

Silas, Adrien

From: Silas, Adrien
Sent: Friday, May 1, 2009 2:00 PM
To: Chipman, Jason; Monaco, Lisa (ODAG); Delery, Stuart F. (ODAG); MacBride, Neil H. (ODAG)
Cc: (b)(6) per NSD; (b)(6) per ATF; Hinnen, Todd (NSD (b)(6), (7)(C) per FBI (FBI (b)(6) per ATF); Schlieter, Courtney H; Burton, Faith (b)(6) per NSD (OIPR (b)(6) per NSD; (b)(6), (7)(C) per FBI; (b)(6) per ATF); (b)(6) per NSD; (b)(6), (7)(C) per FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6) per ATF); Forrester, Nate; Lederman, Mart (b)(6) per ATF
Subject: USA PATRIOT Act - Expiring Provisions (Leahy Ltr/Feinstein & Bond Ltr)
Attachments: FISA29.let.doc

Any ODAG objection to submitting the attached draft Justice Department views letter to OMB for clearance? *As noted below, we would like to get the letter to OMB as early as possible today in order to seek clearance as early as possible next week.*

1) The materials circulated to:

- OLP
- JMD
- NSD
- OLC
- CIV
- CRM
- EOUSA
- FBI
- BATF
- DEA
- NDIC
- OPCL

2) NSD (b)(6) per NSD) drafted the letter; OLC (Marty Lederman) and the FB (b)(6), (7)(C) per FBI) submitted comments;

3) CIV did not respond, but by standing arrangement, when CIV does not respond, we go forward without CIV;

4) We would like to get the letter to OMB as early as possible today in order to seek clearance as early as possible next week;

5) There was no OLA cover page.

<<FISA29.let.doc>>

Delery, Stuart F. (ODAG)

From: Delery, Stuart F. (ODAG)
Sent: Wednesday, May 6, 2009 8:11 AM
To: Golder, Chad (ODAG)
Subject: FW: Fwd: Patriot Act
Attachments: FISA Reauth AG DNI Circulation Draft.let.doc; AG DNI Transmittal Memo for Reauth Letter to OMB.wpd; ATT378957.txt

You might be able to have someone print it when you get to the USAO.

-----Original Message-----

From: Chipman, Jason
Sent: Wednesday, May 06, 2009 8:09 AM
To: Golder, Chad (ODAG)
Cc: Delery, Stuart F. (ODAG); Monaco, Lisa (ODAG)
Subject: Fw: Fwd: Patriot Act

Chad,

I wonder if you could do me a favor to get a doc to the DAG at some appropriate time today? If possible, could you ask someone to print out the attached letter and cover memo for the DAG to review (if he has time today or this evening)? He's familiar with the issue. NSD is hoping to get the draft letter attached here to omb as soon as possible in the hope (b) (5) . We need to clear this through ODAG, and the AG, before they can go to omb.

Jason

----- Original Message -----

From: jason chipman (b) (6) >
To: Chipman, Jason
Sent: Wed May 06 08:01:31 2009
Subject: Fwd: Patriot Act

>

Monaco, Lisa (ODAG)

From: Monaco, Lisa (ODAG)
Sent: Thursday, May 7, 2009 9:24 AM
To: Schlieter, Courtney H; Ruemmler, Kathryn (ODAG); Burrows, Charlotte
Cc: Delery, Stuart F. (ODAG); Parmiter, Robert B; Redding, Michael; Burton, Faith; Appelbaum, Judy; Weich, Ron
Subject: RE: AG talking points -- National Security Related
Attachments: A5 - NSD - Patriot Act Reauthorization (edits for AG testimony) cb editsv2.doc

Courtney -- on the national security-related papers, the only one for which there are changes is the FISA reauth paper. The rest are fine. The FISA paper is attached w/ a redline that Charlotte and I conferred on. Note: this paper may change further as we come to closure on language for an administration position on the reauthorization of these provisions. But I wanted you to have this for your deadline

Thanks

<<A5 - NSD - Patriot Act Reauthorization (edits for AG testimony) cb editsv2.doc>>

Lisa Monaco

Associate Deputy Attorney General
Office of the Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

(o (b) (6))

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(b) (6)

(b) (6) (classified)

From: Schlieter, Courtney H
Sent: Wednesday, May 06, 2009 1:23 PM
To: Monaco, Lisa (ODAG); Ruemmler, Kathryn (ODAG)
Cc: Delery, Stuart F. (ODAG); Parmiter, Robert B; Redding, Michael; Burton, Faith; Appelbaum, Judy; Weich, Ron
Subject: AG talking points -- National Security Related

Lisa and Kathy --

Attached are National Security related talking points for the AG's prep binder for his upcoming HJC oversight hearing. OLA is requested ODAG clearance (with red-lined edits or no comment) by 10:00 am tomorrow, May 7.

Thanks,

Courtney

<< File: A1 - NSD - Counterterrorism Efforts (NSD FBI) - REVISED - CTS (4).doc >> << File: A5 - NSD - Patriot Act Reauthorization (edits for AG testimony).doc >> << File: Media Shield - AG talkers (HJC 5 14 09).doc >> << File: S448 Talking Points_FINAL.doc >> << File: Revised Somalia piracy AG TPs (2).doc >>

Courtney H. Schlieter
Attorney Advisor
U.S. Department of Justice
Office of Legislative Affairs

(b) (6)

Parmiter, Robert B

From: Parmiter, Robert B
Sent: Friday, June 12, 2009 10:44 AM
To: Burton, Faith; Monaco, Lisa (ODAG); Verrilli, Donald
Cc: Weich, Ron; Simpson, Tammi (OLA); Guerra, Joseph R.; Wilkinson, Monty (OAG)
Subject: RE: AG briefing tomorrow o (b) (5) related issues, 3 pm - 4 pm
Attachments: AG Binder - OLA Edits - CLEAN FOR AG BOOK.xls; A1 - NSD (b) (5) Efforts FINAL.doc; A2 - CRM (b) (5) Efforts FINAL.doc; A3 - ODAG - Efforts i (b) (5) FINAL.doc; A4 - NSD (b) (5) FINAL.doc; A5 - NSD - Patriot Act Reauthorization FINAL.doc; A6a (b) (5) Talking Points FINAL.doc; A6b - (b) (5) FINAL.doc; A6c (b) (5) FINAL.doc; A8 - NSD (b) (5) Matter FINAL.doc; A9 - CIV (b) (5) FINAL.doc; A10c - ODAG-CIV (b) (5) Litigation in AI.doc; A11 - NSD (b) (5) FINAL.doc; A13 - OLA (b) (5) tp FINAL.doc; A14 - NSD (b) (5) issue FINAL II 06-04-09.doc; A15 - NSD (b) (5) FINALLM.doc

Attached is everything I have in section A, and a table of contents.

From: (b)(6) per ATF
Sent: Friday, June 12, 2009 9:34 AM
To: Monaco, Lisa (ODAG); Parmiter, Robert B; Verrilli, Donald
Cc: Weich, Ron; Simpson, Tammi (OLA); Guerra, Joseph R.; Wilkinson, Monty (OAG)
Subject: RE: AG briefing tomorrow o (b) (5) related issues, 3 pm - 4 pm

Bobby, could you please send Lisa and Don all of the briefing papers in Tab A plus D1 r (b) (5) Litigation. Lisa, not sure who should brief on th (b) (5) litigation, but I'm copying Joe Guerra here - think he handled it in the AG prep for HJC last month. Bobby, please send D1 also to Joe. Don, if you are available for the 3 pm meeting with the AG today, it might make sense for us to brief him o (b) (5) during that session so that we've covered all of the Tab A an (b) (5) issues this afternoon. If we need more time or need to update the AG next week, we can arrange that, but he specifically asked for a briefing o (b) (5) issues - so we would like to start with that today. Thanks. FB

From: Monaco, Lisa (ODAG)
Sent: Thursday, June 11, 2009 7:58 PM
To: Burton, Faith
Cc: Weich, Ron; Simpson, Tammi (OLA)
Subject: RE: AG briefing tomorrow o (b) (5) related issues, 3 pm - 4 pm

Ok, can you send me the final papers that will be relevant to this session. thanks

Lisa Monaco

Associate Deputy Attorney General
Office of the Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

(o (b) (6)

(c (b) (6)

(b) (6)

(b) (6) (classified)

From: Burton, Faith
Sent: Thursday, June 11, 2009 6:40 PM
To: Monaco, Lisa (ODAG)

Cc: Weich, Ron; Simpson, Tammi (OLA)
Subject: AG briefing tomorrow o (b) (5) related issues, 3 pm - 4 pm

Lisa, Monty has advised that the AG wants to begin his briefing prep for the SJC hearing wit (b) (5) issues. He's set aside 3 -4 pm tomorrow, Monday 1:30 - 4, and Tuesday 4:30 - 6 pm for briefings. We plan to use the last session for hot issues and Member topics.

Could you please lead off tomorrow at 3 o (b) (5) we can come back to it if necessary on Monday. He also wants to hearing about th (b) (5) r issues - so we'll invite CRT to tomorrow's meeting as well.

Not sure who, if anyone, you would like to join you in th (b) (5) prep, but please let us know and invite as you see fit. Is this doable for your? Thanks much. Faith

Parmiter, Robert B

From: Parmiter, Robert B
Sent: Tuesday, July 14, 2009 4:02 PM
To: Burrows, Charlotte; Delery, Stuart F. (ODAG)
Cc: Burton, Faith
Subject: RE: AG QFRs - Senate Judiciary Committee
Attachments: AG SJC QFRs - Draft 2 (draft responses).doc; AG SJC QFR TRACKING CHART.xls

Just got OLP's responses, so the current QFRs are attached along with a tracking chart.

From: Burrows, Charlotte
Sent: Friday, July 10, 2009 6:06 PM
To: Parmiter, Robert B; Delery, Stuart F. (ODAG)
Cc: Burton, Faith
Subject: RE: AG QFRs - Senate Judiciary Committee

Bobby, since there's no deadline w/ Senate Judic, I think that may be premature. I'll be in touch with you Monday re: the deadlines. It would be good to get them back in about 30 days, but I think we still have time left to do so w/o squeezing ODAG adn OAG.

From: Parmiter, Robert B
Sent: Friday, July 10, 2009 6:04 PM
To: Delery, Stuart F. (ODAG)
Cc: Burrows, Charlotte; Burton, Faith
Subject: RE: AG QFRs - Senate Judiciary Committee
Importance: High

Stuart, attached is the current iteration of the Senate AG QFRs. As you can see, there are quite a few missing. I have also attached my QFR tracking chart, which shows which QFRs are outstanding and who the "culprits" are. I can, of course, send a third "friendly reminder" but it would be more forceful coming from ODAG.

I have been in regular contact with NSD and CIV. They are working to get me their outstanding responses.

Bobby

From: Parmiter, Robert B
Sent: Thursday, July 09, 2009 12:52 PM
To: Delery, Stuart F. (ODAG)
Cc: Burrows, Charlotte
Subject: Re: AG QFRs - Senate Judiciary Committee

I'm on the Hill, so I can't tell you specifically which ones are outstanding, but will do so as soon as I get back.

ODAG will get a complete package after it's been circulated through the Dept. I'll include you on that circulation so you can get a head start.

The Committee didn't give us a specific due date. In my humble opinion, however, we should try to duplicate the quick turnaround we had for the HJC QFRs.

From: Delery, Stuart F. (ODAG)
To: Parmiter, Robert B
Cc: Burrows, Charlotte
Sent: Thu Jul 09 12:47:13 2009
Subject: Re: AG QFRs - Senate Judiciary Committee

Which ones are you missing? And when will ODAG get a consolidated set to review?

When are they due to the Hill?

Thanks.

From: Parmiter, Robert B
To: Parmiter, Robert B; Ruemmler, Kathryn (ODAG); Delery, Stuart F. (ODAG); Burrows, Charlotte; MacBride, Neil H. (ODAG); Monaco, Lisa (ODAG); Schools, Scott (ODAG); Siskel, Edward N. (ODAG); Chipman, Jason; Verrilli, Donald; Hitch, Vance (OCIO); Gunn, Currie (SMO); Hauck, Brian; Hirsch, Sam (b)(6) per ATF; Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM) (b)(6) per NSD (OIPR) (b)(6) per NSD, (b)(6) per ATF (b)(6) per ATF; Davis, Valorie A; De, Rajesh; Jackson, Wykema C; Matthews, Matrina (OLP); (b)(6) per ATF; Atsatt, Mikki (b)(6) per ATF; Lauria-Sullens, Jolene; Lofthus, Lee J
Cc: Weich, Ron; Appelbaum, Judy; Agrast, Mark D.; Burton, Faith (b)(6) per ATF; Erb, William (OLA); Simpson, Tammi (OLA); Schlieter, Courtney H (b)(6) per ATF; Redding, Michael
Sent: Thu Jul 09 12:17:42 2009
Subject: Re: AG QFRs - Senate Judiciary Committee

All, this is a reminder that draft responses to these SJC QFRs were due on Tuesday by COB. Thanks to all who have provided their responses already.

From: Parmiter, Robert B
To: Ruemmler, Kathryn (ODAG); Delery, Stuart F. (ODAG); Burrows, Charlotte; MacBride, Neil H. (ODAG); Monaco, Lisa (ODAG); Schools, Scott (ODAG); Siskel, Edward N. (ODAG); Chipman, Jason; Verrilli, Donald; Hitch, Vance (OCIO); Gunn, Currie (SMO); Hauck, Brian; Hirsch, Sam (b)(6) per ATF; Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM) (b)(6) per NSD (OIPR) (b)(6) per NSD; (b)(6) per ATF; (b)(6) per ATF; Davis, Valorie A; De, Rajesh; Jackson, Wykema C; Matthews, Matrina (OLP) (b)(6) per ATF; Atsatt, Mikki (b)(6) per ATF; Hitch, Vance (OCIO); Lauria-Sullens, Jolene; Lofthus, Lee J (b)(6) per ATF; McMahan, Jennifer (CIV); Michaelson, Melanie (CIV) (b)(6) per ATF; O'Neill, Sean; Cummings, Holly (CIV); Martin, Paul K. (OIG); Schnedar, Cynthia A. (OIG); Bernhardt, Gena (OJP); Brien, Peter (OJP); Carradini, Rosemary Cavanagh (OJP); Dirham, Sue (OJP); Duncan, Summer (OJP); Lowry, Kim (OJP); Overmann, Lynn (OJP); Searby, Susan (OJP); Kimball, Sharon (CRM); Nash, Stuart (ODAG); Padden, Tom (CRM); Richmond, John (CRT); Wish, Judith (OPR) (b)(6), (7)(C) per FBI (FBI)
Cc: Weich, Ron; Appelbaum, Judy; Agrast, Mark D.; Burton, Faith (b)(6) per ATF; Erb, William (OLA); Simpson, Tammi (OLA); Schlieter, Courtney H (b)(6) per ATF; Redding, Michael
Sent: Mon Jul 06 18:46:54 2009
Subject: RE: AG QFRs - Senate Judiciary Committee

All, this is a friendly reminder that the draft responses to these QFRs are due by noon tomorrow. Thanks to those who have already submitted their responses. For your convenient reference, I have reattached the QFRs.

Thanks,

Bobby

<<AG SJC QFRs - Draft 1 (rec'd from SJC).doc>>

From: Parmiter, Robert B

Sent: Tuesday, June 30, 2009 6:07 PM

To: Ruemmler, Kathryn (ODAG); Delery, Stuart F. (ODAG); Burrows, Charlotte; MacBride, Neil H. (ODAG); Monaco, Lisa (ODAG); Schools, Scott (ODAG); Siskel, Edward N. (ODAG); Chipman, Jason; Verrilli, Donald; Hitch, Vance (OCIO); Gunn, Currie (SMO); Hauck, Brian; Hirsch, Sam (b)(6) per ATF; Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM) (b)(6) per NSD (OIPR) (b)(6) per NSD; (b)(6) per NSD (b)(6) per ATF; Davis, Valorie A; De, Rajesh; Jackson, Wykema C; Matthews, Matrina (OLP) (b)(6) per ATF; Atsatt, Mikki (b)(6) per ATF; Hitch, Vance (OCIO); Lauria-Sullens, Jolene; Lofthus, Lee J (b)(6) per ATF; McMahan, Jennifer (CIV); Michaelson, Melanie (CIV) (b)(6) per ATF; (b)(6) per ATF; O'Neill, Sean; Cummings, Holly (CIV); Martin, Paul K. (OIG); Schnedar, Cynthia A. (OIG); Bernhardt, Gena (OJP); Brien, Peter (OJP); Carradini, Rosemary Cavanagh (OJP); Dirham, Sue (OJP); Duncan, Summer (OJP); Lowry, Kim (OJP); Overmann, Lynn (OJP); Searby, Susan (OJP); Kimball, Sharon (CRM); Nash, Stuart (ODAG); Padden, Tom (CRM); Richmond, John (CRT); Wish, Judith (OPR) (b)(6), (7)(C) per FBI (FBI)

Cc: Weich, Ron; Appelbaum, Judy; Agrast, Mark D.; Burton, Faith (b)(6) per ATF; Erb, William (OLA); Simpson, Tammi (OLA); Schlieter, Courtney H (b)(6) per ATF; Redding, Michael

Subject: AG QFRs - Senate Judiciary Committee

Importance: High

DOJ Colleagues,

Attached are the Questions for the Record (QFRs) submitted by Members of the Senate Judiciary Committee following the Attorney General's appearance before the Committee on June 17, 2009. Please review the QFRs assigned to your component via the below list, draft a response, and provide that draft response to me by **12 pm on Tuesday, July 7, 2009**. Everyone did an excellent job drafting responses for the House Judiciary Committee; we should treat these Senate QFRs with the same level of urgency.

Assignment List (note that some of these QFRs require input from more than one component):

OLC: Feingold 1a, Feingold 1b, Feingold 2a-c

OJP: Coburn 3a

CRM: Leahy 3, Wyden 1a, Wyden 1b, Coburn 5a-c

CRT: Schumer 1a, Schumer 1b, Schumer 2a, Schumer 8a, Coburn 1a, Coburn 1b

ODAG: Feingold 4, Schumer 3a (Schools), Whitehouse 1 (Verrilli), Whitehouse 2

NSD: Leahy 5a, Leahy 5b, Hatch 1, Hatch 2 (w/BOP), Hatch 3a, Hatch 3b, Kyl 1 (w/BOP), Kyl 3, Kyl 4, Kyl 5, Coburn 4a, Coburn 4b, Coburn 4c

OLP: Leahy 1, Leahy 2a, Leahy 2b, Feingold 3 (w/EOIR), Coburn 2a, Coburn 2b

CIV: Leahy 6, Schumer 5a, Schumer 9a, Schumer 9b, Whitehouse 3

OIP: Leahy 4a-c, Leahy 7, Leahy 8

OPCL: Leahy 9

EOUSA: Feingold 5 (w/CRM)

EOIR: Schumer 4a, Schumer 4b

BOP: Schumer 6a, Schumer 6b, Kyl 2a (w/NSD), Kyl 2b (w/NSD)

ATF: Schumer 7a-c

ATR: Hatch 4

JMD: Coburn 3b

Thanks for your prompt attention to this. If you have any questions or believe that any of these QFRs have been assigned in error, please let me know.

Bobby

<< File: AG SJC QFRs - Draft 1 (rec'd from SJC).doc >>

Robert B. Parmiter
Office of Legislative Affairs
U.S. Department of Justice
Washington, D.C. 20530

(b) (6)

**Questions for the Record
Attorney General Eric H. Holder, Jr.
Senate Judiciary Committee
June 17, 2009**

QUESTIONS POSED BY CHAIRMAN LEAHY

Media Shield

1. Carefully balanced legislation to create a qualified privilege for journalists that protects the identity of their confidential sources is pending on the Judiciary Committee's legislative agenda. During your confirmation hearing, you expressed support for a well-crafted media shield bill, and you committed to work with me and others on this legislation. The legislation (S. 448) before the Committee does not give the press a free pass, and it contains reasonable exceptions to the limited privilege in cases where information is needed to prevent terrorism or to protect national security. Does the Justice Department support S. 448, the Free Flow of Information Act of 2009, currently before the Committee, and will you work with me and others to enact this legislation this year?

Response (b) (5)

[REDACTED]

The Justice Department's Role in Reforming Forensic Sciences

2. In February, the National Academy of Sciences issued a comprehensive report on the urgent need to improve forensic sciences in the United States. One of the core findings in the National Academy of Science Report is that science needs to be the guiding principle in determining the standards and procedures for forensic science. Among other things, the Report calls for the federal government to set national standards for accrediting forensic labs and for certifying forensic scientists. The report also makes clear that a great deal of work needs to be done to conduct new research into traditional forensic disciplines.
 - a. Do you agree that there should be a nationwide forensics reform effort including national standards to be set for accrediting forensic labs and certifying forensic scientists?

Response (b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5) [Redacted]

b. What role should the Justice Department play in this effort to reform forensic sciences in this country?

Respons (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

Public Corruption Prosecution Improvements Act

3. We have seen a shift of resources away from public corruption investigations and prosecutions over the past seven years. Recent prominent corruption cases have made clear that public corruption continues to be pervasive problem that victimizes every American by chipping away at the foundation of our Democracy.

Senator Cornyn and I introduced the bipartisan Public Corruption Prosecution Improvements Act of 2009 (S. 49) that would provide needed funds to the Justice Department for the investigation and prosecution of public corruption offenses and legal tools for federal prosecutors closing loopholes in corruption law and bringing clarity to key statutes. The Department of Justice supports this bill and has submitted a favorable views letter on the legislation.

Why does the Department of Justice need this legislation? Do you believe it should be promptly passed?

Response: (b) (5)

[Redacted response text]

New FOIA Policy

4. July Fourth marks the 43rd anniversary of the enactment of the Freedom of Information Act (“FOIA”). I commend the President for issuing a memorandum to strengthen FOIA on his first full day in office, and I commend you for issuing a FOIA memorandum in March which restores the presumption of openness to our government. Your FOIA Memo requires, among other things, that this new policy “should be taken into account and applied if practicable” to pending FOIA cases. But there is some concern that the Department and other federal agencies are not actually applying this policy to their pending cases.

- a. Is the Department regularly reviewing its pending FOIA cases to determine the impact of your March 19 FOIA Memo on withholding decisions?

Response:

- b. Has your new policy resulted in the release of more information to the public?

Response:

- c. Will you commit to work with me and the FOIA requester community to address concerns about the implementation of this policy?

Response (b) (5) [Redacted]

Material Support for Terrorism

5. Upon taking office, Secretary Napolitano announced a broad review of Department of Homeland Security immigration policies, including how to handle asylum cases held in limbo because of the overly-broad definition of material support for terrorism in our immigration laws. I welcome her review and hope that the Department of Justice is fully cooperating in this process.

- a. What steps is the Department of Justice taking to revisit past agency interpretations of the material support inadmissibility grounds?

Response (b) (5) [Redacted]

- b. Does the Department of Justice agree that *de minimis* contributions and acts committed under duress should not be considered to be “material support”?

Response (b) (5)

[REDACTED]

Asylum Claims Based on Membership in a Particular Social Group

6. Asylum claims may be based on “membership in a particular social group,” but that phrase is not defined by the statute. The standard for defining “membership in a particular social group” was articulated in a 1985 opinion from the Board of Immigration Appeals (BIA) entitled *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985). The *Acosta* decision requires the asylum seeker to show that the members of the social group at issue share a common characteristic that is either immutable or so fundamental to their identity or conscience that they should not be required to change it. For more than twenty years, the BIA followed the *Acosta* standard under the well-established guidance of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the UNHCR Social Group Guidelines. In a 2006 decision titled *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006), the BIA introduced a new and troubling concept into its review of social group asylum cases. In *Matter of C-A-*, the BIA required that the social group at issue in the case also be visible in the society. In this ruling, the BIA cited to the UNHCR Social Group Guidelines as a source for its heightened “social visibility” standard, but in doing so, misstated the UNHCR position on the matter. Since that time, UNHCR has stated unequivocally that the BIA misconstrued its meaning. The UNHCR position is that there is no requirement that a particular social group be visible to society at large. Is the Department reviewing this matter and considering a modification to BIA precedent that is consistent with UNHCR Social Group Guidelines?

Response: (b) (5)

[REDACTED]

(b) (5)
[Redacted]

E-FOIA

7. The Freedom of Information Act was amended in 1996 to cover electronic information. Since then, I and others have worked hard to make sure that our federal agencies are fully complying with that law. Given the explosion of the Internet and other new technologies, compliance with E-FOIA is essential to improving overall FOIA performance across the government.

Will the Department conduct a review of agency web sites to determine whether they are in compliance with the affirmative disclosure requirements of E-FOIA?

Response (b) (5)
[Redacted]

FOIA Processing

8. Delay in the FOIA process has been a persistent problem, and despite efforts under Executive Order 13392, many agencies have not been able to meaningfully reduce their FOIA backlogs.
- a. What do you see as the role of DOJ in helping and/or compelling agencies to reduce their backlogs?

Response (b) (5)
[Redacted]

- b. Many agencies still do not permit members of the public to submit FOIA requests by e-mail, although doing so would save time and money for both requesters and agencies. Will you issue additional guidance requiring all agencies to accept FOIA requests electronically?

Response: (b) (5)

Privacy and MWCOG Multi-Jurisdictional Database

9. In 2002, the Metropolitan Washington Council of Governments (“MWCOG”) received federal funding under the COPS program for the development of a Regional Pawn Sharing Database system. State and local law enforcement agencies use this database to aggregate records of consumer credit transactions by pawnbrokers and to deter the marketing of stolen property. The information contained in the Regional Pawn Sharing Database includes sensitive personal information about U.S. consumers who patronize pawnbroker establishments, including name, date of birth, race, address, an identification number from a state-issued identification document (e.g., driver’s license) or Social Security Number, as well as occasionally, biometric identifiers such as fingerprints. Given the sensitive personal information routinely maintained in the Regional Pawn Sharing Database, there is growing concern that this database could be vulnerable to privacy and civil liberties violations. What steps is the Department taking to ensure that state and local law enforcement agencies that receive federal funding to participate in Regional Pawn Sharing Database comply with the privacy and civil liberties requirements established under 28 C.F.R. Part 23?

Response:

QUESTIONS POSED BY SENATOR FEINGOLD

1. As we discussed at the hearing, I requested in letters I sent to the President on April 29 and June 15 that the administration withdraw the January 2006 White Paper and other classified Office of Legal Counsel (OLC) memos providing legal justification for the NSA’s warrantless wiretapping program. At the hearing, you stated that the OLC is reviewing those opinions to determine whether they can be made public.
- a. How soon can we expect that review to be completed?
- b. My understanding is that OLC attorneys also are reviewing those opinions to determine whether they should be withdrawn. Can you confirm that understanding? When do you expect that review to be completed?

Response to subparts a and b (b) (5)

2. **President Obama, in his May 29 statement on cyber security, offered the following reassurance: “Let me also be clear about what we will not do. Our pursuit of cyber security will not – I repeat, will not include – monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans.” This is a clear statement of the importance of personal privacy as the administration moves forward on cyber security. But the Cyber Space Policy Review report released that day by the White House acknowledged a “complex patchwork” of applicable laws and the “paucity of judicial opinions in several areas.”**
- a. **Is there a currently operative Justice Department legal opinion to guide the application of existing law or any new legislative framework that might be proposed? If so, when and by whom was the opinion developed?**
- b. **Is this topic part of the overall review that is underway of OLC memos?**

Response to subparts a and b: (b) (5)

- c. **Will you make public as much of the relevant legal analysis as possible, and will you provide any existing opinions, and any future opinions on this topic, to Congress, so that staff with appropriate clearances will have complete access to the legal analysis?**

Response (b) (5)

3. **I was very pleased that you decided to vacate the order issued by Attorney General Mukasey in *Matter of Compean*, and that you have directed the Executive Office for Immigration Review to initiate a rulemaking procedure to evaluate the existing framework for making claims of ineffective assistance of counsel. What is the timetable for issuing a final rule in this matter?**

Response (b) (5)

[REDACTED]

4. The recent revelations of high-level officials involved in authorizing or ordering the use of torture, including the disclosure last month of the Office of Legal Counsel memos, the publication of the 2007 report of the International Committee of the Red Cross that concluded that our government committed torture, and the report released last month by the Senate Armed Services Committee on the use of torture by the Defense Department, all raise serious allegations of crimes being authorized and ordered at the very highest levels of government. What steps have you taken to ensure that there is an independent review of the evidence of possible criminal acts, and how would you respond to those who believe that only the appointment of an independent prosecutor will allow a credible investigation of wrongdoing to take place?

Response:

5. At your confirmation hearing in January, I asked if the Justice Department would prepare a detailed report about implementation of the federal death penalty from 2001 to 2008, similar to a report that was issued in 2000. You agreed that it would be appropriate to do an in-depth report and share the results publicly – a response that I greatly appreciated. What is the status of this effort, and when do you expect it to be completed?

Response:

QUESTIONS POSED BY SENATOR SCHUMER

1. As you know, I am the Chairman of the Rules Committee, which has jurisdiction over the administration of federal elections. On March 11, we held a hearing to look into the problems with our current voter registration system. We had found that as many as 7 million eligible voters either could not vote or did not vote due to registration issues. This is unacceptable. I know you would agree with me when I say that voter registration is the

lifeblood of our republic. And there are several components to achieving successful voter registration under our current system. Two of these components are 1) that states comply with the requirements of the National Voter Registration Act (NVRA), and 2) that various Federal agencies be “designated” as voter registration agencies in order to decrease unnecessary obstacles to registration. I believe both are vital to an effective registration system under our current regime.

- a. What steps will you take to reverse the Department of Justice’s past practices of non-enforcement of NVRA and the Help America Vote Act, particularly with respect to registering voters from the public assistance lists?

Response:

- b. Would the Department be willing to sue states out of compliance with NVRA?

Response:

2. There is another aspect of NVRA that deserves significant attention. In order to help improve voter registration and make it easier for some in our population – especially our veterans – to vote, various Federal agencies can be designated as “voter registration agencies.” In fact, I wrote to President Obama requesting that this be done as soon as possible. Now, it does not need to be implemented for every Federal agency, but certainly the Department of Veterans’ Affairs and HHS would be appropriate places to start.

- a. Do you agree with me that such designations are both necessary and helpful, and do you know of any plans to move forward with these designations?

Response:

3. Early this year, the U.S. Attorney for the District of Columbia declined to prosecute the former head of the Civil Rights Division, Bradley Schlozman, for statements that he made to me and other Senators that the Office of Inspector General found to be untrue. At your confirmation hearing, I asked if you would refer this case to the U.S. Attorney in Connecticut, who is conducting a review of politicization at the Department under the last administration, and to give me an update on this investigation.

- a. Can you provide me and the other members of the Committee with an update at this time?

Response (b) (5)

4. As Chairman of the Immigration Subcommittee, one of my primary concerns is the effective operation of our immigration court system. In recent years, many court officials have called for an increase in funding for the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) citing the complexities of immigration cases, unmanageable dockets and unrealistic case completion deadlines.

On average, Immigration Judges have less time than before to dispose of a case despite their burgeoning case loads. In 2007, they received more than 334,000 matters—including bonds, motions and removal proceedings—up from roughly 290,000 in 2002. Based on the total number of judges, this amounts to nearly 1,500 matters per Immigration Judge. In comparison, U.S. District Court judges average 483 matters completed per year.

The Board of Immigration Appeals (BIA) also needs a sufficient number of judges to do its job fairly and efficiently. Reports indicate that there are more than 8,700 cases that took more than five years for the BIA to complete, and tens of thousands more that were pending before the courts for more than two years before they were resolved.

- a. What steps have you taken, or do you plan on taking, to ensure that Immigration Judges and BIA members can manage their burgeoning case loads?

Response:

- b. How many additional Immigration Judges, BIA members, and staff attorneys do you plan to hire in FY 2009 and 2010?

Response:

5. With regard to combating the smuggling of illegal aliens into the United States, a 2005 GAO report concluded that—in order to effectively combat alien smuggling—the Government needs civil forfeiture authority that would enable the Government to seize safe houses used in alien-smuggling. This authority has yet to be granted by Congress. I spoke with Secretary Napolitano last week about my intention to draft a bill giving the Government this authority and she was enthusiastically supportive.

- a. **Would you support my bill giving the Government this civil forfeiture authority to seize safe-houses used in alien-smuggling, and is that something you will work with me to enact?**

Response:

6. I recently toured the Federal Correctional Facility in Otisville, New York. What I saw there was deeply troubling. Otisville is operating at 42.7% over capacity and is 14% understaffed. Federal prisons in Manhattan, Brooklyn and Ray Brook, are all more than 50% overcrowded and are also severely understaffed. Nationally, federal prisons are operating around 37% over their rated capacity and are understaffed by an order of 13.4%. Inmates are being held in areas not originally designed as inmate sleeping areas and, at least on some occasions, non-correctional prison staff is being used for correctional duties. Fortunately, thanks to some very outstanding work by our corrections officers, all four New York facilities I mentioned have been exceptionally safe, and assault numbers were down in 2007. Nonetheless, I'm sure you will agree that we cannot treat prisons like an afterthought.

- a. **With this in mind, does the Department believe that more funding is necessary to ensure safety for prison staff and security for inmates?**

Response: (b) (5)
[Redacted]

- b. **If not, how is the Department planning to address these growing concerns?**

Response: (b) (5)
[Redacted]

7. A common refrain from people who are opposed to more restrictive gun laws is that we should “enforce the existing laws on the books.” I will say that I think this is a fair statement, and it’s one of the rare places on this issue on which we should all be able to agree. But I’m concerned that, at least with respect to the ATF, current staffing limitations may make it impossible to even enforce some of the gun laws we have now. And I say all of this with the important caveat that there are only a few bad apples out there – a handful

of gun dealers are responsible for the overwhelming majority of illegally sold guns in the country. Our goal should be finding the bad apples – and the best way to do that will be through routine inspections. As you know, the ATF is now empowered to conduct an annual inspection of a federal firearms licensee’s inventory and records. But according to recent news reports, most gun dealers are only inspected once every three to six years, because the pool of ATF auditors is stretched dangerously thin.

- a. That estimate was accurate as of April of this year. Do you have any reason to believe that anything has changed with respect to that estimate?

Response:

Likewise, as of 2007, ATF said publicly that conducting a single inspection of every federal firearms licensee in the country would take approximately seventeen years.

- b. Do you have any reason to believe that anything has changed with respect to that estimate?

Response:

- c. In light of these numbers, are you concerned that the ATF may be understaffed?

Response:

8. I understand that the Department of Justice is investigating for accomplices to the murder of Dr. George Tiller, and for potential violations of the Freedom of Access to Clinics Entrances (or “FACE”) Act – the law that prohibits threats of force or physical obstruction of reproductive-health providers and seekers. According to newspaper reports, criminal enforcement of this important law had declined by more than 75 percent over the last 8 years under the previous administration. Therefore, I appreciate that the Department has launched its investigation, and feel that we must work together to stop these unconscionable acts of violence.
 - a. How can we work with the Department of Justice to ensure that health-care professionals are protected from acts of violence?

Response:

9. Last week, the Department issued a brief arguing in favor of upholding the Defense of Marriage Act in federal court. Many members of the LGBT community were upset by this brief.

- a. Can you please tell me what knowledge you had of this before it was written?

Response:

- b. Can you please elaborate on how this administration's position on the Defense of Marriage Act differs from that of the Bush Administration?

Response:

QUESTIONS POSED BY SENATOR WHITEHOUSE

1. The Department under your stewardship has continued and reinforced the Bush Administration's arguments regarding the "state secrets" defense. I understand that on a complex issue like this, one may not wish to revisit it on the schedule of an ongoing case, or in that particular context, and I recognize that Senate delays have slowed down the confirmation of your new management team.

Can we expect a policy review of this defense, and if so, on what schedule? Are there other areas in which you anticipate or are conducting such policy review?

Response:

2. A great deal of damage was done to the Department of Justice during the last administration. What procedures are now in place for capturing disclosures from career Department employees about that damage – be it professional or ethical misconduct, politicized decision-making, or something else? To what office do such disclosures go, so that they can be properly analyzed and, if necessary, acted upon?

Response:

3. On June 15, 2009, the Department of Justice submitted a brief in support of the Defense of Marriage Act (DOMA), the law that protects the right of states not to recognize same-sex marriages or provide same-sex married couples with federal benefits. At the same time, the President has pledged to support repeal of DOMA (and I too would like to see it repealed). Was the litigation posture taken after a policy review by the Department, or a continuation of the litigation strategy of the previous administration? The distinction between a policy position and a litigation posture is important.

Response:

QUESTIONS POSED BY SENATOR WYDEN

1. Article 4 of the Mexican Federal Penal Code allows for the prosecution of Mexican nationals who have committed a crime in the US and fled back to Mexico. In certain cases, extradition may not be achievable, and Article 4 provides the sole process for obtaining justice for US crime victims and imposing punishment upon the criminal. State and local law enforcement authorities in many states, including Oregon, have had success pursuing Article 4 prosecutions. However, complying with the requirements of Article 4 and working with Mexican law enforcement officials to complete the prosecution is quite an entailed process. Many jurisdictions lack the resources and expertise to pursue Article 4 cases.

Response: (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

2. **Given the increasing criminal problems arising from the cross-border activities of Mexican drug cartels, do you believe that Article 4 is an important tool for pursuing justice for crimes committed in the US by Mexican national suspects?**

Response (b) (5) [Redacted]

3. **Are you aware of any barriers that would prevent the Department of Justice's Office of International Affairs from providing assistance to state and local law enforcement officials and providing greater coordination and efficiency to the development of Article 4 cases?**

Response (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

QUESTIONS POSED BY SENATOR HATCH

- 1. Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by terrorist suspects. Director Mueller appeared before this committee this spring and described how important these tools are in furthering the FBI's mission in investigating terrorism activity here in the United States. He also expressed his support for reauthorizing the provisions without modifications. The Director also provided the committee some useful statistics regarding the usage of these**

techniques. For example, between 2004 though 2007 the FBI used the business record examination tool 225 times. During that same time period, the FBI used roving wiretaps 147 times. What is your assessment of these tools and does the administration and the Department of Justice support their reauthorization without additional modifications?

Response (b) (5)

2. There are 15 High Security prisons under the control of the Department of Justice. The total rated capacity of these facilities is 13,448 inmates. The current population of inmates in these facilities is 20,001. Presently, there is only 1 dedicated Supermax prison in the BOP arsenal and as you know this is located in Florence, Colorado. As of June 4, 2009, the current population of the Florence Supermax was 468 inmates. This number means that this facility is currently at its maximum capacity. ADX Florence already houses 33 inmates incarcerated there with ties to international terrorism. Inmates at ADX Florence are locked down for 23 hours a day. There is no congregating or religious services in this facility. I bring this up because this is exactly the same conditions that the high security unit at Guantanamo offers. With the administration's self imposed deadline for closure looming on the horizon there is a lot of criticism that there has not been one hint of a plan for Guantanamo's closure. Some of my colleagues in the majority party have floated the idea that there is plenty of room to incarcerate these detainees in BOP facilities. However, the BOP has stated time and again that they do not have the room. BOP has provided population figures to both sides of the aisle that proves this. Can you give me your view on where the Department of Justice is going to house these detainees when Guantanamo is closed?

Response:

3. Recently, the Obama Administration has advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. This practice has been implemented by agents of the FBI. In January, when you appeared before this committee for your confirmation you stated that in your belief this country is "at war." In January, the President's issued an Executive Order stating that the Army Field Manual would be the "rule book" governing the treatment of prisoners. The Army Field Manual does not mention providing *Miranda* warnings to prisoners. Is the Justice Department endorsing an approach of using criminal investigative techniques in battlefield interrogations? Can you explain this rationale behind reading a waiver to combatants and Al Qaida operatives that informs them of their U.S. Constitutional rights in a foreign nation?

Response:

4. As you know the College Football Bowl Championship Series (BCS) has been a matter of significant controversy for many throughout the country, including President Obama. While some may dismiss the BCS as too trivial a matter for government attention, it involves hundreds of millions of dollars in revenue every year, most of which is reserved for participants most favored by the BCS. This system places nearly half the schools who field Division I football teams at a competitive and financial disadvantage. While most reasonable people agree that the BCS arrangement is unfair, I, along with others, have raised questions about the legality of the BCS in light of our nation's antitrust laws. In addition, I know that you have been contacted by Utah state officials regarding this matter. At this point, what is the disposition of the Justice Department, particularly the Antitrust Division, regarding the BCS? Are there any ongoing Justice Department efforts to examine the legality of the existing BCS system?

Response: (b) (5)

[REDACTED]

QUESTIONS POSED BY SENATOR KYL

1. On May 29th, I sent you a letter asking you to provide the factual justification for the President's statement in his May 21st speech at the National Archives

when he said: “Our federal ‘supermax’ prisons...hold hundreds of convicted terrorists.”

- a. As requested in the letter, please provide the names of the terrorists currently held in federal prisons and the details of their crimes.

Response:

- b. Do you assess that their crimes are comparable to that of the high-value detainees at GTMO?

Response:

- 2. How would the Bureau of Prisons make space for the GTMO detainees?
 - a. If using existing maximum security facilities (which are already overcrowded by almost 7,000 inmates) what would happen to the inmates that are there now?

Response:

- b. If opening a new facility or re-opening a closed facility, how would this facility be made ready in seven months or less in order to accommodate President Obama’s Executive Order deadline of January 22, 2010?

Response:

- 3. On what legal basis would you prevent a GTMO detainee from being released into the United States if found not guilty in a federal court? What if a case is thrown out for procedural reasons?

Response (b) (5) [REDACTED]

- 4. If GTMO is closed, where will the U.S. hold and try newly captured enemy combatants in the future?
 - a. Would they be brought to the U.S. for legal proceedings? If that is not the plan, are you concerned that trying some of the GTMO detainees in a U.S. court will set a precedent that can be cited by future detainees?

Response (b) (5) [Redacted]

5. How soon after the closure of GTMO should we expect to see a notable and measurable decrease in terrorist recruiting?

Response: (b) (5) [Redacted]

(b) (5) [Redacted]

QUESTIONS POSED BY SENATOR COBURN

1. **Emmett Till Unsolved Civil Rights Crimes:**

At last week’s oversight hearing, we discussed how you committed to me at your confirmation hearing that you would “figure out ways to try to move money around” to fund the Emmett Till Unsolved Civil Rights Crime Act. You testified that you would get back to me once you had confirmed whether any money had been provided by the Department of Justice to fund that initiative.

a. Now that you have had time to look into it, please describe what resources (if any) DOJ has devoted to the Emmett Till Unsolved Civil Rights Crime Act.

Response (b) (5) [Redacted]

I was pleased by your commitment to meet with members of the Emmett Till Campaign for Justice, especially its President, Mr. Alvin Sykes.

- b. Has that meeting been scheduled? If so, when will it take place? (I would be happy to help facilitate, if needed.)

Response:

2. “Assault Weapons” Ban:

At the oversight hearing, you testified that: “I don’t think I have in fact said that we need a new assault weapons ban.”

- a. Do you now acknowledge having called for a reinstatement of that ban at a February 25, 2009 press conference?
- b. Is it still your intent to seek a reinstatement of the “assault weapons” ban?

Response to subparts a and b (b) (5)

3. Grant Management

What specific steps have you taken to improve grant management at DOJ? In your confirmation hearing, you recognized that it must be treated as a “consistent priority” to prevent problems.

- a. Have you been in contact with the Inspector General about grant management? Now that you have had time to review the various DOJ grant programs, what problems have you seen, and how do you propose to address them?

Response (b) (5)

President Obama promised to conduct “an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy.” You said you would begin these efforts at DOJ “soon after you took office as Attorney General.”

- b. Have you begun these efforts? If so, what specific steps have you taken?

Response:

4. Prolonged Detention

Last week, the Senate Judiciary Subcommittee on the Constitution held a hearing on prolonged detention.

- a. Do you agree with the President that there are some detainees who cannot be prosecuted?

Response (b) (5)

- b. Do you agree with the President that there are some detainee terrorists who “pose a clear danger” to the American people and who “remain at war with the United States”?

Response (b) (5)

- c. Is the United States under any international obligation to either “try or release” those detainees?

Response (b) (5)

5. Earmark Investigation

On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244) was signed into law. That bill included a provision which reads as follows:

“SEC. 502. DEPARTMENT OF JUSTICE REVIEW. Consistent with applicable standards and procedures, the Department of Justice shall review allegations of impropriety regarding item 462 in section 1934(c) of Public Law 109-59 to ascertain if a violation of Federal criminal law has occurred.”

As you may recall, this provision referred to the \$10 million “Coconut Road” earmark that was inserted into the transportation bill after it passed both the House and Senate. A \$10 million earmark for “Widening and Improvements for I-75 in Collier and Lee County” was in the bill that passed both houses of Congress, but was not in the version of the bill signed by President Bush. That earmark was deleted and one appeared that was for a \$10 million earmark for the “Coconut Rd. interchange I-75/Lee County[.]” An effort I

undertook to have the House and Senate investigate this was modified by my colleague, Senator Boxer, to have DOJ investigate the matter instead.

- a. What is the status of this review?
- b. Has the Department reached any conclusions?
- c. If it has been determined that a violation of federal criminal law has occurred, what will be the next step for DOJ?

Response to subparts a, b, and c:

(b) (5)

Burrows, Charlotte

From: Burrows, Charlotte
Sent: Monday, July 20, 2009 8:22 PM
To: Chipman, Jason; Monaco, Lisa (ODAG); Schools, Scott (ODAG); Siskel, Edward N. (ODAG); MacBride, Neil H. (ODAG); Nash, Stuart (ODAG); Columbus, Eric (ODAG); Golder, Chad (ODAG); Ruemmler, Kathryn (ODAG); Verrilli, Donald; Libin, Nancy C. (ODAG)
Cc: Delery, Stuart F. (ODAG)
Subject: RE: Senate Judic qfrs
Attachments: AG SJC QFRs - Draft 3 (circulation edits 1).doc

All-- Sorry for this, but we got the attached updated version of the Senate qfrs today, w/ a few edits from OLP. I doubled back and am waiting to confirm that OLC will not have anything more. Will let you know when I have confirmed. C

From: Burrows, Charlotte
Sent: Monday, July 20, 2009 1:48 PM
To: Chipman, Jason; Monaco, Lisa (ODAG); Schools, Scott (ODAG); Siskel, Edward N. (ODAG); MacBride, Neil H. (ODAG); Nash, Stuart (ODAG); Columbus, Eric (ODAG); Golder, Chad (ODAG); Ruemmler, Kathryn (ODAG); Verrilli, Donald; Libin, Nancy C. (ODAG)
Cc: Delery, Stuart F. (ODAG)
Subject: FW: Senate Judic qfrs

All -- Attached are draft qfrs for the Senate Judiciary Committee. All components have had the chance to comment on these qfrs. To give David time to review before these go to OAG, please let me know if you have any changes by cob Wednesday if possible.

Note however, that a few components are still working to complete the initial drafts; I am circling back now for an update. Because we hope to get these reviewed, to OAG, and through OMB clearance by August recess, I am circulating the answers we have received to date and will share the additional responses when they come in. I've indicated below who in ODAG I think should review which question, but please let me know as soon as possible if you believe these have been mis-assigned. I've starred (**) the questions where I wasn't entirely sure who should review.

LEAHY

1. Lisa/ Eric?
- 2-3. Neil/ Stuart N./Ed?
4. Eric
5. Jason, Neil, Lisa (definition of material support of terrorism and immigration law)**
6. Neil, Jason (impact of broad definition of material support of terrorism on asylees) **
- 7-8. Eric
9. Nancy

FEINGOLD

1. Jason ** (warrantless wiretapping)
2. Jason
3. Neil
4. Lisa
5. Neil/Ed

SCHUMER

- 1-2. Charlotte
3. Scott
- 4-6. Neil
7. Ed** (whether ATF has staff necessary to enforce existing gun laws)
8. Charlotte
9. Chad/Kathy

WHITEHOUSE

1. Don
2. Scott
3. Kathy/Chad

WYDEN

- 1-3. Neil/ Stuart N/ Ed ** (Art. 4 of the Mexican penal code and extradition)

HATCH

1. Jason
2. Neil
3. Lisa
4. Karyn

KYL

- 1-5. Lisa/ Jason

COBURN

1. Charlotte
2. Neil/Ed/Stuart N.
3. Scott/ Charlotte** (grant management)
4. Jason / Lisa 5. Scott

From: Parmiter, Robert B
Sent: Friday, July 17, 2009 2:53 PM
To: Burrows, Charlotte
Subject: RE: Senate Judic qfrs

Here are the QFRs and a tracking chart. I will circulate the remainder of the QFRs (including those received late) on Monday. Here is a status report on those still outstanding:

CIV has told me their front office is meeting about these QFRs, and they will get me their outstanding responses by Monday.

I have been in contact with NSD about their outstanding responses (including those originally assigned to BOP, which NSD had to run by th (b) (5)).

I have pinged JMD about Coburn 3b. They know I want the answer; hopefully I will get it shortly. I know they are close to done if not totally done.

From: Burrows, Charlotte
Sent: Friday, July 17, 2009 1:52 PM
To: Parmiter, Robert B
Subject: RE: Senate Judic qfrs

tx

From: Parmiter, Robert B
Sent: Friday, July 17, 2009 1:51 PM
To: Burrows, Charlotte
Subject: Re: Senate Judic qfrs

Charlotte, am out of the building but will get back to you as soon as I get back. BP

From: Burrows, Charlotte
To: Parmiter, Robert B
Sent: Fri Jul 17 13:47:42 2009
Subject: Senate Judic qfrs

Bobby-- can you send me the current version of the Senate Judic qfrs when you get a chance? Also, did you get anything yet from CRM? Anyone else not respond yet?

Questions for the Record
Attorney General Eric H. Holder, Jr.
Senate Judiciary Committee
June 17, 2009

QUESTIONS POSED BY CHAIRMAN LEAHY

Media Shield

1. Carefully balanced legislation to create a qualified privilege for journalists that protects the identity of their confidential sources is pending on the Judiciary Committee's legislative agenda. During your confirmation hearing, you expressed support for a well-crafted media shield bill, and you committed to work with me and others on this legislation. The legislation (S. 448) before the Committee does not give the press a free pass, and it contains reasonable exceptions to the limited privilege in cases where information is needed to prevent terrorism or to protect national security. Does the Justice Department support S. 448, the Free Flow of Information Act of 2009, currently before the Committee, and will you work with me and others to enact this legislation this year?

Response (b) (5)

[REDACTED]

The Justice Department's Role in Reforming Forensic Sciences

2. In February, the National Academy of Sciences issued a comprehensive report on the urgent need to improve forensic sciences in the United States. One of the core findings in the National Academy of Science Report is that science needs to be the guiding principle in determining the standards and procedures for forensic science. Among other things, the Report calls for the federal government to set national standards for accrediting forensic labs and for certifying forensic scientists. The report also makes clear that a great deal of work needs to be done to conduct new research into traditional forensic disciplines.
 - a. Do you agree that there should be a nationwide forensics reform effort including national standards to be set for accrediting forensic labs and certifying forensic scientists?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

b. What role should the Justice Department play in this effort to reform forensic sciences in this country?

Respons (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5)

Public Corruption Prosecution Improvements Act

3. We have seen a shift of resources away from public corruption investigations and prosecutions over the past seven years. Recent prominent corruption cases have made clear that public corruption continues to be pervasive problem that victimizes every American by chipping away at the foundation of our Democracy.
- Senator Cornyn and I introduced the bipartisan Public Corruption Prosecution Improvements Act of 2009 (S. 49) that would provide needed funds to the Justice Department for the investigation and prosecution of public corruption offenses and legal tools for federal prosecutors closing loopholes in corruption law and bringing clarity to key statutes. The Department of Justice supports this bill and has submitted a favorable views letter on the legislation.
- Why does the Department of Justice need this legislation? Do you believe it should be promptly passed?

Response: (b) (5)

New FOIA Policy

4. July Fourth marks the 43rd anniversary of the enactment of the Freedom of Information Act (“FOIA”). I commend the President for issuing a memorandum to strengthen FOIA on his first full day in office, and I commend you for issuing a FOIA memorandum in March which restores the presumption of openness to our government. Your FOIA Memo requires, among other things, that this new policy “should be taken into account and

applied if practicable” to pending FOIA cases. But there is some concern that the Department and other federal agencies are not actually applying this policy to their pending cases.

- a. Is the Department regularly reviewing its pending FOIA cases to determine the impact of your March 19 FOIA Memo on withholding decisions?

Response (b) (5) [Redacted]

- b. Has your new policy resulted in the release of more information to the public?

Response (b) (5) [Redacted]

- c. Will you commit to work with me and the FOIA requester community to address concerns about the implementation of this policy?

Response: (b) (5) [Redacted]

Material Support for Terrorism

5. Upon taking office, Secretary Napolitano announced a broad review of Department of Homeland Security immigration policies, including how to handle asylum cases held in limbo because of the overly-broad definition of material support for terrorism in our immigration laws. I welcome her review and hope that the Department of Justice is fully cooperating in this process.

- a. What steps is the Department of Justice taking to revisit past agency interpretations of the material support inadmissibility grounds?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

- b. Does the Department of Justice agree that *de minimis* contributions and acts committed under duress should not be considered to be “material support”?

Response: (b) (5) [Redacted]

Asylum Claims Based on Membership in a Particular Social Group

6. Asylum claims may be based on “membership in a particular social group,” but that phrase is not defined by the statute. The standard for defining “membership in a particular social group” was articulated in a 1985 opinion from the Board of Immigration Appeals (BIA) entitled *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985). The *Acosta* decision requires the asylum seeker to show that the members of the social group at issue share a common characteristic that is either immutable or so fundamental to their identity or conscience that they should not be required to change it. For more than twenty years, the BIA followed the *Acosta* standard under the well-established guidance of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the UNHCR Social Group Guidelines. In a 2006 decision titled *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006), the BIA introduced a new and troubling concept into its review of social group asylum cases. In *Matter of C-A-*, the BIA required that the social group at issue in the case also be visible in the society. In this ruling, the BIA cited to the UNHCR Social Group Guidelines as a source for its heightened “social visibility” standard, but in doing so, misstated the UNHCR position on the matter. Since that time, UNHCR has stated unequivocally that the BIA misconstrued its meaning. The UNHCR position is that there is no requirement that a particular social group be visible to society at large. Is the Department reviewing this matter and considering a modification to BIA precedent that is consistent with UNHCR Social Group Guidelines?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

E-FOIA

- 7. The Freedom of Information Act was amended in 1996 to cover electronic information. Since then, I and others have worked hard to make sure that our federal agencies are fully complying with that law. Given the explosion of the Internet and other new technologies, compliance with E-FOIA is essential to improving overall FOIA performance across the government.

Will the Department conduct a review of agency web sites to determine whether they are in compliance with the affirmative disclosure requirements of E-FOIA?

Response: (b) (5) [Redacted]

FOIA Processing

- 8. Delay in the FOIA process has been a persistent problem, and despite efforts under Executive Order 13392, many agencies have not been able to meaningfully reduce their FOIA backlogs.
 - a. What do you see as the role of DOJ in helping and/or compelling agencies to reduce their backlogs?

Response (b) (5) [Redacted]

(b) (5)

- b. Many agencies still do not permit members of the public to submit FOIA requests by e-mail, although doing so would save time and money for both requesters and agencies. Will you issue additional guidance requiring all agencies to accept FOIA requests electronically?

Response (b) (5)

Privacy and MWCOG Multi-Jurisdictional Database

9. In 2002, the Metropolitan Washington Council of Governments (“MWCOG”) received federal funding under the COPS program for the development of a Regional Pawn Sharing Database system. State and local law enforcement agencies use this database to aggregate records of consumer credit transactions by pawnbrokers and to deter the marketing of stolen property. The information contained in the Regional Pawn Sharing Database includes sensitive personal information about U.S. consumers who patronize pawnbroker establishments, including name, date of birth, race, address, an identification number from a state-issued identification document (e.g., driver’s license) or Social Security Number, as well as occasionally, biometric identifiers such as fingerprints. Given the sensitive personal information routinely maintained in the Regional Pawn Sharing Database, there is growing concern that this database could be vulnerable to privacy and civil liberties violations. What steps is the Department taking to ensure that state and local law enforcement agencies that receive federal funding to participate in Regional Pawn Sharing Database comply with the privacy and civil liberties requirements established under 28 C.F.R. Part 23?

Response:

QUESTIONS POSED BY SENATOR FEINGOLD

1. As we discussed at the hearing, I requested in letters I sent to the President on April 29 and June 15 that the administration withdraw the January 2006 White Paper and other classified Office of Legal Counsel (OLC) memos providing legal justification for the NSA’s warrantless wiretapping program. At the hearing, you stated that the OLC is reviewing those opinions to determine whether they can be made public.

- a. How soon can we expect that review to be completed?
- b. My understanding is that OLC attorneys also are reviewing those opinions to determine whether they should be withdrawn. Can you confirm that understanding? When do you expect that review to be completed?

Response to subparts a and b (b) (5) [Redacted]

2. President Obama, in his May 29 statement on cyber security, offered the following reassurance: “Let me also be clear about what we will not do. Our pursuit of cyber security will not – I repeat, will not include – monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans.” This is a clear statement of the importance of personal privacy as the administration moves forward on cyber security. But the Cyber Space Policy Review report released that day by the White House acknowledged a “complex patchwork” of applicable laws and the “paucity of judicial opinions in several areas.”

- a. Is there a currently operative Justice Department legal opinion to guide the application of existing law or any new legislative framework that might be proposed? If so, when and by whom was the opinion developed?
- b. Is this topic part of the overall review that is underway of OLC memos?

Response to subparts a and b (b) (5) [Redacted]

- c. Will you make public as much of the relevant legal analysis as possible, and will you provide any existing opinions, and any future opinions on this topic, to Congress, so that staff with appropriate clearances will have complete access to the legal analysis?

Response (b) (5) [Redacted]

3. I was very pleased that you decided to vacate the order issued by Attorney General Mukasey in *Matter of Compean*, and that you have directed the Executive Office for Immigration Review to initiate a rulemaking procedure to evaluate the existing framework for making claims of ineffective assistance of counsel. What is the timetable for issuing a final rule in this matter?

Response: (b) (5)

[REDACTED]

4. The recent revelations of high-level officials involved in authorizing or ordering the use of torture, including the disclosure last month of the Office of Legal Counsel memos, the publication of the 2007 report of the International Committee of the Red Cross that concluded that our government committed torture, and the report released last month by the Senate Armed Services Committee on the use of torture by the Defense Department, all raise serious allegations of crimes being authorized and ordered at the very highest levels of government. What steps have you taken to ensure that there is an independent review of the evidence of possible criminal acts, and how would you respond to those who believe that only the appointment of an independent prosecutor will allow a credible investigation of wrongdoing to take place?

Response:

5. At your confirmation hearing in January, I asked if the Justice Department would prepare a detailed report about implementation of the federal death penalty from 2001 to 2008, similar to a report that was issued in 2000. You agreed that it would be appropriate to do an in-depth report and share the results publicly – a response that I greatly appreciated. What is the status of this effort, and when do you expect it to be completed?

Response:

QUESTIONS POSED BY SENATOR SCHUMER

1. As you know, I am the Chairman of the Rules Committee, which has jurisdiction over the administration of federal elections. On March 11, we held a hearing to look into the problems with our current voter registration system. We had found that as many as 7 million eligible voters either could not vote or did not vote due to registration issues. This is unacceptable. I know you would agree with me when I say that voter registration is the lifeblood of our republic. And there are several components to achieving successful voter registration under our current system. Two of these components are 1) that states comply with the requirements of the National Voter Registration Act (NVRA), and 2) that various Federal agencies be “designated” as voter registration agencies in order to decrease unnecessary obstacles to registration. I believe both are vital to an effective registration system under our current regime.
- a. What steps will you take to reverse the Department of Justice’s past practices of non-enforcement of NVRA and the Help America Vote Act, particularly with respect to registering voters from the public assistance lists?

Response: (b) (5)

[Redacted]

(b) (5)

[Redacted]

- b. Would the Department be willing to sue states out of compliance with NVRA?

Response: (b) (5)

[Redacted]

2. **There is another aspect of NVRA that deserves significant attention. In order to help improve voter registration and make it easier for some in our population – especially our veterans – to vote, various Federal agencies can be designated as “voter registration agencies.” In fact, I wrote to President Obama requesting that this be done as soon as possible. Now, it does not need to be implemented for every Federal agency, but certainly the Department of Veterans’ Affairs and HHS would be appropriate places to start.**
- a. **Do you agree with me that such designations are both necessary and helpful, and do you know of any plans to move forward with these designations?**

Response:

3. **Early this year, the U.S. Attorney for the District of Columbia declined to prosecute the former head of the Civil Rights Division, Bradley Schlozman, for statements that he made to me and other Senators that the Office of Inspector General found to be untrue. At your confirmation hearing, I asked if you would refer this case to the U.S. Attorney in Connecticut, who is conducting a review of politicization at the Department under the last administration, and to give me an update on this investigation.**
- a. **Can you provide me and the other members of the Committee with an update at this time?**

Response: (b) (5)

[REDACTED]

4. **As Chairman of the Immigration Subcommittee, one of my primary concerns is the effective operation of our immigration court system. In recent years, many court officials have called for an increase in funding for the Department of Justice’s (DOJ) Executive Office for Immigration Review (EOIR) citing the complexities of immigration cases, unmanageable dockets and unrealistic case completion deadlines.**

On average, Immigration Judges have less time than before to dispose of a case despite their burgeoning case loads. In 2007, they received more than 334,000 matters—including bonds, motions and removal proceedings—up from roughly 290,000 in 2002. Based on the total number of judges, this amounts to nearly 1,500 matters per Immigration Judge. In comparison, U.S. District Court judges average 483 matters completed per year.

The Board of Immigration Appeals (BIA) also needs a sufficient number of judges to do its job fairly and efficiently. Reports indicate that there are more than 8,700 cases that took more than five years for the BIA to complete, and tens of thousands more that were pending before the courts for more than two years before they were resolved.

- a. What steps have you taken, or do you plan on taking, to ensure that Immigration Judges and BIA members can manage their burgeoning case loads?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

- b. How many additional Immigration Judges, BIA members, and staff attorneys do you plan to hire in FY 2009 and 2010?

Response (b) (5) [Redacted]

(b) (5)

5. With regard to combating the smuggling of illegal aliens into the United States, a 2005 GAO report concluded that—in order to effectively combat alien smuggling—the Government needs civil forfeiture authority that would enable the Government to seize safe houses used in alien-smuggling. This authority has yet to be granted by Congress. I spoke with Secretary Napolitano last week about my intention to draft a bill giving the Government this authority and she was enthusiastically supportive.

a. Would you support my bill giving the Government this civil forfeiture authority to seize safe-houses used in alien-smuggling, and is that something you will work with me to enact?

Response: (b) (5)

6. I recently toured the Federal Correctional Facility in Otisville, New York. What I saw there was deeply troubling. Otisville is operating at 42.7% over capacity and is 14% understaffed. Federal prisons in Manhattan, Brooklyn and Ray Brook, are all more than 50% overcrowded and are also severely understaffed. Nationally, federal prisons are operating around 37% over their rated capacity and are understaffed by an order of 13.4%. Inmates are being held in areas not originally designed as inmate sleeping areas and, at least on some occasions, non-correctional prison staff is being used for correctional duties. Fortunately, thanks to some very outstanding work by our corrections officers, all four New York facilities I mentioned have been exceptionally safe, and assault numbers were down in 2007. Nonetheless, I'm sure you will agree that we cannot treat prisons like an afterthought.

a. With this in mind, does the Department believe that more funding is necessary to ensure safety for prison staff and security for inmates?

Response: (b) (5)

- b. If not, how is the Department planning to address these growing concerns?

Response (b) (5)

[REDACTED]

7. A common refrain from people who are opposed to more restrictive gun laws is that we should “enforce the existing laws on the books.” I will say that I think this is a fair statement, and it’s one of the rare places on this issue on which we should all be able to agree. But I’m concerned that, at least with respect to the ATF, current staffing limitations may make it impossible to even enforce some of the gun laws we have now. And I say all of this with the important caveat that there are only a few bad apples out there – a handful of gun dealers are responsible for the overwhelming majority of illegally sold guns in the country. Our goal should be finding the bad apples – and the best way to do that will be through routine inspections. As you know, the ATF is now empowered to conduct an annual inspection of a federal firearms licensee’s inventory and records. But according to recent news reports, most gun dealers are only inspected once every three to six years, because the pool of ATF auditors is stretched dangerously thin.

- a. That estimate was accurate as of April of this year. Do you have any reason to believe that anything has changed with respect to that estimate?

Response: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

Likewise, as of 2007, ATF said publicly that conducting a single inspection of every federal firearms licensee in the country would take approximately seventeen years.

- b. Do you have any reason to believe that anything has changed with respect to that estimate?

Response (b) (5) [Redacted]

- c. In light of these numbers, are you concerned that the ATF may be understaffed?

Response (b) (5) [Redacted]

8. I understand that the Department of Justice is investigating for accomplices to the murder of Dr. George Tiller, and for potential violations of the Freedom of Access to Clinics Entrances (or “FACE”) Act – the law that prohibits threats of force or physical obstruction of reproductive-health providers and seekers. According to newspaper reports, criminal enforcement of this important law had declined by more than 75 percent over the last 8 years under the previous administration. Therefore, I appreciate that the Department has launched its investigation, and feel that we must work together to stop these unconscionable acts of violence.

- a. How can we work with the Department of Justice to ensure that health-care professionals are protected from acts of violence?

Response: (b) (5) [Redacted]

(b) (5)

(b) (5)

(b) (5)

(b) (5)

9. Last week, the Department issued a brief arguing in favor of upholding the Defense of Marriage Act in federal court. Many members of the LGBT community were upset by this brief.

a. Can you please tell me what knowledge you had of this before it was written?

Response:

b. Can you please elaborate on how this administration's position on the Defense of Marriage Act differs from that of the Bush Administration?

Response:

QUESTIONS POSED BY SENATOR WHITEHOUSE

1. **The Department under your stewardship his continued and reinforced the Bush Administration’s arguments regarding the “state secrets” defense. I understand that on a complex issue like this, one may not wish to revisit it on the schedule of an ongoing case, or in that particular context, and I recognize that Senate delays have slowed down the confirmation of your new management team.**

Can we expect a policy review of this defense, and if so, on what schedule? Are there other areas in which you anticipate or are conducting such policy review?

Response:

2. **A great deal of damage was done to the Department of Justice during the last administration. What procedures are now in place for capturing disclosures from career Department employees about that damage – be it professional or ethical misconduct, politicized decision-making, or something else? To what office do such disclosures go, so that they can be properly analyzed and, if necessary, acted upon?**

Response (b) (5)

[REDACTED]

3. **On June 15, 2009, the Department of Justice submitted a brief in support of the Defense of Marriage Act (DOMA), the law that protects the right of states not to recognize same-sex marriages or provide same-sex married couples with federal benefits. At the same time, the President has pledged to support repeal of DOMA (and I too would like to see it repealed). Was the litigation posture taken after a policy review by the Department, or a continuation of the litigation strategy of the previous administration? The distinction between a policy position and a litigation posture is important.**

Response:

QUESTIONS POSED BY SENATOR WYDEN

1. **Article 4 of the Mexican Federal Penal Code allows for the prosecution of Mexican nationals who have committed a crime in the US and fled back to Mexico. In certain cases, extradition may not be achievable, and Article 4 provides the sole process for obtaining justice for US crime victims and imposing punishment upon the criminal. State and local law enforcement authorities in many states, including Oregon, have had success pursuing Article 4 prosecutions. However, complying with the requirements of Article 4 and working with Mexican law enforcement officials to complete the prosecution is quite an entailed process. Many jurisdictions lack the resources and expertise to pursue Article 4 cases.**

Response: (b) (5) [Redacted]

(b) (5) [Redacted]

2. **Given the increasing criminal problems arising from the cross-border activities of Mexican drug cartels, do you believe that Article 4 is an important tool for pursuing justice for crimes committed in the US by Mexican national suspects?**

Response (b) (5)
[Redacted]

3. **Are you aware of any barriers that would prevent the Department of Justice’s Office of International Affairs from providing assistance to state and local law enforcement officials and providing greater coordination and efficiency to the development of Article 4 cases?**

Response (b) (5)
[Redacted]

(b) (5)
[Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

QUESTIONS POSED BY SENATOR HATCH

- 1. Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by terrorist suspects. Director Mueller appeared before this committee this spring and described how important these tools are in furthering the FBI's mission in investigating terrorism activity here in the United States. He also expressed his support for reauthorizing the provisions without modifications. The Director also provided the committee some useful statistics regarding the usage of these techniques. For example, between 2004 though 2007 the FBI used the business record examination tool 225 times. During that same time period,**

the FBI used roving wiretaps 147 times. What is your assessment of these tools and does the administration and the Department of Justice support their reauthorization without additional modifications?

Response: (b) (5)

[REDACTED]

2. There are 15 High Security prisons under the control of the Department of Justice. The total rated capacity of these facilities is 13,448 inmates. The current population of inmates in these facilities is 20,001. Presently, there is only 1 dedicated Supermax prison in the BOP arsenal and as you know this is located in Florence, Colorado. As of June 4, 2009, the current population of the Florence Supermax was 468 inmates. This number means that this facility is currently at its maximum capacity. ADX Florence already houses 33 inmates incarcerated there with ties to international terrorism. Inmates at ADX Florence are locked down for 23 hours a day. There is no congregate dining or religious services in this facility. I bring this up because this is exactly the same conditions that the high security unit at Guantanamo offers. With the administration's self imposed deadline for closure looming on the horizon there is a lot of criticism that there has not been one hint of a plan for Guantanamo's closure. Some of my colleagues in the majority party have floated the idea that there is plenty of room to incarcerate these detainees in BOP facilities. However, the BOP has stated time and again that they do not have the room. BOP has provided population figures to both sides of the aisle that proves this. Can you give me your view on where the Department of Justice is going to house these detainees when Guantanamo is closed?

Response:

3. Recently, the Obama Administration has advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. This practice has been implemented by agents of the FBI. In January, when you appeared before this committee for your confirmation you stated that in your belief this country is "at war." In January, the President's issued an Executive Order stating that the Army Filed Manual would be the "rule book" governing the treatment of prisoners. The Army Filed Manual does not mention providing *Miranda* warnings to prisoners. Is the Justice Department endorsing an approach of using criminal investigative techniques in battlefield interrogations? Can you explain this rationale behind reading a waiver to combatants and Al Qaida operatives that informs them of their U.S. Constitutional rights in a foreign nation?

Response: (b) (5)

[REDACTED]

4. As you know the College Football Bowl Championship Series (BCS) has been a matter of significant controversy for many throughout the country, including President Obama. While some may dismiss the BCS as too trivial a matter for government attention, it involves hundreds of millions of dollars in revenue every year, most of which is reserved for participants most favored by the BCS. This system places nearly half the schools who field Division I football teams at a competitive and financial disadvantage. While most reasonable people agree that the BCS arrangement is unfair, I, along with others, have raised questions about the legality of the BCS in light of our nation's antitrust laws. In addition, I know that you have been contacted by Utah state officials regarding this matter. At this point, what is the disposition of the Justice Department, particularly the Antitrust Division, regarding the BCS? Are there any ongoing Justice Department efforts to examine the legality of the existing BCS system?

Response (b) (5)

[REDACTED]

QUESTIONS POSED BY SENATOR KYL

1. On May 29th, I sent you a letter asking you to provide the factual justification for the President's statement in his May 21st speech at the National Archives when he said: "Our federal 'supermax' prisons...hold hundreds of convicted terrorists."
 - a. As requested in the letter, please provide the names of the terrorists currently held in federal prisons and the details of their crimes.

Response:

- b. Do you assess that their crimes are comparable to that of the high-value detainees at GTMO?

Response:

2. How would the Bureau of Prisons make space for the GTMO detainees?
 - a. If using existing maximum security facilities (which are already overcrowded by almost 7,000 inmates) what would happen to the inmates that are there now?

Response:

- b. If opening a new facility or re-opening a closed facility, how would this facility be made ready in seven months or less in order to accommodate President Obama's Executive Order deadline of January 22, 2010?

Response:

3. On what legal basis would you prevent a GTMO detainee from being released into the United States if found not guilty in a federal court? What if a case is thrown out for procedural reasons?

Response (b) (5)

[REDACTED]

4. If GTMO is closed, where will the U.S. hold and try newly captured enemy combatants in the future?

Response (b) (5)
[Redacted]

- a. **Would they be brought to the U.S. for legal proceedings? If that is not the plan, are you concerned that trying some of the GTMO detainees in a U.S. court will set a precedent that can be cited by future detainees?**

Response (b) (5)
[Redacted]

- 5. **How soon after the closure of GTMO should we expect to see a notable and measurable decrease in terrorist recruiting?**

Response (b) (5)
[Redacted]

(b) (5)
[Redacted]

QUESTIONS POSED BY SENATOR COBURN

- 1. **Emmett Till Unsolved Civil Rights Crimes:**

At last week’s oversight hearing, we discussed how you committed to me at your confirmation hearing that you would “figure out ways to try to move money around” to fund the Emmett Till Unsolved Civil Rights Crime Act. You testified that you would get back to me once you had confirmed whether any money had been provided by the Department of Justice to fund that initiative.

- a. Now that you have had time to look into it, please describe what resources (if any) DOJ has devoted to the Emmett Till Unsolved Civil Rights Crime Act.

Response: (b) (5)

I was pleased by your commitment to meet with members of the Emmett Till Campaign for Justice, especially its President, Mr. Alvin Sykes.

- b. Has that meeting been scheduled? If so, when will it take place? (I would be happy to help facilitate, if needed.)

Response:

2. **“Assault Weapons” Ban:**

At the oversight hearing, you testified that: “I don’t think I have in fact said that we need a new assault weapons ban.”

- a. Do you now acknowledge having called for a reinstatement of that ban at a February 25, 2009 press conference?
- b. Is it still your intent to seek a reinstatement of the “assault weapons” ban?

Response to subparts a and b: (b) (5)

3. **Grant Management**

What specific steps have you taken to improve grant management at DOJ? In your confirmation hearing, you recognized that it must be treated as a “consistent priority” to prevent problems.

- a. Have you been in contact with the Inspector General about grant management? Now that you have had time to review the various DOJ grant programs, what problems have you seen, and how do you propose to address them?

Response: (b) (5)

(b) (5)

President Obama promised to conduct “an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy.” You said you would begin these efforts at DOJ “soon after you took office as Attorney General.”

- b. Have you begun these efforts? If so, what specific steps have you taken?

Response:

4. **Prolonged Detention**

Last week, the Senate Judiciary Subcommittee on the Constitution held a hearing on prolonged detention.

- a. Do you agree with the President that there are some detainees who cannot be prosecuted?

Response (b) (5)

- b. Do you agree with the President that there are some detainee terrorists who “pose a clear danger” to the American people and who “remain at war with the United States”?

Response (b) (5)

- c. Is the United States under any international obligation to either “try or release” those detainees?

Response (b) (5)

5. **Earmark Investigation**

On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244) was signed into law. That bill included a provision which reads as follows:

“SEC. 502. DEPARTMENT OF JUSTICE REVIEW. Consistent with applicable standards and procedures, the Department of Justice shall review allegations of impropriety regarding item 462 in section 1934(c) of Public Law 109-59 to ascertain if a violation of Federal criminal law has occurred.”

As you may recall, this provision referred to the \$10 million “Coconut Road” earmark that was inserted into the transportation bill after it passed both the House and Senate. A \$10 million earmark for “Widening and Improvements for I-75 in Collier and Lee County” was in the bill that passed both houses of Congress, but was not in the version of the bill signed by President Bush. That earmark was deleted and one appeared that was for a \$10 million earmark for the “Coconut Rd. interchange I-75/Lee County[.]” An effort I undertook to have the House and Senate investigate this was modified by my colleague, Senator Boxer, to have DOJ investigate the matter instead.

- a. What is the status of this review?
- b. Has the Department reached any conclusions?
- c. If it has been determined that a violation of federal criminal law has occurred, what will be the next step for DOJ?

Response to subparts a, b, and (b) (5)


Burrows, Charlotte

From: Burrows, Charlotte
Sent: Thursday, July 23, 2009 1:42 PM
To: Delery, Stuart F. (ODAG)
Subject: Attorney General Qfrs from Senate Judic
Attachments: AG SJC QFRs - Draft 4 (ODAG edits).8pm Wednesday.doc

Stuart, So we both have the same document I sent to David, attached is what went out last night. Candace confirmed receipt. Unfortunately, we received some additional information from OLC and a couple other components thereafter. I am working to get that information incorporated and reviewed in ODAG today, so that I can have them w/ a quick cover on his chair first thing in the a.m., and if I get them soon enough will also send via email. Also, just so you know, I had to send the DOMA answers as a separate document. They are not attached because of your recusal, but wanted you to know that I forwarded those as well.

Charlotte

(b)(5) per FBI

The text "(b)(5) per FBI" is followed by four thick black horizontal bars that redact the content of the email body.

**Questions for the Record
Attorney General Eric H. Holder, Jr.
Senate Judiciary Committee
June 17, 2009**

QUESTIONS POSED BY CHAIRMAN LEAHY

Media Shield

1. Carefully balanced legislation to create a qualified privilege for journalists that protects the identity of their confidential sources is pending on the Judiciary Committee's legislative agenda. During your confirmation hearing, you expressed support for a well-crafted media shield bill, and you committed to work with me and others on this legislation. The legislation (S. 448) before the Committee does not give the press a free pass, and it contains reasonable exceptions to the limited privilege in cases where information is needed to prevent terrorism or to protect national security. Does the Justice Department support S. 448, the Free Flow of Information Act of 2009, currently before the Committee, and will you work with me and others to enact this legislation this year?

Response (b) (5)

[REDACTED]

The Justice Department's Role in Reforming Forensic Sciences

2. In February, the National Academy of Sciences issued a comprehensive report on the urgent need to improve forensic sciences in the United States. One of the core findings in the National Academy of Science Report is that science needs to be the guiding principle in determining the standards and procedures for forensic science. Among other things, the Report calls for the federal government to set national standards for accrediting forensic labs and for certifying forensic scientists. The report also makes clear that a great deal of work needs to be done to conduct new research into traditional forensic disciplines.
 - a. Do you agree that there should be a nationwide forensics reform effort including national standards to be set for accrediting forensic labs and certifying forensic scientists?

Response (b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5) [Redacted]

b. What role should the Justice Department play in this effort to reform forensic sciences in this country?

Respons (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5)

Public Corruption Prosecution Improvements Act

3. We have seen a shift of resources away from public corruption investigations and prosecutions over the past seven years. Recent prominent corruption cases have made clear that public corruption continues to be pervasive problem that victimizes every American by chipping away at the foundation of our Democracy.
- Senator Cornyn and I introduced the bipartisan Public Corruption Prosecution Improvements Act of 2009 (S. 49) that would provide needed funds to the Justice Department for the investigation and prosecution of public corruption offenses and legal tools for federal prosecutors closing loopholes in corruption law and bringing clarity to key statutes. The Department of Justice supports this bill and has submitted a favorable views letter on the legislation.
- Why does the Department of Justice need this legislation? Do you believe it should be promptly passed?

Response: (b) (5)

New FOIA Policy

4. July Fourth marks the 43rd anniversary of the enactment of the Freedom of Information Act (“FOIA”). I commend the President for issuing a memorandum to strengthen FOIA on his first full day in office, and I commend you for issuing a FOIA memorandum in March which restores the presumption of openness to our government. Your FOIA Memo requires, among other things, that this new policy “should be taken into account and

applied if practicable” to pending FOIA cases. But there is some concern that the Department and other federal agencies are not actually applying this policy to their pending cases.

- a. Is the Department regularly reviewing its pending FOIA cases to determine the impact of your March 19 FOIA Memo on withholding decisions?

Response (b) (5) [Redacted]

- b. Has your new policy resulted in the release of more information to the public?

Response (b) (5) [Redacted]

- c. Will you commit to work with me and the FOIA requester community to address concerns about the implementation of this policy?

Response: (b) (5) [Redacted]

Material Support for Terrorism

- 5. Upon taking office, Secretary Napolitano announced a broad review of Department of Homeland Security immigration policies, including how to handle asylum cases held in limbo because of the overly-broad definition of material support for terrorism in our immigration laws. I welcome her review and hope that the Department of Justice is fully cooperating in this process.

- a. What steps is the Department of Justice taking to revisit past agency interpretations of the material support inadmissibility grounds?

Response (b) (5)

[REDACTED]

- b. Does the Department of Justice agree that *de minimis* contributions and acts committed under duress should not be considered to be “material support”?

Response: (b) (5)

[REDACTED]

Asylum Claims Based on Membership in a Particular Social Group

6. Asylum claims may be based on “membership in a particular social group,” but that phrase is not defined by the statute. The standard for defining “membership in a particular social group” was articulated in a 1985 opinion from the Board of Immigration Appeals (BIA) entitled *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985). The *Acosta* decision requires the asylum seeker to show that the members of the social group at issue share a common characteristic that is either immutable or so fundamental to their identity or conscience that they should not be required to change it. For more than twenty years, the BIA followed the *Acosta* standard under the well-established guidance of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the UNHCR Social Group Guidelines. In a 2006 decision titled *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006), the BIA introduced a new and troubling concept into its review of social group asylum cases. In *Matter of C-A-*, the BIA required that the social group at issue in the case also be visible in the society. In this ruling, the BIA cited to the UNHCR Social Group Guidelines as a source for its heightened “social visibility” standard, but in doing so, misstated the UNHCR position on the matter. Since that time, UNHCR has stated unequivocally that the BIA misconstrued its meaning. The UNHCR position is that there is no requirement that a particular social group be visible to society at large.

Is the Department reviewing this matter and considering a modification to BIA precedent that is consistent with UNHCR Social Group Guidelines?

Response (b) (5)

[Redacted]

E-FOIA

7. The Freedom of Information Act was amended in 1996 to cover electronic information. Since then, I and others have worked hard to make sure that our federal agencies are fully complying with that law. Given the explosion of the Internet and other new technologies, compliance with E-FOIA is essential to improving overall FOIA performance across the government.

Will the Department conduct a review of agency web sites to determine whether they are in compliance with the affirmative disclosure requirements of E-FOIA?

Response (b) (5)

[Redacted]

FOIA Processing

8. Delay in the FOIA process has been a persistent problem, and despite efforts under Executive Order 13392, many agencies have not been able to meaningfully reduce their FOIA backlogs.

- a. What do you see as the role of DOJ in helping and/or compelling agencies to reduce their backlogs?

Response (b) (5)

[REDACTED]

- b. Many agencies still do not permit members of the public to submit FOIA requests by e-mail, although doing so would save time and money for both requesters and agencies. Will you issue additional guidance requiring all agencies to accept FOIA requests electronically?

Response (b) (5)

[REDACTED]

Privacy and MWCOG Multi-Jurisdictional Database

- 9. In 2002, the Metropolitan Washington Council of Governments (“MWCOG”) received federal funding under the COPS program for the development of a Regional Pawn Sharing Database system. State and local law enforcement agencies use this database to aggregate records of consumer credit transactions by pawnbrokers and to deter the marketing of stolen property. The information contained in the Regional Pawn Sharing Database includes sensitive personal information about U.S. consumers who patronize pawnbroker establishments, including name, date of birth, race, address, an identification number from a state-issued identification document (e.g., driver’s license) or Social Security Number, as well as occasionally, biometric identifiers such as fingerprints. Given the sensitive personal information routinely maintained in the Regional Pawn Sharing Database, there is growing concern that this database could be vulnerable to privacy and civil liberties violations. What steps is the Department taking to ensure that state and local law enforcement agencies that receive federal funding to participate in Regional Pawn Sharing Database comply with the privacy and civil liberties requirements established under 28 C.F.R. Part 23?

Response (b) (5)

[REDACTED]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

- (b) (5) [Redacted list item]

(b) (5) [Redacted]

- (b) (5) [Redacted]

- (b) (5) [Redacted]

QUESTIONS POSED BY SENATOR FEINGOLD

1. **As we discussed at the hearing, I requested in letters I sent to the President on April 29 and June 15 that the administration withdraw the January 2006 White Paper and other classified Office of Legal Counsel (OLC) memos providing legal justification for the NSA’s warrantless wiretapping program. At the hearing, you stated that the OLC is reviewing those opinions to determine whether they can be made public.**
 - a. **How soon can we expect that review to be completed?**
 - b. **My understanding is that OLC attorneys also are reviewing those opinions to determine whether they should be withdrawn. Can you confirm that understanding? When do you expect that review to be completed?**

Response to subparts a and b (b) (5) [Redacted]

2. **President Obama, in his May 29 statement on cyber security, offered the following reassurance: “Let me also be clear about what we will not do. Our pursuit of cyber security will not – I repeat, will not include – monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans.” This is a clear statement of the importance of personal privacy as the administration moves forward on cyber security. But the Cyber Space Policy Review report**

released that day by the White House acknowledged a “complex patchwork” of applicable laws and the “paucity of judicial opinions in several areas.”

- a. Is there a currently operative Justice Department legal opinion to guide the application of existing law or any new legislative framework that might be proposed? If so, when and by whom was the opinion developed?
- b. Is this topic part of the overall review that is underway of OLC memos?

Response to subparts a and b: (b) (5)
[Redacted]

- c. Will you make public as much of the relevant legal analysis as possible, and will you provide any existing opinions, and any future opinions on this topic, to Congress, so that staff with appropriate clearances will have complete access to the legal analysis?

Response: (b) (5)
[Redacted]

- 3. I was very pleased that you decided to vacate the order issued by Attorney General Mukasey in *Matter of Compean*, and that you have directed the Executive Office for Immigration Review to initiate a rulemaking procedure to evaluate the existing framework for making claims of ineffective assistance of counsel. What is the timetable for issuing a final rule in this matter?

Response: (b) (5)
[Redacted]

(b) (5)

4. **The recent revelations of high-level officials involved in authorizing or ordering the use of torture, including the disclosure last month of the Office of Legal Counsel memos, the publication of the 2007 report of the International Committee of the Red Cross that concluded that our government committed torture, and the report released last month by the Senate Armed Services Committee on the use of torture by the Defense Department, all raise serious allegations of crimes being authorized and ordered at the very highest levels of government. What steps have you taken to ensure that there is an independent review of the evidence of possible criminal acts, and how would you respond to those who believe that only the appointment of an independent prosecutor will allow a credible investigation of wrongdoing to take place?**

Response:

5. **At your confirmation hearing in January, I asked if the Justice Department would prepare a detailed report about implementation of the federal death penalty from 2001 to 2008, similar to a report that was issued in 2000. You agreed that it would be appropriate to do an in-depth report and share the results publicly – a response that I greatly appreciated. What is the status of this effort, and when do you expect it to be completed?**

Response:

QUESTIONS POSED BY SENATOR SCHUMER

1. **As you know, I am the Chairman of the Rules Committee, which has jurisdiction over the administration of federal elections. On March 11, we held a hearing to look into the problems with our current voter registration system. We had found that as many as 7 million eligible voters either could not vote or did not vote due to registration issues. This is unacceptable. I know you would agree with me when I say that voter registration is the lifeblood of our republic. And there are several components to achieving successful voter registration under our current system. Two of these components are 1) that states comply with the requirements of the National Voter Registration Act (NVRA), and 2) that various Federal agencies be “designated” as voter registration agencies in order to decrease unnecessary obstacles to registration. I believe both are vital to an effective registration system under our current regime.**
 - a. **What steps will you take to reverse the Department of Justice’s past practices of non-enforcement of NVRA and the Help America Vote**

Act, particularly with respect to registering voters from the public assistance lists?

Response (b) (5)

[Redacted]

(b) (5)

[Redacted]

b. Would the Department be willing to sue states out of compliance with NVRA?

Response (b) (5)

[Redacted]

2. There is another aspect of NVRA that deserves significant attention. In order to help improve voter registration and make it easier for some in our population – especially our veterans – to vote, various Federal agencies can be designated as “voter registration agencies.” In fact, I wrote to President Obama requesting that this be done as soon as possible. Now, it does not need to be implemented for every Federal agency, but certainly the Department of Veterans’ Affairs and HHS would be appropriate places to start.

Do you agree with me that such designations are both necessary and helpful, and do you know of any plans to move forward with these designations?

Response: (b) (5)

[Redacted]

(b) (5)

3. Early this year, the U.S. Attorney for the District of Columbia declined to prosecute the former head of the Civil Rights Division, Bradley Schlozman, for statements that he made to me and other Senators that the Office of Inspector General found to be untrue. At your confirmation hearing, I asked if you would refer this case to the U.S. Attorney in Connecticut, who is conducting a review of politicization at the Department under the last administration, and to give me an update on this investigation.

a. Can you provide me and the other members of the Committee with an update at this time?

Response (b) (5)

4. As Chairman of the Immigration Subcommittee, one of my primary concerns is the effective operation of our immigration court system. In recent years, many court officials have called for an increase in funding for the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) citing the complexities of immigration cases, unmanageable dockets and unrealistic case completion deadlines.

On average, Immigration Judges have less time than before to dispose of a case despite their burgeoning case loads. In 2007, they received more than 334,000 matters—including bonds, motions and removal proceedings—up from roughly 290,000 in 2002. Based on the total number of judges, this amounts to nearly 1,500 matters per Immigration Judge. In comparison, U.S. District Court judges average 483 matters completed per year.

The Board of Immigration Appeals (BIA) also needs a sufficient number of judges to do its job fairly and efficiently. Reports indicate that there are more than 8,700 cases that took more than five years for the BIA to complete, and tens of thousands more that were pending before the courts for more than two years before they were resolved.

a. What steps have you taken, or do you plan on taking, to ensure that Immigration Judges and BIA members can manage their burgeoning case loads?

Response (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

b. How many additional Immigration Judges, BIA members, and staff attorneys do you plan to hire in FY 2009 and 2010?

Response (b) (5)

[REDACTED]

5. With regard to combating the smuggling of illegal aliens into the United States, a 2005 GAO report concluded that—in order to effectively combat alien smuggling—the Government needs civil forfeiture authority that would enable the Government to seize safe houses used in alien-smuggling. This authority has yet to be granted by Congress. I spoke with Secretary Napolitano last week about my intention to draft a bill giving the Government this authority and she was enthusiastically supportive.

- a. **Would you support my bill giving the Government this civil forfeiture authority to seize safe-houses used in alien-smuggling, and is that something you will work with me to enact?**

Response (b) (5)

[REDACTED]

6. **I recently toured the Federal Correctional Facility in Otisville, New York. What I saw there was deeply troubling. Otisville is operating at 42.7% over capacity and is 14% understaffed. Federal prisons in Manhattan, Brooklyn and Ray Brook, are all more than 50% overcrowded and are also severely understaffed. Nationally, federal prisons are operating around 37% over their rated capacity and are understaffed by an order of 13.4%. Inmates are being held in areas not originally designed as inmate sleeping areas and, at least on some occasions, non-correctional prison staff is being used for correctional duties. Fortunately, thanks to some very outstanding work by our corrections officers, all four New York facilities I mentioned have been exceptionally safe, and assault numbers were down in 2007. Nonetheless, I'm sure you will agree that we cannot treat prisons like an afterthought.**

- a. **With this in mind, does the Department believe that more funding is necessary to ensure safety for prison staff and security for inmates?**

Response (b) (5)

[REDACTED]

- b. **If not, how is the Department planning to address these growing concerns?**

Response (b) (5)

[REDACTED]

(b) (5)

7. A common refrain from people who are opposed to more restrictive gun laws is that we should “enforce the existing laws on the books.” I will say that I think this is a fair statement, and it’s one of the rare places on this issue on which we should all be able to agree. But I’m concerned that, at least with respect to the ATF, current staffing limitations may make it impossible to even enforce some of the gun laws we have now. And I say all of this with the important caveat that there are only a few bad apples out there – a handful of gun dealers are responsible for the overwhelming majority of illegally sold guns in the country. Our goal should be finding the bad apples – and the best way to do that will be through routine inspections. As you know, the ATF is now empowered to conduct an annual inspection of a federal firearms licensee’s inventory and records. But according to recent news reports, most gun dealers are only inspected once every three to six years, because the pool of ATF auditors is stretched dangerously thin.

a. That estimate was accurate as of April of this year. Do you have any reason to believe that anything has changed with respect to that estimate?

Response (b) (5)

[Redacted response text]

(b) (5)

[Redacted response text]

Likewise, as of 2007, ATF said publicly that conducting a single inspection of every federal firearms licensee in the country would take approximately seventeen years.

- b. Do you have any reason to believe that anything has changed with respect to that estimate?

Response (b) (5)

[REDACTED]

- c. In light of these numbers, are you concerned that the ATF may be understaffed?

Response (b) (5)

[REDACTED]

- 8. I understand that the Department of Justice is investigating for accomplices to the murder of Dr. George Tiller, and for potential violations of the Freedom of Access to Clinics Entrances (or “FACE”) Act – the law that prohibits threats of force or physical obstruction of reproductive-health providers and seekers. According to newspaper reports, criminal enforcement of this important law had declined by more than 75 percent over the last 8 years under the previous administration. Therefore, I appreciate that the Department has launched its investigation, and feel that we must work together to stop these unconscionable acts of violence.

- a. How can we work with the Department of Justice to ensure that health-care professionals are protected from acts of violence?

Response (b) (5)

[REDACTED]

(b) (5)

[Redacted text block]

(b) (5)

[Redacted text block]

(b) (5)

[Redacted text block]

9. Last week, the Department issued a brief arguing in favor of upholding the Defense of Marriage Act in federal court. Many members of the LGBT community were upset by this brief.

a. Can you please tell me what knowledge you had of this before it was written?

Response:

(b) (5)

b. Can you please elaborate on how this administration's position on the Defense of Marriage Act differs from that of the Bush Administration?

Response:

QUESTIONS POSED BY SENATOR WHITEHOUSE

1. **The Department under your stewardship his continued and reinforced the Bush Administration’s arguments regarding the “state secrets” defense. I understand that on a complex issue like this, one may not wish to revisit it on the schedule of an ongoing case, or in that particular context, and I recognize that Senate delays have slowed down the confirmation of your new management team.**

Can we expect a policy review of this defense, and if so, on what schedule? Are there other areas in which you anticipate or are conducting such policy review?

Response (b) (5)
[Redacted]

(b) (5)
[Redacted]

(b) (5)
[Redacted]

(b) (5)
[Redacted]

(b) (5)
[Redacted]

2. A great deal of damage was done to the Department of Justice during the last administration. What procedures are now in place for capturing disclosures from career Department employees about that damage – be it professional or ethical misconduct, politicized decision-making, or something else? To what office do such disclosures go, so that they can be properly analyzed and, if necessary, acted upon?

Response (b) (5)

[REDACTED]

3. On June 15, 2009, the Department of Justice submitted a brief in support of the Defense of Marriage Act (DOMA), the law that protects the right of states not to recognize same-sex marriages or provide same-sex married couples with federal benefits. At the same time, the President has pledged to support repeal of DOMA (and I too would like to see it repealed). Was the litigation posture taken after a policy review by the Department, or a continuation of the litigation strategy of the previous administration? The distinction between a policy position and a litigation posture is important.

Response (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

QUESTIONS POSED BY SENATOR WYDEN

1. **Article 4 of the Mexican Federal Penal Code allows for the prosecution of Mexican nationals who have committed a crime in the US and fled back to Mexico. In certain cases, extradition may not be achievable, and Article 4 provides the sole process for obtaining justice for US crime victims and imposing punishment upon the criminal. State and local law enforcement authorities in many states, including Oregon, have had success pursuing Article 4 prosecutions. However, complying with the requirements of Article 4 and working with Mexican law enforcement officials to complete the prosecution is quite an entailed process. Many jurisdictions lack the resources and expertise to pursue Article 4 cases.**

Response (b) (5)
[Redacted]

(b) (5)
[Redacted]

2. **Given the increasing criminal problems arising from the cross-border activities of Mexican drug cartels, do you believe that Article 4 is an**

important tool for pursuing justice for crimes committed in the US by Mexican national suspects?

Response (b) (5)

[Redacted]

3. Are you aware of any barriers that would prevent the Department of Justice's Office of International Affairs from providing assistance to state and local law enforcement officials and providing greater coordination and efficiency to the development of Article 4 cases?

Response (b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

QUESTIONS POSED BY SENATOR HATCH

- 1. Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by terrorist suspects. Director Mueller appeared before this committee this spring and described how important these tools are in furthering the FBI's mission in investigating terrorism activity here in the United States. He also expressed his support for reauthorizing the provisions without modifications. The Director also provided the committee some useful statistics regarding the usage of these techniques. For example, between 2004 though 2007 the FBI used the business record examination tool 225 times. During that same time period, the FBI used roving wiretaps 147 times. What is your assessment of these tools and does the administration and the Department of Justice support their reauthorization without additional modifications?**

Response (b) (5)

2. There are 15 High Security prisons under the control of the Department of Justice. The total rated capacity of these facilities is 13,448 inmates. The current population of inmates in these facilities is 20,001. Presently, there is only 1 dedicated Supermax prison in the BOP arsenal and as you know this is located in Florence, Colorado. As of June 4, 2009, the current population of the Florence Supermax was 468 inmates. This number means that this facility is currently at its maximum capacity. ADX Florence already houses 33 inmates incarcerated there with ties to international terrorism. Inmates at ADX Florence are locked down for 23 hours a day. There is no congregating or religious services in this facility. I bring this up because this is exactly the same conditions that the high security unit at Guantanamo offers. With the administration's self imposed deadline for closure looming on the horizon there is a lot of criticism that there has not been one hint of a plan for Guantanamo's closure. Some of my colleagues in the majority party have floated the idea that there is plenty of room to incarcerate these detainees in BOP facilities. However, the BOP has stated time and again that they do not have the room. BOP has provided population figures to both sides of the aisle that proves this. Can you give me your view on where the Department of Justice is going to house these detainees when Guantanamo is closed?

Response (b) (5)

3. Recently, the Obama Administration has advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. This practice has been implemented by agents of the FBI. In January, when you appeared before this committee for your confirmation you stated that in your belief this country is "at war." In January, the President's issued an Executive Order stating that the Army Field Manual would be the "rule book" governing the treatment of prisoners. The Army Field Manual does not mention providing *Miranda* warnings to prisoners. Is the Justice Department endorsing an approach of using criminal investigative techniques in battlefield interrogations? Can you explain this rationale behind reading a waiver to combatants and Al Qaida operatives that informs them of their U.S. Constitutional rights in a foreign nation?

Response: (b) (5)

[REDACTED]

4. As you know the College Football Bowl Championship Series (BCS) has been a matter of significant controversy for many throughout the country, including President Obama. While some may dismiss the BCS as too trivial a matter for government attention, it involves hundreds of millions of dollars in revenue every year, most of which is reserved for participants most favored by the BCS. This system places nearly half the schools who field Division I football teams at a competitive and financial disadvantage. While most reasonable people agree that the BCS arrangement is unfair, I, along with others, have raised questions about the legality of the BCS in light of our nation's antitrust laws. In addition, I know that you have been contacted by Utah state officials regarding this matter. At this point, what is the disposition of the Justice Department, particularly the Antitrust Division, regarding the BCS? Are there any ongoing Justice Department efforts to examine the legality of the existing BCS system?

Response (b) (5)

[REDACTED]

QUESTIONS POSED BY SENATOR KYL

1. On May 29th, I sent you a letter asking you to provide the factual justification for the President's statement in his May 21st speech at the National Archives when he said: "Our federal 'supermax' prisons...hold hundreds of convicted terrorists."

a. As requested in the letter, please provide the names of the terrorists currently held in federal prisons and the details of their crimes.

Response (b) (5)
[Redacted]

b. Do you assess that their crimes are comparable to that of the high-value detainees at GTMO?

Response (b) (5)
[Redacted]

2. How would the Bureau of Prisons make space for the GTMO detainees?

Response (b) (5)
[Redacted]

a. If using existing maximum security facilities (which are already overcrowded by almost 7,000 inmates) what would happen to the inmates that are there now?

Response (b) (5)
[Redacted]

b. If opening a new facility or re-opening a closed facility, how would this facility be made ready in seven months or less in order to accommodate President Obama's Executive Order deadline of January 22, 2010?

Response (b) (5)
[Redacted]

(b) (5) [Redacted]

3. On what legal basis would you prevent a GTMO detainee from being released into the United States if found not guilty in a federal court? What if a case is thrown out for procedural reasons?

Response (b) (5) [Redacted]

4. If GTMO is closed, where will the U.S. hold and try newly captured enemy combatants in the future?

Response (b) (5) [Redacted]

a. Would they be brought to the U.S. for legal proceedings? If that is not the plan, are you concerned that trying some of the GTMO detainees in a U.S. court will set a precedent that can be cited by future detainees?

Response (b) (5) [Redacted]

5. How soon after the closure of GTMO should we expect to see a notable and measurable decrease in terrorist recruiting?

Response: (b) (5) [Redacted]

(b) (5)

QUESTIONS POSED BY SENATOR COBURN

1. **Emmett Till Unsolved Civil Rights Crimes:**

At last week's oversight hearing, we discussed how you committed to me at your confirmation hearing that you would "figure out ways to try to move money around" to fund the Emmett Till Unsolved Civil Rights Crime Act. You testified that you would get back to me once you had confirmed whether any money had been provided by the Department of Justice to fund that initiative.

- a. Now that you have had time to look into it, please describe what resources (if any) DOJ has devoted to the Emmett Till Unsolved Civil Rights Crime Act.

Response (b) (5)

I was pleased by your commitment to meet with members of the Emmett Till Campaign for Justice, especially its President, Mr. Alvin Sykes.

- b. Has that meeting been scheduled? If so, when will it take place? (I would be happy to help facilitate, if needed.)

Response (b) (5)

2. **"Assault Weapons" Ban:**

At the oversight hearing, you testified that: "I don't think I have in fact said that we need a new assault weapons ban."

- a. Do you now acknowledge having called for a reinstatement of that ban at a February 25, 2009 press conference?
- b. Is it still your intent to seek a reinstatement of the "assault weapons" ban?

Response to subparts a and b (b) (5)

(b) (5)

3. Grant Management

What specific steps have you taken to improve grant management at DOJ? In your confirmation hearing, you recognized that it must be treated as a “consistent priority” to prevent problems.

- a. Have you been in contact with the Inspector General about grant management? Now that you have had time to review the various DOJ grant programs, what problems have you seen, and how do you propose to address them?**

Response (b) (5)

President Obama promised to conduct “an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy.” You said you would begin these efforts at DOJ “soon after you took office as Attorney General.”

- b. Have you begun these efforts? If so, what specific steps have you taken?**

Response:

4. Prolonged Detention

Last week, the Senate Judiciary Subcommittee on the Constitution held a hearing on prolonged detention.

- a. Do you agree with the President that there are some detainees who cannot be prosecuted?**

Response (b) (5)

- b. Do you agree with the President that there are some detainee terrorists who “pose a clear danger” to the American people and who “remain at war with the United States”?**

Response (b) (5)

- c. Is the United States under any international obligation to either “try or release” those detainees?

Response (b) (5)

5. **Earmark Investigation**

On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244) was signed into law. That bill included a provision which reads as follows:

“SEC. 502. DEPARTMENT OF JUSTICE REVIEW. Consistent with applicable standards and procedures, the Department of Justice shall review allegations of impropriety regarding item 462 in section 1934(c) of Public Law 109-59 to ascertain if a violation of Federal criminal law has occurred.”

As you may recall, this provision referred to the \$10 million “Coconut Road” earmark that was inserted into the transportation bill after it passed both the House and Senate. A \$10 million earmark for “Widening and Improvements for I-75 in Collier and Lee County” was in the bill that passed both houses of Congress, but was not in the version of the bill signed by President Bush. That earmark was deleted and one appeared that was for a \$10 million earmark for the “Coconut Rd. interchange I-75/Lee County[.]” An effort I undertook to have the House and Senate investigate this was modified by my colleague, Senator Boxer, to have DOJ investigate the matter instead.

- a. What is the status of this review?
- b. Has the Department reached any conclusions?
- c. If it has been determined that a violation of federal criminal law has occurred, what will be the next step for DOJ?

Response to subparts a, b, and c (b) (5)

Parmiter, Robert B

From: Parmiter, Robert B
Sent: Friday, July 24, 2009 8:57 PM
To: Wilkinson, Monty (OAG); Bies, John; Garland, James; Ohlson, Kevin (OAG)
Cc: Burrows, Charlotte; Columbus, Eric (ODAG)
Subject: AG QFRs - Senate Judiciary Committee
Attachments: AG Transcript Feb 25 press conference.doc; AG SJC QFRs - Draft 6 (ODAG edits).doc
Importance: High

Monty, John, Jim, and Kevin,

Attached for your review are draft responses to the QFRs submitted to the Attorney General following his appearance before the Senate Judiciary Committee on June 17, 2009. These responses have been fully vetted through the various components, and cleared by ODAG. All of the "tracked changes" are visible, to make it easier for you to see who drafted, edited, and cleared each QFR response.

I would like to draw your attention to the response to Coburn 2b in particular. Coburn's question is whether the AG acknowledges "having called for a reinstatement of [the assault weapons] ban at a February 25, 2009 press conference." We have inserted two possible answers. The first is just (b) (5) [REDACTED]

The second possible answer is (b) (5) [REDACTED]

Thanks. Please let us know when we can transmit these to OMB.

Bobby

Robert B. Parmiter
Office of Legislative Affairs
U.S. Department of Justice
Washington, D.C. 20530

(b) (6) [REDACTED]

**Questions for the Record
Attorney General Eric H. Holder, Jr.
Senate Judiciary Committee
June 17, 2009**

QUESTIONS POSED BY CHAIRMAN LEAHY

Media Shield

1. Carefully balanced legislation to create a qualified privilege for journalists that protects the identity of their confidential sources is pending on the Judiciary Committee's legislative agenda. During your confirmation hearing, you expressed support for a well-crafted media shield bill, and you committed to work with me and others on this legislation. The legislation (S. 448) before the Committee does not give the press a free pass, and it contains reasonable exceptions to the limited privilege in cases where information is needed to prevent terrorism or to protect national security. Does the Justice Department support S. 448, the Free Flow of Information Act of 2009, currently before the Committee, and will you work with me and others to enact this legislation this year?

(b) (5)

The Justice Department's Role in Reforming Forensic Sciences

2. In February, the National Academy of Sciences issued a comprehensive report on the urgent need to improve forensic sciences in the United States. One of the core findings in the National Academy of Science Report is that science needs to be the guiding principle in determining the standards and procedures for forensic science. Among other things, the Report calls for the federal government to set national standards for accrediting forensic labs and for certifying forensic scientists. The report also makes clear that a great deal of work needs to be done to conduct new research into traditional forensic disciplines.

- a. Do you agree that there should be a nationwide forensics reform effort including national standards to be set for accrediting forensic labs and certifying forensic scientists?

(b) (5)

(b) (5)

[Redacted text block]

b. What role should the Justice Department play in this effort to reform forensic sciences in this country?

(b) (5)

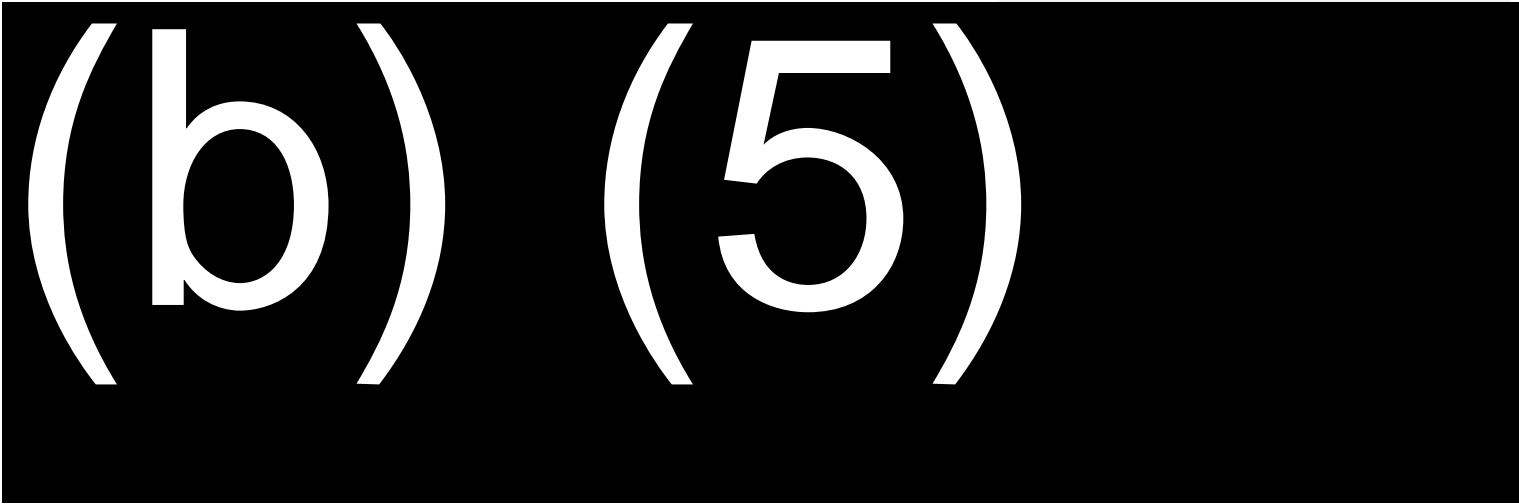
(b) (5)

Public Corruption Prosecution Improvements Act

- We have seen a shift of resources away from public corruption investigations and prosecutions over the past seven years. Recent prominent corruption cases have made clear that public corruption continues to be pervasive problem that victimizes every American by chipping away at the foundation of our Democracy.**

Senator Cornyn and I introduced the bipartisan Public Corruption Prosecution Improvements Act of 2009 (S. 49) that would provide needed funds to the Justice Department for the investigation and prosecution of public corruption offenses and legal tools for federal prosecutors closing loopholes in corruption law and bringing clarity to key statutes. The Department of Justice supports this bill and has submitted a favorable views letter on the legislation.

Why does the Department of Justice need this legislation? Do you believe it should be promptly passed?



New FOIA Policy

- July Fourth marks the 43rd anniversary of the enactment of the Freedom of Information Act ("FOIA"). I commend the President for issuing a memorandum to strengthen FOIA on his first full day in office, and I**

commend you for issuing a FOIA memorandum in March which restores the presumption of openness to our government. Your FOIA Memo requires, among other things, that this new policy “should be taken into account and applied if practicable” to pending FOIA cases. But there is some concern that the Department and other federal agencies are not actually applying this policy to their pending cases.

- a. Is the Department regularly reviewing its pending FOIA cases to determine the impact of your March 19 FOIA Memo on withholding decisions?

(b) (5)

- b. Has your new policy resulted in the release of more information to the public?

(b) (5)

- c. Will you commit to work with me and the FOIA requester community to address concerns about the implementation of this policy?

(b) (5)

Material Support for Terrorism

- 5. Upon taking office, Secretary Napolitano announced a broad review of Department of Homeland Security immigration policies, including how to handle asylum cases held in limbo because of the overly-broad definition of material support for terrorism in our immigration laws. I welcome her

review and hope that the Department of Justice is fully cooperating in this process.

- a. What steps is the Department of Justice taking to revisit past agency interpretations of the material support inadmissibility grounds?

(b) (5)

- b. Does the Department of Justice agree that *de minimis* contributions and acts committed under duress should not be considered to be “material support”?

(b) (5)

Asylum Claims Based on Membership in a Particular Social Group

6. Asylum claims may be based on “membership in a particular social group,” but that phrase is not defined by the statute. The standard for defining “membership in a particular social group” was articulated in a 1985 opinion from the Board of Immigration Appeals (BIA) entitled *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985). The *Acosta* decision requires the asylum seeker to show that the members of the social group at issue share a common characteristic that is either immutable or so fundamental to their identity or conscience that they should not be required to change it. For more than twenty years, the BIA followed the *Acosta* standard under the well-established guidance of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the UNHCR Social Group Guidelines. In a 2006 decision titled *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006), the BIA introduced a new and troubling concept into its review of social group asylum cases. In *Matter of C-A-*, the BIA required that the social group at issue in the case also be visible in the society. In this ruling, the BIA cited to the UNHCR Social Group Guidelines as a source for its heightened “social visibility” standard, but in doing so, misstated the UNHCR position on the matter. Since that time, UNHCR has stated unequivocally that the BIA

misconstrued its meaning. The UNHCR position is that there is no requirement that a particular social group be visible to society at large. Is the Department reviewing this matter and considering a modification to BIA precedent that is consistent with UNHCR Social Group Guidelines?

(b) (5)

E-FOIA

- 7. The Freedom of Information Act was amended in 1996 to cover electronic information. Since then, I and others have worked hard to make sure that our federal agencies are fully complying with that law. Given the explosion of the Internet and other new technologies, compliance with E-FOIA is essential to improving overall FOIA performance across the government.**

Will the Department conduct a review of agency web sites to determine whether they are in compliance with the affirmative disclosure requirements of E-FOIA?

(b) (5)

FOIA Processing

8. Delay in the FOIA process has been a persistent problem, and despite efforts under Executive Order 13392, many agencies have not been able to meaningfully reduce their FOIA backlogs.

a. What do you see as the role of DOJ in helping and/or compelling agencies to reduce their backlogs?

(b) (5)

b. Many agencies still do not permit members of the public to submit FOIA requests by e-mail, although doing so would save time and money for both requesters and agencies. Will you issue additional guidance requiring all agencies to accept FOIA requests electronically?

(b) (5)

Privacy and MWCOG Multi-Jurisdictional Database

9. In 2002, the Metropolitan Washington Council of Governments (“MWCOG”) received federal funding under the COPS program for the development of a Regional Pawn Sharing Database system. State and local law enforcement agencies use this database to aggregate records of consumer credit transactions by pawnbrokers and to deter the marketing of stolen property. The information contained in the Regional Pawn Sharing Database includes sensitive personal information about U.S. consumers who patronize pawnbroker establishments, including name, date of birth, race, address, an identification number from a state-issued identification document (e.g., driver’s license) or Social Security Number, as well as occasionally, biometric identifiers such as fingerprints. Given the sensitive personal information routinely maintained in the Regional Pawn Sharing Database, there is growing concern that this database could be vulnerable to privacy and civil liberties violations. What steps is the Department taking to ensure that state and local law enforcement agencies that receive federal funding to participate in Regional

Pawn Sharing Database comply with the privacy and civil liberties requirements established under 28 C.F.R. Part 23?

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR FEINGOLD

1. **As we discussed at the hearing, I requested in letters I sent to the President on April 29 and June 15 that the administration withdraw the January 2006 White Paper and other classified Office of Legal Counsel (OLC) memos providing legal justification for the NSA's warrantless wiretapping program. At the hearing, you stated that the OLC is reviewing those opinions to determine whether they can be made public.**
 - a. **How soon can we expect that review to be completed?**
 - b. **My understanding is that OLC attorneys also are reviewing those opinions to determine whether they should be withdrawn. Can you confirm that understanding? When do you expect that review to be completed?**

(b) (5)

2. President Obama, in his May 29 statement on cyber security, offered the following reassurance: “Let me also be clear about what we will not do. Our pursuit of cyber security will not – I repeat, will not include – monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans.” This is a clear statement of the importance of personal privacy as the administration moves forward on cyber security. But the Cyber Space Policy Review report released that day by the White House acknowledged a “complex patchwork” of applicable laws and the “paucity of judicial opinions in several areas.”

a. Is there a currently operative Justice Department legal opinion to guide the application of existing law or any new legislative framework that might be proposed? If so, when and by whom was the opinion developed?

b. Is this topic part of the overall review that is underway of OLC memos?

(b) (5)

c. Will you make public as much of the relevant legal analysis as possible, and will you provide any existing opinions, and any future opinions on this topic, to Congress, so that staff with appropriate clearances will have complete access to the legal analysis?

(b) (5)

3. I was very pleased that you decided to vacate the order issued by Attorney General Mukasey in *Matter of Compean*, and that you have directed the Executive Office for Immigration Review to initiate a rulemaking procedure to evaluate the existing framework for making claims of ineffective assistance of counsel. What is the timetable for issuing a final rule in this matter?

(b) (5)

(b) (5)

4. **The recent revelations of high-level officials involved in authorizing or ordering the use of torture, including the disclosure last month of the Office of Legal Counsel memos, the publication of the 2007 report of the International Committee of the Red Cross that concluded that our government committed torture, and the report released last month by the Senate Armed Services Committee on the use of torture by the Defense Department, all raise serious allegations of crimes being authorized and ordered at the very highest levels of government. What steps have you taken to ensure that there is an independent review of the evidence of possible criminal acts, and how would you respond to those who believe that only the appointment of an independent prosecutor will allow a credible investigation of wrongdoing to take place?**

(b) (5)

5. **At your confirmation hearing in January, I asked if the Justice Department would prepare a detailed report about implementation of the federal death penalty from 2001 to 2008, similar to a report that was issued in 2000. You agreed that it would be appropriate to do an in-depth report and share the results publicly – a response that I greatly appreciated. What is the status of this effort, and when do you expect it to be completed?**

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR SCHUMER

1. **As you know, I am the Chairman of the Rules Committee, which has jurisdiction over the administration of federal elections. On March 11, we held a hearing to look into the problems with our current voter registration system. We had found that as many as 7 million eligible voters either could not vote or did not vote due to registration issues. This is unacceptable. I know you would agree with me when I say that voter registration is the lifeblood of our republic. And there are several components to achieving successful voter registration under our current system. Two of these components are 1) that states comply with the requirements of the National Voter Registration Act (NVRA), and 2) that various Federal agencies be “designated” as voter registration agencies in order to decrease unnecessary obstacles to registration. I believe both are vital to an effective registration system under our current regime.**
 - a. **What steps will you take to reverse the Department of Justice’s past practices of non-enforcement of NVRA and the Help America Vote Act, particularly with respect to registering voters from the public assistance lists?**

(b) (5)

(b) (5)

b. Would the Department be willing to sue states out of compliance with NVRA?

(b) (5)

2. There is another aspect of NVRA that deserves significant attention. In order to help improve voter registration and make it easier for some in our population – especially our veterans – to vote, various Federal agencies can be designated as “voter registration agencies.” In fact, I wrote to President Obama requesting that this be done as soon as possible. Now, it does not need to be implemented for every Federal agency, but certainly the Department of Veterans’ Affairs and HHS would be appropriate places to start.

(b) (5)

Do you agree with me that such designations are both necessary and helpful, and do you know of any plans to move forward with these designations?

(b) (5)

3. Early this year, the U.S. Attorney for the District of Columbia declined to prosecute the former head of the Civil Rights Division, Bradley Schlozman, for statements that he made to me and other Senators that the Office of Inspector General found to be untrue. At your confirmation hearing, I asked if you would refer this case to the U.S. Attorney in Connecticut, who is conducting a review of politicization at the Department under the last administration, and to give me an update on this investigation.

- a. Can you provide me and the other members of the Committee with an update at this time?

(b) (5)

4. As Chairman of the Immigration Subcommittee, one of my primary concerns is the effective operation of our immigration court system. In recent years, many court officials have called for an increase in funding for the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) citing the complexities of immigration cases, unmanageable dockets and unrealistic case completion deadlines.

On average, Immigration Judges have less time than before to dispose of a case despite their burgeoning case loads. In 2007, they received more than 334,000 matters—including bonds, motions and removal proceedings—up from roughly 290,000 in 2002. Based on the total number of judges, this amounts to nearly 1,500 matters per Immigration Judge. In comparison, U.S. District Court judges average 483 matters completed per year.

The Board of Immigration Appeals (BIA) also needs a sufficient number of judges to do its job fairly and efficiently. Reports indicate that there are more than 8,700 cases that took more than five years for the BIA to complete, and tens of thousands more that were pending before the courts for more than two years before they were resolved.

- a. What steps have you taken, or do you plan on taking, to ensure that Immigration Judges and BIA members can manage their burgeoning case loads?

(b) (5)

(b) (5)

- b. How many additional Immigration Judges, BIA members, and staff attorneys do you plan to hire in FY 2009 and 2010?

Response (b) (5)
[Redacted]

- 5. With regard to combating the smuggling of illegal aliens into the United States, a 2005 GAO report concluded that—in order to effectively combat alien smuggling—the Government needs civil forfeiture authority that would enable the Government to seize safe houses used in alien-smuggling. This authority has yet to be granted by Congress. I spoke with Secretary Napolitano last week about my intention to draft a bill giving the Government this authority and she was enthusiastically supportive.

- a. Would you support my bill giving the Government this civil forfeiture authority to seize safe-houses used in alien-smuggling, and is that something you will work with me to enact?

(b) (5)

6. I recently toured the Federal Correctional Facility in Otisville, New York. What I saw there was deeply troubling. Otisville is operating at 42.7% over capacity and is 14% understaffed. Federal prisons in Manhattan, Brooklyn and Ray Brook, are all more than 50% overcrowded and are also severely understaffed. Nationally, federal prisons are operating around 37% over their rated capacity and are understaffed by an order of 13.4%. Inmates are being held in areas not originally designed as inmate sleeping areas and, at least on some occasions, non-correctional prison staff is being used for correctional duties. Fortunately, thanks to some very outstanding work by our corrections officers, all four New York facilities I mentioned have been exceptionally safe, and assault numbers were down in 2007. Nonetheless, I'm sure you will agree that we cannot treat prisons like an afterthought.

a. With this in mind, does the Department believe that more funding is necessary to ensure safety for prison staff and security for inmates?

(b) (5)

b. If not, how is the Department planning to address these growing concerns?

(b) (5)

7. A common refrain from people who are opposed to more restrictive gun laws is that we should "enforce the existing laws on the books." I will say that I think this is a fair statement, and it's one of the rare places on this issue on which we should all be able to agree. But I'm concerned that, at least with respect to the ATF, current staffing limitations may make it impossible to even enforce some of the gun laws we have now. And I say all of this with the important caveat that there are only a few bad apples out there – a handful of gun dealers are responsible for the overwhelming majority of illegally sold guns in the country. Our goal should be finding the bad apples – and the

best way to do that will be through routine inspections. As you know, the ATF is now empowered to conduct an annual inspection of a federal firearms licensee's inventory and records. But according to recent news reports, most gun dealers are only inspected once every three to six years, because the pool of ATF auditors is stretched dangerously thin.

- a. That estimate was accurate as of April of this year. Do you have any reason to believe that anything has changed with respect to that estimate?

(b) (5)

Likewise, as of 2007, ATF said publicly that conducting a single inspection of every federal firearms licensee in the country would take approximately seventeen years.

- b. Do you have any reason to believe that anything has changed with respect to that estimate?

(b) (5)

- c. In light of these numbers, are you concerned that the ATF may be understaffed?

(b) (5)

(b) (5)

8. **I understand that the Department of Justice is investigating for accomplices to the murder of Dr. George Tiller, and for potential violations of the Freedom of Access to Clinic Entrances (or “FACE”) Act – the law that prohibits threats of force or physical obstruction of reproductive-health providers and seekers. According to newspaper reports, criminal enforcement of this important law had declined by more than 75 percent over the last 8 years under the previous administration. Therefore, I appreciate that the Department has launched its investigation, and feel that we must work together to stop these unconscionable acts of violence.**
 - a. **How can we work with the Department of Justice to ensure that health-care professionals are protected from acts of violence?**

(b) (5)

(b) (5)

[Redacted text block]

[Redacted text block]

9. Last week, the Department issued a brief arguing in favor of upholding the Defense of Marriage Act in federal court. Many members of the LGBT community were upset by this brief.

a. Can you please tell me what knowledge you had of this before it was written?

(b) (5)

b. Can you please elaborate on how this administration's position on the Defense of Marriage Act differs from that of the Bush Administration?

(b) (5)

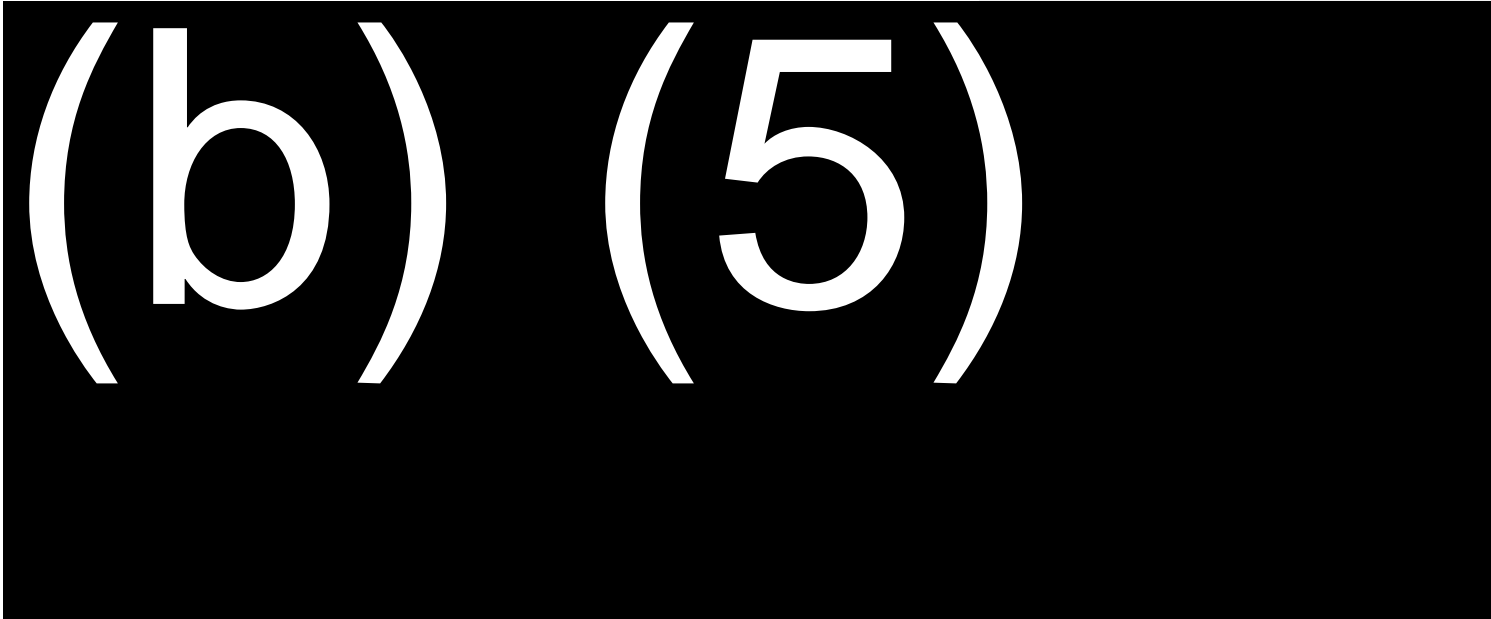
(b) (5)

QUESTIONS POSED BY SENATOR WHITEHOUSE

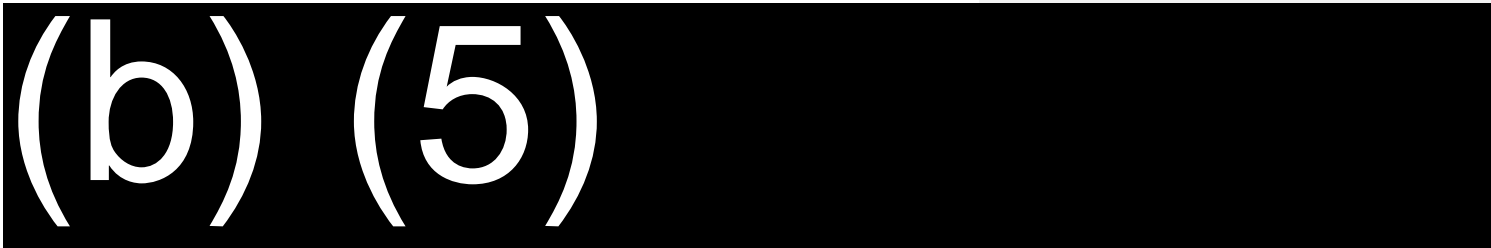
1. **The Department under your stewardship his continued and reinforced the Bush Administration’s arguments regarding the “state secrets” defense. I understand that on a complex issue like this, one may not wish to revisit it on the schedule of an ongoing case, or in that particular context, and I recognize that Senate delays have slowed down the confirmation of your new management team.**

**Can we expect a policy review of this defense, and if so, on what schedule?
Are there other areas in which you anticipate or are conducting such policy review?**

(b) (5)



- 2. A great deal of damage was done to the Department of Justice during the last administration. What procedures are now in place for capturing disclosures from career Department employees about that damage – be it professional or ethical misconduct, politicized decision-making, or something else? To what office do such disclosures go, so that they can be properly analyzed and, if necessary, acted upon?



- 3. ~~3.~~ On June 15, 2009, the Department of Justice submitted a brief in support of the Defense of Marriage Act (DOMA), the law that protects the right of states not to recognize same-sex marriages or provide same-sex married couples with federal benefits. At the same time, the President has pledged to support repeal of DOMA (and I too would like to see it repealed). Was the litigation posture taken after a policy review by the Department, or a continuation of the litigation strategy of the previous administration? The distinction between a policy position and a litigation posture is important.

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(b) (5)

QUESTIONS POSED BY SENATOR WYDEN

1. **Article 4 of the Mexican Federal Penal Code allows for the prosecution of Mexican nationals who have committed a crime in the US and fled back to Mexico. In certain cases, extradition may not be achievable, and Article 4 provides the sole process for obtaining justice for US crime victims and imposing punishment upon the criminal. State and local law enforcement authorities in many states, including Oregon, have had success pursuing Article 4 prosecutions. However, complying with the requirements of Article 4 and working with Mexican law enforcement officials to complete the prosecution is quite an entailed process. Many jurisdictions lack the resources and expertise to pursue Article 4 cases.**

(b) (5)

2. **Given the increasing criminal problems arising from the cross-border activities of Mexican drug cartels, do you believe that Article 4 is an**

important tool for pursuing justice for crimes committed in the US by Mexican national suspects?

(b) (5)

3. Are you aware of any barriers that would prevent the Department of Justice's Office of International Affairs from providing assistance to state and local law enforcement officials and providing greater coordination and efficiency to the development of Article 4 cases?

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR HATCH

- 1. Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by terrorist suspects. Director Mueller appeared before this committee this spring and described how important these tools are in furthering the FBI's mission in investigating terrorism activity here in the United States. He also expressed his support for reauthorizing the provisions without modifications. The Director also provided the committee some useful statistics regarding the usage of these techniques. For example, between 2004 though 2007 the FBI used the business record examination tool 225 times. During that same time period, the FBI used roving wiretaps 147 times. What is your assessment of these tools and does the administration and the Department of Justice support their reauthorization without additional modifications?**

(b) (5)

2. There are 15 High Security prisons under the control of the Department of Justice. The total rated capacity of these facilities is 13,448 inmates. The current population of inmates in these facilities is 20,001. Presently, there is only 1 dedicated Supermax prison in the BOP arsenal and as you know this is located in Florence, Colorado. As of June 4, 2009, the current population of the Florence Supermax was 468 inmates. This number means that this facility is currently at its maximum capacity. ADX Florence already houses 33 inmates incarcerated there with ties to international terrorism. Inmates at ADX Florence are locked down for 23 hours a day. There is no congregating dining or religious services in this facility. I bring this up because this is exactly the same conditions that the high security unit at Guantanamo offers. With the administration's self imposed deadline for closure looming on the horizon there is a lot of criticism that there has not been one hint of a plan for Guantanamo's closure. Some of my colleagues in the majority party have floated the idea that there is plenty of room to incarcerate these detainees in BOP facilities. However, the BOP has stated time and again that they do not have the room. BOP has provided population figures to both sides of the aisle that proves this. Can you give me your view on where the Department of Justice is going to house these detainees when Guantanamo is closed?

(b) (5)

3. Recently, the Obama Administration has advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. This practice has been implemented by agents of the FBI. In January, when you appeared before this committee for your confirmation you stated that in your belief this country is "at war." In January, the President's issued an Executive Order stating that the Army Field Manual would be the "rule book" governing the treatment of prisoners. The Army Field Manual does not mention providing *Miranda* warnings to prisoners. Is the Justice Department endorsing an approach of using criminal investigative techniques in battlefield interrogations? Can you explain this rationale behind reading a waiver to combatants and Al Qaida operatives that informs them of their U.S. Constitutional rights in a foreign nation?

(b) (5)

4. **As you know the College Football Bowl Championship Series (BCS) has been a matter of significant controversy for many throughout the country, including President Obama. While some may dismiss the BCS as too trivial a matter for government attention, it involves hundreds of millions of dollars in revenue every year, most of which is reserved for participants most favored by the BCS. This system places nearly half the schools who field Division I football teams at a competitive and financial disadvantage. While most reasonable people agree that the BCS arrangement is unfair, I, along with others, have raised questions about the legality of the BCS in light of our nation's antitrust laws. In addition, I know that you have been contacted by Utah state officials regarding this matter. At this point, what is the disposition of the Justice Department, particularly the Antitrust Division, regarding the BCS? Are there any ongoing Justice Department efforts to examine the legality of the existing BCS system?**

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR KYL

1. On May 29th, I sent you a letter asking you to provide the factual justification for the President’s statement in his May 21st speech at the National Archives when he said: “Our federal ‘supermax’ prisons...hold hundreds of convicted terrorists.”
 - a. As requested in the letter, please provide the names of the terrorists currently held in federal prisons and the details of their crimes.

(b) (5)

- b. Do you assess that their crimes are comparable to that of the high-value detainees at GTMO?

(b) (5)

2. How would the Bureau of Prisons make space for the GTMO detainees?

(b) (5)

- a. If using existing maximum security facilities (which are already overcrowded by almost 7,000 inmates) what would happen to the inmates that are there now?

(b) (5)

- b. If opening a new facility or re-opening a closed facility, how would this facility be made ready in seven months or less in order to accommodate President Obama's Executive Order deadline of January 22, 2010?

(b) (5)

3. On what legal basis would you prevent a GTMO detainee from being released into the United States if found not guilty in a federal court? What if a case is thrown out for procedural reasons?

(b) (5)

4. If GTMO is closed, where will the U.S. hold and try newly captured enemy combatants in the future?

(b) (5)

- a. Would they be brought to the U.S. for legal proceedings? If that is not the plan, are you concerned that trying some of the GTMO detainees in a U.S. court will set a precedent that can be cited by future detainees?

(b) (5)

5. How soon after the closure of GTMO should we expect to see a notable and measurable decrease in terrorist recruiting?

(b) (5)

QUESTIONS POSED BY SENATOR COBURN

1. Emmett Till Unsolved Civil Rights Crimes:

At last week's oversight hearing, we discussed how you committed to me at your confirmation hearing that you would "figure out ways to try to move money around" to fund the Emmett Till Unsolved Civil Rights Crime Act. You testified that you would get back to me once you had confirmed whether any money had been provided by the Department of Justice to fund that initiative.

- a. Now that you have had time to look into it, please describe what resources (if any) DOJ has devoted to the Emmett Till Unsolved Civil Rights Crime Act.

(b) (5)

I was pleased by your commitment to meet with members of the Emmett Till Campaign for Justice, especially its President, Mr. Alvin Sykes.

- b. Has that meeting been scheduled? If so, when will it take place? (I would be happy to help facilitate, if needed.)

(b) (5)

(b) (5)

2. “Assault Weapons” Ban:

At the oversight hearing, you testified that: “I don’t think I have in fact said that we need a new assault weapons ban.”

- a. Do you now acknowledge having called for a reinstatement of that ban at a February 25, 2009 press conference?

Response (b) (5)

- b. Is it still your intent to seek a reinstatement of the “assault weapons” ban?

Response (b) (5)

(b) (5)

3. Grant Management

What specific steps have you taken to improve grant management at DOJ? In your confirmation hearing, you recognized that it must be treated as a “consistent priority” to prevent problems.

- a. Have you been in contact with the Inspector General about grant management? Now that you have had time to review the various DOJ grant programs, what problems have you seen, and how do you propose to address them?

(b) (5)

President Obama promised to conduct “an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy.” You said you would begin these efforts at DOJ “soon after you took office as Attorney General.”

- b. Have you begun these efforts? If so, what specific steps have you taken?

(b) (5)

4. Prolonged Detention

Last week, the Senate Judiciary Subcommittee on the Constitution held a hearing on prolonged detention.

- a. Do you agree with the President that there are some detainees who cannot be prosecuted?

Response (b) (5)

- b. Do you agree with the President that there are some detainee terrorists who “pose a clear danger” to the American people and who “remain at war with the United States”?

Response (b) (5)

- c. Is the United States under any international obligation to either “try or release” those detainees?

Response (b) (5)

5. Earmark Investigation

On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244) was signed into law. That bill included a provision which reads as follows:

“SEC. 502. DEPARTMENT OF JUSTICE REVIEW. Consistent with applicable standards and procedures, the Department of

(b) (5)

Justice shall review allegations of impropriety regarding item 462 in section 1934(c) of Public Law 109-59 to ascertain if a violation of Federal criminal law has occurred.”

As you may recall, this provision referred to the \$10 million “Coconut Road” earmark that was inserted into the transportation bill after it passed both the House and Senate. A \$10 million earmark for “Widening and Improvements for I-75 in Collier and Lee County” was in the bill that passed both houses of Congress, but was not in the version of the bill signed by President Bush. That earmark was deleted and one appeared that was for a \$10 million earmark for the “Coconut Rd. interchange I-75/Lee County[.]” An effort I undertook to have the House and Senate investigate this was modified by my colleague, Senator Boxer, to have DOJ investigate the matter instead.

- a. What is the status of this review?**
- b. Has the Department reached any conclusions?**
- c. If it has been determined that a violation of federal criminal law has occurred, what will be the next step for DOJ?**

(b) (5)

Burrows, Charlotte

From: Burrows, Charlotte
Sent: Monday, July 27, 2009 9:01 PM
To: Parmiter, Robert B; Wilkinson, Monty (OAG); Bies, John; Garland, James; Ohlson, Kevin (OAG)
Cc: Columbus, Eric (ODAG)
Subject: RE: AG QFRs - Senate Judiciary Committee
Attachments: AG SJC QFRs - Draft 7 (ODAG edits) (2).doc

All -- the attached includes additional edits from the DAG t (b) (5) [REDACTED]. Otherwise this document is identical to the one Bobby sent on Friday. This leaves only the factual follow-up to Leahy 4 a. and b. that I think I mentioned in my last email, and which is noted both in this version of the qfrs and the one Bobby sent Friday.

Just as a heads up, we also are working to get to you soon the qfrs from the FBI, also from Senate Judic.

Thanks, C

From: Parmiter, Robert B
Sent: Friday, July 24, 2009 8:57 PM
To: Wilkinson, Monty (OAG); Bies, John; Garland, James; Ohlson, Kevin (OAG)
Cc: Burrows, Charlotte; Columbus, Eric (ODAG)
Subject: AG QFRs - Senate Judiciary Committee
Importance: High

Duplicative Material (Document ID: 0.7.10663.9913)



Questions for the Record
Attorney General Eric H. Holder, Jr.
Senate Judiciary Committee
June 17, 2009

QUESTIONS POSED BY CHAIRMAN LEAHY

Media Shield

1. Carefully balanced legislation to create a qualified privilege for journalists that protects the identity of their confidential sources is pending on the Judiciary Committee's legislative agenda. During your confirmation hearing, you expressed support for a well-crafted media shield bill, and you committed to work with me and others on this legislation. The legislation (S. 448) before the Committee does not give the press a free pass, and it contains reasonable exceptions to the limited privilege in cases where information is needed to prevent terrorism or to protect national security. Does the Justice Department support S. 448, the Free Flow of Information Act of 2009, currently before the Committee, and will you work with me and others to enact this legislation this year?

(b) (5)

The Justice Department's Role in Reforming Forensic Sciences

2. In February, the National Academy of Sciences issued a comprehensive report on the urgent need to improve forensic sciences in the United States. One of the core findings in the National Academy of Science Report is that science needs to be the guiding principle in determining the standards and procedures for forensic science. Among other things, the Report calls for the federal government to set national standards for accrediting forensic labs and for certifying forensic scientists. The report also makes clear that a great deal of work needs to be done to conduct new research into traditional forensic disciplines.

- a. **Do you agree that there should be a nationwide forensics reform effort including national standards to be set for accrediting forensic labs and certifying forensic scientists?**

(b) (5)

(b) (5)

b. What role should the Justice Department play in this effort to reform forensic sciences in this country?

(b) (5)

(b) (5)

Public Corruption Prosecution Improvements Act

3. We have seen a shift of resources away from public corruption investigations and prosecutions over the past seven years. Recent prominent corruption cases have made clear that public corruption continues to be pervasive problem that victimizes every American by chipping away at the foundation of our Democracy.

Senator Cornyn and I introduced the bipartisan Public Corruption Prosecution Improvements Act of 2009 (S. 49) that would provide needed funds to the Justice Department for the investigation and prosecution of public corruption offenses and legal tools for federal prosecutors closing loopholes in corruption law and bringing clarity to key statutes. The Department of Justice supports this bill and has submitted a favorable views letter on the legislation.

Why does the Department of Justice need this legislation? Do you believe it should be promptly passed?

(b) (5)

New FOIA Policy

4. July Fourth marks the 43rd anniversary of the enactment of the Freedom of Information Act (“FOIA”). I commend the President for issuing a memorandum to strengthen FOIA on his first full day in office, and I commend you for issuing a FOIA memorandum in March which restores the presumption of openness to our government. Your FOIA Memo requires, among other things, that this new policy “should be taken into account and applied if practicable” to pending FOIA cases. But there is some concern that the Department and other federal agencies are not actually applying this policy to their pending cases.

a. Is the Department regularly reviewing its pending FOIA cases to determine the impact of your March 19 FOIA Memo on withholding decisions?

(b) (5)

b. Has your new policy resulted in the release of more information to the public?

(b) (5)

c. Will you commit to work with me and the FOIA requester community to address concerns about the implementation of this policy?

(b) (5)

Material Support for Terrorism

5. Upon taking office, Secretary Napolitano announced a broad review of Department of Homeland Security immigration policies, including how to handle asylum cases held in limbo because of the overly-broad definition of material support for terrorism in our immigration laws. I welcome her review and hope that the Department of Justice is fully cooperating in this process.

a. What steps is the Department of Justice taking to revisit past agency interpretations of the material support inadmissibility grounds?

(b) (5)

b. Does the Department of Justice agree that *de minimis* contributions and acts committed under duress should not be considered to be “material support”?

(b) (5)

Asylum Claims Based on Membership in a Particular Social Group

6. Asylum claims may be based on “membership in a particular social group,” but that phrase is not defined by the statute. The standard for defining “membership in a particular social group” was articulated in a 1985 opinion from the Board of Immigration Appeals (BIA) entitled *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985). The *Acosta* decision requires the asylum seeker to show that the members of the social group at issue share a common characteristic that is either immutable or so fundamental to their identity or conscience that they should not be required to change it. For more than twenty years, the BIA followed the *Acosta* standard under the well-established guidance of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the UNHCR Social Group Guidelines. In a 2006 decision titled *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006), the BIA introduced a new and troubling concept into its review of social group asylum cases. In *Matter of C-A-*, the BIA required that the social group at

issue in the case also be visible in the society. In this ruling, the BIA cited to the UNHCR Social Group Guidelines as a source for its heightened “social visibility” standard, but in doing so, misstated the UNHCR position on the matter. Since that time, UNHCR has stated unequivocally that the BIA misconstrued its meaning. The UNHCR position is that there is no requirement that a particular social group be visible to society at large. Is the Department reviewing this matter and considering a modification to BIA precedent that is consistent with UNHCR Social Group Guidelines?

(b) (5)

E-FOIA

7. The Freedom of Information Act was amended in 1996 to cover electronic information. Since then, I and others have worked hard to make sure that our federal agencies are fully complying with that law. Given the explosion of the Internet and other new technologies, compliance with E-FOIA is essential to improving overall FOIA performance across the government.

Will the Department conduct a review of agency web sites to determine whether they are in compliance with the affirmative disclosure requirements of E-FOIA?

(b) (5)

FOIA Processing

8. Delay in the FOIA process has been a persistent problem, and despite efforts under Executive Order 13392, many agencies have not been able to meaningfully reduce their FOIA backlogs.
- a. What do you see as the role of DOJ in helping and/or compelling agencies to reduce their backlogs?

(b) (5)

- b. Many agencies still do not permit members of the public to submit FOIA requests by e-mail, although doing so would save time and money for both requesters and agencies. Will you issue additional guidance requiring all agencies to accept FOIA requests electronically?

(b) (5)

Privacy and MWCOG Multi-Jurisdictional Database

9. In 2002, the Metropolitan Washington Council of Governments (“MWCOG”) received federal funding under the COPS program for the development of a Regional Pawn Sharing Database system. State and local law enforcement agencies use this database to aggregate records of consumer credit transactions by pawnbrokers and to deter the marketing of stolen property. The information contained in the Regional Pawn Sharing Database includes sensitive personal information about U.S. consumers who patronize pawnbroker establishments, including name, date of birth, race, address, an identification number from a state-issued identification document (e.g., driver’s license) or Social Security Number, as well as occasionally, biometric identifiers such as fingerprints. Given the sensitive personal information routinely maintained in the Regional Pawn Sharing Database, there is growing concern that this database could be vulnerable to privacy and civil liberties violations.

What steps is the Department taking to ensure that state and local law enforcement agencies that receive federal funding to participate in Regional Pawn Sharing Database comply with the privacy and civil liberties requirements established under 28 C.F.R. Part 23?

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR FEINGOLD

1. **As we discussed at the hearing, I requested in letters I sent to the President on April 29 and June 15 that the administration withdraw the January 2006 White Paper and other classified Office of Legal Counsel (OLC) memos providing legal justification for the NSA's warrantless wiretapping program. At the hearing, you stated that the OLC is reviewing those opinions to determine whether they can be made public.**
 - a. **How soon can we expect that review to be completed?**
 - b. **My understanding is that OLC attorneys also are reviewing those opinions to determine whether they should be withdrawn. Can you confirm that understanding? When do you expect that review to be completed?**

(b) (5)

2. President Obama, in his May 29 statement on cyber security, offered the following reassurance: “Let me also be clear about what we will not do. Our pursuit of cyber security will not – I repeat, will not include – monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans.” This is a clear statement of the importance of personal privacy as the administration moves forward on cyber security. But the Cyber Space Policy Review report released that day by the White House acknowledged a “complex patchwork” of applicable laws and the “paucity of judicial opinions in several areas.”

- a. Is there a currently operative Justice Department legal opinion to guide the application of existing law or any new legislative framework that might be proposed? If so, when and by whom was the opinion developed?
- b. Is this topic part of the overall review that is underway of OLC memos?

(b) (5)

- c. Will you make public as much of the relevant legal analysis as possible, and will you provide any existing opinions, and any future opinions on this topic, to Congress, so that staff with appropriate clearances will have complete access to the legal analysis?

(b) (5)

3. I was very pleased that you decided to vacate the order issued by Attorney General Mukasey in *Matter of Compean*, and that you have directed the Executive Office for Immigration Review to initiate a rulemaking procedure to evaluate the existing framework for making claims of ineffective assistance of counsel. What is the timetable for issuing a final rule in this matter?

(b) (5)

(b) (5)

- 4. The recent revelations of high-level officials involved in authorizing or ordering the use of torture, including the disclosure last month of the Office of Legal Counsel memos, the publication of the 2007 report of the International Committee of the Red Cross that concluded that our government committed torture, and the report released last month by the Senate Armed Services Committee on the use of torture by the Defense Department, all raise serious allegations of crimes being authorized and ordered at the very highest levels of government. What steps have you taken to ensure that there is an independent review of the evidence of possible criminal acts, and how would you respond to those who believe that only the appointment of an independent prosecutor will allow a credible investigation of wrongdoing to take place?**

(b) (5)

- 5. At your confirmation hearing in January, I asked if the Justice Department would prepare a detailed report about implementation of the federal death penalty from 2001 to 2008, similar to a report that was issued in 2000. You agreed that it would be appropriate to do an in-depth report and share the results publicly – a response that I greatly appreciated. What is the status of this effort, and when do you expect it to be completed?**

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR SCHUMER

1. **As you know, I am the Chairman of the Rules Committee, which has jurisdiction over the administration of federal elections. On March 11, we held a hearing to look into the problems with our current voter registration system. We had found that as many as 7 million eligible voters either could not vote or did not vote due to registration issues. This is unacceptable. I know you would agree with me when I say that voter registration is the lifeblood of our republic. And there are several components to achieving successful voter registration under our current system. Two of these components are 1) that states comply with the requirements of the National Voter Registration Act (NVRA), and 2) that various Federal agencies be “designated” as voter registration agencies in order to decrease unnecessary obstacles to registration. I believe both are vital to an effective registration system under our current regime.**
 - a. **What steps will you take to reverse the Department of Justice’s past practices of non-enforcement of NVRA and the Help America Vote Act, particularly with respect to registering voters from the public assistance lists?**

(b) (5)

(b) (5)

b. Would the Department be willing to sue states out of compliance with NVRA?

(b) (5)

(b) (5)

2. There is another aspect of NVRA that deserves significant attention. In order to help improve voter registration and make it easier for some in our population – especially our veterans – to vote, various Federal agencies can be designated as “voter registration agencies.” In fact, I wrote to President Obama requesting that this be done as soon as possible. Now, it does not need to be implemented for every Federal agency, but certainly the Department of Veterans’ Affairs and HHS would be appropriate places to start.

Do you agree with me that such designations are both necessary and helpful, and do you know of any plans to move forward with these designations?

(b) (5)

3. Early this year, the U.S. Attorney for the District of Columbia declined to prosecute the former head of the Civil Rights Division, Bradley Schlozman, for statements that he made to me and other Senators that the Office of Inspector General found to be untrue. At your confirmation hearing, I asked if you would refer this case to the U.S. Attorney in Connecticut, who is

conducting a review of politicization at the Department under the last administration, and to give me an update on this investigation.

- a. Can you provide me and the other members of the Committee with an update at this time?

(b) (5)

4. **As Chairman of the Immigration Subcommittee, one of my primary concerns is the effective operation of our immigration court system. In recent years, many court officials have called for an increase in funding for the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) citing the complexities of immigration cases, unmanageable dockets and unrealistic case completion deadlines.**

On average, Immigration Judges have less time than before to dispose of a case despite their burgeoning case loads. In 2007, they received more than 334,000 matters—including bonds, motions and removal proceedings—up from roughly 290,000 in 2002. Based on the total number of judges, this amounts to nearly 1,500 matters per Immigration Judge. In comparison, U.S. District Court judges average 483 matters completed per year.

The Board of Immigration Appeals (BIA) also needs a sufficient number of judges to do its job fairly and efficiently. Reports indicate that there are more than 8,700 cases that took more than five years for the BIA to complete, and tens of thousands more that were pending before the courts for more than two years before they were resolved.

- a. What steps have you taken, or do you plan on taking, to ensure that Immigration Judges and BIA members can manage their burgeoning case loads?

(b) (5)

(b) (5)

- b. How many additional Immigration Judges, BIA members, and staff attorneys do you plan to hire in FY 2009 and 2010?

(b) (5)

5. With regard to combating the smuggling of illegal aliens into the United States, a 2005 GAO report concluded that—in order to effectively combat alien smuggling—the Government needs civil forfeiture authority that would enable the Government to seize safe houses used in alien-smuggling. This authority has yet to be granted by Congress. I spoke with Secretary Napolitano last week about my intention to draft a bill giving the Government this authority and she was enthusiastically supportive.

- a. Would you support my bill giving the Government this civil forfeiture authority to seize safe-houses used in alien-smuggling, and is that something you will work with me to enact?

(b) (5)

(b) (5)

6. I recently toured the Federal Correctional Facility in Otisville, New York. What I saw there was deeply troubling. Otisville is operating at 42.7% over capacity and is 14% understaffed. Federal prisons in Manhattan, Brooklyn and Ray Brook, are all more than 50% overcrowded and are also severely understaffed. Nationally, federal prisons are operating around 37% over their rated capacity and are understaffed by an order of 13.4%. Inmates are being held in areas not originally designed as inmate sleeping areas and, at least on some occasions, non-correctional prison staff is being used for correctional duties. Fortunately, thanks to some very outstanding work by our corrections officers, all four New York facilities I mentioned have been exceptionally safe, and assault numbers were down in 2007. Nonetheless, I'm sure you will agree that we cannot treat prisons like an afterthought.
- a. With this in mind, does the Department believe that more funding is necessary to ensure safety for prison staff and security for inmates?

(b) (5)

- b. If not, how is the Department planning to address these growing concerns?

(b) (5)

7. A common refrain from people who are opposed to more restrictive gun laws is that we should "enforce the existing laws on the books." I will say that I think this is a fair statement, and it's one of the rare places on this issue on which we should all be able to agree. But I'm concerned that, at least with respect to the ATF, current staffing limitations may make it impossible to even enforce some of the gun laws we have now. And I say all of this with the

important caveat that there are only a few bad apples out there – a handful of gun dealers are responsible for the overwhelming majority of illegally sold guns in the country. Our goal should be finding the bad apples – and the best way to do that will be through routine inspections. As you know, the ATF is now empowered to conduct an annual inspection of a federal firearms licensee’s inventory and records. But according to recent news reports, most gun dealers are only inspected once every three to six years, because the pool of ATF auditors is stretched dangerously thin.

- a. That estimate was accurate as of April of this year. Do you have any reason to believe that anything has changed with respect to that estimate?

(b) (5)

Likewise, as of 2007, ATF said publicly that conducting a single inspection of every federal firearms licensee in the country would take approximately seventeen years.

- b. Do you have any reason to believe that anything has changed with respect to that estimate?

(b) (5)

- c. In light of these numbers, are you concerned that the ATF may be understaffed?

(b) (5)

8. I understand that the Department of Justice is investigating for accomplices to the murder of Dr. George Tiller, and for potential violations of the Freedom of Access to Clinic Entrances (or “FACE”) Act – the law that prohibits threats of force or physical obstruction of reproductive-health providers and seekers. According to newspaper reports, criminal enforcement of this important law had declined by more than 75 percent over the last 8 years under the previous administration. Therefore, I appreciate that the Department has launched its investigation, and feel that we must work together to stop these unconscionable acts of violence.

a. How can we work with the Department of Justice to ensure that health-care professionals are protected from acts of violence?

(b) (5)

(b) (5)

9. Last week, the Department issued a brief arguing in favor of upholding the Defense of Marriage Act in federal court. Many members of the LGBT community were upset by this brief.

a. Can you please tell me what knowledge you had of this before it was written?

(b) (5)

b. Can you please elaborate on how this administration's position on the Defense of Marriage Act differs from that of the Bush Administration?

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR WHITEHOUSE

- 1. The Department under your stewardship his continued and reinforced the Bush Administration’s arguments regarding the “state secrets” defense. I understand that on a complex issue like this, one may not wish to revisit it on the schedule of an ongoing case, or in that particular context, and I recognize that Senate delays have slowed down the confirmation of your new management team.**

**Can we expect a policy review of this defense, and if so, on what schedule?
Are there other areas in which you anticipate or are conducting such policy review?**

(b) (5)

(b) (5)

2. **A great deal of damage was done to the Department of Justice during the last administration. What procedures are now in place for capturing disclosures from career Department employees about that damage – be it professional or ethical misconduct, politicized decision-making, or something else? To what office do such disclosures go, so that they can be properly analyzed and, if necessary, acted upon?**

(b) (5)

3. **3.—On June 15, 2009, the Department of Justice submitted a brief in support of the Defense of Marriage Act (DOMA), the law that protects the right of states not to recognize same-sex marriages or provide same-sex married couples with federal benefits. At the same time, the President has pledged to support repeal of DOMA (and I too would like to see it repealed).**

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Was the litigation posture taken after a policy review by the Department, or a continuation of the litigation strategy of the previous administration? The distinction between a policy position and a litigation posture is important.

(b) (5)

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR WYDEN

- 1. Article 4 of the Mexican Federal Penal Code allows for the prosecution of Mexican nationals who have committed a crime in the US and fled back to Mexico. In certain cases, extradition may not be achievable, and Article 4 provides the sole process for obtaining justice for US crime victims and imposing punishment upon the criminal. State and local law enforcement authorities in many states, including Oregon, have had success pursuing Article 4 prosecutions. However, complying with the requirements of Article 4 and working with Mexican law enforcement officials to complete the prosecution is quite an entailed process. Many jurisdictions lack the resources and expertise to pursue Article 4 cases.**

(b) (5)

2. **Given the increasing criminal problems arising from the cross-border activities of Mexican drug cartels, do you believe that Article 4 is an important tool for pursuing justice for crimes committed in the US by Mexican national suspects?**

(b) (5)

3. **Are you aware of any barriers that would prevent the Department of Justice's Office of International Affairs from providing assistance to state and local law enforcement officials and providing greater coordination and efficiency to the development of Article 4 cases?**

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR HATCH

1. **Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by terrorist suspects. Director Mueller appeared before this committee this spring and described how important these tools are in furthering the FBI's mission in investigating terrorism activity here in the United States. He also expressed his support for reauthorizing the provisions without modifications. The Director also provided the committee some useful statistics regarding the usage of these techniques. For example, between 2004 though 2007 the FBI used the business record examination tool 225 times. During that same time period, the FBI used roving wiretaps 147 times. What is your assessment of these**

tools and does the administration and the Department of Justice support their reauthorization without additional modifications?

(b) (5)

2. There are 15 High Security prisons under the control of the Department of Justice. The total rated capacity of these facilities is 13,448 inmates. The current population of inmates in these facilities is 20,001. Presently, there is only 1 dedicated Supermax prison in the BOP arsenal and as you know this is located in Florence, Colorado. As of June 4, 2009, the current population of the Florence Supermax was 468 inmates. This number means that this facility is currently at its maximum capacity. ADX Florence already houses 33 inmates incarcerated there with ties to international terrorism. Inmates at ADX Florence are locked down for 23 hours a day. There is no congregating dining or religious services in this facility. I bring this up because this is exactly the same conditions that the high security unit at Guantanamo offers. With the administration's self imposed deadline for closure looming on the horizon there is a lot of criticism that there has not been one hint of a plan for Guantanamo's closure. Some of my colleagues in the majority party have floated the idea that there is plenty of room to incarcerate these detainees in BOP facilities. However, the BOP has stated time and again that they do not have the room. BOP has provided population figures to both sides of the aisle that proves this. Can you give me your view on where the Department of Justice is going to house these detainees when Guantanamo is closed?

(b) (5)

3. Recently, the Obama Administration has advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. This practice has been implemented by agents of the FBI. In January, when you appeared before this committee for your confirmation you stated that in your belief this country is "at war." In January, the President's issued an Executive Order stating that the Army Field Manual would be the "rule book" governing the treatment of prisoners. The Army Field Manual does not mention providing *Miranda* warnings to prisoners. Is the Justice Department endorsing an approach of using criminal investigative techniques in battlefield interrogations? Can you explain this rationale behind reading a waiver to combatants and Al Qaida operatives that informs them of their U.S. Constitutional rights in a foreign nation?

(b) (5)

4. **As you know the College Football Bowl Championship Series (BCS) has been a matter of significant controversy for many throughout the country, including President Obama. While some may dismiss the BCS as too trivial a matter for government attention, it involves hundreds of millions of dollars in revenue every year, most of which is reserved for participants most favored by the BCS. This system places nearly half the schools who field Division I football teams at a competitive and financial disadvantage. While most reasonable people agree that the BCS arrangement is unfair, I, along with others, have raised questions about the legality of the BCS in light of our nation's antitrust laws. In addition, I know that you have been contacted by Utah state officials regarding this matter. At this point, what is the disposition of the Justice Department, particularly the Antitrust Division, regarding the BCS? Are there any ongoing Justice Department efforts to examine the legality of the existing BCS system?**

(b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR KYL

1. On May 29th, I sent you a letter asking you to provide the factual justification for the President's statement in his May 21st speech at the National Archives when he said: "Our federal 'supermax' prisons...hold hundreds of convicted terrorists."
 - a. As requested in the letter, please provide the names of the terrorists currently held in federal prisons and the details of their crimes.

(b) (5)

- b. Do you assess that their crimes are comparable to that of the high-value detainees at GTMO?

(b) (5)

2. How would the Bureau of Prisons make space for the GTMO detainees?

(b) (5)

- a. If using existing maximum security facilities (which are already overcrowded by almost 7,000 inmates) what would happen to the inmates that are there now?

(b) (5)

- b. If opening a new facility or re-opening a closed facility, how would this facility be made ready in seven months or less in order to accommodate President Obama's Executive Order deadline of January 22, 2010?

(b) (5)

3. On what legal basis would you prevent a GTMO detainee from being released into the United States if found not guilty in a federal court? What if a case is thrown out for procedural reasons?

(b) (5)

4. If GTMO is closed, where will the U.S. hold and try newly captured enemy combatants in the future?

(b) (5)

- a. Would they be brought to the U.S. for legal proceedings? If that is not the plan, are you concerned that trying some of the GTMO detainees in a U.S. court will set a precedent that can be cited by future detainees?

(b) (5)

5. How soon after the closure of GTMO should we expect to see a notable and measurable decrease in terrorist recruiting?

(b) (5)

QUESTIONS POSED BY SENATOR COBURN

1. Emmett Till Unsolved Civil Rights Crimes:

At last week's oversight hearing, we discussed how you committed to me at your confirmation hearing that you would "figure out ways to try to move money around" to fund the Emmett Till Unsolved Civil Rights Crime Act. You testified that you would get back to me once you had confirmed whether any money had been provided by the Department of Justice to fund that initiative.

- a. Now that you have had time to look into it, please describe what resources (if any) DOJ has devoted to the Emmett Till Unsolved Civil Rights Crime Act.

(b) (5)

I was pleased by your commitment to meet with members of the Emmett Till Campaign for Justice, especially its President, Mr. Alvin Sykes.

- b. Has that meeting been scheduled? If so, when will it take place? (I would be happy to help facilitate, if needed.)

(b) (5)

(b) (5)

2. “Assault Weapons” Ban:

At the oversight hearing, you testified that: “I don’t think I have in fact said that we need a new assault weapons ban.”

- a. Do you now acknowledge having called for a reinstatement of that ban at a February 25, 2009 press conference?

(b) (5)

(b) (5)

- b. Is it still your intent to seek a reinstatement of the “assault weapons” ban?

(b) (5)

3. Grant Management

What specific steps have you taken to improve grant management at DOJ? In your confirmation hearing, you recognized that it must be treated as a “consistent priority” to prevent problems.

- a. Have you been in contact with the Inspector General about grant management? Now that you have had time to review the various DOJ grant programs, what problems have you seen, and how do you propose to address them?

(b) (5)

President Obama promised to conduct “an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy.” You said you would begin these efforts at DOJ “soon after you took office as Attorney General.”

- b. Have you begun these efforts? If so, what specific steps have you taken?

(b) (5)

4. Prolonged Detention

Last week, the Senate Judiciary Subcommittee on the Constitution held a hearing on prolonged detention.

- a. Do you agree with the President that there are some detainees who cannot be prosecuted?

Response (b) (5)

- b. Do you agree with the President that there are some detainee terrorists who “pose a clear danger” to the American people and who “remain at war with the United States”?

Response (b) (5)

- c. Is the United States under any international obligation to either “try or release” those detainees?

Response (b) (5)

5. Earmark Investigation

On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244) was signed into law. That bill included a provision which reads as follows:

“SEC. 502. DEPARTMENT OF JUSTICE REVIEW. Consistent with applicable standards and procedures, the Department of

Justice shall review allegations of impropriety regarding item 462 in section 1934(c) of Public Law 109-59 to ascertain if a violation of Federal criminal law has occurred.”

As you may recall, this provision referred to the \$10 million “Coconut Road” earmark that was inserted into the transportation bill after it passed both the House and Senate. A \$10 million earmark for “Widening and Improvements for I-75 in Collier and Lee County” was in the bill that passed both houses of Congress, but was not in the version of the bill signed by President Bush. That earmark was deleted and one appeared that was for a \$10 million earmark for the “Coconut Rd. interchange I-75/Lee County[.]” An effort I undertook to have the House and Senate investigate this was modified by my colleague, Senator Boxer, to have DOJ investigate the matter instead.

- a. What is the status of this review?**
- b. Has the Department reached any conclusions?**
- c. If it has been determined that a violation of federal criminal law has occurred, what will be the next step for DOJ?**

(b) (5)

Burrows, Charlotte (SMO)

From: Burrows, Charlotte (SMO)
Sent: Thursday, July 30, 2009 2:18 PM
To: Ohlson, Kevin (OAG); Wilkinson, Monty (OAG)
Cc: Parmiter, Robert B (SMO); Columbus, Eric (ODAG); Weich, Ron (SMO); Burton, Faith (SMO)
Subject: FW: AG qfrs draft 8
Attachments: AG SJC QFRs - Draft 8 (ODAG edits) 7.29.09.doc

All-- The attached includes the final outstanding qfrs responses -- those for Leahy 4.a. and 4.b. Together w/ Ron's recent email on Coburn 2, that should be fine. C

From: Columbus, Eric (ODAG)
Sent: Wednesday, July 29, 2009 2:25 PM
To: Burrows, Charlotte
Subject: AG qfrs draft 8

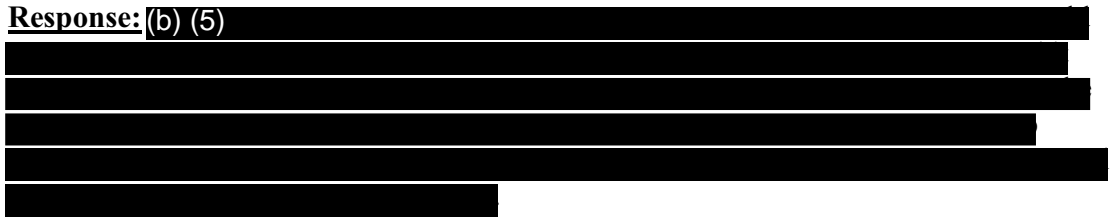
**Questions for the Record
Attorney General Eric H. Holder, Jr.
Senate Judiciary Committee
June 17, 2009**

QUESTIONS POSED BY CHAIRMAN LEAHY

Media Shield

1. Carefully balanced legislation to create a qualified privilege for journalists that protects the identity of their confidential sources is pending on the Judiciary Committee's legislative agenda. During your confirmation hearing, you expressed support for a well-crafted media shield bill, and you committed to work with me and others on this legislation. The legislation (S. 448) before the Committee does not give the press a free pass, and it contains reasonable exceptions to the limited privilege in cases where information is needed to prevent terrorism or to protect national security. Does the Justice Department support S. 448, the Free Flow of Information Act of 2009, currently before the Committee, and will you work with me and others to enact this legislation this year?


Response: (b) (5)



The Justice Department's Role in Reforming Forensic Sciences

2. In February, the National Academy of Sciences issued a comprehensive report on the urgent need to improve forensic sciences in the United States. One of the core findings in the National Academy of Science Report is that science needs to be the guiding principle in determining the standards and procedures for forensic science. Among other things, the Report calls for the federal government to set national standards for accrediting forensic labs and for certifying forensic scientists. The report also makes clear that a great deal of work needs to be done to conduct new research into traditional forensic disciplines.
 - a. Do you agree that there should be a nationwide forensics reform effort including national standards to be set for accrediting forensic labs and certifying forensic scientists?

Response (b) (5)



(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted]

b. What role should the Justice Department play in this effort to reform forensic sciences in this country?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

Public Corruption Prosecution Improvements Act

3. We have seen a shift of resources away from public corruption investigations and prosecutions over the past seven years. Recent prominent corruption cases have made clear that public corruption continues to be pervasive problem that victimizes every American by chipping away at the foundation of our Democracy.

Senator Cornyn and I introduced the bipartisan Public Corruption Prosecution Improvements Act of 2009 (S. 49) that would provide needed funds to the Justice Department for the investigation and prosecution of public corruption offenses and legal tools for federal prosecutors closing loopholes in corruption law and bringing clarity to key statutes. The Department of Justice supports this bill and has submitted a favorable views letter on the legislation.

Why does the Department of Justice need this legislation? Do you believe it should be promptly passed?

Response: (b) (5)

[Redacted response text]

New FOIA Policy

4. July Fourth marks the 43rd anniversary of the enactment of the Freedom of Information Act (“FOIA”). I commend the President for issuing a memorandum to strengthen FOIA on his first full day in office, and I commend you for issuing a FOIA memorandum in March which restores the presumption of openness to our government. Your FOIA Memo requires, among other things, that this new policy “should be taken into account and applied if practicable” to pending FOIA cases. But there is some concern that the Department and other federal agencies are not actually applying this policy to their pending cases.

- a. Is the Department regularly reviewing its pending FOIA cases to determine the impact of your March 19 FOIA Memo on withholding decisions?

Response: (b) (5) [Redacted]

- b. Has your new policy resulted in the release of more information to the public?

Response: (b) (5) [Redacted]

- c. Will you commit to work with me and the FOIA requester community to address concerns about the implementation of this policy?

Response: (b) (5) [Redacted]

Material Support for Terrorism

5. Upon taking office, Secretary Napolitano announced a broad review of Department of Homeland Security immigration policies, including how to

handle asylum cases held in limbo because of the overly-broad definition of material support for terrorism in our immigration laws. I welcome her review and hope that the Department of Justice is fully cooperating in this process.

- a. What steps is the Department of Justice taking to revisit past agency interpretations of the material support inadmissibility grounds?

Response (b) (5)

[REDACTED]

- b. Does the Department of Justice agree that *de minimis* contributions and acts committed under duress should not be considered to be “material support”?

Response (b) (5)

[REDACTED]

Asylum Claims Based on Membership in a Particular Social Group

- 6. Asylum claims may be based on “membership in a particular social group,” but that phrase is not defined by the statute. The standard for defining “membership in a particular social group” was articulated in a 1985 opinion from the Board of Immigration Appeals (BIA) entitled *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985). The *Acosta* decision requires the asylum seeker to show that the members of the social group at issue share a common characteristic that is either immutable or so fundamental to their identity or conscience that they should not be required to change it. For more than twenty years, the BIA followed the *Acosta* standard under the well-established guidance of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the UNHCR Social Group Guidelines. In a 2006 decision titled *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006), the BIA introduced a new and troubling concept into its review of social group asylum cases. In *Matter of C-A-*, the BIA required that the social group at issue in the case also be visible in the society. In this ruling, the BIA cited to the UNHCR Social Group Guidelines as a source for its heightened “social

visibility” standard, but in doing so, misstated the UNHCR position on the matter. Since that time, UNHCR has stated unequivocally that the BIA misconstrued its meaning. The UNHCR position is that there is no requirement that a particular social group be visible to society at large. Is the Department reviewing this matter and considering a modification to BIA precedent that is consistent with UNHCR Social Group Guidelines?

Response (b) (5)

E-FOIA

7. The Freedom of Information Act was amended in 1996 to cover electronic information. Since then, I and others have worked hard to make sure that our federal agencies are fully complying with that law. Given the explosion of the Internet and other new technologies, compliance with E-FOIA is essential to improving overall FOIA performance across the government.

Will the Department conduct a review of agency web sites to determine whether they are in compliance with the affirmative disclosure requirements of E-FOIA?

Response: (b) (5)

FOIA Processing

8. Delay in the FOIA process has been a persistent problem, and despite efforts under Executive Order 13392, many agencies have not been able to meaningfully reduce their FOIA backlogs.
 - a. What do you see as the role of DOJ in helping and/or compelling agencies to reduce their backlogs?

Response (b) (5)

(b) (5)

- b. Many agencies still do not permit members of the public to submit FOIA requests by e-mail, although doing so would save time and money for both requesters and agencies. Will you issue additional guidance requiring all agencies to accept FOIA requests electronically?

Response (b) (5)

Privacy and MWCOG Multi-Jurisdictional Database

- 9. In 2002, the Metropolitan Washington Council of Governments (“MWCOG”) received federal funding under the COPS program for the development of a Regional Pawn Sharing Database system. State and local law enforcement agencies use this database to aggregate records of consumer credit transactions by pawnbrokers and to deter the marketing of stolen property. The information contained in the Regional Pawn Sharing Database includes sensitive personal information about U.S. consumers who patronize pawnbroker establishments, including name, date of birth, race, address, an identification number from a state-issued identification document (e.g., driver’s license) or Social Security Number, as well as occasionally, biometric identifiers such as fingerprints. Given the sensitive personal information routinely maintained in the Regional Pawn Sharing Database, there is growing concern that this database could be vulnerable to privacy and civil liberties violations. What steps is the Department taking to ensure that state and local law enforcement agencies that receive federal funding to participate in Regional Pawn Sharing Database comply with the privacy and civil liberties requirements established under 28 C.F.R. Part 23?

Response: (b) (5)

(b) (5)

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

- (b) (5) [Redacted list item]

- (b) (5) [Redacted list item]

(b) (5) [REDACTED]

- (b) (5) [REDACTED]

QUESTIONS POSED BY SENATOR FEINGOLD

1. As we discussed at the hearing, I requested in letters I sent to the President on April 29 and June 15 that the administration withdraw the January 2006 White Paper and other classified Office of Legal Counsel (OLC) memos providing legal justification for the NSA’s warrantless wiretapping program. At the hearing, you stated that the OLC is reviewing those opinions to determine whether they can be made public.
 - a. How soon can we expect that review to be completed?
 - b. My understanding is that OLC attorneys also are reviewing those opinions to determine whether they should be withdrawn. Can you confirm that understanding? When do you expect that review to be completed?

Response to subparts a and b (b) (5) [REDACTED]

2. President Obama, in his May 29 statement on cyber security, offered the following reassurance: “Let me also be clear about what we will not do. Our pursuit of cyber security will not – I repeat, will not include – monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans.” This is a clear statement of the importance of personal privacy as the administration moves forward on cyber security. But the Cyber Space Policy Review report released that day by the White House acknowledged a “complex patchwork” of applicable laws and the “paucity of judicial opinions in several areas.”
 - a. Is there a currently operative Justice Department legal opinion to guide the application of existing law or any new legislative framework that might be proposed? If so, when and by whom was the opinion developed?

- b. Is this topic part of the overall review that is underway of OLC memos?

Response to subparts a and b (b) (5)

[REDACTED]

- c. Will you make public as much of the relevant legal analysis as possible, and will you provide any existing opinions, and any future opinions on this topic, to Congress, so that staff with appropriate clearances will have complete access to the legal analysis?

Response (b) (5)

[REDACTED]

3. I was very pleased that you decided to vacate the order issued by Attorney General Mukasey in *Matter of Compean*, and that you have directed the Executive Office for Immigration Review to initiate a rulemaking procedure to evaluate the existing framework for making claims of ineffective assistance of counsel. What is the timetable for issuing a final rule in this matter?

Response: (b) (5)

[REDACTED]

4. The recent revelations of high-level officials involved in authorizing or ordering the use of torture, including the disclosure last month of the Office of Legal Counsel memos, the publication of the 2007 report of the International Committee of the Red Cross that concluded that our government committed torture, and the report released last month by the

Senate Armed Services Committee on the use of torture by the Defense Department, all raise serious allegations of crimes being authorized and ordered at the very highest levels of government. What steps have you taken to ensure that there is an independent review of the evidence of possible criminal acts, and how would you respond to those who believe that only the appointment of an independent prosecutor will allow a credible investigation of wrongdoing to take place?

Response (b) (5) [Redacted]

5. At your confirmation hearing in January, I asked if the Justice Department would prepare a detailed report about implementation of the federal death penalty from 2001 to 2008, similar to a report that was issued in 2000. You agreed that it would be appropriate to do an in-depth report and share the results publicly – a response that I greatly appreciated. What is the status of this effort, and when do you expect it to be completed?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

QUESTIONS POSED BY SENATOR SCHUMER

1. **As you know, I am the Chairman of the Rules Committee, which has jurisdiction over the administration of federal elections. On March 11, we held a hearing to look into the problems with our current voter registration system. We had found that as many as 7 million eligible voters either could not vote or did not vote due to registration issues. This is unacceptable. I know you would agree with me when I say that voter registration is the lifeblood of our republic. And there are several components to achieving successful voter registration under our current system. Two of these components are 1) that states comply with the requirements of the National Voter Registration Act (NVRA), and 2) that various Federal agencies be “designated” as voter registration agencies in order to decrease unnecessary obstacles to registration. I believe both are vital to an effective registration system under our current regime.**
 - a. **What steps will you take to reverse the Department of Justice’s past practices of non-enforcement of NVRA and the Help America Vote Act, particularly with respect to registering voters from the public assistance lists?**

Response (b) (5)
[Redacted]

(b) (5)
[Redacted]

- b. **Would the Department be willing to sue states out of compliance with NVRA?**

Response (b) (5)
[Redacted]

2. **There is another aspect of NVRA that deserves significant attention. In order to help improve voter registration and make it easier for some in our population – especially our veterans – to vote, various Federal agencies can be designated as “voter registration agencies.” In fact, I wrote to President Obama requesting that this be done as soon as possible. Now, it does not need to be implemented for every Federal agency, but certainly the Department of Veterans’ Affairs and HHS would be appropriate places to start.**

Do you agree with me that such designations are both necessary and helpful, and do you know of any plans to move forward with these designations?

Response: (b) (5)

[REDACTED]

3. **Early this year, the U.S. Attorney for the District of Columbia declined to prosecute the former head of the Civil Rights Division, Bradley Schlozman, for statements that he made to me and other Senators that the Office of Inspector General found to be untrue. At your confirmation hearing, I asked if you would refer this case to the U.S. Attorney in Connecticut, who is conducting a review of politicization at the Department under the last administration, and to give me an update on this investigation.**

- a. **Can you provide me and the other members of the Committee with an update at this time?**

Response: (b) (5)

[REDACTED]

4. **As Chairman of the Immigration Subcommittee, one of my primary concerns is the effective operation of our immigration court system. In recent years, many court officials have called for an increase in funding for the Department of Justice’s (DOJ) Executive Office for Immigration Review**

(EOIR) citing the complexities of immigration cases, unmanageable dockets and unrealistic case completion deadlines.

On average, Immigration Judges have less time than before to dispose of a case despite their burgeoning case loads. In 2007, they received more than 334,000 matters—including bonds, motions and removal proceedings—up from roughly 290,000 in 2002. Based on the total number of judges, this amounts to nearly 1,500 matters per Immigration Judge. In comparison, U.S. District Court judges average 483 matters completed per year.

The Board of Immigration Appeals (BIA) also needs a sufficient number of judges to do its job fairly and efficiently. Reports indicate that there are more than 8,700 cases that took more than five years for the BIA to complete, and tens of thousands more that were pending before the courts for more than two years before they were resolved.

- a. What steps have you taken, or do you plan on taking, to ensure that Immigration Judges and BIA members can manage their burgeoning case loads?

Response (b) (5)
[Redacted]

(b) (5)
[Redacted]

(b) (5)
[Redacted]

- b. How many additional Immigration Judges, BIA members, and staff attorneys do you plan to hire in FY 2009 and 2010?

Response (b) (5)

[REDACTED]

5. With regard to combating the smuggling of illegal aliens into the United States, a 2005 GAO report concluded that—in order to effectively combat alien smuggling—the Government needs civil forfeiture authority that would enable the Government to seize safe houses used in alien-smuggling. This authority has yet to be granted by Congress. I spoke with Secretary Napolitano last week about my intention to draft a bill giving the Government this authority and she was enthusiastically supportive.

- a. Would you support my bill giving the Government this civil forfeiture authority to seize safe-houses used in alien-smuggling, and is that something you will work with me to enact?

Response (b) (5)

[REDACTED]

6. I recently toured the Federal Correctional Facility in Otisville, New York. What I saw there was deeply troubling. Otisville is operating at 42.7% over capacity and is 14% understaffed. Federal prisons in Manhattan, Brooklyn and Ray Brook, are all more than 50% overcrowded and are also severely understaffed. Nationally, federal prisons are operating around 37% over their rated capacity and are understaffed by an order of 13.4%. Inmates are being held in areas not originally designed as inmate sleeping areas and, at least on some occasions, non-correctional prison staff is being used for correctional duties. Fortunately, thanks to some very outstanding work by our corrections officers, all four New York facilities I mentioned have been exceptionally safe, and assault numbers were down in 2007. Nonetheless, I'm sure you will agree that we cannot treat prisons like an afterthought.

- a. With this in mind, does the Department believe that more funding is necessary to ensure safety for prison staff and security for inmates?

Response: (b) (5)

[REDACTED]

- b. If not, how is the Department planning to address these growing concerns?

Response: (b) (5)

[REDACTED]

7. A common refrain from people who are opposed to more restrictive gun laws is that we should “enforce the existing laws on the books.” I will say that I think this is a fair statement, and it’s one of the rare places on this issue on which we should all be able to agree. But I’m concerned that, at least with respect to the ATF, current staffing limitations may make it impossible to even enforce some of the gun laws we have now. And I say all of this with the important caveat that there are only a few bad apples out there – a handful of gun dealers are responsible for the overwhelming majority of illegally sold guns in the country. Our goal should be finding the bad apples – and the best way to do that will be through routine inspections. As you know, the ATF is now empowered to conduct an annual inspection of a federal firearms licensee’s inventory and records. But according to recent news reports, most gun dealers are only inspected once every three to six years, because the pool of ATF auditors is stretched dangerously thin.

- a. That estimate was accurate as of April of this year. Do you have any reason to believe that anything has changed with respect to that estimate?

Response: (b) (5)

[REDACTED]

(b) (5) [Redacted]

(b) (5) [Redacted]

Likewise, as of 2007, ATF said publicly that conducting a single inspection of every federal firearms licensee in the country would take approximately seventeen years.

b. Do you have any reason to believe that anything has changed with respect to that estimate?

Response (b) (5) [Redacted]

c. In light of these numbers, are you concerned that the ATF may be understaffed?

Response (b) (5) [Redacted]

8. I understand that the Department of Justice is investigating for accomplices to the murder of Dr. George Tiller, and for potential violations of the Freedom of Access to Clinics Entrances (or “FACE”) Act – the law that prohibits threats of force or physical obstruction of reproductive-health providers and seekers. According to newspaper reports, criminal enforcement of this important law had declined by more than 75 percent over the last 8 years under the previous administration. Therefore, I

appreciate that the Department has launched its investigation, and feel that we must work together to stop these unconscionable acts of violence.

- a. How can we work with the Department of Justice to ensure that health-care professionals are protected from acts of violence?

Response: (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5)

9. Last week, the Department issued a brief arguing in favor of upholding the Defense of Marriage Act in federal court. Many members of the LGBT community were upset by this brief.

a. Can you please tell me what knowledge you had of this before it was written?

Response (b) (5)

b. Can you please elaborate on how this administration's position on the Defense of Marriage Act differs from that of the Bush Administration?

Response (b) (5)

(b) (5)

QUESTIONS POSED BY SENATOR WHITEHOUSE

1. The Department under your stewardship has continued and reinforced the Bush Administration's arguments regarding the "state secrets" defense. I understand that on a complex issue like this, one may not wish to revisit it on the schedule of an ongoing case, or in that particular context, and I recognize that Senate delays have slowed down the confirmation of your new

management team.

Can we expect a policy review of this defense, and if so, on what schedule?
Are there other areas in which you anticipate or are conducting such policy review?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

2. A great deal of damage was done to the Department of Justice during the last administration. What procedures are now in place for capturing disclosures from career Department employees about that damage – be it professional or ethical misconduct, politicized decision-making, or something else? To what office do such disclosures go, so that they can be properly analyzed and, if necessary, acted upon?

Response (b) (5)

[REDACTED]

3. On June 15, 2009, the Department of Justice submitted a brief in support of the Defense of Marriage Act (DOMA), the law that protects the right of states not to recognize same-sex marriages or provide same-sex married couples with federal benefits. At the same time, the President has pledged to support repeal of DOMA (and I too would like to see it repealed). Was the litigation posture taken after a policy review by the Department, or a continuation of the litigation strategy of the previous administration? The distinction between a policy position and a litigation posture is important.

Response (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

QUESTIONS POSED BY SENATOR WYDEN

1. **Article 4 of the Mexican Federal Penal Code allows for the prosecution of Mexican nationals who have committed a crime in the US and fled back to Mexico. In certain cases, extradition may not be achievable, and Article 4 provides the sole process for obtaining justice for US crime victims and imposing punishment upon the criminal. State and local law enforcement authorities in many states, including Oregon, have had success pursuing Article 4 prosecutions. However, complying with the requirements of Article 4 and working with Mexican law enforcement officials to complete the prosecution is quite an entailed process. Many jurisdictions lack the resources and expertise to pursue Article 4 cases.**

Response (b) (5)
[Redacted]

(b) (5)
[Redacted]

2. **Given the increasing criminal problems arising from the cross-border activities of Mexican drug cartels, do you believe that Article 4 is an**

important tool for pursuing justice for crimes committed in the US by Mexican national suspects?

Response (b) (5)

[Redacted]

3. Are you aware of any barriers that would prevent the Department of Justice's Office of International Affairs from providing assistance to state and local law enforcement officials and providing greater coordination and efficiency to the development of Article 4 cases?

Response (b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

QUESTIONS POSED BY SENATOR HATCH

- 1. Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by terrorist suspects. Director Mueller appeared before this committee this spring and described how important these tools are in furthering the FBI's mission in investigating terrorism activity here in the United States. He also expressed his support for reauthorizing the provisions without modifications. The Director also provided the committee some useful statistics regarding the usage of these techniques. For example, between 2004 though 2007 the FBI used the business record examination tool 225 times. During that same time period, the FBI used roving wiretaps 147 times. What is your assessment of these tools and does the administration and the Department of Justice support their reauthorization without additional modifications?**

Response: (b) (5)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
2. There are 15 High Security prisons under the control of the Department of Justice. The total rated capacity of these facilities is 13,448 inmates. The current population of inmates in these facilities is 20,001. Presently, there is only 1 dedicated Supermax prison in the BOP arsenal and as you know this is located in Florence, Colorado. As of June 4, 2009, the current population of the Florence Supermax was 468 inmates. This number means that this facility is currently at its maximum capacity. ADX Florence already houses 33 inmates incarcerated there with ties to international terrorism. Inmates at ADX Florence are locked down for 23 hours a day. There is no congregating or religious services in this facility. I bring this up because this is exactly the same conditions that the high security unit at Guantanamo offers. With the administration's self imposed deadline for closure looming on the horizon there is a lot of criticism that there has not been one hint of a plan for Guantanamo's closure. Some of my colleagues in the majority party have floated the idea that there is plenty of room to incarcerate these detainees in BOP facilities. However, the BOP has stated time and again that they do not have the room. BOP has provided population figures to both sides of the aisle that proves this. Can you give me your view on where the Department of Justice is going to house these detainees when Guantanamo is closed?

Response: (b) (5)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
3. Recently, the Obama Administration has advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. This practice has been implemented by agents of the FBI. In January, when you appeared before this committee for your confirmation you stated that in your belief this country is "at war." In January, the President's issued an Executive Order stating that the Army Field Manual would be the "rule book" governing the treatment of prisoners. The Army Field Manual does not mention providing *Miranda* warnings to prisoners. Is the Justice Department endorsing an approach of using criminal investigative techniques in battlefield interrogations? Can you explain this rationale behind reading a waiver to combatants and Al Qaida operatives that informs them of their U.S. Constitutional rights in a foreign nation?

Response (b) (5)

[REDACTED]

4. As you know the College Football Bowl Championship Series (BCS) has been a matter of significant controversy for many throughout the country, including President Obama. While some may dismiss the BCS as too trivial a matter for government attention, it involves hundreds of millions of dollars in revenue every year, most of which is reserved for participants most favored by the BCS. This system places nearly half the schools who field Division I football teams at a competitive and financial disadvantage. While most reasonable people agree that the BCS arrangement is unfair, I, along with others, have raised questions about the legality of the BCS in light of our nation's antitrust laws. In addition, I know that you have been contacted by Utah state officials regarding this matter. At this point, what is the disposition of the Justice Department, particularly the Antitrust Division, regarding the BCS? Are there any ongoing Justice Department efforts to examine the legality of the existing BCS system?

Response (b) (5)

[REDACTED]

QUESTIONS POSED BY SENATOR KYL

1. On May 29th, I sent you a letter asking you to provide the factual justification for the President's statement in his May 21st speech at the National Archives when he said: "Our federal 'supermax' prisons...hold hundreds of convicted terrorists."
- a. As requested in the letter, please provide the names of the terrorists currently held in federal prisons and the details of their crimes.

Response (b) (5) [Redacted]

b. Do you assess that their crimes are comparable to that of the high-value detainees at GTMO?

Response (b) (5) [Redacted]

2. How would the Bureau of Prisons make space for the GTMO detainees?

Response (b) (5) [Redacted]

a. If using existing maximum security facilities (which are already overcrowded by almost 7,000 inmates) what would happen to the inmates that are there now?

Response (b) (5) [Redacted]

b. If opening a new facility or re-opening a closed facility, how would this facility be made ready in seven months or less in order to accommodate President Obama's Executive Order deadline of January 22, 2010?

Response (b) (5) [Redacted]

3. On what legal basis would you prevent a GTMO detainee from being released into the United States if found not guilty in a federal court? What if a case is thrown out for procedural reasons?

Response (b) (5) [Redacted]

(b) (5) [Redacted]

4. If GTMO is closed, where will the U.S. hold and try newly captured enemy combatants in the future?

Response (b) (5) [Redacted]

a. Would they be brought to the U.S. for legal proceedings? If that is not the plan, are you concerned that trying some of the GTMO detainees in a U.S. court will set a precedent that can be cited by future detainees?

Response (b) (5) [Redacted]

5. How soon after the closure of GTMO should we expect to see a notable and measurable decrease in terrorist recruiting?

Response: (b) (5) [Redacted]

(b) (5) [Redacted]

QUESTIONS POSED BY SENATOR COBURN

1. **Emmett Till Unsolved Civil Rights Crimes:**

At last week's oversight hearing, we discussed how you committed to me at your confirmation hearing that you would "figure out ways to try to move money around" to fund the Emmett Till Unsolved Civil Rights Crime Act. You testified that you would get back to me once you had confirmed whether any money had been provided by the Department of Justice to fund that initiative.

- a. Now that you have had time to look into it, please describe what resources (if any) DOJ has devoted to the Emmett Till Unsolved Civil Rights Crime Act.

Response (b) (5)

I was pleased by your commitment to meet with members of the Emmett Till Campaign for Justice, especially its President, Mr. Alvin Sykes.

- b. Has that meeting been scheduled? If so, when will it take place? (I would be happy to help facilitate, if needed.)

Response (b) (5)

2. "Assault Weapons" Ban:

At the oversight hearing, you testified that: "I don't think I have in fact said that we need a new assault weapons ban."

- a. Do you now acknowledge having called for a reinstatement of that ban at a February 25, 2009 press conference?

Response (b) (5)

- b. Is it still your intent to seek a reinstatement of the "assault weapons" ban?

Response (b) (5)

3. Grant Management

What specific steps have you taken to improve grant management at DOJ? In your confirmation hearing, you recognized that it must be treated as a “consistent priority” to prevent problems.

- a. Have you been in contact with the Inspector General about grant management? Now that you have had time to review the various DOJ grant programs, what problems have you seen, and how do you propose to address them?**

Response (b) (5) [REDACTED]

President Obama promised to conduct “an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy.” You said you would begin these efforts at DOJ “soon after you took office as Attorney General.”

- b. Have you begun these efforts? If so, what specific steps have you taken?**

Response: (b) (5) [REDACTED]

4. Prolonged Detention

Last week, the Senate Judiciary Subcommittee on the Constitution held a hearing on prolonged detention.

- a. Do you agree with the President that there are some detainees who cannot be prosecuted?**

Response (b) (5) [REDACTED]

- b. Do you agree with the President that there are some detainee terrorists who “pose a clear danger” to the American people and who “remain at war with the United States”?**

Response (b) (5)

- c. **Is the United States under any international obligation to either “try or release” those detainees?**

Response (b) (5)

5. Earmark Investigation

On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244) was signed into law. That bill included a provision which reads as follows:

“SEC. 502. DEPARTMENT OF JUSTICE REVIEW. Consistent with applicable standards and procedures, the Department of Justice shall review allegations of impropriety regarding item 462 in section 1934(c) of Public Law 109-59 to ascertain if a violation of Federal criminal law has occurred.”

As you may recall, this provision referred to the \$10 million “Coconut Road” earmark that was inserted into the transportation bill after it passed both the House and Senate. A \$10 million earmark for “Widening and Improvements for I-75 in Collier and Lee County” was in the bill that passed both houses of Congress, but was not in the version of the bill signed by President Bush. That earmark was deleted and one appeared that was for a \$10 million earmark for the “Coconut Rd. interchange I-75/Lee County[.]” An effort I undertook to have the House and Senate investigate this was modified by my colleague, Senator Boxer, to have DOJ investigate the matter instead.

- a. **What is the status of this review?**
- b. **Has the Department reached any conclusions?**
- c. **If it has been determined that a violation of federal criminal law has occurred, what will be the next step for DOJ?**

Response to subparts a, b, and c (b) (5)

Monaco, Lisa (ODAG)

From: Monaco, Lisa (ODAG)
Sent: Monday, September 14, 2009 5:13 PM
To: Long, Linda E
Cc: Delery, Stuart F. (ODAG)
Subject: Fw: Patriot Act Letters
Attachments: Leahy 091409.pdf; Feinstein-Bond 091409.pdf; Durbin-Feingold 091409.pdf

Pls print for DAG
FYI

Lisa Monaco
Associate Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC. 20530

(o (b) (6))
(c (b) (6))
(b) (6)
SIPR (b) (6) (classified email)

From: Agrast, Mark D.
To: Kris, David (NSD); Hinnen, Todd (NSD); Vieira, Donald
Cc: Monaco, Lisa (ODAG); Jeffress, Amy (OAG); Weich, Ron
Sent: Mon Sep 14 17:06:00 2009
Subject: Patriot Act Letters

Attached please find copies of the Patriot Act letters as sent up to the Hill this afternoon.

Mark David Agrast
Deputy Assistant Attorney General for Legislative Affairs
U.S. DEPARTMENT OF JUSTICE
Robert F. Kennedy Main Justice Building
950 Pennsylvania Avenue, N.W., Room 1607
Washington, D.C. 20530-0001
202.514.2141 main (b) (6) direct | 202.514.4482 fax



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 14, 2009

The Honorable Richard J. Durbin
The Honorable Russell D. Feingold
United States Senate
Washington, D.C. 20510

Dear Senators Durbin and Feingold:

Thank you for your letter of August 6, 2009, expressing your views regarding reauthorization of the three expiring provisions of the Foreign Intelligence Surveillance Act ("FISA") currently scheduled to expire on December 31, 2009. Your letter urges the administration to consider a number of modifications "to better protect the constitutional rights of American citizens, while preserving the powers our government needs to fight terrorism."

I am pleased to enclose a copy of a letter to Chairman Leahy setting forth the views of the Department regarding reauthorization of the expiring authorities. As that letter notes:

We also are aware that Members of Congress may propose modifications to provide additional protection for the privacy of law abiding Americans. As President Obama said in his speech at the National Archives on May 21, 2009, 'We are indeed at war with al Qaeda and its affiliates. We do need to update our institutions to deal with this threat. But we must do so with an abiding confidence in the rule of law and due process; in checks and balances and accountability.' Therefore, the Administration is willing to consider such ideas, provided that they do not undermine the effectiveness of these important authorities.

We hope this letter is helpful and appreciate the opportunity to present our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 14, 2009

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

Dear Mr. Chairman:

Thank you for your letter requesting our recommendations on the three provisions of the Foreign Intelligence Surveillance Act ("FISA") currently scheduled to expire on December 31, 2009. We believe that the best legislation will emerge from a careful examination of these matters. In this letter, we provide our recommendations for each provision, along with a summary of the supporting facts and rationale. We have discussed these issues with the Office of the Director of National Intelligence, which concurs with the views expressed in this letter.

We also are aware that Members of Congress may propose modifications to provide additional protection for the privacy of law abiding Americans. As President Obama said in his speech at the National Archives on May 21, 2009, "We are indeed at war with al Qaeda and its affiliates. We do need to update our institutions to deal with this threat. But we must do so with an abiding confidence in the rule of law and due process; in checks and balances and accountability." Therefore, the Administration is willing to consider such ideas, provided that they do not undermine the effectiveness of these important authorities.

1. Roving Wiretaps, USA PATRIOT Act Section 206 (codified at 50 U.S.C. § 1805(c)(2))

We recommend reauthorizing section 206 of the USA PATRIOT Act, which provides for roving surveillance of targets who take measures to thwart FISA surveillance. It has proven an important intelligence-gathering tool in a small but significant subset of FISA electronic surveillance orders.

This provision states that where the Government sets forth in its application for a surveillance order "specific facts" indicating that the actions of the target of the order "may have the effect of thwarting" the identification, at the time of the application, of third parties necessary to accomplish the ordered surveillance, the order shall direct such third parties, when identified to furnish the Government with all assistance necessary to accomplish surveillance of the target identified in the order. In other words, the "roving" authority is only available when the Government is able to provide specific information that the target may engage in counter-surveillance activity (such as rapidly switching cell phone numbers. The language of the statute does not allow the Government to make a general, "boilerplate" allegation that the target may

engage in such activities; rather, the Government must provide specific facts to support its allegation.

There are at least two scenarios in which the Government's ability to obtain a roving wiretap may be critical to effective surveillance of a target. The first is where the surveillance targets a traditional foreign intelligence officer. In these cases, the Government often has years of experience maintaining surveillance of officers of a particular foreign intelligence service who are posted to locations within the United States. The FBI will have extensive information documenting the tactics and tradecraft practiced by officers of the particular intelligence service, and may even have information about the training provided to those officers in their home country. Under these circumstances, the Government can represent that an individual who has been identified as an officer of that intelligence service is likely to engage in counter-surveillance activity.

The second scenario in which the ability to obtain a roving wiretap may be critical to effective surveillance is the case of an individual who actually has engaged in counter-surveillance activities or in preparations for such activities. In some cases, individuals already subject to FISA surveillance are found to be making preparations for counter-surveillance activities or instructing associates on how to communicate with them through more secure means. In other cases, non-FISA investigative techniques have revealed counter-surveillance preparations (such as buying "throwaway" cell phones or multiple calling cards). The Government then offers these specific facts to the FISA court as justification for a grant of roving authority.

Since the roving authority was added to FISA in 2001, the Government has sought to use it in a relatively small number of cases (on average, twenty-two applications a year). We would be pleased to brief Members or staff regarding actual numbers, along with specific case examples, in a classified setting. The FBI uses the granted authority only when the target actually begins to engage in counter-surveillance activity that thwarts the already authorized surveillance, and does so in a way that renders the use of roving authority feasible.

Roving authority is subject to the same court-approved minimization rules that govern other electronic surveillance under FISA and that protect against the unjustified acquisition or retention of non-pertinent information. The statute generally requires the Government to notify the FISA court within 10 days of the date upon which surveillance begins to be directed at any new facility. Over the past seven years, this process has functioned well and has provided effective oversight for this investigative technique.

We believe that the basic justification offered to Congress in 2001 for the roving authority remains valid today. Specifically, the ease with which individuals can rapidly shift between communications providers, and the proliferation of both those providers and the services they offer, almost certainly will increase as technology continues to develop. International terrorists, foreign intelligence officers, and espionage suspects — like ordinary

criminals — have learned to use these numerous and diverse communications options to their advantage. Any effective surveillance mechanism must incorporate the ability to rapidly address an unanticipated change in the target's communications behavior. The roving electronic surveillance provision has functioned as intended and has addressed an investigative requirement that will continue to be critical to national security operations. Accordingly, we recommend reauthorizing this feature of FISA.

2. “Business Records,” USA PATRIOT Act Section 215 (codified at 50 U.S.C. § 1861-62)

We also recommend reauthorizing section 215 of the USA PATRIOT Act, which allows the FISA court to compel the production of “business records.” The business records provision addresses a gap in intelligence collection authorities and has proven valuable in a number of contexts.

The USA PATRIOT Act made the FISA authority relating to business records roughly analogous to that available to FBI agents investigating criminal matters through the use of grand jury subpoenas. The original FISA language, added in 1998, limited the business records authority to four specific types of records, and required the Government to demonstrate “specific and articulable facts” supporting a reason to believe that the target was an agent of a foreign power. In the USA PATRIOT Act, the authority was changed to encompass the production of “any tangible things” and the legal standard was changed to one of simple relevance to an authorized investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

The Government first used the USA PATRIOT Act business records authority in 2004 after extensive internal discussions over its proper implementation. The Department's inspector general evaluated the Department's implementation of this new authority at length, in reports that are now publicly available. Other parts of the USA PATRIOT Act, specifically those eliminating the “wall” separating intelligence operations and criminal investigations, also had an effect on the operational environment. The greater access that intelligence investigators now have to criminal tools (such as grand jury subpoenas) reduces but does not eliminate the need for intelligence tools such as the business records authority. The operational security requirements of most intelligence investigations still require the secrecy afforded by the FISA authority.

For the period 2004-2007, the FISA court has issued about 220 orders to produce business records. Of these, 173 orders were issued in 2004-06 in combination with FISA pen register orders to address an anomaly in the statutory language that prevented the acquisition of subscriber identification information ordinarily associated with pen register information. Congress corrected this deficiency in the pen register provision in 2006 with language in the USA PATRIOT Improvement and Reauthorization Act. Thus, this use of the business records authority became unnecessary.

The remaining business records orders issued between 2004 and 2007 were used to obtain transactional information that did not fall within the scope of any other national security investigative authority (such as a national security letter). Some of these orders were used to support important and highly sensitive intelligence collection operations, of which both Members of the Intelligence Committee and their staffs are aware. The Department can provide additional information to Members or their staff in a classified setting.

It is noteworthy that no recipient of a FISA business records order has ever challenged the validity of the order, despite the availability, since 2006, of a clear statutory mechanism to do so. At the time of the USA PATRIOT Act, there was concern that the FBI would exploit the broad scope of the business records authority to collect sensitive personal information on constitutionally protected activities, such as the use of public libraries. This simply has not occurred, even in the environment of heightened terrorist threat activity. The oversight provided by Congress since 2001 and the specific oversight provisions added to the statute in 2006 have helped to ensure that the authority is being used as intended.

Based upon this operational experience, we believe that the FISA business records authority should be reauthorized. There will continue to be instances in which FBI investigators need to obtain transactional information that does not fall within the scope of authorities relating to national security letters and are operating in an environment that precludes the use of less secure criminal authorities. Many of these instances will be mundane (as they have been in the past), such as the need to obtain driver's license information that is protected by State law. Others will be more complex, such as the need to track the activities of intelligence officers through their use of certain business services. In all these cases, the availability of a generic, court-supervised FISA business records authority is the best option for advancing national security investigations in a manner consistent with civil liberties. The absence of such an authority could force the FBI to sacrifice key intelligence opportunities.

**3. "Lone Wolf," Intelligence Reform and Terrorism Prevention Act of 2004
Section 6001 (codified at 50 U.S.C. § 1801(b)(1)(C))**

Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 defines a "lone wolf" agent of a foreign power and allows a non-United States person who "engages in international terrorism activities" to be considered an agent of a foreign power under FISA even though the specific foreign power (*i.e.*, the international terrorist group) remains unidentified. We also recommend reauthorizing this provision.

Enacted in 2004, this provision arose from discussions inspired by the Zacarias Moussaoui case. The basic idea behind the authority was to cover situations in which information linking the target of an investigation to an international group was absent or insufficient, although the target's engagement in "international terrorism" was sufficiently established. The definition is quite narrow: it applies only to non-United States persons; the activities of the person must meet the FISA definition of "international terrorism;" and the

information likely to be obtained must be foreign intelligence information. What this means, in practice, is that the Government must know a great deal about the target, including the target's purpose and plans for terrorist activity (in order to satisfy the definition of "international terrorism"), but still be unable to connect the individual to any group that meets the FISA definition of a foreign power.

To date, the Government has not encountered a case in which this definition was both necessary and available, *i.e.*, the target was a non-United States person. Thus, the definition has never been used in a FISA application. However, we do not believe that this means the authority is now unnecessary. Subsection 101(b) of FISA provides ten separate definitions for the term "agent of a foreign power" (five applicable only to non-United States persons, and five applicable to all persons). Some of these definitions cover the most common fact patterns; others describe narrow categories that may be encountered rarely. However, this latter group includes legitimate targets that could not be accommodated under the more generic definitions and would escape surveillance but for the more specific definitions.

We believe that the "lone wolf" provision falls squarely within this class. While we cannot predict the frequency with which it may be used, we can foresee situations in which it would be the only avenue to effective surveillance. For example, we could have a case in which a known international terrorist affirmatively severed his connection with his group, perhaps following some internal dispute. The target still would be an international terrorist, and an appropriate target for intelligence surveillance. However, the Government could no longer represent to the FISA court that he was currently a member of an international terrorist group or acting on its behalf. Lacking the "lone wolf" definition, the Government could have to postpone FISA surveillance until the target could be linked to another group. Another scenario is the prospect of a terrorist who "self-radicalizes" by means of information and training provided by a variety of international terrorist groups via the Internet. Although this target would have adopted the aims and means of international terrorism, the target would not actually have contacted a terrorist group. Without the lone wolf definition, the Government might be unable to establish FISA surveillance.

These scenarios are not remote hypotheticals; they are based on trends we observe in current intelligence reporting. We cannot determine how common these fact patterns will be in the future or whether any of the targets will so completely lack connections to groups that they cannot be accommodated under other definitions. However, the continued availability of the lone wolf definition eliminates any gap. The statutory language of the existing provision ensures its narrow application, so the availability of this potentially useful tool carries little risk of overuse. We believe that it is essential to have the tool available for the rare situation in which it is necessary rather than to delay surveillance of a terrorist in the hopes that the necessary links are established.

The Honorable Patrick J. Leahy
Page 6

Thank you for the opportunity to present our views. We would be happy to meet with your staff to discuss them. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Weich". The signature is fluid and cursive.

Ronald Weich
Assistant Attorney General

cc: The Honorable Jeff Sessions
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 14, 2009

The Honorable Dianne Feinstein
Chairwoman
The Honorable Christopher S. Bond
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Senators Feinstein and Bond:

Thank you for your letter requesting our recommendations on the three provisions of the Foreign Intelligence Surveillance Act ("FISA") currently scheduled to expire on December 31, 2009. We believe that the best legislation will emerge from a careful examination of these matters. In this letter, we provide our recommendations for each provision, along with a summary of the supporting facts and rationale. We have discussed these issues with the Office of the Director of National Intelligence, which concurs with the views expressed in this letter.

We also are aware that Members of Congress may propose modifications to provide additional protection for the privacy of law abiding Americans. As President Obama said in his speech at the National Archives on May 21, 2009, "We are indeed at war with al Qaeda and its affiliates. We do need to update our institutions to deal with this threat. But we must do so with an abiding confidence in the rule of law and due process; in checks and balances and accountability." Therefore, the Administration is willing to consider such ideas, provided that they do not undermine the effectiveness of these important authorities.

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The Honorable Dianne Feinstein
The Honorable Christopher S. Bond
Page 6

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Thank you for the opportunity to present our views. We would be happy to meet with your staff to discuss them. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Weich', is positioned above the typed name.

Ronald Weich
Assistant Attorney General

Kimball, Astri B.

From: Kimball, Astri B.
Sent: Tuesday, November 17, 2009 3:10 PM
To: Ohlson, Kevin (OAG); Wilkinson, Monty (OAG)
Subject: FW: AG Oversight Testimony on Weds
Attachments: AG Q&A--national security.pdf

Monty-Kevin:

Thanks so much for the briefing book that arrived yesterday. Is it possible to make suggestions? Our national security team had these thoughts:

- (b) (5)
[Redacted]
- (b) (5)
[Redacted]

We look forward to seeing the AG's opening statement later today. Thanks for the opportunity to look at these materials.

All the best,
Astri

Ogden, David W. (ODAG)

From: Ogden, David W. (ODAG)
Sent: Saturday, December 12, 2009 5:09 PM
To: Monaco, Lisa (ODAG)
Cc: Delery, Stuart F. (ODAG)
Subject: Re: PATRIOT update

Agreed, so long as Glenn is apprised.

From: Monaco, Lisa (ODAG)
To: Ogden, David W. (ODAG)
Cc: Delery, Stuart F. (ODAG)
Sent: Sat Dec 12 17:04:37 2009
Subject: Fw: PATRIOT update

David - FYI. Given that Glenn reached out to Ron late last week to gauge likelihood of patriot act being taken up before next year, Ron is going to give Glenn a heads up about this. I've made sure Monty knows as well. Per Ron, Chairman Leahy is personally invested in securing the below referenced compromise so it may well proceed. My own view is that (b) (5).

Lisa Monaco
Associate Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC. 20530

(o (b) (6))
(c (b) (6))
(b) (6)
SIPR (b) (6) (classified email)

From: Agrast, Mark D.
To: (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI); Baker, James A. (ODAG) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6) Bradley Brooker (b)(6) Bradley Brooker >; (b)(6) Kathleen Turner (b)(6) Kathleen Turner > (b)(6) Michael Zgoda (b)(6) Michael Zgoda >; (b)(6) Robert Litt (b)(6) Robert Litt >; Wiegmann, Brad; Weich, Ron; Monaco, Lisa (ODAG)
Cc: Weich, Ron; Schlieter, Courtney H
Sent: Sat Dec 12 16:59:04 2009
Subject: PATRIOT update

As of this afternoon, it appears increasingly likely that the reauthorization will be attached to the Defense Appropriations bill. The measure would consist of the Senate bill with four changes: (1) the House lone wolf extension; (2) the House library/bookseller provision; (3) the Schiff reporting amendment agreed to by the House Judiciary Committee (attached); and (4) the Senate audit language sent to you yesterday and reprinted in plain text below.

We have conveyed to the House, Senate and White House that the administration has concerns with the audit provision, but it is unlikely that our objections will be sufficient to derail the compromise. (b) (5)

Also attached is the draft of the Senate manager's amendment, which contains all of the above provisions EXCEPT the Schiff amendment.

<<Schiff Reporting.pdf>> <<HEN09D32.pdf>>

Section 10 (FISA Audit subsection)

(d) FISA Amendments Act of 2008.—

(1) Definition.—In this subsection, the term “covered element of the intelligence community” means an element of the intelligence community authorized to acquire foreign intelligence information under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.).

(2) Audits.—The Inspector General of the Department of Justice and the Inspector General of each covered element of the intelligence community shall perform, with respect to the department or element of such Inspector General, comprehensive audits of the effectiveness and use, including any improper or illegal use, of the authorities granted under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.) during the period beginning on July 10, 2008, and ending on December 31, 2011.

(3) Requirements.—The audits required under paragraph (2) shall include—

(A) an examination of the use of the authorities granted under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.) for the applicable period, including—

(i) the implementation of the limitations imposed under section 702(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(b)) and the adoption of the guidelines to ensure compliance with the limitations as required under section 702(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(f));

(ii) the adoption and implementation of the targeting procedures required under section 702(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(d)); and

(iii) the use of minimization procedures in relation to the authorities granted under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.), and whether the minimization procedures protect the constitutional rights of United States persons;

(B) any noteworthy facts or circumstances relating to the use of the authorities granted under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.), including any improper or illegal use of the authorities provided under that title;

(C) an examination of the effectiveness of the authorities granted under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.) as investigative tools, including—

(i) the importance of the information acquired to intelligence activities;

(ii) the manner in which the information is collected, retained, analyzed, and disseminated by the Federal Bureau of Investigation or a covered element of the intelligence community, including any direct access to the information provided to—

(I) any other department, agency, or instrumentality of Federal, State, local, or tribal governments; or

(II) any private sector entity;

(iii) whether, and how often, any department or agency of the Federal government used information acquired under the authorities granted under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.) to produce an analytical intelligence product for distribution within the intelligence community, or to other Federal, State, local, or tribal government departments, agencies, or instrumentalities; and

(iv) whether, and how often, any department or agency of the Federal government provided information acquired under the authorities granted under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.) to a law enforcement authority for use in a criminal proceeding; and

(D) with respect to acquisitions authorized under section 702(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(a))—

(i) the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the department or covered element of the intelligence community concerned in response to requests for identities that were not referred to by name or title in the original reporting; and

(ii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed.

(4) Submission dates.—

(A) Prior years.—Not later than September 30, 2011, the Inspector General of the Department of Justice and the Inspector General of each covered element of the intelligence community shall submit a report containing the results of the audit conducted under this subsection with respect to the department or element of such Inspector General for the period beginning on July 10, 2008, and ending on December 31, 2009, to—

(i) the Committee on the Judiciary and the Select Committee on Intelligence of the Senate; and

(ii) the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives.

(B) Calendar years 2010 and 2011.—Not later than June 30, 2012, the Inspector General of the Department of Justice and the Inspector General of each covered element of the intelligence community shall submit a report containing the results of the audit conducted under this subsection with respect to the department or element of such Inspector General for calendar years 2010 and 2011 to—

(i) the Committee on the Judiciary and the Select Committee on Intelligence of the Senate; and

(ii) the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives.

(5) Prior notice to attorney general and direction of national intelligence; comments.—

(A) Notice.—Not later than 30 days before the submission of a report under paragraph (4), the Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community authorized to acquire foreign intelligence information under title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.) shall provide the report to—

(i) the Attorney General;

(ii) the Director of National Intelligence; and

(iii) the Secretary of Defense.

(B) Comments.—The Attorney General, the Director of National Intelligence, and the Secretary of Defense may provide such comments to be included in a report submitted under paragraph (4) as the Attorney General, the Director of National Intelligence, or the Secretary of Defense determines necessary.

(6) Unclassified form.—A report submitted under paragraph (4) and any comments included with the report under paragraph (5)(B) shall be in unclassified form, but may include a classified annex.

(7) Technical and conforming amendments.—Section 702(l) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)) is amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2).

(e) Definitions.—In this section—

(1) the terms “foreign intelligence information” and “United States person” have the meanings given those terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

(2) the term “intelligence community” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

From: Beeman, Judy (USAEO)
Sent: Tuesday, January 5, 2010 6:51 PM
To: USAEO-USAttorneysOnly; USAEO-USAttorneys
Subject: December 2-3 AGAC Summary
Attachments: DecAGACSummary09.pdf

MessageId: 9457437

To: All United States Attorneys

Please find attached the AGAC summary memo for the December 2-3, 2009 meeting from Todd Jones and Marshall Jarrett. Also, as a reminder the AG will be having a conference call with all United States Attorneys on Thursday, January 7 at 3 p.m. EST. Please start calling in by 2:45 p.m. so you will be on the line when the AG starts speaking. The call is for USAs only – no substitutes. No cell phones please. Again, the number is (b) (6) and the pass code is (b) (6). The Toll free number if out of the country is (b) (6).

Thanks. Judy

<<DecAGACSummary09.pdf>>



U.S. Department of Justice

Executive Office for United States Attorneys

Attorney General's Advisory Committee
of United States Attorneys

Main Justice Building, Room 2262
950 Pennsylvania Avenue, N. W.
Washington, D.C. 20530

(202) 514-4633

MEMORANDUM-Sent via Electronic Mail

JAN 05 2010

TO: All United States Attorneys
(b)(6) per EOUSA

FROM: B. Todd Jones
United States Attorney
District of Minnesota
Chair
Attorney General's Advisory Committee
(b)(6) per EOUSA
H. Marshall Jarrett
Director

SUBJECT: December 2-3, 2009, AGAC Summary Memorandum

CONTACT: Judy Beeman
Executive Assistant to the AGAC
Tel: (b) (6)
E-mail: (b) (6)

The Attorney General's Advisory Committee (AGAC) met on December 2-3, 2009, in Washington, DC. Please find attached a summary of that meeting. The next AGAC meeting will be held in Washington, DC on January 11-12, 2010. Please bring any issues you wish raised with the Committee during its next meeting to the attention of Todd Jones at (b) (6) with a copy to Judy Beeman at (b) (6)

Attachment

Jeffress, Amy (OAG)

From: Jeffress, Amy (OAG)
Sent: Friday, February 19, 2010 8:48 PM
To: Yearwood, Henry
Cc: Ohlson, Kevin (OAG); Wilkinson, Monty (OAG)
Subject: Fw: Letter re PATRIOT Act requiring AG's signature --
Attachments: AG-DNI to Reid-Pelosi re PAT Act_18 Feb 10_final.doc

Eric - as Ron's email explains, attached is a letter to be signed by you and Director Blair urging reauthorization or extension of the Patriot Act provisions that would otherwise expire at the end of the month. Director Blair is signing the letter tonight and Ron's assistant will take it to the command center for the detail to bring to you. Apparently WH leg is working with certain members on this over the weekend, so OLA didn't think it could wait until Monday (though tomorrow is fine). The letter is consistent with the one you signed last fall so I don't expect you will have any issues with the content. If you have any problems with the letter or this process, please let me know.

From: Weich, Ron
To: Ohlson, Kevin (OAG); Wilkinson, Monty (OAG); Jeffress, Amy (OAG)
Cc: Monaco, Lisa (ODAG); Wiegmann, Brad; Agrast, Mark D.; Redding, Michael
Sent: Fri Feb 19 19:37:26 2010
Subject: Letter re PATRIOT Act requiring AG's signature --

The attached Holder/Blair letter to Congress regarding the PATRIOT Act requires the Attorney General's signature tonight or over the weekend. I'm sorry it wasn't available earlier in the day, but there was much interagency and White House discussion about the content. This version has been cleared by me, Lisa and NSD. It is entirely consistent with our earlier statements and letters on this subject, including a views letter signed by the Attorney General last November.

The letter will be formatted on joint letterhead and signed by ODNI Director Blair tonight. I understand that the AG's autopen is not an option. But my assistant Michael Redding (cc'd) is prepared to bring the hard copy to the AG's residence for his signature tonight or tomorrow. Is that a suitable arrangement? If so, let me or Michael know how and when that should occur. Thanks.

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Majority Leader Reid and Speaker Pelosi:

Over the past several months, Congress has been considering the reauthorization of three important provisions of the Foreign Intelligence Surveillance Act (FISA), which are scheduled to expire on February 28, 2010: section 206 of the USA PATRIOT Act, which provides authority for roving surveillance of targets who take steps to thwart FISA surveillance; section 215 of the USA PATRIOT Act, which provides authority to compel production of business records and other tangible things with the approval of the FISA court; and section 6001 of the Intelligence Reform and Terrorism Prevention Act, which provides authority to target with FISA surveillance non-United States persons who engage in international terrorist activities but are not necessarily associated with an identified terrorist group. National security requires that these provisions be reauthorized before they expire.

As discussed in the Attorney General's November 9, 2009 letter, we believe that S. 1692, the USA PATRIOT Act Sunset Extension Act, as reported by the Senate Judiciary Committee, strikes the right balance by both reauthorizing these essential national security tools and enhancing statutory protections for civil liberties and privacy in the exercise of these and related authorities. We were very pleased that the bill received bipartisan support in the Committee.

Since the bill was reported, we have negotiated a number of specific changes with the sponsors of the bill which we support including in the final version of this legislation. Among these are several provisions derived from the bills reported by the House Judiciary Committee and introduced by House Permanent Select Committee on Intelligence Chairman Silvestre Reyes in November.

We strongly support the prompt consideration of USA PATRIOT Act reauthorization legislation based on S. 1692, together with the changes to which our staffs have informally agreed. However, if Congress is unable to complete work on this measure before these authorities expire, it is imperative that Congress pass a temporary extension of sufficient length to ensure that there is no disruption to the availability of these vital tools in the fight against terrorists.

As was previously noted in a September 14 letter from the Department of Justice to Senator Patrick Leahy, the business records authority has been used to support important and highly sensitive intelligence collection operations, of which both Senate and House leadership, as well as Members of the Intelligence and Judiciary Committees and their staffs are aware. We can provide additional information to Members concerning these and related operations in a classified setting.

Finally, we remain committed to working with Congress to examine additional ways to enhance protection for civil liberties and privacy consistent with effective use of these important authorities.

The Office of Management and Budget has advised us that there is no objection to this letter from the perspective of the Administration's program.

Sincerely,

Eric H. Holder Jr.

Dennis C Blair

Faherty, Stephan (JMD)

From: Faherty, Stephan (JMD)
Sent: Friday, March 12, 2010 4:26 PM
To: Jordan, Wyevetra G (JMD); Burrows, Charlotte (SMO); Burton, Faith (SMO); Luck, Stacey (ODAG); Delery, Stuart F. (OAG); Monaco, Lisa (ODAG); Miller, Matthew A (SMO); Hinnen, Todd (NSD); Wiegmann, Brad (NSD); Vieira, Donald (NSD); Jeffress, Amy (OAG); Weich, Ron (SMO); Lofthus, Lee J (JMD); Agrast, Mark D. (SMO); Lauria-Sullens, Jolene (JMD); Olsen, Matthew (ODAG); Thiemann, Robyn (OLP); Wroblewski, Jonathan (CRM); Siskel, Edward N. (ODAG); Hirsch, Sam (SMO); Columbus, Eric (ODAG); Osuna, Juan (CIV); Bies, John; Perez, Thomas E (CRT); Hirsch, Sam (SMO); Appelbaum, Judy (SMO); Shasky, Jennifer (ODAG); Grindler, Gary (ODAG); Garland, James; De, Rajesh
Cc: Wilkinson, Monty (OAG); Ambrose, Cheryl (JMD); Petty, Emily (SMO); O'Leary, Karin (JMD); Atsatt, Mikki (JMD); Sullivan, Bill (JMD); Lucas, Daniel (JMD); Miguel, Amy (JMD); Munro, Shannon L. (JMD); Redding, Michael; Luck, Stacey (ODAG)
Subject: RE: AG Prep Session Schedule for next week
Attachments: 7 Mollohan.zip; 8 Wolf.zip; 9 Obey.zip; 10 Aderholt.zip; 12 Culberson.zip; 13 Fattah.zip; 14 Honda.zip; 15 Kennedy.zip; 16 Ruppertsberger.zip; 17 Schiff.zip; 18 Serrano.zip; 20 Lewis.zip; Final AG Binder Table of Contents v4.xls

All,

The attached files contain the issue papers for the AG's Hearing Prep sessions on Monday.

For the morning session:

For the afternoon session:

All these papers are included in your briefing book, if you have one. The attached table of contents is the most up to date guide to that book.

Please let me know if you have any questions.

-Stephan

From: Jordan, Wyevetra G
Sent: Friday, March 12, 2010 3:34 PM
To: Jordan, Wyevetra G; Faherty, Stephan; Burrows, Charlotte; Burton, Faith; Luck, Stacey (ODAG); Delery, Stuart F. (ODAG); Monaco, Lisa (ODAG); Miller, Matthew A; Hinnen, Todd (NSD); Wiegmann, Brad; Vieira, Donald; Jeffress, Amy (OAG); Weich, Ron; Lofthus, Lee J; Agrast, Mark D.; Lauria-Sullens, Jolene; Olsen, Matthew (ODAG); Thiemann, Robyn (OLP); Wroblewski, Jonathan (CRM); Siskel, Edward N. (ODAG); Hirsch, Sam; Columbus, Eric (ODAG); Osuna, Juan (CIV); Bies, John; Perez, Thomas E (CRT); Hirsch, Sam; Appelbaum, Judy
Cc: Wilkinson, Monty (OAG); Ambrose, Cheryl; Petty, Emily; O'Leary, Karin; Atsatt, Mikki; Sullivan, Bill; Lucas, Daniel (JMD); Miguel, Amy (JMD); Munro, Shannon L.; Redding, Michael; Luck, Stacey (ODAG)
Subject: AG Prep Session Schedule for next week
Importance: High

AG Hearing Prep Team,

We have 4 prep sessions remaining with the AG for his CJS House Appropriations hearing. Below are the times and list of briefers for those sessions. Also attached is the detailed prep schedule with topics and briefers listed. Monday's sessions will be focused on specific member issues/areas based on intel we have received from staff. Stephan Faherty will be sending out the final briefing papers for Monday's session this evening. Thanks and have a great weekend.

- March 15 10:00--11:30 - **House Member Issues (Chair & Ranking)**
Briefers: *Wyevetra Jordan, Bill Sullivan, Dan Lucas, Jolene Lauria-Sullens, Lee Lofthus, Karen O'Leary, Ron Weich, Matt Miller, Matt Olsen, Charlotte Burrows, Judy Appelbaum, Mark Agrast, Ed Siskel, John Wroblewski, Jennifer Shasky, Eric Columbus, Sam Hirsch*

- March 15 1:00--2:00 - **Finish Member issues**
Briefers: *Wyevetra Jordan, Bill Sullivan, Dan Lucas, Jolene Lauria-Sullens, Lee Lofthus, Karen O'Leary, ADAG Grindler, Ron Weich, Matt Miller, Judy Appelbaum, Mark Agrast, Ed Siskel, John Wroblewski, Jennifer Shasky, Robyn Thiemann, John Bies, Tom Perez, Juan Osuna, Jim Garland, Raj De*

- March 15 **3:00--4:00** - **Public Affairs/Member Hot Topics (Q&A's)** -
Briefers: *Wyevetra Jordan, Bill Sullivan, Dan Lucas, Jolene Lauria-Sullens, Lee Lofthus, Karen O'Leary, Ron Weich, Matt Miller, Judy Appelbaum, Mark Agrast*

- March 16 **10:00--11:00** - **Late Breaking Hot Topics (Q&A's)** -
Briefers: *Wyevetra Jordan, Bill Sullivan, Dan Lucas, Jolene Lauria-Sullens, Lee Lofthus, Karen O'Leary, Ron Weich, Matt Miller, Judy Appelbaum, Mark Agrast*

House CJS Appropriations hearing is March 16 at 2:00 pm

<< File: ATTORNEY GENERAL Prep - 3-12-10.doc >>

Clifton, Deborah J

From: Clifton, Deborah J
Sent: Tuesday, April 6, 2010 5:28 PM
To: (b)(6) per ATF
(b)(6) per ATF; Ed Ross; Edens, Jennifer L. (BOP); Garrett, Judi (BOP); Sussman, Scott; Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); Strait, Matthew J. (DEA-US); Benderson, Judith (USAEO); Pings, Anne (USAEO); Smith, David L. (USAEO); Wong, Norman (USAEO (b)(6) per ATF; Hitch, Vance (OCIO); Lauria-Sullens, Jolene; Lofthus, Lee (b)(6) per ATF; Michaelson, Melanie (CIV); Miguel, Amy (JMD (b)(6) per ATF (b)(6), (b)(7)(C), (b)(7)(F) per NSA (NDIC (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC (b)(6) per NSD (OIPR (b)(6) per NSD, (b)(6) per NSD, (b)(6); Adiga, Mala; Greenfeld, Helaine; Gunn, Currie (SMO); Hauck, Brian; Hirsch, Sam; Blier, William M.(OIG); Schnedar, Cynthia A. (OIG); Davis, Valorie A; De, Rajesh; Jackson, Wykema C; Matthews, Matrina (OL (b)(6) per ATF (b)(6) per ATF; Cedarbaum, Jonathan; Forrester, Nate; Price, Zachary; Rhee, Jeanni (b)(6), (b)(7)(C), (b)(7)(F) per USMS (USMS (b)(6), (b)(7)(C), (b)(7)(F) per USMS (USMS (b)(6), (b)(7)(C), (b)(7)(F) per USMS (USMS (b)(6), (b)(7)(C), (b)(7)(F) per USMS (USMS)
Cc: Burrows, Charlotte; Columbus, Eric (ODAG); Baker, James A. (ODAG); Chipman, Jaso (b)(6) per ATF; Redding, Michae (b)(6) per ATF; Agrast, Mark D.; Appelbaum, Judy; Schlieter, Courtney H; Simpson, Tammi (OLA (b)(6) per ATF
Subject: Draft responses to QFRs for FBI Mueller from 01-20-10 hearing re Security America's Safety: Improving the Effectiveness of Anti-Terrorism Tools & Inter-Agency Communication
Attachments: H70control.pdf; UNCLASS_Dir_012010SJC_FBIResp_033010.wpd

PLEASE PROVIDE COMMENTS TO MICHAEL REDDING, OLA, NO LATER THAN 04/16/10.

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the January 20, 2010, Hearing Before the
Senate Committee on the Judiciary
Regarding "Securing America's Safety: Improving the
Effectiveness of
Anti-Terrorism Tools and Inter-Agency Communication"**

Questions Posed by Chairman Leahy

1. In a recent article about the failed Christmas day plot, the *New York Times* reported that intelligence agencies are having trouble doing automatic and repeated searches for possible links within databases and, according to a House Committee on Science and Technology report, "even simple keyword searches are a challenge." We need to make sure that we are not wasting millions of dollars to go backwards in our network capabilities. As you know, I have repeatedly expressed my frustration at the money and time wasted as the FBI tries to upgrade its technology. The Virtual Case File project was a \$170 million failure. It was replaced by the Sentinel project which, after much delay and over \$ 450 million, is supposed to transform the FBI's case management and tracking ability. But according to a Department of Justice Office of Inspector General audit released last year, the rollout of an effective Sentinel system has been further hampered by the FBI's "aging network architecture." The audit stated that the FBI was due to complete an upgrade of its network architecture by December of 2009.

a. I am deeply disturbed that years after 9/11, an OIG audit describes the FBI's network infrastructure as "aging." Has the FBI finished upgrading its "aging network architecture"? And will that technology help compile information more quickly and thoroughly?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

(b)(6), (b)(7)(E)

(b)(5); (b)(5), (b)(7)(E) per FBI

b. I am also disturbed by reports that our intelligence agencies may be struggling to perform even basic keyword searches to establish links between critical pieces of intelligence and recognize threats. What is the FBI doing - both internally and in coordination with other agencies - to enhance our technological ability to sort through the vast amount of information we collect? Will the hundreds of millions of dollars that we have spent on the Sentinel and Guardian programs help in this regard?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

2. The suspect in the Christmas day plot was immediately taken into custody after the Northwest Airlines flight landed and has now been charged in a six-count indictment in federal court in Michigan. If convicted he is facing life in prison. The administration has acknowledged that he gave valuable information to FBI interrogators. He was given a lawyer, a right -- and I cannot emphasize this more strongly -- that he would have in a military commission, just as he has in our federal system. He will now be tried in a court system that, unlike military commissions, does not have a mere three convictions to rely on. Instead, he will be tried in a system that has convicted hundreds of terrorists, that has existed for over 200 years, and that is respected throughout the world.

According to news reports, in recent terrorism related cases such as Bryant Neal Vinas and David Headley, the suspects are reportedly cooperating with law enforcement. FBI interrogators have long played a role in obtaining highly valuable information from terrorism suspects through interrogations, and in helping to secure their subsequent convictions.

Are military interrogations the only way to obtain valuable information from terrorism suspects? Can you explain the value of having FBI interrogators involved in terrorism cases?

Response:

(b) (5)
[Redacted text block]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(D), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

3. There has been a lot of debate about how Umar Farouk Abdulmutallab was interrogated and charged after he was taken into custody. There has also been much discussion recently about whether there is a protocol for deciding how to interrogate and charge someone suspected of having committed a terrorism-related offense. I believe that it is important to have clear procedures for making this determination so we can ensure that we are able to obtain intelligence while also preserving our ability to charge and convict such individuals. Please explain how the administration makes these decisions.

Response:

(b)(5); (b)(5) per ODNI
[Redacted]

4. The President has stated that the attempted Christmas Day attack did not reflect a failure to collect intelligence, but rather a failure to connect and understand the intelligence that we already had. We are already gathering a massive amount of intelligence, but it appears that we need to do a better job of prioritizing, integrating, and analyzing this information. The National Counterterrorism Center and the Terrorist Screening Center were formed to consolidate intelligence information and coordinate our responses to terrorist threats, and the system of watchlists was designed to help filter and prioritize the intelligence that is gathered.

How do we ensure that intelligence analysts - at the FBI and other agencies in the intelligence community - are not overloaded with the volume of information coming in, and can efficiently analyze and understand the data? And what steps need to be taken to create clear lines of responsibility and accountability - so that information and leads don't fall through the cracks, as they did in this case?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

Questions Posed by Senator Feinstein

Fort Hood

5. Director Mueller, after the tragedy at Fort Hood in November, the Attorney General endorsed legislation that would block suspected terrorist suspects from purchasing guns and explosives -- S.1317, Denying Firearms and Explosives to Dangerous Terrorist Act of 2009. Attorney General Holder told the Senate Judiciary Committee on November 18, 2009 that "it seems incongruous to me that we would bar certain people from flying on airplanes, because they are on the terrorist watch list, and yet we'd still allow them to possess weapons." The Christmas Day incident has highlighted just how difficult it is to be added to the terrorist watch-list. Yet in June 2009, the GAO released a report indicating that individuals on terrorist watch lists purchased guns an astonishing 865 times between 2004 and 2009. We also now know that both Mr. Abdulmutallab and Major Hasan were persons of interest to the intelligence agencies. However, the FBI still lacks the power to block guns and explosives sales to terror suspects.

Director Mueller, the FBI administers the National Instant Criminal Background Check System (NICS) for guns and explosives sales. Do you agree with Attorney General Holder that it is important for us to pass legislation to ensure that the FBI has the power to block guns and explosives sales to terrorist suspects?

Response:

(b)(5); (b)(5) per FBI

Terrorism Watch List

6. I'm going to ask now about some terrorism-related events from recent years. In each case I have two questions: First, were any of the suspects in these cases on a terrorism watch-list in advance of their arrest or attack? Second, did any of the suspects involved in these plots and attacks purchase guns or explosives from licensed dealers in the U.S.?

- a. November 2009, Major Nidal Hasan, who attacked Fort Hood;**
- b. October 2009, Tarek Mehanna, who plotted to use guns to attack people at random inside shopping malls;**
- c. September 2009, Najibullah Zazi, who was caught buying chemicals he needed for a plot to attack the NYC subway system;**
- d. July 2009, Abdulhakim Mujahid Muhammad, who opened fire outside a military recruitment station in Little Rock, AR, killing one private and wounding another;**
- e. June 2009, Daniel Patrick Boyd and his North Carolina terrorist cell, which was plotting to attack the Marine base at Quantico;**
- f. May 2007, Dritan Duka and the rest of the terror cell plotting to attack Fort Dix in New Jersey;**
- g. July 2002, Hesham Mohamed Hadayet, who shot and killed two people in an act of terrorism at the El Al airline ticket counter at LAX airport.**

Response to subparts a through g, above:

(b)(5); (b)(5) per FBI

(b)(5); (b)(5) per FBI
[Redacted text block]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

White House Directives

7. The White House report on the Christmas Day bomber incident found that "Although Umar Farouk Abdulmutallab was included in the Terrorist Identities Datamart Environment (TIDE), the failure to include Mr. Abdulmutallab in a watch-list is part of the overall system failure", and then recommended that we "Accelerate information technology enhancements, to include knowledge discovery, database integration, cross-database searches, and the ability to correlate biographic information with terrorism-related intelligence".

Does our technology today enable us to assess every single passenger's risk profile, in order to determine his specific risk level and to immediately communicate that information to other agencies for extra screening or follow up?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

Questions Posed by Senator Feingold

8. The President has directed the FBI to review the watch list nomination process and make possible recommendations.

a. What is the status of that review?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI, (b)(5) per ODNI
[Redacted]

b. As part of that review, what steps are you considering to ensure innocent Americans are not mistakenly identified as being on the watch list?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5) per FBI; (b)(5) per ODNI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

9. The FBI's internal review on Fort Hood called for "strengthened training addressing legal restrictions which govern the retention and dissemination of information." Press reports indicate that the Joint Terrorism Task Force that examined Major Hasan's case prior to the attack at Fort Hood shared information on Hasan with DOD personnel. Is that

accurate? Did the FBI find that there were any legal barriers to sharing information about Major Hasan that was in its possession with the Department of Defense?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

Questions Posed by Senator Specter

10. In addition to the many efforts you discussed at the hearing, are there any changes that you would suggest other agencies implement to increase security?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

11. You mentioned in your testimony that home-grown terrorists and "lone wolf" attacks are serious threats in addition to terrorists acting with external support. Should security check-points for domestic flights adopt the enhanced screening standards applied to international travelers?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

Questions Posed by Senator Sessions

12. During your testimony before the Committee, you were asked about how the decisions regarding Umar Farouk Abdulmutallab’s questioning on December 25th were made.

a. At the time of the attempted bombing attack on Christmas Day 2009, was there a policy, protocol or any written guidance in place on how the U.S. government would handle the detention and questioning of U.S. persons or non-U.S. persons apprehended in the United States who have attempted or committed a terrorist attack or for whom the Government has cause to believe that they are engaged in terrorist activities?

b. Is there now such a policy, protocol or any written guidance in place?

c. If such guidance existed or now exists, please provide a copy to the Committee, enclosing it in a classified annex if necessary.

Response to subparts a through c:

(b)(5); (b)(5) per FBI
[Redacted]

Questions Posed by Senator Hatch

13. There are three expiring provisions of the PATRIOT Act. In previous testimony before this committee, you have heralded these provisions as critical investigative tools that the FBI needs to detect and thwart terror plots. For example, the three separate terror plots in Illinois, Texas and New York detected by the FBI last September. In December, Congress only temporarily reauthorized these provisions without any modifications. I have some concerns that any modifications to these investigative tools would "water them down"

and unnecessarily increase the investigative burden on the FBI before these tools may be used.

a. Can you tell me if you would support a full reauthorization of these provisions without any modifications?

Response:

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

b. Can you confirm if any of these expiring provisions were used by the FBI in the investigation of these plots?

Response:

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5) per FBI

14. With regard to the decision to arrest of Umar Farouk Abdulmutallab on federal charges for his attempted bombing of NW 253. During the hearing, you informed the committee that the suspect was interviewed before any Miranda warnings were given. The administration asserts that the suspect provided valuable information during this 90 minute interview.

a. What if any guidance has FBI headquarters communicated field offices or JTTFs by either electronic communication, policy directives or standard operating procedures as to how possible terrorists in custody are to be held, detained and interviewed?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

b. If the policy was changed, what was the previous policy and when did it change?

Response:

(b)(5); (b)(5) per FBI

c. Has it been communicated to FBI offices and task forces that agents will operate under the assumption that potential terrorism cases will be referred to the U.S. Attorney's office for prosecution?

Response:

(b)(5); (b)(5) per FBI

(b)(5); (b)(5) per FBI
[Redacted]

d. Are potential terrorist[s] expeditiously presented to the High Value Detainee Interrogation Group for possible follow up or additional action before the suspect is arrested and adjudicated in federal court?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

e. Was the information provided by the suspect immediately reviewed or corroborated with other government entities like the High Value Detainee Interrogation Group, NCTC or other assets to determine if the suspect was truthful in his responses to questions pre-Miranda?

Response:

(b)(5); (b)(5) per FBI; (b)(5) per ODNI
[Redacted]

(b)(5); (b)(5) per FBI
[Redacted]

15. The Terrorist Screening Center (TSC) is responsible for generating terrorist screening databases, look out records and watch lists to front line screening agencies and state and local law enforcement. These alerts and lookouts are made available to state and local agencies through NCIC's Violent Gang and Terrorist Offender File. In last September's case of alleged Texas terror plot bomber, Hosam Smadi, the system worked and a Deputy Sheriff was informed that Smadi was under investigation by the FBI during a routine traffic stop. However, when Smadi was run through NCIC there was no information in his alert regarding his visa overstay.

a. Can you tell me if during the course of its investigation, the FBI had received information from either DHS or the State Department regarding the immigration or visa status of Hosan Smadi?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

b. Does FBI obtain information from either State or DHS regarding the visa status of persons under investigation for terrorism or other criminal violations?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

Questions Posed by Senator Grassley

16 According to recent congressional testimony provided by Mr. Timothy Healy, Director of the Terrorist Screening Center (TSC) administered by the FBI, a person nominated to be on the Terrorist Watchlist must meet two principal requirements: 1) the biographic information associated with the individual must contain sufficient identifying data so the person can be matched to the watch list; and 2) the facts and circumstances linking the watch list nominee must meet the "reasonable suspicion" standard of review. Mr. Healy stated, "Mere guesses or inarticulable 'hunches' are not enough to constitute reasonable suspicion."

a. Standing alone, does the report from the father in this case meet the "reasonable suspicion" standard in your view?

b. The State Department and DHS have indicated in their briefings that the information from the father would not, by itself, have been enough to place Abdulmutallab on the TSC watch list because of a particular policy which prevents listing an individual based solely on information from a single source - regardless of how credible or reliable the source may be. Is that an accurate description of the policy, and if so, why should a single reliable source not be enough to place a foreign national on the watchlist?

Response to subparts a and b:

(b)(5); (b)(5) per FBI
[Redacted]

c. Given that al-Qaeda has extensively recruited non-U.S. citizens to carry out its attacks, has the TSC considered revising its nomination standards to allow a less restrictive standard of review for the listing of non-U.S. persons suspected of terrorism on the no fly list?

Response:

(b)(5); (b)(7)(E) per FBI; (b)(5) per ODNI
[Redacted]

Redding, Michael

From: Redding, Michael
Sent: Wednesday, May 26, 2010 6:21 PM
To: Burrows, Charlotte; Columbus, Eric (ODAG)
Cc: Luck, Stacey (ODAG)
Subject: UNCLASSIFIED FBI_Director QFRs_012010SJC_Component Comments.docx
Attachments: UNCLASSIFIED FBI_Director QFRs_012010SJC_Component Comments.docx

Charlotte, Eric and Stacey,

Attached are the component comments on FBI QFRs stemming from Director Mueller's appearance before the SJC on 1.20.10. Please let me know if ODAG approves these comments. If so, I will send to FBI for their responses. Thanks!

Michael

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the January 20, 2010, Hearing Before the
Senate Committee on the Judiciary
Regarding “Securing America’s Safety: Improving the Effectiveness of
Anti-Terrorism Tools and Inter-Agency Communication”**

Questions Posed by Chairman Leahy

1. In a recent article about the failed Christmas day plot, the *New York Times* reported that intelligence agencies are having trouble doing automatic and repeated searches for possible links within databases and, according to a House Committee on Science and Technology report, “even simple keyword searches are a challenge.” We need to make sure that we are not wasting millions of dollars to go backwards in our network capabilities. As you know, I have repeatedly expressed my frustration at the money and time wasted as the FBI tries to upgrade its technology. The Virtual Case File project was a \$170 million failure. It was replaced by the Sentinel project which, after much delay and over \$ 450 million, is supposed to transform the FBI’s case management and tracking ability. But according to a Department of Justice Office of Inspector General audit released last year, the rollout of an effective Sentinel system has been further hampered by the FBI’s “aging network architecture.” The audit stated that the FBI was due to complete an upgrade of its network architecture by December of 2009.

a. I am deeply disturbed that years after 9/11, an OIG audit describes the FBI’s network infrastructure as “aging.” Has the FBI finished upgrading its “aging network architecture”? And will that technology help compile information more quickly and thoroughly?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI

b. I am also disturbed by reports that our intelligence agencies may be struggling to perform even basic keyword searches to establish links between critical pieces of intelligence and recognize threats. What is the FBI doing - both internally and in coordination with other agencies - to enhance our technological ability to sort through the vast amount of information we collect? Will the hundreds of millions of dollars that we have spent on the Sentinel and Guardian programs help in this regard?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI

2. The suspect in the Christmas day plot was immediately taken into custody after the Northwest Airlines flight landed and has now been charged in a six-count indictment in federal court in Michigan. If convicted he is facing life in prison. The administration has acknowledged that he gave valuable information to FBI interrogators. He was given a lawyer, a right -- and I cannot emphasize this more strongly -- that he would have in a military commission, just as he has in our federal system. He will now be tried in a court system that, unlike military commissions, does not have a mere three convictions to rely on. Instead, he will be tried in a system that has convicted hundreds of terrorists, that has existed for over 200 years, and that is respected throughout the world.

According to news reports, in recent terrorism related cases such as Bryant Neal Vinas and David Headley, the suspects are reportedly cooperating with law enforcement. FBI interrogators have long played a role in obtaining highly valuable information from terrorism suspects through interrogations, and in helping to secure their subsequent convictions.

Are military interrogations the only way to obtain valuable information from terrorism suspects? Can you explain the value of having FBI interrogators involved in terrorism cases?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(D), (b)(7)(E) per FBI

3. There has been a lot of debate about how Umar Farouk Abdulmutallab was interrogated and charged after he was taken into custody. There has also been much discussion recently about whether there is a protocol for deciding how to interrogate and charge someone suspected of having committed a terrorism-related offense. I believe that it is important to have clear procedures for making this determination so we can ensure that we are able to obtain intelligence while also preserving our ability to charge and convict such individuals. Please explain how the administration makes these decisions.

Response:

(b)(5); (b)(5) per ODNI

(b) (5)

4. The President has stated that the attempted Christmas Day attack did not reflect a failure to collect intelligence, but rather a failure to connect and understand the intelligence that we already had. We are already gathering a massive amount of intelligence, but it appears that we need to do a better job of prioritizing, integrating, and analyzing this information. The National Counterterrorism Center and the Terrorist Screening Center were formed to consolidate intelligence information and coordinate our responses to terrorist threats, and the system of watchlists was designed to help filter and prioritize the intelligence that is gathered.

How do we ensure that intelligence analysts - at the FBI and other agencies in the intelligence community - are not overloaded with the volume of information coming in, and can efficiently analyze and understand the data? And what steps need to be taken to create clear lines of responsibility and accountability - so that information and leads don't fall through the cracks, as they did in this case?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI

Questions Posed by Senator Feinstein

Fort Hood

5. Director Mueller, after the tragedy at Fort Hood in November, the Attorney General endorsed legislation that would block suspected terrorist suspects from purchasing guns and explosives -- S.1317, Denying Firearms and Explosives to Dangerous Terrorist Act of 2009. Attorney General Holder told the Senate Judiciary Committee on November 18, 2009 that "it seems incongruous to me that we would bar certain people from flying on airplanes, because they are on the terrorist watch list, and yet we'd still allow them to possess weapons." The Christmas Day incident has highlighted just how difficult it is to be added to the terrorist watch-list. Yet in June 2009, the GAO released a report indicating that individuals on terrorist watch lists purchased guns an astonishing 865 times between 2004 and 2009. We also now know that both Mr. Abdulmutallab and Major Hasan were persons of interest to the intelligence agencies. However, the FBI still lacks the power to block guns and explosives sales to terror suspects.

Director Mueller, the FBI administers the National Instant Criminal Background Check System (NICS) for guns and explosives sales. Do you agree with Attorney General Holder that it is important for us to pass legislation to ensure that the FBI has the power to block guns and explosives sales to terrorist suspects?

Response:

(b)(5); (b)(5) per FBI

Terrorism Watch List

6. I'm going to ask now about some terrorism-related events from recent years. In each case I have two questions: First, were any of the suspects in these cases on a terrorism watch-list in advance of their arrest or attack? Second, did any of the suspects involved in these plots and attacks purchase guns or explosives from licensed dealers in the U.S.?

- a. November 2009, Major Nidal Hasan, who attacked Fort Hood;
- b. October 2009, Tarek Mehanna, who plotted to use guns to attack people at random inside shopping malls;
- c. September 2009, Najibullah Zazi, who was caught buying chemicals he needed for a plot to attack the NYC subway system;
- d. July 2009, Abdulhakim Mujahid Muhammad, who opened fire outside a military recruitment station in Little Rock, AR, killing one private and wounding another;
- e. June 2009, Daniel Patrick Boyd and his North Carolina terrorist cell, which was plotting to attack the Marine base at Quantico;
- f. May 2007, Dritan Duka and the rest of the terror cell plotting to attack Fort Dix in New Jersey;
- g. July 2002, Hesham Mohamed Hadayet, who shot and killed two people in an act of terrorism at the El Al airline ticket counter at LAX airport.

Response to subparts a through g, above:

(b)(5); (b)(5) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(5), (b)(7)(E) per FBI

White House Directives

7. The White House report on the Christmas Day bomber incident found that “Although Umar Farouk Abdulmutallab was included in the Terrorist Identities Datamart Environment (TIDE), the failure to include Mr. Abdulmutallab in a watch-list is part of the overall system failure”, and then recommended that we “Accelerate information technology enhancements, to include knowledge discovery, database integration, cross-database searches, and the ability to correlate biographic information with terrorism-related intelligence”.

Does our technology today enable us to assess every single passenger’s risk profile, in order to determine his specific risk level and to immediately communicate that information to other agencies for extra screening or follow up?

Response:

(b)(5); (b)(5) per FBI

Questions Posed by Senator Feingold

8. The President has directed the FBI to review the watch list nomination process and make possible recommendations.

a. What is the status of that review?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI; (b)(5) per ODNI

b. As part of that review, what steps are you considering to ensure innocent Americans are not mistakenly identified as being on the watch list?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI; (b)(5) per ODNI

9. The FBI's internal review on Fort Hood called for "strengthened training addressing legal restrictions which govern the retention and dissemination of information." Press reports indicate that the Joint Terrorism Task Force that examined Major Hasan's case prior to the attack at Fort Hood shared information on Hasan with DOD personnel. Is that accurate? Did the FBI find that there were any legal barriers to sharing information about Major Hasan that was in its possession with the Department of Defense?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

Questions Posed by Senator Specter

10. In addition to the many efforts you discussed at the hearing, are there any changes that you would suggest other agencies implement to increase security?

Response:

(b)(5); (b)(5) per FBI

11. You mentioned in your testimony that home-grown terrorists and "lone wolf" attacks are serious threats in addition to terrorists acting with external support. Should security

check-points for domestic flights adopt the enhanced screening standards applied to international travelers?

Response:

(b)(5); (b)(5) per FBI

Questions Posed by Senator Sessions

12. During your testimony before the Committee, you were asked about how the decisions regarding Umar Farouk Abdulmutallab's questioning on December 25th were made.

a. At the time of the attempted bombing attack on Christmas Day 2009, was there a policy, protocol or any written guidance in place on how the U.S. government would handle the detention and questioning of U.S. persons or non-U.S. persons apprehended in the United States who have attempted or committed a terrorist attack or for whom the Government has cause to believe that they are engaged in terrorist activities?

b. Is there now such a policy, protocol or any written guidance in place?

c. If such guidance existed or now exists, please provide a copy to the Committee, enclosing it in a classified annex if necessary.

Response to subparts a through c:

(b)(5); (b)(5) per FBI

Questions Posed by Senator Hatch

13. There are three expiring provisions of the PATRIOT Act. In previous testimony before this committee, you have heralded these provisions as critical investigative tools that

the FBI needs to detect and thwart terror plots. For example, the three separate terror plots in Illinois, Texas and New York detected by the FBI last September. In December, Congress only temporarily reauthorized these provisions without any modifications. I have some concerns that any modifications to these investigative tools would “water them down” and unnecessarily increase the investigative burden on the FBI before these tools may be used.

a. Can you tell me if you would support a full reauthorization of these provisions without any modifications?

Response:

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI

b. Can you confirm if any of these expiring provisions were used by the FBI in the investigation of these plots?

Response:

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI

14. With regard to the decision to arrest of Umar Farouk Abdulmutallab on federal charges for his attempted bombing of NW 253. During the hearing, you informed the committee that the suspect was interviewed before any Miranda warnings were given. The administration asserts that the suspect provided valuable information during this 90 minute interview.

a. What if any guidance has FBI headquarters communicated field offices or JTTFs by either electronic communication, policy directives or standard operating procedures as to how possible terrorists in custody are to be held, detained and interviewed?

Response:

(b)(5); (b)(5) per FBI

b. If the policy was changed, what was the previous policy and when did it change?

Response:

(b)(5); (b)(5) per FBI

c. Has it been communicated to FBI offices and task forces that agents will operate under the assumption that potential terrorism cases will be referred to the U.S. Attorney's office for prosecution?

Response:

(b)(5); (b)(5) per FBI

d. Are potential terrorist[s] expeditiously presented to the High Value Detainee Interrogation Group for possible follow up or additional action before the suspect is arrested and adjudicated in federal court?

Response:

(b)(5); (b)(5) per FBI

e. Was the information provided by the suspect immediately reviewed or corroborated with other government entities like the High Value Detainee Interrogation Group, NCTC or other assets to determine if the suspect was truthful in his responses to questions pre-Miranda?

Response:

(b)(5); (b)(5) per FBI; (b)(5) per ODNI

(b)(5); (b)(5) per FBI

15. The Terrorist Screening Center (TSC) is responsible for generating terrorist screening databases, look out records and watch lists to front line screening agencies and state and local law enforcement. These alerts and lookouts are made available to state and local agencies through NCIC's Violent Gang and Terrorist Offender File. In last September's case of alleged Texas terror plot bomber, Hosam Smadi, the system worked and a Deputy Sheriff was informed that Smadi was under investigation by the FBI during a routine traffic stop. However, when Smadi was run through NCIC there was no information in his alert regarding his visa overstay.

a. Can you tell me if during the course of its investigation, the FBI had received information from either DHS or the State Department regarding the immigration or visa status of Hosan Smadi?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

b. Does FBI obtain information from either State or DHS regarding the visa status of persons under investigation for terrorism or other criminal violations?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI

Questions Posed by Senator Grassley

16 According to recent congressional testimony provided by Mr. Timothy Healy, Director of the Terrorist Screening Center (TSC) administered by the FBI, a person nominated to be on the Terrorist Watchlist must meet two principal requirements: 1) the biographic information associated with the individual must contain sufficient identifying data so the person can be matched to the watch list; and 2) the facts and circumstances linking the watch list nominee must meet the "reasonable suspicion" standard of review. Mr. Healy

stated, "Mere guesses or inarticulate 'hunches' are not enough to constitute reasonable suspicion."

a. Standing alone, does the report from the father in this case meet the "reasonable suspicion" standard in your view?

b. The State Department and DHS have indicated in their briefings that the information from the father would not, by itself, have been enough to place Abdulmutallab on the TSC watch list because of a particular policy which prevents listing an individual based solely on information from a single source - regardless of how credible or reliable the source may be. Is that an accurate description of the policy, and if so, why should a single reliable source not be enough to place a foreign national on the watchlist?

Response to subparts a and b:

(b)(5); (b)(5) per FBI

c. Given that al-Qaeda has extensively recruited non-U.S. citizens to carry out its attacks, has the TSC considered revising its nomination standards to allow a less restrictive standard of review for the listing of non-U.S. persons suspected of terrorism on the no fly list?

Response:

(b)(5); (b)(5) per FBI; (b)(5) per ODNI

Burrows, Charlotte

From: Burrows, Charlotte
Sent: Friday, July 9, 2010 4:06 PM
To: Luck, Stacey (ODAG)
Subject: FW: QFRs - FBI (Mueller) from January 20, 2010 SJC hearing
Attachments: QFRs - FBI (Mueller) from January 20, 2010 hearing (9JUL10).doc

Stacey,

FYI, this was a good reminder to let you know that Brad has consistently been truly amazing in promptly assisting w/ all of the clearance issues that come up -- and as you know, his area is one of the busiest. Just wanted to pass on some praise in light of our earlier conversation.

C

-----Original Message-----

From: Burrows, Charlotte
Sent: Friday, July 09, 2010 4:03 PM
To: Smith, Brad (ODAG)
Cc: Chipman, Jason; Columbus, Eric (ODAG); Luck, Stacey (ODAG)
Subject: FW: QFRs - FBI (Mueller) from January 20, 2010 SJC hearing

Brad,

Per our conversation, we really appreciate all the work you and Jason have been doing to help clear the remaining FBI qfrs in advance of Mueller's hearing. Here's the last sent in the urgent category, which OLA just forwarded to us. If you could coordinate w/ Jason and try to get them back to us Monday, I'd be extremely grateful.

Many thanks,

Charlotte

-----Original Message-----

From: Levine, Doug
Sent: Friday, July 09, 2010 3:52 PM
To: Columbus, Eric (ODAG); Burrows, Charlotte
Cc: Luck, Stacey (ODAG)
Subject: QFRs - FBI (Mueller) from January 20, 2010 SJC hearing

Eric and Charli, here are the component-cleared QFRs from Director Mueller's January 10, 2010 appearance before the Senate Judiciary Committee. If we can get these to OMB as early as possible next week we may have a very good opportunity to clear these out of OMB before the Director testifies on the

28th.

Thank you.

Doug

Doug Levine

Office of Legislative Affairs

U.S. Department of Justice

(b) (6) (Office) (b) (6) (Cell)

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the January 20, 2010, Hearing Before the
Senate Committee on the Judiciary
Regarding “Securing America’s Safety: Improving the Effectiveness of
Anti-Terrorism Tools and Inter-Agency Communication”**

Questions Posed by Chairman Leahy

1. In a recent article about the failed Christmas day plot, the *New York Times* reported that intelligence agencies are having trouble doing automatic and repeated searches for possible links within databases and, according to a House Committee on Science and Technology report, “even simple keyword searches are a challenge.” We need to make sure that we are not wasting millions of dollars to go backwards in our network capabilities. As you know, I have repeatedly expressed my frustration at the money and time wasted as the FBI tries to upgrade its technology. The Virtual Case File project was a \$170 million failure. It was replaced by the Sentinel project which, after much delay and over \$ 450 million, is supposed to transform the FBI’s case management and tracking ability. But according to a Department of Justice Office of Inspector General audit released last year, the rollout of an effective Sentinel system has been further hampered by the FBI’s “aging network architecture.” The audit stated that the FBI was due to complete an upgrade of its network architecture by December of 2009.

a. I am deeply disturbed that years after 9/11, an OIG audit describes the FBI’s network infrastructure as “aging.” Has the FBI finished upgrading its “aging network architecture”? And will that technology help compile information more quickly and thoroughly?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted text block]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

b. I am also disturbed by reports that our intelligence agencies may be struggling to perform even basic keyword searches to establish links between critical pieces of intelligence and recognize threats. What is the FBI doing - both internally and in coordination with other agencies - to enhance our technological ability to sort through the vast amount of information we collect? Will the hundreds of millions of dollars that we have spent on the Sentinel and Guardian programs help in this regard?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

2. The suspect in the Christmas day plot was immediately taken into custody after the Northwest Airlines flight landed and has now been charged in a six-count indictment in federal court in Michigan. If convicted he is facing life in prison. The administration has acknowledged that he gave valuable information to FBI interrogators. He was given a lawyer, a right -- and I cannot emphasize this more strongly -- that he would have in a military commission, just as he has in our federal system. He will now be tried in a court system that, unlike military commissions, does not have a mere three convictions to rely on. Instead, he will be tried in a system that has convicted hundreds of terrorists, that has existed for over 200 years, and that is respected throughout the world.

According to news reports, in recent terrorism related cases such as Bryant Neal Vinas and David Headley, the suspects are reportedly cooperating with law enforcement. FBI interrogators have long played a role in obtaining highly valuable information from terrorism suspects through interrogations, and in helping to secure their subsequent convictions.

Are military interrogations the only way to obtain valuable information from terrorism suspects? Can you explain the value of having FBI interrogators involved in terrorism cases?

Response:

(b) (5)
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(D), (b)(7)(E) per FBI
[Redacted]

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3. There has been a lot of debate about how Umar Farouk Abdulmutallab was interrogated and charged after he was taken into custody. There has also been much discussion recently about whether there is a protocol for deciding how to interrogate and charge someone suspected of having committed a terrorism-related offense. I believe that it is important to have clear procedures for making this determination so we can ensure that we are able to obtain intelligence while also preserving our ability to charge and convict such individuals. Please explain how the administration makes these decisions.

Response:

(b)(5); (b)(5) per ODNI
[Redacted]

(b)(5); (b)(5) per ODNI
[Redacted]

4. The President has stated that the attempted Christmas Day attack did not reflect a failure to collect intelligence, but rather a failure to connect and understand the intelligence that we already had. We are already gathering a massive amount of intelligence, but it appears that we need to do a better job of prioritizing, integrating, and analyzing this information. The National Counterterrorism Center and the Terrorist Screening Center were formed to consolidate intelligence information and coordinate our responses to terrorist threats, and the system of watchlists was designed to help filter and prioritize the intelligence that is gathered.

How do we ensure that intelligence analysts - at the FBI and other agencies in the intelligence community - are not overloaded with the volume of information coming in, and can efficiently analyze and understand the data? And what steps need to be taken to create clear lines of responsibility and accountability - so that information and leads don't fall through the cracks, as they did in this case?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

Questions Posed by Senator Feinstein

Fort Hood

5. Director Mueller, after the tragedy at Fort Hood in November, the Attorney General endorsed legislation that would block suspected terrorist suspects from purchasing guns and explosives -- S.1317, Denying Firearms and Explosives to Dangerous Terrorist Act of 2009. Attorney General Holder told the Senate Judiciary Committee on November 18, 2009 that “it seems incongruous to me that we would bar certain people from flying on airplanes, because they are on the terrorist watch list, and yet we'd still allow them to possess weapons.” The Christmas Day incident has highlighted just how difficult it is to be added to the terrorist watch-list. Yet in June 2009, the GAO released a report indicating that individuals on terrorist watch lists purchased guns an astonishing 865 times between 2004 and 2009. We also now know that both Mr. Abdulmutallab and Major Hasan were persons of interest to the intelligence agencies. However, the FBI still lacks the power to block guns and explosives sales to terror suspects.

Director Mueller, the FBI administers the National Instant Criminal Background Check System (NICS) for guns and explosives sales. Do you agree with Attorney General Holder that it is important for us to pass legislation to ensure that the FBI has the power to block guns and explosives sales to terrorist suspects?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

Terrorism Watch List

6. I'm going to ask now about some terrorism-related events from recent years. In each case I have two questions: First, were any of the suspects in these cases on a terrorism watch-list in advance of their arrest or attack? Second, did any of the suspects involved in these plots and attacks purchase guns or explosives from licensed dealers in the U.S.?

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- e. June 2009, Daniel Patrick Boyd and his North Carolina terrorist cell, which was plotting to attack the Marine base at Quantico;**
- f. May 2007, Dritan Duka and the rest of the terror cell plotting to attack Fort Dix in New Jersey;**
- g. July 2002, Hesham Mohamed Hadayet, who shot and killed two people in an act of terrorism at the El Al airline ticket counter at LAX airport.**

Response to subparts a through g, above:

(b)(5); (b)(5) per FBI
[Redacted]

(b)(5); (b)(5) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

White House Directives

7. The White House report on the Christmas Day bomber incident found that “Although Umar Farouk Abdulmutallab was included in the Terrorist Identities Datamart Environment (TIDE), the failure to include Mr. Abdulmutallab in a watch-list is part of the overall system failure”, and then recommended that we “Accelerate information technology enhancements, to include knowledge discovery, database integration, cross-database searches, and the ability to correlate biographic information with terrorism-related intelligence”.

Does our technology today enable us to assess every single passenger’s risk profile, in order to determine his specific risk level and to immediately communicate that information to other agencies for extra screening or follow up?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

Questions Posed by Senator Feingold

8. The President has directed the FBI to review the watch list nomination process and make possible recommendations.

a. What is the status of that review?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI; (b)(5) per ODNI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI; (b)(5) per ODNI
[Redacted]

b. As part of that review, what steps are you considering to ensure innocent Americans are not mistakenly identified as being on the watch list?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(5) per FBI; (b)(5) per ODNI
[Redacted]

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

9. The FBI’s internal review on Fort Hood called for “strengthened training addressing legal restrictions which govern the retention and dissemination of information.” Press reports indicate that the Joint Terrorism Task Force that examined Major Hasan’s case prior to the attack at Fort Hood shared information on Hasan with DOD personnel. Is that

accurate? Did the FBI find that there were any legal barriers to sharing information about Major Hasan that was in its possession with the Department of Defense?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

Questions Posed by Senator Specter

10. In addition to the many efforts you discussed at the hearing, are there any changes that you would suggest other agencies implement to increase security?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

11. You mentioned in your testimony that home-grown terrorists and “lone wolf” attacks are serious threats in addition to terrorists acting with external support. Should security check-points for domestic flights adopt the enhanced screening standards applied to international travelers?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

Questions Posed by Senator Sessions

12. During your testimony before the Committee, you were asked about how the decisions regarding Umar Farouk Abdulmutallab’s questioning on December 25th were made.

a. At the time of the attempted bombing attack on Christmas Day 2009, was there a policy, protocol or any written guidance in place on how the U.S. government would

handle the detention and questioning of U.S. persons or non-U.S. persons apprehended in the United States who have attempted or committed a terrorist attack or for whom the Government has cause to believe that they are engaged in terrorist activities?

b. Is there now such a policy, protocol or any written guidance in place?

c. If such guidance existed or now exists, please provide a copy to the Committee, enclosing it in a classified annex if necessary.

Response to subparts a through c:

(b)(5); (b)(5) per FBI
[Redacted]

Questions Posed by Senator Hatch

13. There are three expiring provisions of the PATRIOT Act. In previous testimony before this committee, you have heralded these provisions as critical investigative tools that the FBI needs to detect and thwart terror plots. For example, the three separate terror plots in Illinois, Texas and New York detected by the FBI last September. In December, Congress only temporarily reauthorized these provisions without any modifications. I have some concerns that any modifications to these investigative tools would “water them down” and unnecessarily increase the investigative burden on the FBI before these tools may be used.

a. Can you tell me if you would support a full reauthorization of these provisions without any modifications?

Response:

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

b. Can you confirm if any of these expiring provisions were used by the FBI in the investigation of these plots?

Response:

(b)(5); (b)(3), (b)(5), (b)(7)(E) per FBI
[Redacted]

14. With regard to the decision to arrest of Umar Farouk Abdulmutallab on federal charges for his attempted bombing of NW 253. During the hearing, you informed the committee that the suspect was interviewed before any Miranda warnings were given. The administration asserts that the suspect provided valuable information during this 90 minute interview.

a. What if any guidance has FBI headquarters communicated field offices or JTTFs by either electronic communication, policy directives or standard operating procedures as to how possible terrorists in custody are to be held, detained and interviewed?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

b. If the policy was changed, what was the previous policy and when did it change?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

c. Has it been communicated to FBI offices and task forces that agents will operate under the assumption that potential terrorism cases will be referred to the U.S. Attorney's office for prosecution?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

d. Are potential terrorist[s] expeditiously presented to the High Value Detainee Interrogation Group for possible follow up or additional action before the suspect is arrested and adjudicated in federal court?

Response:

(b)(5); (b)(5) per FBI
[Redacted]

e. Was the information provided by the suspect immediately reviewed or corroborated with other government entities like the High Value Detainee Interrogation Group, NCTC or other assets to determine if the suspect was truthful in his responses to questions pre-Miranda?

Response:

(b)(5); (b)(5) per FBI; (b)(5) per ODNI
[Redacted]

15. The Terrorist Screening Center (TSC) is responsible for generating terrorist screening databases, look out records and watch lists to front line screening agencies and state and local law enforcement. These alerts and lookouts are made available to state and local agencies through NCIC's Violent Gang and Terrorist Offender File. In last September's case of alleged Texas terror plot bomber, Hosam Smadi, the system worked and a Deputy Sheriff was informed that Smadi was under investigation by the FBI during a routine traffic stop. However, when Smadi was run through NCIC there was no information in his alert regarding his visa overstay.

a. Can you tell me if during the course of its investigation, the FBI had received information from either DHS or the State Department regarding the immigration or visa status of Hosan Smadi?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

b. Does FBI obtain information from either State or DHS regarding the visa status of persons under investigation for terrorism or other criminal violations?

Response:

(b)(5); (b)(5), (b)(7)(E) per FBI
[Redacted]

Questions Posed by Senator Grassley

16 According to recent congressional testimony provided by Mr. Timothy Healy, Director of the Terrorist Screening Center (TSC) administered by the FBI, a person nominated to be on the Terrorist Watchlist must meet two principal requirements: 1) the biographic information associated with the individual must contain sufficient identifying data so the person can be matched to the watch list; and 2) the facts and circumstances linking the watch list nominee must meet the “reasonable suspicion” standard of review. Mr. Healy stated, “Mere guesses or inarticulate ‘hunches’ are not enough to constitute reasonable suspicion.”

a. Standing alone, does the report from the father in this case meet the “reasonable suspicion” standard in your view?

b. The State Department and DHS have indicated in their briefings that the information from the father would not, by itself, have been enough to place Abdulmutallab on the TSC watch list because of a particular policy which prevents listing an individual based solely on information from a single source - regardless of how credible or reliable the source may be. Is that an accurate description of the policy, and if so, why should a single reliable source not be enough to place a foreign national on the watchlist?

Response to subparts a and b:

(b)(5); (b)(5) per FBI
[Redacted]

(b)(5); (b)(5) per FBI
[Redacted]

c. Given that al-Qaeda has extensively recruited non-U.S. citizens to carry out its attacks, has the TSC considered revising its nomination standards to allow a less restrictive standard of review for the listing of non-U.S. persons suspected of terrorism on the no fly list?

Response:

(b)(5); (b)(5) per FBI; (b)(5) per ODNI
[Redacted]

Richardson, Margaret (SMO)

From: Richardson, Margaret (SMO)
Sent: Thursday, December 9, 2010 11:00 AM
To: Watson, Theresa (OAG)
Subject: FW: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --
Attachments: DOJ Patriot Leahy response 120910 FINAL AG signature.doc

Could you prepare this for the AG's signature in the event that Kevin says that is ok?

Thank you,
Margaret

From: Weich, Ron (SMO)
Sent: Thursday, December 09, 2010 10:59 AM
To: Ohlson, Kevin (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Agrast, Mark D. (SMO); Baker, James A. (ODAG); Wiegmann, Brad (NSD); Miller, Matthew A (SMO)
Subject: RE: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --

Here is a version on OAG letterhead and with the AG's signature block, in case we decide to go this route.

From: Weich, Ron (SMO)
Sent: Thursday, December 09, 2010 10:44 AM
To: Ohlson, Kevin (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Agrast, Mark D. (SMO); Baker, James A. (ODAG); Wiegmann, Brad (NSD); Miller, Matthew A (SMO)
Subject: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --
Importance: High

This is the letter I mentioned in the 9:45 meeting. As you can see we transmitted it to the Leahy staff, but they have now asked if it could be signed by the AG rather than me. I recommend that w (b) (5)

. Please advise ASAP.

From: Agrast, Mark D. (SMO)
Sent: Thursday, December 09, 2010 10:26 AM
To: 'Magner, Tara (Judiciary-Dem)'; Park, Chan (Judiciary-Dem)
Cc: Weich, Ron (SMO)
Subject: DOJ letter to Chairman Leahy

I am pleased to attach the letter to Chairman Leahy. As discussed, we would appreciate your letting us know when you plan to share the letter with other offices so we can coordinate with you.

<< File: DOJ PATRIOT Leahy resposne 12092010.pdf >>

Mark David Agrast
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. DEPARTMENT OF JUSTICE

Robert F. Kennedy Main Justice Building
950 Pennsylvania Avenue, N.W., Room 1607
Washington, D.C. 20530-0001
202.514.2141 main (b) (6) direct | 202.514.4482 fax

Email (b) (6)
Classified (b) (6) (b) (6)

Ohlson, Kevin (OAG)

From: Ohlson, Kevin (OAG)
Sent: Thursday, December 9, 2010 11:45 AM
To: Washington, Tracy T (SMO)
Subject: FW: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --
Attachments: DOJ Patriot Leahy response 120910 FINAL AG signature.doc

Can you pls put on letterhead and fix the signature block? Thanks/

From: Weich, Ron (SMO)
Sent: Thursday, December 09, 2010 11:22 AM
To: Ohlson, Kevin (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Agrast, Mark D. (SMO); Baker, James A. (ODAG); Wiegmann, Brad (NSD); Miller, Matthew A (SMO)
Subject: RE: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --

Here's a version without (b) (5)

[REDACTED]

From: Ohlson, Kevin (OAG)
Sent: Thursday, December 09, 2010 11:01 AM
To: Weich, Ron (SMO); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Agrast, Mark D. (SMO); Baker, James A. (ODAG); Wiegmann, Brad (NSD); Miller, Matthew A (SMO)
Subject: RE: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --

Yes, I am confident the Attorney General will sign this letter. Please revise it accordingly, and please take out (b) (5)

[REDACTED]

From: Weich, Ron (SMO)
Sent: Thursday, December 09, 2010 10:44 AM
To: Ohlson, Kevin (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Agrast, Mark D. (SMO); Baker, James A. (ODAG); Wiegmann, Brad (NSD); Miller, Matthew A (SMO)
Subject: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --
Importance: High

Duplicative Material (Document ID: 0.7.10663.30886)

[REDACTED]

Weich, Ron (SMO)

From: Weich, Ron (SMO)
Sent: Thursday, December 9, 2010 1:49 PM
To: Ohlson, Kevin (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Miller, Matthew A (SMO); Agrast, Mark D. (SMO)
Subject: RE: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --
Attachments: DOJ Patriot Leahy response 120910 FINAL AG signature.doc

Corrected version attached.

From: Ohlson, Kevin (OAG)
Sent: Thursday, December 09, 2010 1:00 PM
To: Weich, Ron (SMO); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Miller, Matthew A (SMO); Agrast, Mark D. (SMO)
Subject: Re: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --

The plan is to have OLA correctly revise this letter so that the Attorney General isn't referring to himself in the third person, and then I will present the corrected letter to the AG for his signature.

From: Weich, Ron (SMO)
To: Ohlson, Kevin (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Miller, Matthew A (SMO); Agrast, Mark D. (SMO)
Sent: Thu Dec 09 12:46:14 2010
Subject: FW: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --

Now that we got the Gitmo letter out, what is the plan for having him sign this one before he leaves town? It is also very important and time sensitive.

From: Weich, Ron (SMO)
Sent: Thursday, December 09, 2010 11:22 AM
To: Ohlson, Kevin (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Cc: Agrast, Mark D. (SMO); Baker, James A. (ODAG); Wiegmann, Brad (NSD); Miller, Matthew A (SMO)
Subject: RE: request for AG signature on letter to Chairman Leahy re: PATRIOT Act --

Duplicative Information - See Document ID 0.7.10663.20223



From: Weich, Ron (SMO)
Sent: Thursday, December 09, 2010 10:44 AM

Richardson, Margaret (SMO)

From: Richardson, Margaret (SMO)
Sent: Thursday, December 9, 2010 2:14 PM
To: Watson, Theresa (OAG)
Subject: DOJ Patriot Leahy response 120910 FINAL AG signature (2)
Attachments: DOJ Patriot Leahy response 120910 FINAL AG signature (2).doc

Richardson, Margaret (SMO)

From: Richardson, Margaret (SMO)
Sent: Thursday, December 9, 2010 2:44 PM
To: Weich, Ron (SMO)
Cc: Ohlson, Kevin (OAG); Monaco, Lisa (ODAG); Miller, Matthew A (SMO); Agrast, Mark D. (SMO)
Subject: FW: DOJ Patriot Leahy response 120910 FINAL AG signature (2)
Attachments: Senator Patrick Leahy.Ltr.pdf

[Signed letter is attached.](#)

From: Watson, Theresa (OAG)
Sent: Thursday, December 09, 2010 2:42 PM
To: Richardson, Margaret (SMO)
Subject: RE: DOJ Patriot Leahy response 120910 FINAL AG signature (2)



Office of the Attorney General
Washington, D. C. 20530

December 9, 2010

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

Dear Chairman Leahy:

This responds to your letter of March 17, 2010, which asked the Department of Justice to consider implementing administratively certain enhanced civil liberties protections that were included in S. 1692, the USA PATRIOT Act Sunset Extension Act, as reported by the Senate Judiciary Committee.

In my letter of November 9, 2009, I expressed strong support on behalf of the Department for the bill as reported, which would reauthorize several important Foreign Intelligence Surveillance Act (FISA) authorities while enhancing protections for civil liberties and privacy in the exercise of these essential national security tools.

The bill would reauthorize section 206 of the USA PATRIOT Act, which provides authority for roving surveillance of targets who take steps that thwart FISA surveillance; section 215 of the USA PATRIOT Act, which provides authority to compel production of business records and other tangible things with the approval of the Foreign Intelligence Surveillance Court (the FISA Court); and section 6001 of the Intelligence Reform and Terrorism Prevention Act, which provides authority to target with FISA searches or surveillance non-United States persons who engage in international terrorist activities but are not necessarily associated with an identified terrorist group. Earlier this year, Congress acted to extend the expiring authorities until February 28, 2011. As that date approaches, I strongly urge that Congress again take action to ensure that these provisions remain in force.

Assuming these authorities are reauthorized, the Department has determined that many of the privacy and civil liberties provisions of S. 1692 can be implemented without legislation. Indeed, in a number of instances, we have already taken steps to do so. I am confident that these measures will enhance standards, oversight, and accountability, especially with respect to how information about U.S. persons is retained and disseminated, without sacrificing the operational effectiveness and flexibility needed to protect our citizens from terrorism and facilitate the collection of vital foreign intelligence and counterintelligence information.

The Honorable Patrick J. Leahy
Page Two

National Security Letters

Your letter seeks our response regarding several matters related to National Security Letters (NSLs): notification to recipients of NSLs of their opportunity to contest the nondisclosure requirement; issuance of procedures related to the collection, use and storage of information obtained in response to NSLs; retention of a statement of specific facts that the information sought is relevant to an authorized investigation; and increased public reporting on the use of NSLs.

You will be pleased to know that as of February 2009, all NSLs are required to include a notice that informs recipients of the opportunity to contest the nondisclosure requirement through the government initiated judicial review. In most cases, this notice is automatically generated by the NSL subsystem. Domestic Investigations and Operations Guide (DIOG) § 11.9.3.E. The FBI also will ensure that in any case in which a recipient challenges a nondisclosure order, the recipient is notified when compliance with the order is no longer required. Thus far, there have been only four challenges to the non-disclosure requirement, and in two of the challenges, the FBI permitted the recipient to disclose the fact that an NSL was received. If and when the volume of such requests becomes sufficiently large that solutions beyond "one-off" notifications are required, the FBI will develop appropriate policies and procedures to notify the recipient when non-disclosure is no longer required.

I also am pleased to report that I approved Procedures for the Collection, Use and Storage of Information Derived from National Security Letters on October 1, 2010, and these procedures have been provided to the Judiciary and Intelligence Committees. The FBI's current practice is consistent with the procedures and the FBI is working on formal policy to implement them. In addition, DOJ and ODNI will shortly complete work on a joint report to Congress on NSL "minimization" as required by the PATRIOT Reauthorization Act of 2005.

As to the information retained internally in connection with the issuance of NSLs, it is current policy for the FBI to retain a statement of specific facts showing that the information sought through NSLs is relevant to an authorized investigation. DIOG § 11.9.3.C.

The Department appreciates the desire of the Committee for enhanced public reporting on the use of NSLs. Accordingly, although the FBI cannot provide information regarding subcategories of NSLs in a public setting, it will continue to report publicly the aggregate numbers of NSLs on an annual basis and will evaluate whether any additional information can be publicly reported.

Section 215 Orders

Your letter also raises a number of matters related to section 215 orders. You seek assurances that the government will not rely on the conclusive presumption in section 215 and will present the FISA Court with a complete statement of facts sufficient to show relevance of the tangible things requested to an authorized investigation. It is current FBI practice to provide the Foreign Intelligence Surveillance Court with a complete statement of facts to support issuance of an order. The FBI is reviewing the DIOG to determine whether changes need to be made to reflect this practice. With respect to section 215 records that contain bookseller records, or are from a library and contain personally identifiable information about a patron of the library, we are prepared to require a statement of specific and articulable facts as would have been required under S. 1692, and to notify Congress should it become necessary to change that practice.

You ask the Department to issue policy guidance providing that certifications accompanying applications for section 215 nondisclosure orders must include an appropriately thorough statement of facts that sets forth the need for nondisclosure. I am pleased to report that this is current FBI practice, and the FBI is reviewing the DIOG to determine whether revisions should be made to reflect this practice.

You also ask the Department to institute guidelines to require court-approved minimization procedures for section 215 orders and pen register and trap and trace (PR/TT) devices. Minimization procedures are already required by statute in relation to section 215 orders. 50 USC § 1861(b)(2)(B). The proposal to extend this requirement to PR/TT orders is intended to apply only to certain intelligence collection activities. Procedures governing these operations are currently in effect, having been proposed by the government and approved by the FISA Court.

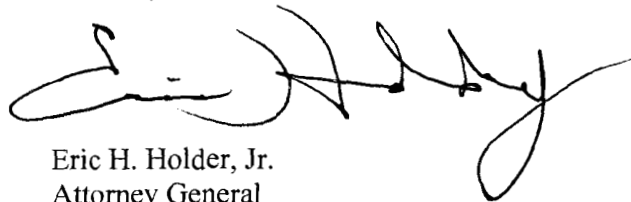
Finally, you ask the Department to consider providing an annual unclassified report on the use of FISA authorities and the impact on privacy of United States persons. I believe that providing greater transparency regarding the U.S. government's exercise of FISA authorities is an important objective, and will show the care taken by officials to implement and comply with constitutional and statutory requirements to protect the privacy of United States persons. Although the Department has concerns that there may be little additional information that can be provided in an unclassified format and that such unclassified information could be unintentionally misleading, we are prepared to work with the committee and our partners in the Intelligence Community to determine whether there is a way to overcome these difficulties and make additional information publicly available regarding the use of these authorities.

Taken together, I believe these measures will advance the goals of S. 1692 by enhancing the privacy and civil liberties our citizens enjoy without compromising our ability to keep our nation safe and secure.

The Honorable Patrick J. Leahy
Page Four

I hope this information is helpful. The Department stands ready to work with Congress to ensure that the expiring FISA authorities are reauthorized in a timely way.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric H. Holder, Jr.", with a large, stylized flourish at the end.

Eric H. Holder, Jr.
Attorney General

cc: Honorable Jeff Sessions
Ranking Republican Member

Richardson, Margaret (SMO)

From: Richardson, Margaret (SMO)
Sent: Thursday, December 9, 2010 2:44 PM
To: Weich, Ron (SMO)
Cc: Ohlson, Kevin (OAG); Monaco, Lisa (ODAG); Miller, Matthew A (SMO); Agrast, Mark D. (SMO)
Subject: FW: DOJ Patriot Leahy response 120910 FINAL AG signature (2)
Attachments: Senator Patrick Leahy.Ltr.pdf

[Signed letter is attached.](#)

From: Watson, Theresa (OAG)
Sent: Thursday, December 09, 2010 2:42 PM
To: Richardson, Margaret (SMO)
Subject: RE: DOJ Patriot Leahy response 120910 FINAL AG signature (2)

Weich, Ron (SMO)

From: Weich, Ron (SMO)
Sent: Thursday, December 9, 2010 6:25 PM
To: Richardson, Margaret (SMO)
Subject: FW: Leahy statement on DOJ PATRIOT letter
Attachments: DOJ PATRIOT Act letter to Chairman Leahy 12092010.pdf

[More.](#)

From: Agrast, Mark D. (SMO)
Sent: Thursday, December 09, 2010 5:45 PM
To: Monaco, Lisa (ODAG); Baker, James A. (ODAG); Wiegmann, Brad (NSD); Ohlson, Kevin (OAG) (b)(6), (7)(C) per FBI (FBI)
Cc: Weich, Ron (SMO) (b)(6), (7)(C) per FBI (FBI); Ruppert, Mary (SMO)
Subject: Leahy statement on DOJ PATRIOT letter

Attached is the signed letter to Sen. Leahy regarding the PATRIOT Act. The Leahy statement responding to the letter is below:

DOJ To Implement Provisions Of Leahy-Authored Patriot Act Reauthorization Proposal

WASHINGTON (Thursday, Dec. 9, 2010) – In a letter sent Thursday to Judiciary Committee Chairman Patrick Leahy (D-Vt.), the U.S. Department of Justice has indicated that it is implementing several key oversight and civil liberties provisions incorporated in legislation authored by Leahy to reauthorize expiring provisions of the USA PATRIOT Act.

In March, Leahy wrote to Attorney General Eric Holder urging the Justice Department to implement oversight provisions and reporting requirements included in the USA PATRIOT Act Sunset Extension Act, which was approved by the Senate Judiciary Committee in October 2009. In November 2009, the Justice Department expressed strong support for the Leahy-authored bill, as reported by the Judiciary Committee. The Attorney General's letter to Leahy, received Thursday, states that many oversight provisions in the Committee-reported bill have been implemented by the Justice Department.

"I am pleased that the Justice Department is implementing many of the important oversight provisions of the USA PATRIOT Act Sunset Extension Act," said Leahy. "I take seriously the Senate's role in conducting oversight. We must remain vigilant to ensure that law enforcement has the necessary tools to protect our national security, without compromising the personal privacy of Americans. I still believe that these important oversight and accountability provisions should be enacted in law, but I appreciate that by implementing key measures in the bill, the Department of Justice has embraced the need for oversight and transparency. I look forward to working with Attorney General Holder to improve and strengthen the privacy protections and tools authorized in the Patriot Act."

"[W]e have determined that many of the privacy and civil liberties provisions of S. 1692 can be implemented without legislation," wrote Holder. "We believe these measures will enhance standards, oversight, and accountability, especially with respect to how information about U.S. persons is retained and disseminated, without sacrificing the operational effectiveness and flexibility needed to protect our citizens from terrorism and facilitate the collection of vital foreign intelligence and counterintelligence information."

In its response to Leahy's letter, the Justice Department indicated that it has:

- Implemented a requirement that, when library or bookseller records are sought via a Section 215 order for

business records, a statement of specific and articulable facts showing relevance to an authorized investigation must be produced;

- Adopted a policy requiring the FBI to retain a statement of facts showing that the information sought through a National Security Letter (NSL) is relevant to an authorized investigation, to facilitate better auditing and accountability;
- Adopted procedures to provide notification to recipients of NSLs of their opportunity to contest any nondisclosure requirement attached to the NSL;
- Agreed to ensure that NSL recipients who challenge nondisclosure orders are notified by the FBI when compliance with such nondisclosure orders are no longer required;
- Adopted Procedures for the Collection, Use and Storage of Information Derived from National Security Letters, which were approved by Attorney General Holder on October 1, 2010;
- Agreed to work with Congress to determine ways to make additional information publicly available regarding the use of FISA authorities.

Leahy also wrote in March to Justice Department Inspector General Glenn Fine requesting that the Office of the Inspector General fulfill several reporting requirements included in the legislation. In June, Fine [sent a letter](#) to Leahy indicating that his office would conduct many of the reviews called for in Leahy's proposed legislation.

Last year, Leahy introduced legislation to reauthorize expiring provisions of the USA PATRIOT Act. A bipartisan majority of the Judiciary Committee [approved the legislation](#) in October, but the legislation was stalled on the floor. In March, the Senate passed a temporary [one-year extension](#) of expiring provisions of the USA PATRIOT Act.

A PDF of Attorney General Holder's letter to Leahy is [available online](#).

#####

Mark David Agrast
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. DEPARTMENT OF JUSTICE
Robert F. Kennedy Main Justice Building
950 Pennsylvania Avenue, N.W., Room 1607
Washington, D.C. 20530-0001
202.514.2141 main (b) (6) direct | 202.514.4482 fax

Emai (b) (6)
Classifie (b) (6) (b) (6)

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 01/06/11
Date Received: 01/06/11
Due Date: 01/06/11 4 pm

Control No.: 110106-25606
ID No.: 452061

From: OLA (M.2) ((112TH CONGRESS))

To: OLP, NSD, OLC, CIV, CRM, EOUSA, FBI, DEA, ATF, OPCL

Subject:

DRAFT LETTER INDICATING THAT ON FEBRUARY 28, 2011, THREE IMPORTANT PROVISIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) ARE SCHEDULED TO EXPIRE. THESE INCLUDE SECTION 207 OF THE USA PATRIOT ACT WHICH PROVIDES AUTHORITY FOR ROVING SURVEILLANCE OF TARGETS WHO TAKE STEPS TO THWART FISA SURVEILLANCE; SECTION 215 OF THE USA PATRIOT ACT WHICH PROVIDES AUTHORITY TO COMPEL PRODUCTION OF BUSINESS RECORDS AND OTHER TANGIBLE THINGS WITH APPROVAL OF THE FISA COURT; AND SECTION 6001 OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT, WHICH PROVIDES THE AUTHORITY TO TARGET WITH FISA SEARCHES AND SURVEILLANCE NON-UNITED STATES PERSONS WHO ENGAGE IN INTERNATIONAL TERRORIST ACTIVITIES BUT ARE NOT NECESSARILY ASSOCIATED WITH AN IDENTIFIED TERRORIST GROUP. INDICATES THAT DOJ IS COMMITTED TO WORKING WITH CONGRESS TO REAUTHORIZE THESE PROVISIONS.

Action/Information:

Signature Level: OLA

Referred To:

Assigned: Action:

OLP, NSD, OLC, CIV, CRM,
EOUSA, FBI, DEA, ATF,
OPCL

01/06/11 COMMENTS DUE TO OLA/SILAS BY 4 PM
01/06/11. CC: OAG, ODAG, OASG,
OLA/AGRAST/SIMPSON/RUPPERT

Remarks:

Comments:

File Comments:

Primary Contact: ADRIEN SILAS, (b) (6)

Silas, Adrien (SMO)

From: Silas, Adrien (SMO)
Sent: Friday, January 7, 2011 3:38 PM
To: Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Luck, Stacey (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG); Libin, Nancy C. (ODAG); Monaco, Lisa (ODAG); Wilkinson, Monty (OAG)
Cc: Wiegmann, Brad (NSD); Calogero, Valerie P. (SMO); Chung, Joo (SMO); Simpson, Tammi (OLA); Ruppert, Mary (SMO); Agrast, Mark D. (SMO); Moncada, Kirsten J (SMO); Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matrina (OLP); Tyrangiel, Elana (SMO (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD (b)(6) per NSD (NSD); Bies, John; Cedarbaum, Jonathan (SMO); Dunbar, Kelly P. (SMO); Forrester, Nate (SMO); Price, Zachary (SMO); Rhee, Jeannie (SMO); Rodriguez, Cristina M. (SMO); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); USAEO-Legislative (USA (b)(6), (7)(C) per FBI (FBI); (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FB (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); Strait, Matthew J. (DEA-US (b)(6) per ATF (b)(6) per ATF (b)(6) per ATF
Subject: M2, FISA Reauth - DOJ/DNI Ltr (Control -25606)
Attachments: M2control.pdf; FISA36.let.doc.docx
Importance: High

Any OAG or ODAG objection to submitting the attached draft joint OAG/DNI letter on reauthorizing FISA provisions to ODNI? The draft is **NOT** ready for signature, as it still requires ODNI approval. We would like to seek ODNI approval today.

1) The materials circulated to

- OLP
- NSD
- OLC
- CIV
- CRM
- EOUSA
- FBI
- DEA
- BATF
- OPCL

2) ODAG (James Baker), NSD (Brad Wiegmann), and OPCL (Valerie Calogero) submitted comments;

3) EOUSA did not respond;

4) As noted above, we would like to provide our draft of the letter to ODNI this afternoon;

5) I have attached the associated documents.

CIV
CRM
EOUSA
FBI
DEA
BATF
OPCL

cc: OAG
ODAG
OASG

with comments due to me by **1:30 p.m. tomorrow**. Please note in your circulating e-mail that all changes tracked in the document are from ODNI, except those specifically marked in the comment section of the document as _New DOJ/OLA edit._ These new edits originated in OLA. Thanks!

(USA) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI); (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI); (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); Strait, Matthew J. (DEA-US) (b)(6) per ATF (b)(6) per ATF (b)(6) per ATF; Calogero, Valerie P. (SMO); Chung, Joo (SMO); Libin, Nancy C. (ODAG); Moncada, Kirsten J (SMO)
Cc: Wilkinson, Monty (OAG); Baker, James A. (ODAG); Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Adiga, Mala (SMO); Greenfeld, Helaine (SMO); Gunn, Currie (SMO); Hauck, Brian (SMO); Hirsch, Sam (SMO); Agrast, Mark D. (SMO); Ruppert, Mary (SMO); Simpson, Tammi (OLA); Silas, Adrien (SMO); Richardson, Margaret (SMO)
Subject: Revised Draft DOJ/ODNI letter re reauthorization of certain provisions of FISA

IF YOU RECEIVED THE FIRST E-MAIL, PLEASE IGNORE. USE THIS ONE.

PLEASE PROVIDE COMMENTS TO ADRIEN SILAS, OLA, NO LATER THAN 1:30 pm 01/12/11.

NOTE: All changes tracked in the document are from ODNI, except those specifically marked in the comment section of the document as “New DOJ/OLA edit.” These new edits originated in OLA.

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 01/06/11
Date Received: 01/06/11
Due Date: 01/12/11 1:30 pm

Control No.: 110106-25606
ID No.: 452061

From: OLA (M.2) ((112TH CONGRESS))

To: OLP, NSD, OLC, CIV, CRM, EOUSA, FBI, DEA, ATF, OPCL

Subject:

DRAFT LETTER INDICATING THAT ON FEBRUARY 28, 2011, THREE IMPORTANT PROVISIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) ARE SCHEDULED TO EXPIRE. THESE INCLUDE SECTION 207 OF THE USA PATRIOT ACT WHICH PROVIDES AUTHORITY FOR ROVING SURVEILLANCE OF TARGETS WHO TAKE STEPS TO THWART FISA SURVEILLANCE; SECTION 215 OF THE USA PATRIOT ACT WHICH PROVIDES AUTHORITY TO COMPEL PRODUCTION OF BUSINESS RECORDS AND OTHER TANGIBLE THINGS WITH APPROVAL OF THE FISA COURT; AND SECTION 6001 OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT, WHICH PROVIDES THE AUTHORITY TO TARGET WITH FISA SEARCHES AND SURVEILLANCE NON-UNITED STATES PERSONS WHO ENGAGE IN INTERNATIONAL TERRORIST ACTIVITIES BUT ARE NOT NECESSARILY ASSOCIATED WITH AN IDENTIFIED TERRORIST GROUP. INDICATES THAT DOJ IS COMMITTED TO WORKING WITH CONGRESS TO REAUTHORIZE THESE PROVISIONS.

Action/Information:

Signature Level: OLA

Referred To:

Assigned: Action:

OLP, NSD, OLC, CIV, CRM,
EOUSA, FBI, DEA, ATF,
OPCL

01/06/11 COMMENTS DUE TO OLA/SILAS BY 4 PM
01/06/11. CC: OAG, ODAG, OASG,
OLA/AGRAST/SIMPSON/RUPPERT

OLP, NSD, OLC, CIV, CRM,
EOUSA, FBI, DEA, ATF,
OPCL

01/11/11 COMMENTS ON REVISED DRAFT LETTER DUE
TO OLA/SILAS BY 1:30 PM 01/12/11.
CC: OAG, ODAG, OASG, OLA/AGRAST/
SIMPSON/RUPPERT

Remarks:

Comments:

File Comments:

Primary Contact: ADRIEN SILAS, (b) (6)

Any ODAG objection to submitting the attached, latest set of DOJ revisions to the most recent draft DOJ/ODNI letter? The draft is **NOT** ready for signature, as it still requires ODNI approval.

1) The materials circulated to

OLP
NSD
OLC
CIV
CRM
EOUSA
FBI
DEA
BATF
OPCL

2) NSD (b)(6) per NSD) submitted comments;

3) EOUSA, the FBI, and OPCL did not respond; CIV did not respond, but by standing arrangement, when CIV does not respond, we go forward without CIV;

4) As noted above, we would like to provide our edits to ODNI this afternoon;

5) I have attached the associated documents.

Silas, Adrien (SMO)

From: Silas, Adrien (SMO)

Sent: Friday, January 28, 2011 10:25 AM

To: Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG)

Cc: Wiegmann, Brad (NSD); Simpson, Tammi (OLA); Ruppert, Mary (SMO); Agrast, Mark D. (SMO); Weich, Ron (SMO); Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matrina (OLP); Tyrangiel, Elana (SMO (b)(6) per NSD (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD (b)(6) per NSD (NSD); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); USAEO-Legislative (USA (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6) per ATF (b)(6) per ATF (b)(6) per ATF (b)(6), (7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); Strait, Matthew J. (DEA-US)

Subject: M2, FISA Reauth - DOJ/DNI Ltr (Control -25678)

Attachments: EHF112-7control.pdf; misc02.doc.docx

Importance: High

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 01/26/11
Date Received: 01/26/11
Due Date: 01/27/11 3 pm

Control No.: 110127-25678
ID No.: 452133

From: OMB (M.2) (LRM-EHF-112-7) ((112TH CONGRESS))
To: OLA

Subject:

DNI/DOJ LETTER ON FISA/PATRIOT ACT EXTENSION (SECTION 206 OF THE USA PATRIOT ACT, WHICH PROVIDES AUTHORITY FOR ROVING SURVEILLANCE OF TARGETS WHO TAKE STEPS THAT MAY THWART FISA SURVEILLANCE; SECTION 215 OF THE USA PATRIOT ACT, WHICH PROVIDES EXPANDED AUTHORITY TO COMPEL PRODUCTION OF BUSINESS RECORDS AND OTHER TANGIBLE THINGS WITH THE APPROVAL OF THE FISA COURT; AND SECTION 6001 OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT, WHICH PROVIDES AUTHORITY UNDER FISA TO TARGET NON-UNITED STATES PERSONS WHO ENGAGE IN INTERNATIONAL TERRORISM OR ACTIVITIES IN PREPARATION THEREFOR, BUT ARE NOT NECESSARILY ASSOCIATED WITH AN IDENTIFIED TERRORIST GROUP)

Action/Information:

Signature Level: OLA

Referred To:

Assigned: Action:

OLA;SILAS

01/27/11 FOR APPROPRIATE ACTION

OLP, NSD, OLC, CIV, CRM,
EOUSA, FBI, DEA, ATF,
OPCL

01/27/11 COMMENTS DUE TO OLA/SILAS BY 3 PM
01/27/11. CC: ODAG, OLA/AGRAST/
SIMPSON/RUPPERT

Remarks:

Comments:

File Comments: PREVIOUS REQUEST REFERRED TO OLP, NSD, OLC, CIV,
CRM, EOUSA, FBI, DEA, ATF, OPCL

Primary Contact: ADRIEN SILAS, (b) (6)

Wilkinson, Monty (OAG)

From: Wilkinson, Monty (OAG)
Sent: Friday, January 28, 2011 1:01 PM
To: Cheung, Denise (OAG); Grindler, Gary (OAG); Richardson, Margaret (SMO)
Subject: Fw: M2, FISA Reauth - DOJ/DNI Ltr (Control -25678)
Attachments: FISA36.let.doc.docx
Importance: High

From: Silas, Adrien (SMO)
Sent: Friday, January 28, 2011 12:48 PM
To: Wilkinson, Monty (OAG)
Cc: Monaco, Lisa (ODAG); Baker, James A. (ODAG); Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Weich, Ron (SMO); Agrast, Mark D. (SMO); Ruppert, Mary (SMO); Wiegmann, Brad (NSD)
Subject: M2, FISA Reauth - DOJ/DNI Ltr (Control -25678)

Just wanted to ensure that you are aware of the attached joint DOJ/ODNI letter on reauthorizing certain provisions of the Foreign Intelligence Surveillance Act. The letter is for signature by the Attorney General. OMB has approved the letter and we are trying to get it to the Congress today. I am working out the logistics of the joint signature with ODNI.

<<FISA36.let.doc.docx>>