

Transcript of Senate Judiciary Committee Hearing on Justice Department Oversight

Hearing Held on May 4, 2011

LEAHY:

Good morning.

The committee holds this oversight hearing today as details continue to emerge about the successful military and intelligence operation that killed Osama bin Laden, the terrorist who we know is responsible for thousands of American deaths in the attacks of September 11, 2001, the October 2000 bombing of the USS Cole, the 1998 embassy bombings in East Africa, the 1993 bombing of the World Trade Center, and so many other attacks around the world.

Nearly 10 years after the murderous attacks of September 11, a measure of justice has been brought for the victims of those criminal acts. Osama bin Laden has paid for his actions against innocent Americans and innocent people around the world. This terrorist, and that's what he was -- a terrorist, a murderer -- perpetuated hate and destruction and death is a fitting end to his reign of terror.

One thing can be said for certain, both President Obama and his national security team never lost sight of the nation's war against terrorism. And today, I welcome back a member of that national security team, welcome back to the committee for the sixth time, Attorney General Holder.

He has, as I said, been a key member of that national security team. His approach to fighting terrorism has been vigilant. He has not excused constitutional excesses out of fear and he, like President Obama, has used our full arsenal to protect and defend the American people.

This week, there should be universal praise for the successful operation against Osama bin Laden and Al Qaida, and those who attacked us on September 11th. But our need for vigilance in response to the continuing threat from terrorism remains. No one doubts that. America will continue to face these threats for a long time to come. We should always act with strength and not out of fear.

I share the commitment of the administration, of Attorney General Holder, to our core constitutional values and I urge all Americans to not only support our president, but all of us in Congress in both parties who work with him to keep America safe. I agree with what the president said at a dinner many of us attended at the White House this week: "It's time to put aside partisanship and join together for the good of the country and all Americans."

I'd like to see the same unity we displayed right after the 9/11 attacks. I remember standing arm in arm on the steps of the Capitol, Republicans and Democrats alike, the support we showed for then- President George W. Bush and others in a common goal to stop terrorism. And I think to help the administration, the Senate must make sure that its full national security team is in place.

I believe the Senate should confirm Deputy Attorney General Jim Cole's nomination without further delay. It's a key national security nomination that's been held up too long. We should move forward with our consideration of the confirmation of Lisa Monaco to lead the National Security Division at the Justice Department. Her nomination is on the committee's agenda this week, tomorrow, and it should not be delayed. I would like to see it go through quickly and get passed by the Senate.

I appreciate Attorney General Holder's consistent support of our efforts to reauthorize the expiring the provisions of the USA Patriot Act and to improve them by increasing accountability. He has said repeatedly that legislation before the Senate, which we had negotiated with the administration, poses no operational concerns.

And turning to other aspects of the mission of Justice Department, I'm heartened by the important work the department continues to do to fight the scourge of fraud, which has harmed so many hard-working Americans and which also contributed to our current economic crisis. Senator Grassley and I worked together in the last Congress to write and pass the Fraud Enforcement Recovery Act that gave fraud investigators and prosecutors needed tools, and making use of these new tools is extremely important.

LEAHY:

I hope the -- I hope the department will address the problem as aggressively as possible, especially with the ongoing reports about inaccurate, forged or fraudulent documents in the housing foreclosure process. And more recently, the attorney general has announced formation of a new working group to tackle the problem of fraud related to oil and gas prices. These costs are hurting our economy. I want to make sure that we are facing it the way we should.

I have a number of other areas which we will -- I'll put in the record, so we can continue. I want to reauthorize the Violence against Women Act, the Trafficking in Victims Protection Act.

And I thank the attorney general for being here and I yield to Senator Grassley.

GRASSLEY:

Yes. Thank you, Mr. Chairman, for holding this oversight hearing. It's been over a year since this committee has held an oversight hearing with the attorney general so, of course, there's much ground to be covered.

In that intervening year, many developments at the Justice Department have raised serious questions about whether the department is putting politics before the interests of the American people.

These are serious issues, and I plan to ask a number of questions along that line.

I'm extremely disappointed in the Justice Department's response to my inquiry into the Bureau of Alcohol, Tobacco and Firearms. I sent a letter in January about allegations from whistleblowers that our government was allowing guns to be illegally smuggled to Mexico.

The department claimed the whistleblower allegations were false and that, quote, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."

I personally expressed my concern to the attorney general about the accuracy of the department's replies in our telephone conversation just this Monday.

So I was stunned that just a few hours after our conversation, the department sent another letter repeating the denial, in slightly different words.

According to Monday's letter, quote, "ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico," end of quote.

It is particularly disturbing that the department would renew its denial at this late date in light of the growing evidence in support of the allegations. Documents and witness testimony show that the ATF (sic) allowed the sale of semi-automatic weapons to many straw purchasers, even after it knew that the guns they previously purchased were recovered in Mexico.

Worst of all, on December 15th, 2010, Border Patrol agent Brian Terry was killed in an incident at the border where two of these weapons that the ATF knowingly allowed to be sold to criminals were found at the crime scene.

At best, the ATF was careless in authorizing the sale of thousands of guns to straw purchasers. At worst, our own government knowingly participated in arming criminals, drug cartels and those who later killed federal agents.

The department argues that the congressional investigation of these allegations threaten the ongoing criminal prosecutions of straw purchasers. Yet, the department and the ATF chose to wait and watch those same straw purchasers do business for over a year before charging them with any criminal conduct. It was only after the death of Terry that the straw purchasers were finally charged.

I take exception to the notion that Congress must hold off on an investigation on the grounds that discovering the truth could hinder prosecutions. The goal of a trial is to search for truth.

If our system of justice works that way -- it should -- as it should, the department cannot ultimately prevent the truth from coming to light.

Congress should not allow its fact-finding efforts to be stonewalled, just because the details might be embarrassing to certain officials in the department.

The conduct in question by both ATF and the department is serious. It may have led to the death of at least one federal agent and countless other crimes in U.S. and Mexico.

The department should not stonewall Congress or seek to intimidate whistleblowers or other potential witnesses in congressional proceedings. This cannot simply be swept under the rug.

I plan to continue my work with the help of Congressman Issa and get to the bottom of who signed off on this operation that failed so tragically.

In addition to the AFT (sic) matter, I want to discuss leaks of classified information. Attorney General Holder has publicly stated that, quote, "Unauthorized leaks of classified and other sensitive information are a real threat to our national security." Continuing to quote: "To the extent that we can find anyone -- anybody -- involved in breaking American law who has put at risk the assets and the people that I have described, they will be held responsible; they will be held accountable," end of quote.

Unfortunately, these statements do not appear to represent the realities at the department when it comes to prosecuting those who leaked classified information.

Just this week it was reported in the press that the department had dropped the prosecution of former Justice attorney Thomas Tamm, who admitted to leaking classified national security information to the New York Times.

I am concerned that the decision not to prosecute anyone related to this specific leak may indicate a reluctance to enforce the law. Leaks of classified information threaten the lives of our agents and allies in the field. They also threaten the integrity of our government and especially in foreign relations conduct.

I want to ask the attorney general about this decision not to prosecute one of the department's own, because it is starting to look like there may be a double standard for leakers at the department.

I would also like to discuss what appears to be a new failed I.T. procurement at the department. The integrated wireless network, IWN, was recently suspended by the Department of Justice, and it appears that the project will end without completing its original goal to integrate the wireless radios for all federal law enforcement agencies.

I'm concerned that this program is starting to look like a lot of other failed I.T. programs at the department, hundreds of millions of dollars -- of taxpayers' dollars with nothing to show for it.

I'm glad that the attorney general's here so we can discuss these things.

Thank you, Mr. Chairman.

LEAHY:

Thank you very much.

And welcome back, Attorney General Holder. And I apologize for the nosebleed.

I apologize to Senator Grassley in -- in leaving.

And I'm ready to hear you. It was not in anticipation of something explosive from your testimony, Attorney General, that gave me the nosebleed. I think it was the dry air.

Go ahead, please.

HOLDER:

Well, good morning, Chairman Leahy, Ranking Member Grassley and other distinguished members of the committee. It's a privilege to appear before you today again to discuss the priorities and the accomplishments of the United States Department of Justice.

Throughout my tenure as attorney general, I've had the chance to work closely with this committee to carry out our most important duty, and that is protecting the American people.

Today I'm pleased to report that the Justice Department's effort to fulfill this solemn obligation have never been stronger. Three days ago, thanks to many dedicated military and civilian leaders, intelligence and law enforcement officers, diplomats and policy-makers, investigators, prosecutors and counterterrorism experts, the decade-long manhunt for Osama bin Laden came to a successful end.

This historic achievement was a tremendous step forward in attaining justice for the nearly 3,000 innocent Americans who were murdered on September the 11th, 2001.

And I hope it will inspire a renewed commitment to collaboration across party lines, branches of responsibility and agencies so that we can effectively address the most pressing challenges facing the American people.

At the Justice Department, we are determined to build on the extraordinary record of progress that has been established over the last two years in meeting our responsibility to those who we serve.

We have thwarted potential terror attacks and charged more defendants with the most serious terror-related offenses than in any similar period in our history.

At the same time, and despite very significant budget constraints, we have strengthened our operations and advanced our traditional missions.

We have filed a record number of criminal civil rights cases and secured a record amount of False Claims Act recoveries. We have played a leading role in responding to the largest oil spill in America's history, and worked to ensure that taxpayers do not foot the bill for its cleanup.

We've also spearheaded the efforts of the interagency Financial Fraud Enforcement Task Force and successfully executed the largest financial and health care fraud takedowns on record, and the biggest fraud prosecution -- bank fraud prosecution in a generation.

Now these are historic achievements, but we have more to do. Going forward, our efforts will focus on four specific areas.

First of all, our national security workload will continue. Despite recent successes, our fight against terrorist threats is far from over. Already, I have ordered the department's prosecutors and law enforcement agencies to be mindful that bin Laden's death could result in retaliatory attacks.

Now, more than ever, we need access to the crucial authorities in the Patriot Act, and I call on Congress to reauthorize them for a substantial period of time before they expire at the end of this month.

Second, we will protect Americans from violent crimes. We will continue to prosecute federal criminal law violations aggressively, but, in addition, we will implement research-based crime prevention strategies to combat gun, gang and drug-fueled violence.

We will provide support to young people who need our help in avoiding lives of crime and to those who've served their time and are struggling to rejoin their communities.

And we will strengthen relationships with our federal, state, local and tribal law enforcement partners.

We also will increase support for law enforcement officers and work to reverse the alarming recent increase in line-of-duty officer fatalities.

Third, we will protect Americans from financial fraud through our highly effective task force and through other outreach and prosecutorial initiatives. And we'll continue to take pro-active steps, like the recent launch of the Oil and Gas Price Fraud Working Group, to safeguard consumers.

Finally, we will protect the most vulnerable among us -- our children, the elderly, victims of hate crimes, human trafficking and exploitation, and we'll enforce our civil rights laws to guarantee that the rights of all Americans are upheld.

Now, to achieve these goals, I need my full team in place. I urge you to confirm the highly qualified individuals whom President Obama has nominated to serve alongside me in leadership roles at the department. In particular, I hope the Senate will promptly confirm Jim Cole, whose nomination to serve as deputy attorney general has been pending for a full year.

Finally, we need your help in ensuring the effective administration of justice. Today, our nation's court system is in a state of crisis, with more than 10 percent of federal judgeships sitting vacant.

If the Senate maintains the confirmation pace set during the last two years, the result will be a federal judicial system stressed to the breaking point, with litigants waiting longer and longer for their day in court. I urge the Senate to act without delay on all outstanding judicial nominations.

As always, I look forward to working with you to address these challenges and to advance our shared priorities. And I'd be more than glad to respond to any questions that you might have.

LEAHY:

Well, thank you very much, attorney general.

And as you know, this committee favorably reported S. 193, the USA PATRIOT Act Sunset Extension Act, in March, with a bipartisan vote. You've previously said you think the bill strikes an appropriate balance to the (inaudible) operational concerns for the department.

Would you agree that this bill is the product of careful negotiations between the Department of Justice, the intelligence community and this committee?

HOLDER:

Yes, I would agree. And as I indicated in my opening statement, I think it is really critical that that bill become law as quickly as possible. We don't want to have the uncertainty that we have had over the recent past where we have had to come back for extensions of the Patriot Act that do not last long enough. We look for a reauthorization for a substantial-enough period in order to provide certainty and predictability for the people who will have to enforce those very important provisions of the act.

LEAHY:

Would three years be considered substantial?

HOLDER:

Three years to me sounds substantial. I'm interested in getting...

LEAHY:

A lot better than three months.

HOLDER:

A lot better than three months. And I'm also trying to get to 60, I guess, in this body and I guess 217 or 218, whatever it is in the other body. So whatever we can get to get to a substantial period would be appreciated.

LEAHY:

Thank you.

We've talked before about the fact of that American intellectual property is a major driver of our economy and job creation. At the same time, if you steal that intellectual property, it hurts us. And also we're finding more and more that when the intellectual property is stolen, it's actually financing major criminal enterprises.

So I applaud the work you've done in conjunction with Homeland Security to set as a priority I.P. enforcement, including reconstituting the I.P. task force within the department. We know that the theft of intellectual property, especially by rogue websites, is something we, both Republicans and Democrats on this committee, have tried to stop.

Can you work with us on this? Because -- and do you agree that this is a major problem?

HOLDER:

This is a -- a very, very substantial problem.

LEAHY:

I was concerned, and I know Senator Franken has expressed his concern about recent reports of Apple iPhone and Google Android phone and other mobile applications may collect and store and track American consumers' location information without their consent. Those raise privacy rights and security issues.

Last month, The Wall Street Journal reported that federal prosecutors in New Jersey are investigating whether certain smartphone applications may have violated federal computer fraud laws because the applications obtain or transmit user information without the proper disclosure.

I realize if you've got an ongoing criminal investigation you can't talk about that, but can you tell us at least in general what steps the department is taking on this issue?

HOLDER:

Well, at this point...

LEAHY:

And Senator Franken and others have raised this issue, and I'm curious.

HOLDER:

I guess I should first disclose that I am a satisfied owner of both an iPod, iPad, and an iPhone. But having said that, I understand the committee will be holding hearings in a couple of weeks with regard to this issue. It is something that we will follow, and on the basis of that and other things that we are looking at, determine if there is appropriate action that we can be taking.

LEAHY:

Some have suggested the important digital privacy protections we put in place with ECPA, the Electronic Communications Privacy Act, may not apply to some of the, or many of the mobile applications currently available. Will your department work with us in the committee on reform of ECBA?

HOLDER:

Yes, we certainly want to do that. We want to make sure that we strike an appropriate balance between the legitimate privacy interests that that bill seeks to protect, and the law enforcement interest that we have in being able to obtain information in order to protect the American people and to enforce our federal criminal laws.

LEAHY:

As you know, I've taken, and I realize I'm switching to a number of different areas, but I now we're going to have a series of votes, so we may not get to second rounds, but let's go to Khalid Sheikh Mohammed. I've expressed my concern that trials, he and others, are going to be conducted before a military commission at Guantanamo Bay, and not before a federal jury in American courtrooms.

I expressed this, seeing the hundreds of convictions in federal courtrooms on terrorist issues. I've seen five or six military tribunals, and I -- I've seen a very successful use of our federal courtrooms. And as you and I are both former prosecutors, and are aware of that.

So I'm going to ask you the same question, and actually it's the exact same question I asked Attorney General Mukasey in 2008. As the chief law enforcement officer, what's been done to ensure the victims of 9/11 -- the victims

of 9/11 -- are treated with respect and dignity? And what accommodations will be made to protect their rights, given the decision to proceed before a military tribunal in Guantanamo?

The reason I asked the former attorney general this, I wanted to make sure there was going to be transparency and access to all aspects of the trials as there would be if it was in a federal court in the United States.

HOLDER:

Well, the Department of Defense will take the lead in the managing of those proceedings. I think, however, that there will be a sensitivity to the needs, the wants of people who are victims of 9/11, relatives of victims of 9/11. Transparency, I think, will be something that will be a touchstone. The ability for members in that community to be able to observe the proceedings is something that I think is paramount.

So as I said, I think that working with the Department of Defense, we can ensure that those proceedings are held in an appropriate way.

LEAHY:

And we worked very hard. In fact, I helped put together the procedure that we could do it during one of our major terrorist activities here in the United States, the Timothy McVeigh bombing in Oklahoma City. I worked very closely with the then-Department of Justice and others so that the victims were able to observe the trial, even though it was from a different location. And I thought that was very, very important that they be allowed to.

And lastly, I talked about the Leahy-Grassley Fraud Enforcement Recovery Act, which was one of the first bills that the president signed into law. In the coming weeks, Senator Grassley and I plan to introduce a new bill to build on the success of the Fraud Enforcement Recovery Act by reinvesting a small part of the penalties collected back into more fraud investigation prosecution.

Do you -- do you agree that if we can do this, we can not only deter conduct which hurts Americans, but we can pay for it at the same time?

HOLDER:

I totally agree. The ability that we have to deter criminals in that area, to protect the American people from fraudsters, I think is almost directly related to the funds that we have, the number of people who we can deploy. We have a proven record, certainly, over the last two years, and even before that, shows that we are capable of doing great things if we have the resources.

And to the extent that you and Senator Grassley can help us in that regard, I think that would be much appreciated.

LEAHY:

Thank you.

I yield to Senator Grassley.

GRASSLEY:

(inaudible) opening statement about the ATF, so I'm not going to repeat that.

But on March the 9th, 2011, one month after your department's first denial of allegations that I have described, your deputy attorney general issued a directive stating this, and I'd like to have you listen to this quote, and then I've got

questions around this quote. There's something ironic about it, quote: "We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate actions to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation," end of quote.

So I have three short questions here. I'm going to state them all at once because they kind of go together.

If the ATF, as the agency keeps telling us, did not knowingly allow guns into the hands of traffickers, then why was that directive even necessary? Why issue a memo telling people to stop doing something unless you think maybe they have been doing it? Doesn't that memo show that there was enough substance to what the whistleblower allegations were to me and even on television, that the policy needed to be clarified?

HOLDER:

Well, the memo was issued because the allegations had been raised. And I take those allegations seriously. It's why I sent the material to the inspector general for an inspection. The possibility that that happened was sufficient, I thought, to have clarification sent to the field that we should never allow guns in an uncontrolled fashion to cross the border, or actually to leave any investigation in an uncontrolled way.

And that was the purpose of the memo. I frankly don't know. That's what the investigation, I think, will -- will tell us. As I said, it's something that we take very seriously and I think the proof of that is the fact that I issued that memo, or the deputy attorney general issued that memo, and in addition to that, we've referred the matter to the inspector general for inspection.

GRASSLEY:

Well, do you believe that that memo is consistent with all the previous Justice Department policies? Or does it represent a change in policy?

HOLDER:

No, I don't think it represents a change in policy. But I certainly wanted to make sure that people in the field understood that that is in fact the policy, and to the extent that there was any confusion, I wanted to make sure that there was none; that that is in fact the policy of the Department of Justice. It is the policy that I expect to be enforced.

GRASSLEY:

One more series of questions on this point and then I'll go on. Does this policy only affect guns that law enforcement actually knows will go to Mexico? What about guns that are likely to go to bandits operating near the border, like those captured in Agent Terry's murder scene? What about guns that are likely to go to other criminals operating in border towns on this side of the border? Should agents let those guns go even if they have a chance to intercept them earlier?

HOLDER:

That's a good question, Senator. And no, the -- as I just indicated, my view is that, and the policy of the department is that guns should not be allowed to be -- to travel in that uncontrolled fashion, whether crossing the border or this happens within the confines of the United States. Uncontrolled distribution of guns connected to any kind of investigation that we are doing is something that is not consistent with the policies that I (inaudible) followed in the Department of Justice.

GRASSLEY:

OK.

I have a chart that's been prepared -- and all the members have it. And I assume that the Attorney General has it, right?

(CROSSTALK)

GRASSLEY:

Yeah.

By the Bureau of Alcohol, Tobacco and Firearms -- made in March of this year. It shows 1,318 weapons purchased by 15 suspects after they had been identified as targets of an investigation.

All 15 targets were later indicted on related charges. However, the indictments came only after Agent Brian Terry was killed and two guns from this case were found at the scene of a the murder.

I would ask unanimous consent to put that in the record.

LEAHY:

Without objection.

GRASSLEY:

The Justice Department cannot account for the current location of these 1,318 weapons, is that right?

HOLDER:

Senator, this is the first time I've seen this chart. I'm not in a position at this point to answer that question. We can certainly look at the chart and get -- get back to you. But -- I don't know.

GRASSLEY:

OK.

Let me ask you this question even though you haven't seen the chart. If the agents had been allowed to intervene sooner, couldn't they have prevented this 1,318 guns from getting into the hands of criminals.

HOLDER:

Well, again, as I said, it is the policy of the department not to allow guns to get into the hands of criminals, irrespective of the border.

Now, if that means they got into the hands of criminals and were then arrested immediately thereafter and there was a prevention of the use of the weapon by the -- by the criminal, that's one thing. If they were simply transitioned to a -- a criminal and then they were lost track of, that is something that is not -- not acceptable.

I (inaudible) I have to look at these numbers and the cases...

(CROSSTALK)

HOLDER:

... to be able to answer the question in a more intelligent fashion.

GRASSLEY:

... three -- three questions and I'd appreciate an answer in writing.

HOLDER:

Sure.

GRASSLEY:

OK.

Last week, it was reported that the Justice Department had notified a former department attorney, Thomas Tamm, that it was no longer investigating him for leaking classified information to the New York Times. This announcement surprised many because Tamm had publicly admitted he revealed classified information in a series of phone calls with reporters of the New York Times.

This information ultimately was printed and revealed the existence of the terrorist surveillance program.

Attorney General Holder, you have stated publicly that, quote, "to the extent that we can find anybody who was involved in breaking the law, they will be held accountable."

Did you personally sign off on the decision not to prosecute Mr. Tamm?

HOLDER:

No, I did not. The Tamm declaration was done on the merits by career professionals within the -- within the Department of Justice.

These kinds of declamations happen all the time without the involvement of me, the deputy attorney general, even the assistant attorney general for the Criminal Division.

GRASSLEY:

Can I answer (sic) one last question? My time's up.

LEAHY:

(inaudible)

GRASSLEY:

Why -- why would the department fail to prosecute someone who admits knowingly revealing classified information?

HOLDER:

There are a variety of reasons why a case might be declined. I can't get into the specifics of any particular case. That is generally not the policy of the department.

I will note that when it comes to cases that involve national security, sometimes there is a balancing that has to be done -- I'm not talking about the Tamm case specifically -- sometimes there has to be a balancing that is done between what our national security interests are and what might be gained by prosecuting a particular individual.

But I can say that with regard to this matter, the decision was made on the merits by career professionals without any notion of a double standard.

GRASSLEY:

Then let me give my judgment of it, and I'll end.

Just seems simply that when somebody admits that they broke the law in something as closely related to national security as that program was, it just seems to me that it sends a very, very bad signal that leaking is OK, and you ain't going to get prosecuted for it.

Thank you, Mr. Chairman.

LEAHY:

Thank you.

Senator Kohl?

KOHL:

Thank you, Mr. Chairman.

Attorney General Holder, before I turn to my questions, I'd like to thank you for the personal attention you devoted to my concerns about a change in DEA policy that resulted in nursing home residents not being able to access pain medication in emergency situations.

Using the legislative guidance you provided, we are working on a bill and plan to introduce it soon. And I look forward to continuing to work with you on this important issue.

Mr. Attorney General, as we know, everybody all across the country is (inaudible) upset by the rising gas prices which are now surpassing \$4 a gallon in many states, including Wisconsin, and have nearly doubled in two years.

While we know that the rising gas prices has caused many -- has many causes, one important cause is the actions of the OPEC oil cartel which limits supply in order to maintain a high price.

If the nations of OPEC were private companies such conduct would be nothing more naked price-fixing, illegal under the most fundamental principles of antitrust law.

And that is why I've introduced by NOPEC legislation designed to make nations that participate in OPEC price-fixing liable under U.S. antitrust law.

This bipartisan legislation passed the Senate with 70 votes in 2007 and last month passed the Judiciary Committee 14-1.

Now, I recognize that I've proposed my bill now for many years, but doesn't the fact that gas prices are now over \$4 a gallon make my bill more necessary than ever.

Do you agree with me that the passage of this bill would give the Justice Department an important tool to combat price-fixing activity of the OPEC cartel?

Why should OPEC be treated differently than any other price-fixing cartel that the Justice Department has taken action against under antitrust laws?

HOLDER:

Well, always eager to work with Congress to try to protect the American consumers. We have started a task force to look at this whole question of gas prices to see if there has been an appropriate market manipulation.

There are market forces that are at work, but we are looking to see if in fact there are things that were done inappropriately.

With regard to the bill that you have -- that has been introduced and that you are supporting (inaudible) want to look at the bill. And I don't think the administration has taken a position on that. But I think we want to do all the things that we possibly can in conjunction with the members of this committee and with Congress to try to protect the American consumers.

KOHL:

Well -- I appreciate your answer and, you know, we understand the sensitivity and the politics of the issue. But OPEC -- I think the 13 nations of OPEC -- as you know, they get together several times a year and limit supply. This is a violation of antitrust law. And I'm sure you're familiar with that and you know that.

Why would you not -- and -- and that's the basis of our legislation. It's nothing more complicated than that.

Can you give us a more definitive answer as to whether or not you would support a bill that would make it illegal for nations to get together and limit supply?

HOLDER:

Well, again, I'm not aware of an administration position here, but I think among the things that we'd have to consider would be the foreign policy consequences of -- of such a bill, what the impact of the passage of such a bill or any enforcement action taken by the Department of Justice (inaudible) bill were passed, what the foreign policy implications would be.

And I -- I don't mean to in any way, you know, indicate that your concern and the remedy that you are advancing to deal with that concern is something that should not be taken seriously, and may in fact be something that the administration could support. I just am not aware of an administration position at this point.

I would bet that we'd want to hear from Secretary Clinton, among other people, with regard to what position the administration would take.

KOHL:

Now, passage of this bill would not require that the administration -- to take any action at all if the administration determines that bringing an antitrust enforcement action under NOPEC would risk harming our foreign relations that it could simply decide not to bring such an action.

All our bill does is give the Justice Department a tool to use at its discretion, and after consultation with other parts of the administration.

So on the face of it, what's wrong with that?

HOLDER:

Well, I'm always looking for more enforcement tools, I will tell you that.

And I'm not a person -- an (ph) attorney general who will say no to a concern to a senator with whom I've worked a great deal and, I think, successfully in a number of areas -- to say no to you.

My only concern would be that I have other people who are -- serve with me in the Cabinet -- I'm not a boss -- who I have to answer to in the executive branch. And I wouldn't want to get too far out there and indicate where we stand with regard to this legislation.

But I will say that it is certainly something that we will -- I will raise, will talk about. And I'll get back to you as quickly as I can with regard to where we stand on that.

KOHL:

All right. Turning to another issue. We're all proud of the extraordinary efforts to finally bring Osama bin Laden to justice. And, of course, we congratulate all of those involved.

Attorney General Holder, we all appreciate the Justice Department's highest priority has been and will remain the steadfast and vigilant protection of national security.

We know that the entire national security operation is working tirelessly around the clock to keep Americans safe, but after Sunday's dramatic events and the demise of bin Laden, we're living in a different environment today.

CIA Director Panetta has warned that terrorists, and I quote, "will almost certainly attempt to avenge bin Laden's death."

What have you done to step your counterterrorism efforts? Have you considered whether the department needs to make any changes or adjustments, major or more nuanced or subtle, to your counterterrorism strategy and investigations?

HOLDER:

I think that's actually an excellent point, Senator. And one of the concerns that we have, as I indicated in my opening remarks, is what -- what are we looking at in the short term if there are going to be retaliatory attempts or attacks as a result of bin Laden's death.

I had a conference call with all of the United States Attorneys, I believe on -- on Tuesday -- maybe on Monday, going through with them (inaudible) steps that we wanted them to take, making sure that they as well as (inaudible) federal investigative agencies were on their toes and being mindful of the fact that this is a difficult time for this nation after the death of bin Laden.

And so I think that we will ultimately be more safe as a result of his death, but in the short term I think we have some serious concerns that -- that we have to be ready to address.

KOHL:

My last question. Mr. Attorney General, the number one concern that I have heard from small rural police and sheriff departments in my state -- I'm sure also in other states -- is about maintaining their access to the regional information sharing systems program -- otherwise known as RISS.

RISS is a nationwide program that supports state, local and tribal law enforcement with information sharing services. Equipment sharing, training, and investigative and analytical support is one of the few federally funded programs that is able to reach small, rural law enforcement agencies.

KOHL:

This concern is not unique to my state. Law enforcement officers all across the country rely on the vital service that this program provides to keep their community safe. However, in his budget request the budget called for RISS to be funded at \$45 million, which is a cut of nearly 50 percent from last year.

Why does the administration request us to severely cut a program that offers small rural agencies a low-cost solution to their investigative and communications needs that help them to keep our communities safe -- a 50 percent cut?

HOLDER:

Well, we are doing what we can given the budget situation that we face, and we've had to make some difficult choices. To the extent that we can support this program, which, I think you're right, has worked effectively in the past, we will continue to do so.

We had to make, as I said, some tough budgetary decisions, and to the extent that this program is cut, we will try to find other ways in which we can support our federal, state -- our state and local and tribal law enforcement partners who have participated in this program.

It is, as I said, regrettable that we've had to make these tough decisions. We have, however, tried to make sure that we have maintained an overall support for our state, local and tribal partners, and there are a whole host of other things that we do in the department, both budgetary and programmatic, to support -- to support them.

KOHL:

Thank you. I'd like to continue to lobby you on restoring some of that cut.

Thank you so much.

Thank you, Mr. Chairman.

LEAHY:

Thank you.

Senator Sessions?

SESSIONS:

Thank you, Mr. Chairman.

Attorney General Holder, I've got a number of questions and I've just raise with you that I care about deeply.

First, I would just respond to your comment about money and resources being the critical thing in prosecuting fraud. I don't believe that's the critical thing. I think it's leadership from the top.

I believe that we're going to be in a tight budget situation. You're not going to receive extra money. And every business that I know of is reviewing their entire structure, eliminating unproductive middle-level management and putting people in the courtroom to prosecute cases.

I suggest that you need to do an aggressive job in that to get the taxpayers the kind of return that they're entitled to.

And with regard to the Tamm case and the New York Times, I'd like to you to give us all the information that you feel like you can give us concerning the failure to prosecute that case. I know the New York Times has been a fan of your terrorism policy and the president's terrorism policy. I'm not in agreement with that. So it causes me concern that what appears to be an admission of wrongdoing is not prosecuted.

With regard to the terrorist situation, I've asked you previously and I've asked Director Mueller about what the -- how to handle people who are arrested who are terrorists. And he said the decision was above his pay grade, Director Mueller said. I guess it's not above yours.

But essentially I want to ask, is it still the policy of the Department of Justice that a terrorist arrested would presume to be tried in civilian court?

HOLDER:

I think what we'll do, we make a determination on a case-by-case basis, as I did on the same day that I announced that the Khalid Sheikh Mohammed matter was gonna go into the civilian courts. I sent a number of cases to the military commissions. And we will continue to do that.

I do think...

SESSIONS:

Is there a presumption that it would go into a civilian court? That was the policy that the committee you put together recommended, unwisely, I think.

HOLDER:

Well, that's what the president indicated in his Archive speech, but it does not necessarily mean that we're not gonna make use of, as I have made use of, the military (inaudible).

SESSIONS:

Well, isn't it a fact, if you're presumptively to try an individual who's a terrorist planning or plotting or attempting an attack on the United States, that if you presumptively are going to move them into civilian court, they're entitled to Miranda warnings within a few minutes of arrest, they're entitled to the appointment of a lawyer, entitled to be brought publicly before a civilian magistrate, entitled to pre-trial discovery, entitled to a speedy trial?

And isn't that -- cannot -- can that not be a detriment to interrogating that individual over a period of time and obtaining information that could protect Americans from further attack?

HOLDER:

Well, I think if one looks at the way in which the civilian system has worked in the past, we have certainly had an ability to convict hundreds of terrorists. We have gotten actionable intelligence from people who were tried ultimately in the civilian system. We have modified how Miranda should be viewed. Guidelines have gone out to the field with regard to the...

SESSIONS:

Doesn't Miranda still have to be given within a matter of hours of arrest at least? And, frankly, I'm not sure what legal authority you have to delay it as long as Director Mueller indicated they may delay it. I don't think there's any court that has held that.

But regardless of that, you would have to provide Miranda within a short period of time and the -- appoint a lawyer, bring them before a court, therefore revealing the fact that a terrorist may be arrested, allowing other terrorists to be knowledgeable of that and to perhaps escape. There are many complications that arise from treating these cases as a normal civilian case, are there are?

HOLDER:

Well, there are, but let me share one concrete example with you with regard to the Miranda issue, with regard to the Shahzad case, a case that was successfully concluded in the civilian system. He pled guilty. He's now serving an extended period of time in jail.

The U.S. attorney and I talked on the evening that he was apprehended and made a decision that we would not give him Miranda warnings at all -- at all.

SESSIONS:

Well, then, you made a decision...

(CROSSTALK)

LEAHY:

... answer. I think he's entitled to finish his answer.

SESSIONS:

OK.

HOLDER:

And the decision was made so that we could get whatever intelligence that we could get from him while at the same time deciding that we would simply make the case without any statements from him.

We successfully gathered significant intelligence from him, and we successfully concluded the civilian trial. It was a civilian matter, it was not a trial, a civilian matter.

SESSIONS:

Mr. Attorney General, the problem is that there may be other people involved in this case, not just that individual, other people planning to attack American citizens and kill them that very moment. To put yourself in a situation

where you are making a decision solely on whether you think you have enough evidence to convict him, even if he makes an admission, I think is a very problematic policy.

HOLDER:

Well, actually...

SESSIONS:

I guess my question to you fundamentally is, every law enforcement officer involved out there, every military person involved out there needs to know what the policy is.

So is the policy that they would be treated as a -- presumptively be tried in civilian court?

HOLDER:

As I said, the Archive speech that the president made was that there is a presumption -- it is not an irrebuttable presumption -- that cases go to the civilian court. And with regard to the Miranda issue, I think we have demonstrated hundreds of times, hundreds of times, that we can get actionable intelligence while at the same time prosecuting and putting people in jail for really extended periods of time.

SESSIONS:

Well, I don't think it can be denied that individuals can be held who are attempting to attack the United States in military custody, and they can be detained without trial, as prisoners of war, and they can be interrogated over a period of months or years, without Miranda warnings and without lawyers.

And if you decide at some point to try them in civilian court, they can then be tried in civilian court. It makes no sense to me whatsoever that the presumption would be anything other than a terrorist would be tried in military commissions, and it gives you the option sometime later, if you choose, to try them in the civilian court.

With regard to the Defense of Marriage Act, my time is about up, I would just conclude on that to say I really -- well, I want to ask you one question, briefly.

With regard to the fact that 11 circuits have held that the sexual orientation issue is to be decided based on rational basis, whether those laws meet a rational basis test, when you now decided that with regard to DOMA it requires a higher scrutiny, a strict scrutiny, apparently, are you taking the position that every one of those cases involving other, different aspects of sexual orientation also should be judged by the higher strict scrutiny standard?

HOLDER:

Well, many of those cases came before some significant events in the Supreme Court, certainly the court decision that held that criminalizing homosexual conduct was unconstitutional. I mean, if you look at that from that point on, there have been a number of changes, both in what the court has said, but also with regard to how our society has looked at certain things that Congress has done. Congress has repealed the military's "don't ask/don't tell" policy. There have been lower courts that have held that DOMA...

SESSIONS:

What has that got to do with the Constitution and the right and the standard?

HOLDER:

Well, as I was gonna say, there are lower courts that have held that DOMA itself is unconstitutional. Given the history of discrimination that gay people have faced and given all the other things that I have just mentioned and given the fact that we were in a circuit that had not addressed this question, the determination that I made after consulting with my colleagues in the Department of Justice was that the heightened scrutiny test was -- heightened scrutiny level of inspection was appropriate. I made the recommendation to the president and he agreed.

SESSIONS:

And...

(CROSSTALK)

LEAHY:

And, Senator Sessions, I think we're going have to move on, because we are going to have votes. I want to make sure -- did you have another comment you wanted to make?

SESSIONS:

Just that I believe that was a failure of duty to defend the lawfully passed statutes of the United States. I believe the courts -- more courts have upheld it than not. And I do believe that you had a responsibility to defend that law as attorney general, regardless of whether or not you liked it, regardless of whether or not you would have voted for it. And the president had the same duty. And I think you violated that duty. And I am very disappointed in that fact.

HOLDER:

And we'll now go to Senator Schumer.

I would note that I've been here with six presidents, Republicans and Democrats, I've seen many instances where presidents and administrations have decided not to defend a statute, both Republican presidents and Democratic presidents. And my position has been consistent in every one of those times, that that's a judgment call that the executive branch...

SESSIONS:

Well, it's not a political judgment call, Mr. Chairman...

(CROSSTALK)

LEAHY:

I have said -- I have said, even when some have criticized Republican president, saying it was a political judgment call, I have said that that's a judgment call the executive branch should carry.

Senator Schumer?

SCHUMER:

Thank you, Mr. Chairman.

SCHUMER:

I have four questions, so would like to try to get through them all. The first relates to James Cole, deputy attorney general. He received a recess appointment in December, but he still hasn't received his official appointment.

Given the fast-moving pace of intelligence and investigations in terrorism -- we now have the death of Osama bin Laden and information that was gleaned from his compound, isn't it important -- even more important now that we get him confirmed, because, as a recess appointment, he can't do everything that he could do as a confirmed deputy attorney general. Is that correct?

HOLDER:

Well, he can do just about everything, but, Senator, the point you make is a good one. And it is a perfect one, because given the situation that we find ourselves in after the bin Laden death, for instance, the number of FISAs that we will be signing...

SCHUMER:

Exactly.

HOLDER:

... we need to have all of the people who -- in the department who can sign -- there are only three of us in the Department of Justice who can sign FISAs, me, the deputy attorney general and the head of the National Security Division. We need to have all of those position filled.

SCHUMER:

Right. Can he sign FISAs as a recess appointment?

HOLDER:

Yes. Yes, he can.

SCHUMER:

OK. So the problem is just that he's looking at an end of a term in December, and that, given everything that's going on, is not a very good idea.

HOLDER:

It is not at all. We need to have our team in place and we need to have some degree...

(CROSSTALK)

SCHUMER:

And so it's just there's a heightened need for him now, given all the new work that's going to come forward, including more FISAs and many other types of things that have to happen.

HOLDER:

Absolutely.

SCHUMER:

OK. The second question's a little bit related to that. I don't want you to get into specifics here. Obviously, we congratulate the administration and all of you on capturing bin Laden and killing him.

But we also learned that there's a treasure trove of intelligence material found in his compound, that's sort of great and a gold mine, I guess, for us.

I don't want you to get into specifics, but can you tell me whether the FBI is coordinating with the State Department and Homeland Security to add names to the terrorist watch list, revoke the visas of anyone who's found in the material confiscated in the bin Laden residence, what is happening there, and has anyone already been -- you don't have to give names -- but already been added to watch lists and had visa revocations because of that intelligence?

HOLDER:

The material that was seized from that residence is being reviewed by an interagency team -- CIA, Justice, other intelligence agencies, other law enforcement agencies are all contributing people and machines to go through that material.

As we glean information from that material we will make appropriate decisions with regard to who might be added to the terrorist watch list, the no-fly list, all those things...

SCHUMER:

You expect you probably will add people as a result of what you've found.

HOLDER:

My guess would be that we probably will.

SCHUMER:

OK. Let me go to other subjects here. 9/11 health, you know this a great -- an issue of great importance to New York, the implementation of the Zadroga bill, signed by the president January 2nd.

I sent you a letter thereafter asking that the victims' compensation fund be up and running by Memorial Day to get the heroes the money they so desperately need to pay for their medical bills and other illness-related expenses.

Apparently, under the language of the bill as passed by the House, it's not clear that DOJ could use the appropriated funds to administer the program. We've now fixed this in the latest continuing resolution, which means that DOJ will have the funding to administer the program starting in the new fiscal year.

But it's May 4th, and DOJ hasn't picked a special master. Can you commit to picking a special master within the month?

HOLDER:

I would say that we will try to do this as quickly as we can, as soon as we can. I don't think that -- we have identified a number of candidates. I think we have a...

SCHUMER:

Is it likely you'll have it within the month? (inaudible)?

HOLDER:

I would hope that within a few weeks that we should -- we should have somebody. We are...

SCHUMER:

That's less than the month.

HOLDER:

It could be slightly more, but we -- I think we will -- we will have somebody very soon.

SCHUMER:

OK. I'm hopeful it will be within a month, and that's a real possibility, right? A likelihood?

HOLDER:

We'll work to try to -- I will keep your words in my mind as we are...

(CROSSTALK)

SCHUMER:

OK. Thank you.

All right, after the special master is picked, it's then going to take time to draft and finalize the regulations, get the physical infrastructure for the VCF running.

When can I tell the heroes the VCF will be up and running? And can I get your assurance you'll do everything possible to have it up and running by October 1st -- by 2011 (inaudible)?

HOLDER:

Our hope is to try to do a lot of -- being mindful of the fact that we can only expend funds once the fiscal year begins. I think there are other things we can do in anticipation of the start of the fiscal year, so that on October 1, with the person who will be named and would be ready to go, that we can be up and running on that day...

(CROSSTALK)

SCHUMER:

Good, that is the goal...

HOLDER:

That I can pledge to you.

SCHUMER:

Right. And there's a lot of -- that's very good. There's a lot anxiety about that, because we haven't picked anyone yet and because a lot has to be done ahead of time.

But, OK, as long as we'll be ready to go on October 1st, with a person in place, with the infrastructure in place, and up and running, that's very good news.

So I have time for one more, and I would like to ask you about -- well, I would have liked to have asked you about -- here it is, synthetic stimulants.

On April 1st, I sent a letter to you and D.E. Administrator Leonhart urging you to use emergency scheduling authority to ban MDPV and mephedrone, two harmful compounds in substances known as bath salts. As you know, I've been very active in the -- trying to make sure that these are banned.

We've introduced bipartisan legislation that would permanently ban these substances. However, I hope DEA will move forward with emergency scheduling of these compounds to stop the sale of these harmful drugs.

At a recent hearing before the Caucus on International Narcotics Control, DEA indicated it'll publish a notice of intent to do so. Can you confirm that and provide a more specific timeline for implementing such a ban?

HOLDER:

It is our intention to move on that as quickly as we can. Michele -- I talked to Michele Leonhart about this. I don't know what the regulations -- what the administrative time frames are that we have to go through, but we will try to do this as fast as we can.

We agree with you...

(CROSSTALK)

SCHUMER:

Your intent is to ban them regulatorily if you can.

HOLDER:

If we can.

SCHUMER:

And I believe you can. I think that's pretty clear.

HOLDER:

I think that we can. But we'll work with DEA and with the administration -- with the Congress, if they are -- if we need additional tools in order to do that.

But the harm that you've identified, the potential harm, I think is one that is worthy of our attention and worthy of our action.

SCHUMER:

Great. Thank you. And I look forward to do -- having you do that as quickly as possible. Thanks.

LEAHY:

Thank you very much.

Senator Kyl?

KYL:

Thank you.

Mr. Attorney General, first I want to express my appreciation and congratulations for an action that the Southern District of New York U.S. attorney took in connection with activities that your office was involved in, relating to arrests for illegal Internet gambling, poker activities.

The released, dated April 15th, just read it for those who aren't familiar with it: "Manhattan U.S. attorney charges principals of three largest Internet gambling companies with bank fraud, illegal gambling offenses and laundering billions in illegal gambling proceeds."

And the release has the specifics of the individuals involved, the entities involved and the potential penalties.

The thing that strikes me with this is of course it's very difficult to engage in these activities and get money back into the United States, because it's all illegal and, therefore, initiated from outside the U.S. But they're able to do it through the Internet into the United States.

It's pretty difficult to do that without conspiracy to commit bank fraud, wire fraud, money laundering so on. So you're able to charge those other offenses here.

But, interestingly, unfortunately, the laws that relate to Internet gambling itself only have a maximum five years in prison and \$250,000 penalty.

And when -- when you add up all these other things, there's probably an adequate penalty potentially involved.

My question to you is -- is this: Whether you're prepared today to -- or to agree with me that we probably need a -- a stronger penalty, both monetary and potential jail time, for the illegal gambling activity aspect of this and, in any event, whether you would work with us to see where there are some changes that would be necessary to enhance your office's ability to enforce these important laws?

HOLDER:

I'd be glad to work with the committee, you, Senator Kyl, in that regard. We are serious about the enforcement measures, processes, measures that we are taking with regard to Internet gambling.

I think an example of that is what happened in the Southern District of New York and is consistent with that press release that -- that you mentioned.

To the extent that we need to talk about enhanced penalties for Internet gambling itself, I think that's something we would be more than glad to engage with you on.

KYL:

I'll be corresponding with your office, and really would appreciate your attention to this.

This is an important activity, particularly as it relates to kids nowadays. It is ubiquitous. It's difficult to enforce. But you've got some very, very capable people who devote time and attention to this. And it's, I think, an important activity. And I appreciate that.

I want to visit for a minute about illegal immigration. The -- I've talked to you on numerous occasions about the Department of Justice's role in something called Operation Streamline. It's just the code name for in many instances prosecuting and sending to jail for maybe two weeks, potentially up to 60 days for repeat offenders, people who cross the border illegally.

That operation, which involves the Office of the Courts, the Department of Justice and Department of Homeland Security, essentially, has dramatically reduced illegal immigration in the Yuma sector, in the Del Rio of the border.

But in the Tucson sector, where over half of all of the illegal immigrants continue to come across the border, we do not have an adequate enforcement. I've asked you repeatedly for the numbers.

I finally got the numbers through the late Judge John Roll, one of the unfortunate victims of the January 8th shooting in Tucson. He had been working with us on this. And he obtained from the Office of the Courts statistics on what it would cost to implement this. Part of it's DOJ, part of it's Office of the Courts, part of it is DHS.

I gave a memo to the secretary of homeland security and asked her in February to give that to you. Do you recall receiving that memo, that describes all of these statistics that Judge Roll put together for us?

HOLDER:

I'm not sure about that. We actually spent the -- I had people in my -- in my office speak to Judge Roll about this. I'm not sure I remember that memo, though.

KYL:

Would you -- would you do this for me, please? And I've asked for this in the past and I haven't gotten it, so I'm getting frustrated.

Would you have your folks take a look at this? I'll give you another copy of the memorandum right after the hearing here. It is just a summary of what Judge Roll determined would be the rough estimate of cost for a doubling or a tripling of prosecutions.

KYL:

What we got back, on the one occasion you did respond, was not responsive. We're not suggesting that on day one there be a 100 percent prosecution of everybody who comes across the border.

The way it was done in Yuma with only -- and I've forgotten the exact numbers, but they only had, like, 60 or 70 beds available. So they started with small segments of the border, two or three miles, and as people were arrested in those areas, they were prosecuted.

When it became clear to the people -- to the coyotes who were pushing them across the border that if you crossed in that segment of the border you got sent to jail, of course they didn't want to get sent to jail and they stopped crossing there. That was -- and that 60 or 70 beds was adequate to provide for that.

Over the course of several months, those miles were expanded until finally the entire segment of the border, called the Yuma sector, was covered and they never needed to have more than that number of beds.

Now, what you don't want to do is suggest to the bad guys exactly how you're running the operation, but the bottom line is you do not need to have all of the expenses from day one that it would take to prosecute everybody that crosses in a part of the border.

What I'm asking you to do is look at the way that it was implemented in the Yuma sector and agree with us that at a relatively small cost, considering all of the other things we're doing in terms of fencing and border patrol and all the rest of it, that implementing this program of prosecutions provides an extraordinarily effective deterrent and that you would commit to us that as far as the Department of Justice is concerned, that you would work to implement that program in the Tucson sector which remains, as I said, the one area that over half of all the illegal immigration is in.

HOLDER:

Well, I -- you're right, we've had a number of conversations about this, and as I've indicated then, and I was sincere in what I said, I think that the streamline concept is a good one. The problem, I think, that we have is what are the downstream impacts. And what you're saying about phasing it in, as opposed to doing something at 100 percent on day one is I think an idea that, you know, perhaps we should explore.

There are downstream consequences when it comes to detention facilities, courtrooms -- Judge Roll, I remember him talking about that -- the number of judges, prosecutors who he would need. But again, I think the concept -- the proof is in the pudding. I think that the concept is a sound one, and I'm kind of intrigued by the notion of a phase-in.

You know, these are tough budgetary times. So that's another thing that we have not that we didn't have when I started as attorney general.

KYL:

If I could just, Mr. Chairman, just for one 20 seconds here indulgence. These are tough budgetary times, so you're looking for the most cost-efficient ways to create a deterrent for people crossing. And you've got personnel. You've got high-tech equipment. You've got expensive fences. And you also send people down to Mexico City on the airplane, rather than just sending them back across the border so it's not easy for them to cross -- a lot of techniques.

This is an effective, efficient technique, I think, and could you tell me, just and this will be my last point, could you tell me who in your office I could communicate with personally about this so I've got a real human being that I can have a conversation with?

HOLDER:

Well, I've got my chief-of-staff sitting right behind me and he's glad to -- I'm going to be giving his name up, but you could get in touch with him. His name is Gary Grindler.

KYL:

All right.

HOLDER:

And if he is not the right person, he can get the appropriate person within the Department of Justice to speak with you.

KYL:

Thank you, Mr. Attorney General.

Gary, I'll be calling -- I'll be giving you a call.

Thank you, sir.

LEAHY:

Thank you.

Senator Klobuchar?

KLOBUCHAR:

Thank you very much, Mr. Chairman.

Thank you for being here, Attorney General. I know some of the earlier questions on the terrorism policy were critical, and I just -- that debate has its place, but I just wanted to thank you and Director Panetta and all of the team that have been working on this, just from the heart here.

I know we get in these hearing rooms and you don't realize what this meant for regular people. I was in Minnesota when this hit the news about Osama bin Laden's death, and I talked to the mother of a man named Tom Burnett who was on that plane over Pennsylvania. And he was one of the passengers that stood up and wrestled those hijackers. And as we all know, they perished on that Pennsylvania field. But that plane would have crashed, as we know, into either the Capitol or the White House.

Or the family of Max Bielke, who was a last soldier out of Vietnam. He had also served in the Korean War. He went back. He didn't have enough of it. He went back on the civilian side; helped design the TRICARE system, from Alexandria, Minnesota. And he was sitting at his desk at the Pentagon and killed when that plane crashed into the Pentagon.

So those are the families that felt that every time they saw Osama bin Laden on TV that he was mocking them, and he was mocking our country. So I want to thank you and the rest of the administration for the good work.

My questions are focused on some domestic issues. Senator Schumer had raised the issue of the synthetic drugs. And what he didn't mention was the hallucinogen issue with 2 C-E. This is -- I've introduced a separate bill in addition to the bill I'm on with Senator Schumer and Senator Grassley. But this one is focused on 2 C-E hallucinogens. We lost a young man in Minnesota and a number of other ones were close to death. They just thought these were synthetic drugs. They didn't -- I don't know that they realized the effect of these drugs. And I just wondered if you've been seeing an increase in these synthetic drugs?

HOLDER:

Yes, we have seen an increase and it's one of the reasons why I think Senator Schumer's idea of doing something on an emergency basis makes a lot of sense. And to the extent that we can, we will, because we have seen an increase in their use. They have obviously a detrimental effect -- not obviously -- they do have a detrimental effect on the people who use them. And I think that their increased use warrants our increased attention. And so we are focusing on them.

KLOBUCHAR:

Thank you. And we have these bills which I hope you'll -- our hope also is to permanently ban them.

Secondly, we've recently seen a number of high-profile incidents where hackers have broken into various businesses, computer systems, like what happened with Sony. Senator Hatch and I are working on a cloud computing bill that we are soon to introduce that is focused specifically on cloud computing, but also a number of issues, but also on the hacking.

And is the Department of Justice looking into these recent hacking incidents? And are you doing a review of the statutes to see how we can update them so that we are as sophisticated in our enforcement as these crooks that are breaking the law?

HOLDER:

I think the concern you raise is a good one. We have to try to stay ahead of the people who would perpetrate these crimes. What was sufficient law six months ago might not be sufficient now. What was good five years ago probably -- certainly is almost not sufficient now. And so we are in the process of looking at that, would like to work with you on potential enhancements that we think are -- are appropriate.

We are, in fact, looking. We have opened investigations with regard to those hacking situations that have gotten publicity over the last few weeks, the Sony incident among them.

KLOBUCHAR:

Thank you.

In your testimony, you mentioned the alarming -- this is your written testimony -- the alarming trend of increasing fatalities among our nation's law enforcement officers. And this troubles anyone, but as a former prosecutor, I'll never forget the police funerals that I attended. And have you identified any causes for the increase in fatal violence against our law enforcement? And what are some of the steps that we can take to combat this very serious problem?

HOLDER:

It's something that gives me a great deal of concern. We've seen about -- about a 40 percent rise in the number of police officer deaths. This is at the same time that our -- our homicide rate is going down pretty substantially and is at historic lows. We are pushing out a number of policies. We are making available bullet-proof vests as quickly as we can to our state and local partners. And we make that conditioned on a mandatory wear policy that be adopted by our state and local partners.

We also have something called a VALOR program that trains police officers on how to conduct themselves, how to deal with situations in which -- where their lives might be threatened so they will know how to react when they're put in those situations.

I also called a summit meeting about three weeks ago, four weeks ago in the department where we brought together state and local leaders, police officers from police groups, as well as chiefs and sheriffs, to talk about this problem. Out of that summit, we have a working group that is trying to come up with ways in which we can try to keep our police officers, our sheriffs, safe.

KLOBUCHAR:

Thank you.

And then finally, the prevalence of health care fraud continues to be a concern. Recently, I saw that a Los Angeles woman pled guilty to participating in a Medicare fraud scheme and that cost something like \$6 million in Medicare money. You provided information in your testimony about how DOJ has tried to crack down on health care fraud. You mentioned that the area has produced a record \$4 billion in recoveries in F.Y. 2010.

I actually sat in on the homeland security on this and know that there's been some stepped-up efforts with the hot spots with health care fraud. Do you believe that we are starting to deter would-be fraudsters? And is there anything else we should be doing legislatively to assist you with this effort?

HOLDER:

We are working certainly within the Department of Justice and with our partners at HHS. Secretary Sebelius and I have started this thing called the HEAT program where we put up these task forces in those places where we, as you correctly call them, would find hot spots of Medicare fraud, and they have been I think particularly effective.

One of the things, unfortunately, that we see is that when we become effective in one city, they move to another place, or the techniques that are used in one city go to another place. And so we have to expand the use of these task forces. That's another area where I think we want to work with you to look at the laws that we have on the books to make sure that they're adequate to meet the challenges that we face.

The huge amounts of money that are lost to fraud in the Medicare programs, Medicaid programs, is just astounding and could be used in obviously much better ways. And given the budgetary issues that we are facing, there are not only criminal concerns that I have, but there are budgetary fiscal ones that I have as well. And so I think that we should be -- we in the executive branch should be working with you in the legislative branch to make sure that we have all the tools that we need.

KLOBUCHAR:

Thank you very much.

LEAHY:

Thank you.

I'm going to yield to Senator Hatch, but I should note there is a matter on the floor. I'm going to have to leave, but Senator Franken is going to take over the gavel.

And again, Attorney General, I appreciate not only your being here, but the fact that anytime I've ever called with questions for the department, you've responded. I also compliment Ron Weich, who gets bugged by us all the time, and I appreciate his responses.

Senator Hatch, I yield to you.

HATCH:

Well, thank you, Mr. Chairman.

Welcome, Mr. General. I appreciate your being here.

HOLDER:

Good morning.

HATCH:

I don't expect an answer to this, but I hope that the Justice Department will not only look into the BCS, Bowl Championship Series, situation. It's a mess. It involves billions over years. The privileged (ph) conferences have tremendous advantages that are unfair. For the unprivileged conferences as much as 87 percent of the money goes to them.

And I just hope that you'll continue to follow up on that particular issue. It's an important one, I think.

HOLDER:

Senator, if I can just maybe very quickly, I will disagree with you. We -- you and I have talked about this issue, and I think I'm free to say that we have sent a letter to the NCAA about -- about this issue and will be following up.

HATCH:

Well, I appreciate it. Because it's an important issue.

If you look at the fiasco at the Fiesta Bowl and how that was handled and so forth, that gives you some idea of how royal these people think they are.

And it just isn't fair to -- to the whole system. And I think even BCS states are realizing it's not fair.

Now, General Holder, I naturally want to welcome you back to the committee. I have another hearing going on right now on the Finance Committee, so my time is short. And if you can answer this close to yes or no, I'd appreciate it.

I may have additional written answers, but concise answers would help me here.

You received a letter from me and 42 senators regarding obscenity enforcement. This included half the members of this committee on both sides of the aisle. And we're focusing on adult obscenity. We know you're at least trying to do something on child obscenity, but we're talking about adult obscenity -- obscenity as well, what is sometimes called -- is hard-core pornography.

Now, this is a separate category of material that's different from child pornography or child exploitation, which is very important to me too. This material is toxic. It's illegal. And laws against it have not been enforced for a long time.

In our letter we urge you to study the information and research about the harms of such hard-core pornography that is available through resources such as the clearinghouse website pornographyharms.com.

Now, I don't expect that you personally did that, but you -- but did you at least assign someone to review the evidence collected there as we asked?

HOLDER:

We have, as you know, conflated the -- what was the Obscenity Task Force into the Child Exploitation and Obscenity Section. And at this point, since we have been in office, seven obscenity cases have been brought that involve only adult pornography. This is of the 150 cases that we have brought involving pornography in total, most of which involve child exploitation, but as I said, seven of those cases have involved adult pornography.

HATCH:

OK. I raised the issue of obscenity enforcement in the confirmation hearing before this committee for Lanny Breuer who now heads the department's Criminal Division.

In his answers to my written questions Mr. Breuer wrote that, quote, "I believe that sexually explicit material can be harmful to individuals, families and communities," unquote.

I'm sure you agree with that?

HOLDER:

Yes.

HATCH:

The research I referred to earlier as well as the testimony of activists on the ground reveals a growing connection between hard-core pornography and sex trafficking. I think you would agree that there is such a connection?

HOLDER:

I believe there is.

HATCH:

OK.

That research included work by Dr. Sharon Cooper (ph) at the University of North Carolina shows how hard-core adult pornography normalizes sexual harm to children.

I think you'd agree with that?

HOLDER:

Sure. And that's one of the reasons why we are as vigilant as we are in bringing those -- those kinds of cases.

HATCH:

OK.

Do you believe that hard-core pornography relates to domestic violence?

HOLDER:

Be honest, I just don't know -- I don't know about the research in that area.

(CROSSTALK)

HATCH:

I can tell you it does. And it's a big problem (inaudible).

Did you know that the American Psychiatric Association recently added to its diagnostic manual a disorder that includes pornography addiction?

HOLDER:

Was not aware of that. But I've seen reports of that in some cases that I'm familiar with. But was not aware of the American Psychiatric (inaudible)

HATCH:

Now, would you send us -- be kind enough to have your people send us the seven cases -- you know, description of the seven cases?

Because I think you need to do a lot more. We're getting awash with this stuff, and it's just -- it's really terrible as far as I'm concerned.

We received a response to the letter that many of us signed from Ron Weich -- I think is the way to pronounce the name -- who heads the Office of Legislative Affairs.

But it said that the department has charged violations of the federal obscenity statute, but when my staff discussed this last week with OLA staff, they could not say which of those involved adult material or were unrelated to child pornography or child exploitation. And that's one of the things that I'm concerned about.

So I just want you to look into it. Means a lot to me, and I think it -- I'm sure it means a lot to you, as well.

HOLDER:

Yeah, we're trying to unpack those numbers. We have -- I said it's the overall number and we're trying to come up with a way in which we can determine which of those 150 cases involve only adult -- adult matter. And as I said, at this point we have identified seven.

HATCH:

OK.

Well, I think that's important.

It's a big deal to me.

In about 2005 -- because the Child Exploitation and Obscenity Section was doing so little to prosecute adult obscenity -- in our view anyway -- the department created the Obscenity Prosecution Task Force to focus specifically on that.

Now, my understanding is you dismantled that task force as a separate entity and incorporated its work back into the very section that had produced so little in the first place -- at least in our view.

Again, that looks to me like the department simply doesn't give enough consideration to adult obscenity and may not consider it to be a big deal.

Just please look into it for me, will you?

HOLDER:

Well, as I said, we (inaudible) reincorporated it. It doesn't mean that we are turning our backs on that issue.

As I looked at it, you know, the numbers from 2005 to 2010, that task force brought (inaudible) say about 15 cases. Since we've made that change we brought, as I said, seven. So I think that the -- the process that we have in place, the organizational structure that we have in place is, I think, an effective one. But we're always looking to make it better.

HATCH:

OK.

And if you're -- if you'd have your folks send us how many prosecutors and personnel you have working on these cases, I'd appreciate that.

Let me just quickly shift gears. If I could just ask this one last question, Mr. Chairman, because I'd like to change the subject here.

Let me ask about one of the approximately 200 detainees in Utah -- in U.S. custody in Iraq. Now, this person is a Hezbollah terrorist named Ali Mussa Daqduq. He was captured in Basra in March, 2007 after planning and coordinating an attack on U.S. forces that killed five American soldiers and wounded three others.

Now, he was captured on the battlefield in Iraq by military personnel. He is accused of clear violations of the law of war. And I believe, really, that he ought to be transferred to Guantanamo and prosecuted in a military commission.

Is that what will happen? Or is the department planning to prosecute him in federal civilian court?

HOLDER:

I have to tell you I'm not familiar with that case. That is one that we'd have to examine and see where the case can best be brought. I'm not familiar with it, but a determination will be made on a case-by-case basis as to where the trial can be most effectively had.

HATCH:

OK, it's my understanding that that case is sitting on the deputy attorney general's desk right now for review. I'd like you to look into it. It's a serious case. You've got five American soldiers who were killed by this terrorist, and frankly I think he ought to be tried at Guantanamo. And I'd appreciate your looking into it.

HOLDER:

OK.

HATCH:

I appreciate your service. We've had a long relationship together.

HOLDER:

We have.

HATCH:

I respect you. I naturally have some real questions about the Justice Department and the way things have gone, but I also understand it's a very tough job, too. But thank you, I appreciate your being here.

HOLDER:

Thank you. I appreciate all your support.

FRANKEN:

Thank you, Senator.

The chair recognizes Senator Coons.

COONS:

Thank you, Mr. Chairman.

Thank you, Senator Franken.

I will do my best to be brief, given the pressing commitments I understand both Senator Blumenthal and I have.

Thank you, Attorney General Holder, for being with us today and for your service to our nation.

As a former county executive, I was grateful for the support of the department for local law enforcement. I was very concerned about the depth of the cuts in the continuing resolution and the path forward.

I have four questions I'll get to briefly, two about intellectual property enforcement; two about partnership with local law enforcement.

If you could, first, I'd just be interested in your views on how your ability to support law enforcement is being affected by the double-digit cuts in the current year C.R. and going forward. You made reference before to the critical bullet-proof vest partnership.

I'm also concerned about Byrne JAG grants and in particular I'm interested in intelligence-sharing. This committee will hold a field hearing in Delaware later this year about intelligence-sharing and the partnership which is currently very strong between federal and local law enforcement in Delaware. So some comment, if you would, on the impact of the budget on intelligence-sharing with local law enforcement.

HOLDER:

My hope would be that with regard to intelligence-sharing, that should not have a -- we should not be adversely impacted by the budgetary issues that we are confronting. Intelligence-sharing really is the key to good law enforcement in this day and age, and we'll place priority emphasis on that.

I am concerned, however, about the reduction that we'll have in -- certainly in the COPS program, among other things. There are going to be problems there that we didn't have before the budgetary problems. And what we're going to try to do is come up with ways in which we use the more limited funds we have in the most effective way. But we just face a fiscal reality that we're not going to have as much money to distribute.

COONS:

I was concerned to see the COPS technology program, for example, zeroed out. My predecessor in this seat, our vice president, was a strong advocate for the Violence Against Women Act, and the COPS program, and I'll endeavor to do my best to work in partnership with you to sustain their funding and their vital role.

I'm also concerned about intellectual property enforcement. I'm very pleased with your task force on intellectual property and your good work in that field. And I just wanted to briefly, if I could, raise the concerns I have about counterfeit pharmaceuticals in particular, which are a very real and growing problem and are affecting thousands of Americans.

You have a recent "Operation In Our Sites" effort, a multi-agency mission that has been seizing and closing down websites that are trademark infringers. To the best of my understanding, it doesn't yet include online pharmacies that are a significant source of counterfeit pharmaceuticals. Is that something you think the department might expand to you use your legal authority and forfeiture statutes to go after?

HOLDER:

I think that's certainly something that we ought to consider. If one looks at the intellectual property issues, there are economic consequences; potential problems for our infrastructure; national security consequences, and when it comes to pharma issues, pharmaceutical issues, the health and well-being of our fellow citizens.

And so the thought that you have is I think one that we ought to consider and one that we'll look forward to working with you on. We want to make sure that our efforts are as complete as they can and that we are protecting as many of the American people as we can.

COONS:

And last, if I could, there are strong efforts, obviously, under way to combat I.P. theft, but I'm concerned about trade secrets, which are in some ways more difficult to identify, but in many ways more important even to protect, and the very real and growing threat of industrial espionage.

Are there things that we can and should be doing in this committee and the Congress to support you, the efforts of your agency? Do you need any additional resources, whether statutory or financial, to strengthen the hand of your agency in combating either industrial espionage or trade secret theft?

HOLDER:

Well, if you'd let me -- allow me to do this, maybe let me canvass the people in the department who are most knowledgeable about this and who are doing these -- concerned with this on a day-to-day basis and maybe get back to you about how we might work together with regard to -- I think you correctly identify issues that should be of concern -- industrial espionage and trade secrets.

So let me get back to you in that regard?

COONS:

Tremendous. Thank you very much, and thank you for your service.

FRANKEN:

Senator Blumenthal?

BLUMENTHAL:

Thank you, Mr. Chairman.

And thank you to my colleague, Senator Coons, for accommodating my schedule. And I do apologize, I have to preside at about noon.

So first and foremost, thank you for your excellent, distinguished service to our nation in the job and in other positions that you've held and the tremendous leadership that you've given to the Department of Justice.

As you know, I've asked that there be an investigation into illegal manipulation of oil -- gasoline, oil prices, crude oil, at every level, not only at the retail level, where price gouging may have occurred, but I've written asking that there -- that there be investigations.

And I noticed in establishing the working group and the Financial Fraud Task Force you have very carefully stayed away from the use of the term "investigation." Indeed, in your testimony today, you've used the word "examine" rather than "investigate."

Again, I urge that there be an investigation, that it involve the FBI, subpoena, even a grand jury if necessary, and ask now for your reaction to that suggestion.

HOLDER:

I can see that you're still a state attorney general, Senator.

(LAUGHTER)

We are working with, I should point out, state attorneys general in this regard because I think they're a very important component of this -- of this task force.

And, you know, I'm not hesitant necessarily to use the word "investigate" or call it an inquiry. I mean, it is a task force that is looking to see if there have been inappropriate steps taken to try to manipulate the market, to price gouge, to somehow do things that are wrong and that have harmed the American people. And we will be aggressive in that regard.

We understand that there are market forces that are at play here and don't want to sell this as more than it can be, but we take very seriously the harm that the American people have suffered as a rise of these rise in gas prices, and to the extent those were inappropriately driven, we will take action.

BLUMENTHAL:

And I don't want to belabor the point now. I would welcome an opportunity to sit with you and key members of your staff on this subject because I think that all of the indications are that speculation is at an all-time high, an unprecedented level, and that it is a major part -- not the only reason, but a major cause of the spiraling phenomenon that is plaguing the industry and crushing not only our consumers, but the fragile economic growth that's so important to our nation at this point.

So I would welcome an opportunity to continue this discussion as soon as possible.

And I want to just turn briefly to the Sony breach of confidential information. Again, I've asked for an investigation into the hacking that's occurred, now reportedly affecting another 25 million consumers, after the first hacking which was discovered affecting more than 70 million people.

So more than 100 million are potentially victims, and indeed potentially victims of identity theft. But the focus, in my view, should be on not only the hacking itself, but also possibly on Sony's response, which I regard as having been completely egregiously and unacceptably inadequate in failing to notify consumers promptly, as would be required under some state laws, for example Connecticut's law, and failing to take protective measures and offer protective services to consumers.

So, again, I ask for your reaction.

HOLDER:

Well, as I think I've previously indicated, the Sony matter is under active investigation. There's not a lot I can say about the case as a result of that.

But we are using our investigative capacity. Personnel from the department, as well as the FBI, are in fact looking at this matter, and it is something that we are taking extremely seriously.

BLUMENTHAL:

And I believe going forward there is a clear need -- and I know Senator Franken has been really leading on this effort -- for measures that would provide stronger incentives and if necessary remedies for failure to safeguard this information more effectively, and also offer protective services in the event there are these breaches.

And I would ask again for cooperation from the department in this effort.

HOLDER:

Yeah. I mean, I think that's right. We have to not only take effective enforcement efforts once a breach has occurred. We have to also focus on preventive efforts that can be taken by companies that have this data, that acquire this data.

And to the extent that we can work with the committee -- and with industry -- to try to come up with effective ways that we can prevent these breaches from occurring, I think everybody is actually better served by -- by that. And we'd be more than glad to work with you.

BLUMENTHAL:

Thank you very much.

Thank you, Mr. Chairman.

FRANKEN:

Thank you.

And see that Senator Graham is returned. So...

GRAHAM:

Thank you...

(CROSSTALK)

GRAHAM:

Good morning.

HOLDER:

Morning.

GRAHAM:

Congratulations to the administration for, I think, what will be a historic operation when it comes to the -- the operation against bin Laden. I know the president made a very difficult decision, and that is putting boots on the ground, but I certainly think the right decision.

What I want to do is sort of talk about the way forward on terrorism issues. I know that KSM, going back into military commissions, was a hard decision for you. We had respectful disagreements.

But I just want to be on the record, I believe very strongly there's a place for Article 3 courts and that I'm an all-of-the-above approach when it comes to trial venues.

And just for the record, the reason I objected to KSM and the co- conspirators, that they'd been held as enemy combatants for so long under the law of war, and I just really was worried about mixing systems.

But the Christmas Day bomber, the situation with the Times Square bomber, these are classic examples, I think, of where you could grab somebody off the battlefield and go right into Article 3 court.

Now, let's talk about the interrogation programs we have. I am somewhere between waterboarding and the Army field manual. I believe, as I've said many times, I've been a military lawyer for 30 years, waterboarding as a technique has been talked about among the legal community in the military of a very long time as something not appropriate.

And I think going down that road -- and I'm sure there was some information gleaned from waterboarding -- but overall the reason we stopped this practice, it was causing a lot of problems for the country.

Having said that, I think the best way to interrogate enemy prisoners is to keep them off balance, form relationships over time, but basically have procedures they can't train against.

So, Mr. Attorney General, as I understand it, the CIA is no longer involved in interrogation of terror suspects directly. Is that true or do you know?

HOLDER:

I'm not sure that that's accurate. I could perhaps get back to you on that...

(CROSSTALK)

GRAHAM:

Well, here's what I -- and check my homework here. The executive order the president issued shortly after taking office took off the table the enhanced interrogation techniques that are classified in the Detainee Treatment Act. And now the only techniques available to us are in the Army field manual, their own line. So I would urge you to look at that.

I just think it is a mistake to deny the CIA the ability to use classified techniques in the Detainee Treatment Act that I helped write, because the enemy needs to be kept off balance.

So if you could look at that and get back with me. And it's my understanding the CIA, after this executive order, no longer directly interrogates enemy suspects...

(CROSSTALK)

HOLDER:

One thing I'd say, Senator, is that, you know, when the changes were made with regard to the techniques that could be used, the intelligence community was canvassed, and they indicated that with regard to the techniques that are no longer to be employed and the ones that could be used, that they thought that gave them the -- gave them adequate tools in order to do their jobs.

GRAHAM:

But my question is, I believe that the only techniques available to the intelligence community and to our military are the Army field manual, and that was never written with a view to be the exhaustive techniques available to interrogate prisoners. It really is a guide to our troops to make sure they don't get in trouble.

And if the CIA is no longer directly involved in interrogations, I'd like to know that, if that's true. If they're limited to the Army field manual, I'd like to know that...

HOLDER:

So what gives me pause is I know that the CIA's a part of the HIG...

GRAHAM:

Right.

HOLDER:

... and so that's why I, you know, I'm hesitant.

(CROSSTALK)

GRAHAM:

No, no. And please check it out.

HOLDER:

Yeah.

GRAHAM:

It's just I want to be on record, it's my belief that the policy today is that the Army field manual is the exclusive means of interrogating terror suspects. It is on line. And that the enhanced interrogation techniques authorized under the Detainee Treatment Act are no longer being used. In my view, that's a mistake.

Now, when we go forward with future captures, Guantanamo Bay. We've both tried to find ways to create a new prison. I've been sort of out there saying it doesn't bother me that you would create a prison in the United States as long as there's a national security- centric legal system around it, but I think we've lost that argument. I don't believe Guantanamo Bay is going to be closed any time soon by the Congress.

Is that your assessment?

HOLDER:

Well, we're gonna continue to try to close it, but I think it's gonna be difficult given the votes that we have seen in Congress...

GRAHAM:

Yeah.

HOLDER:

... and the sentiment...

(CROSSTALK)

GRAHAM:

... my colleagues who understand, I think it is a well- run prison now. It has had problems in the past, but the administration, working with us, we wrote a new Military Commissions Act in 2009, which I'm very proud of, and you helped write it.

GRAHAM:

So I think we've got Guantanamo Bay in pretty good shape right now for all those who want to be reasonable. But given that dilemma, I understand we may have some people in our capture now that might be good candidates for Article 3 trials or military commission trials that we captured abroad.

Where do we put people? If we caught someone tomorrow that would be a terrorist suspect, an Al Qaida member, and if we caught Zawahiri up at -- you just name the person, where would we put them?

HOLDER:

Well, I guess it would depend on the charges that we could bring. Certainly, if we have an Article 3 case that we can bring against them, we can put them in any of the federal facilities that we have.

GRAHAM:

What if you had an enemy combatant that you wanted to hold for, you know, extensive interrogation? Lawful, but you wanted to hold him. Where would you put that person?

HOLDER:

Well, we have overseas facilities that we can make use of for, you know, interrogation and for detention.

GRAHAM:

Well, Bagram, you know, the Parwan prison, I would really argue that the Afghan government cannot become the American jailer. And if you caught someone in Somalia, if you took them to Afghanistan, that would create a lot of problems for our operations there.

I -- the answer to me is, and I've asked special forces, where would you put these people? I asked Secretary Gates and asked Admiral Mullen, if you caught someone tomorrow in Somalia or Yemen, a high-value target, where would you put them? And they say they don't have an answer for that because Gitmo's off the table.

Do you see any time soon Gitmo being allowed to be used in special cases of high-value targets that were caught in the war on terror?

HOLDER:

I don't think that is our intention. Our intention is to, even given the issues that we have with Congress, to try to close that facility and to try to make use of other area -- other locations that we would have for interrogation...

(CROSSTALK)

GRAHAM:

I just don't believe there are other viable locations. We need to think this thing through. There are detainees at Bagram Air Base now, Parwan prison, that are not going to be left in Afghan control because they're third-country nationals. And we need to find what to do with those detainees, because they're not going to be left in Afghanistan because I just don't trust the Afghan legal system. So I'd like to work with you on these issues.

And one last point: There's a lot of chatter out there about the use of force against bin Laden. Would you agree with me, Mr. Attorney General, that given the intelligence about bin Laden, he promised never to be captured alive.

HOLDER:

Yeah, let me make something very clear: The operation in which Osama bin Laden was killed was -- was lawful. He was the head of Al Qaida, an organization that had conducted the attacks of September the 11th. He admitted his involvement. As you indicated, he said he would not be taken alive.

The operation against bin Laden was justified as an act of national self-defense.

It's lawful to target an enemy commander in the field. We did so, for instance, with regard to Yamamoto in World War II, when he was shot down...

GRAHAM:

Absolutely.

HOLDER:

... in an airplane.

So he was, by my estimation and the estimation of the U.S. Justice Department, a lawful military target. And the operation was conducted in a way that's consistent with our law, with our values.

If he had surrendered, I think -- attempted to surrender, I think we should, obviously, have accepted that. But there was no indication that he wanted to do that. And, therefore, his -- his killing was appropriate.

GRAHAM:

Well, I agree with everything you said, and I'd just like to add one final comment: From a Navy SEAL perspective, you had to believe that this guy was a walking IED.

HOLDER:

Exactly.

GRAHAM:

So if I were a Navy SEAL, and I made a positive ID on this guy, I would want to take him down as far away from my teammates as possible.

So to those out there who question what happened here, the intelligence and the statements from the man himself said he would never be taken alive, that he had bombs strapped to himself. I think the Navy SEAL team had to believe that the moment they encountered bin Laden, whether he raised his hands or not, that could be a fake surrender, that they were well within their rights.

And shooting him as soon as possible, probably protected everybody, including the SEALs and women and children.

So I agree with you, Mr. Attorney General. This was an operation within the law, and the Navy SEALs acted appropriately. And I am proud of the fact that they protected women and children at their own detriment. They took time to shield women and children from the helicopter being blown up. They protected the women and children the best they could in this firefight. And the moment they saw bin Laden, they had to consider him a threat.

And I could not believe a scenario where you would believe he could reliably surrender.

So I just want to put my two cents worth in there. And I look forward to working with you on these tough issues.

HOLDER:

I look forward to working with you, Senator. But I think you make some very valid points that I think people should focus on. It was a kill-or-capture mission. He made no attempts to surrender. And I tend to agree with you that even if he had, there is -- there would be a good basis on the part of those very brave Navy SEAL team members to do what they did in order to protect themselves and the other people who were in -- in that building.

They conducted themselves totally appropriately in that the loss of life was minimal or as minimized as it could be. Substantial numbers of women and children were not -- not impacted during the -- their entry into those buildings.

And I'm proud of what they did. And I really want to emphasize that what they did was entirely lawful and consistent with our values.

GRAHAM:

I totally agree. Thank you.

FRANKEN:

Thank you, Senator Graham.

And, Mr. Attorney General, since we're on the -- on the subject, I just want to commend you and your department. And, of course, those troops who did an unbelievable job, but everyone who played a role in this tremendous operation and bringing bin Laden to justice, congratulations and thank you.

I want to get into contractor fraud, which has been a concern of mine for quite a while. And I've been (inaudible) that they've been getting kind of a free pass, these contractors, after they commit procurement fraud.

And I asked Lanny Breuer a number of questions about this back in January.

Since then, a report by the Department of Defense confirmed some of my suspicions. Over a three-year period, DOD paid \$270 billion to more than 91 contractors who were found to be civilly liable for contract fraud and another \$10 billion to an additional 120 contractors who settled civil fraud cases.

What is even more astounding, is that 30 contractors who were convicted of criminal fraud against the government received another \$682 million in contracts from -- from DOD after they had been convicted of criminal fraud.

Now, I understand that your department is not responsible for making debarment decisions, but do you agree that it's -- it's just bizarre that we are awarding billions of dollars in new contracts to entities we know just can't be trusted?

HOLDER:

It's an interesting question. I know that there -- that you have to deal with these things, as strange as this might sound, on a case-by-case basis.

It is sometimes possible that a company that has done inappropriate things and has been held civilly liable, maybe even criminally liable, has new management, and they've gotten rid of the people who were responsible for the fraud, you know, in its previous iteration.

And on that basis, the Department of Defense has made the determination that they can continue to do business with the company.

In the absence of some kind of remedial steps, though, I would agree with you that it does not make sense to continue to do business with those who have defrauded the American people.

FRANKEN:

Well, I think there have been cases in which they haven't changed personnel. And it would just come right back to it.

And I think that's a good idea, that we could be debarring CEOs or divisions or heads of divisions or heads of departments of companies where there have been problems, especially where it might not be in our best interest to go after the entire company.

But I think that we should be definitely encouraging that, and not be going right back to the same people and not requiring that there be a change in -- in the people responsible.

HOLDER:

No, I would agree with you. I mean -- I mean you have the notion that perhaps there be some presumptions that have -- that perhaps can be overcome by the change -- changes that a company has made.

One of the things that I would want to make sure is that the government agencies that are involved have the maximum amount of flexibility so that they can take appropriate sanctions when that is necessary, but do it in a way that is consistent with serving the interests of the American people.

FRANKEN:

Well, I'll give you an example: The Department of Health and Human Services recently notified the CEO of Forest Laboratories that it intends to specifically include him...

HOLDER:

Right.

FRANKEN:

... from doing business with the government. And I think that would force the company to get rid of him. And that follows a large investigation and settlement of civil and criminal charges related to the sales of antidepressants.

And I applaud that approach and think we need to go after individual executives more, especially when there's evidence that they had knowledge of or encouraged this type of misconduct.

And unfortunately, though, the tactic of targeting specific executives just seems to be very rare, particularly among our larger -- largest contracting agencies, like the Department of Defense and Department of State.

And I fear that most contracting officers are simply not equipped to make some of these decisions and that we should be relying more on inspectors general to lead investigations and make recommendations.

What do you think we should -- could do -- to encourage greater coordination between DOJ and the inspector general community on these issues?

HOLDER:

Well, I think we certainly have to communicate. I think we do a pretty good job of it now. To the extent that there are problems that you've identified, I'd certainly want to hear about them and see if there are ways in which we can change our -- the way in which we communicate with the I.G.s.

We have a pretty robust, you know, fraud enforcement program. I think a very robust fraud enforcement program. It's a priority matter for us. We've had, I think, some notable successes, as my written and opening statement have indicated.

It doesn't mean that we can't do more and we're not looking for ways in which we can do our job better.

HOLDER:

The I.G.s I think have a particular -- have particular strengths, in that they know their agencies better than outsiders are going to know them.

And I would hope that, as they identify conduct that is potentially criminal, that they are making sure they refer that information to the Justice Department so that we can take appropriate enforcement actions, whether it is civil or criminal.

I'll also say that, with regard to your point, without looking at individuals, that that is something that we have to do. This can't simply be seen as the cost of doing business, that, you know, you defraud the United States; you pay a big fine and then you continue to interact with the government and continue to get contracts and no harm befalls anybody except maybe the shareholders because this company has had to pay the government a huge amount of money.

To the extent that we can identify individuals who are responsible for these actions, it is my instruction; it is our intent to hold them accountable, to hold them individually liable for -- for these actions.

FRANKEN:

I think that would incentivize not committing fraud...

HOLDER:

Right.

FRANKEN:

... which I think is a good thing.

HOLDER:

Yeah, I -- people behind bars tends to stick in individuals' minds, as opposed to the notion that, well, my company's simply going to have to pay, you know...

FRANKEN:

Or, I mean, I'm not even necessarily talking behind bars, just, oh, this is career-ending. That also catches people's attention.

I want to touch on something, and then let you go, because I'm the only thing between you and...

(LAUGHTER)

... and going -- and something that Senator Blumenthal talked about, which is the Sony PlayStation and Epsilon data breaches, which have shown us all, this month, how vulnerable our private information is online.

And among those companies affected by the Epsilon breach were several Minnesota companies, as well as many, many Minnesota customers. A few weeks ago I wrote a letter to Assistant Attorney General Lanny Breuer, again, asking if our current anti-hacking laws are strong enough to deter hackers.

So I wanted to really ask about two questions. First is, does the Department of Justice have any recommendations to update or strengthen these anti-hacking laws, including the Computer Fraud and Abuse Act within that?

HOLDER:

Senator, what I'd like to do is, maybe, get in touch with our experts and ask them that question and put something in writing for you with regard to suggestions that we might have.

I will say that, with regard to both the Epsilon matter and the Sony matter, they are currently under investigation in the Department of Justice.

FRANKEN:

Right, and thank you for that.

This is a slightly different question, but it -- should those who have these data be required to protect those data?

Because it's one thing -- we're talking about anti-hacking, the people that hacked into Sony, the people that hacked into Epsilon. But shouldn't Epsilon and Sony have some requirement -- and there are a lot of third parties who have a lot of data, and they can get hacked into.

In -- in updating our privacy laws, is there possibly a role to require -- and maybe it's -- I'm not sure whether you do this by law or regulatory function -- to require them to have a protocol to secure this data in a way that can't be hacked, or that is state-of-the art?

So I mean, because if -- if you have all this data and you're -- if there's no requirement to have a certain level of security, it seems like we're inviting hacking.

HOLDER:

As I indicated to Senator Blumenthal, I actually think that the idea that you're raising is a good one, and maybe there's a way in which this committee, the Justice Department, other involved federal agencies and industry can get together and look at that issue.

Because I really do think that the focus has to be on prevention.

FRANKEN:

Right.

HOLDER:

That is the way in which you offer the maximum prevention to consumers, not after the horse is out of the barn, where we are doing what we can to enforce the laws and hold people responsible but to prevent people from suffering the loss of their identities, their financial information.

And so I would pledge to work with you or any group that you put together...

FRANKEN:

That would be great. I'm chairman of a new subcommittee on privacy and technology and the law and I would -- I'll take you up on that.

HOLDER:

Good.

FRANKEN:

OK. And I'll let you go.

So Attorney General Holder, I want -- I just want to thank you for your time, for your testimony, for your service. And we always appreciate hearing from you and learning all about what -- what's going on at the Department of Justice. Thank you again for being here.

And the record of this hearing will be kept open for a week. This meeting stands adjourned.

HOLDER:

Thank you, Senator.

FRANKEN:

Thank you.