



**U.S. Department of Justice**  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

October 21, 2010

Gary J. Cohen  
General Counsel  
Financial Crisis Inquiry Commission  
1717 Pennsylvania Avenue, NW, Suite 800  
Washington, D.C. 20006-4616

Dear Mr. Cohen:

We are writing in response to your letter of October 12, 2010. The answers to the questions you presented are set forth below.

- 1. Why, in light of the FBI's own warning in 2004 (from Assistant Director Swecker) about mortgage fraud and the economic problems it could cause, did the FBI not reprioritize white-collar crime (specifically mortgage fraud) and devote more resources to it?**

After the attacks of September 11, 2001, the FBI's priorities shifted dramatically as it charted a new course, with national security at the forefront of its mission. Necessarily, this required a realignment of resources across the organization to address the highest priority threats. As is widely known, in 2001, the white collar crime program lost 22% of its agent resources, as agents were reassigned to the Counterterrorism Division.

But this does not mean that the FBI abandoned its efforts to combat white collar crime. Rather, in order to make the best use of its finite resources, the FBI focused on those areas where it brings something unique to the table and to target those criminal threats against which it has the most substantial and lasting impact. At the same time, the FBI implemented strategies designed to effectively and efficiently confront those threats. As a result of these changes, the FBI is a stronger organization.

The positive results of these efforts can be seen in the modernization of the FBI's national mortgage fraud program. As this Commission has recognized, the FBI was one of the first organizations to identify and warn of the emerging mortgage fraud threat. At least as early as 2003, the FBI took steps to more effectively and efficiently confront that threat. As AD Swecker explained in his October 7, 2004, Congressional testimony, the FBI began evaluating the effectiveness of its national mortgage fraud program in 2003. (AD Swecker's testimony can

be found at [http://commdocs.house.gov/committees/bank/hba97524.000/hba97524\\_0f.htm](http://commdocs.house.gov/committees/bank/hba97524.000/hba97524_0f.htm)) In June 2004, the mortgage fraud program, which was previously spread across sections, was consolidated into the Financial Crimes Section of the FBI's Criminal Investigative Division. This consolidation provided the FBI with more effective and efficient management of its mortgage fraud investigations. At the same time, the FBI began to develop an overall strategy to combat the mortgage fraud threat. As AD Swecker explained, in 2004, the FBI initiated an overall strategy to:

- address mortgage fraud on a proactive basis utilizing partnerships with federal agencies, state and local law enforcement, regulatory bodies, and private industry;
- ensure that appropriate personnel resources were dedicated to emerging mortgage fraud problems in regions of the country that were encountering the greatest level of fraud; and
- focus on insiders harming the industry in order to disrupt and dismantle entire criminal enterprises.

Moreover, the FBI implemented new and innovative methods to detect and combat mortgage fraud. For example, the FBI developed a property flipping analytical computer application used to detect illegal "flipping" schemes and, in 2006, established intelligence collections requirements for mortgage fraud. In 2008, the FBI established a Forensic Accountant Unit, and, in 2009, established the Financial Intelligence Center (FIC).

As the FBI gained experience and learned more about the mortgage fraud threat, it increased the resources dedicated to confronting it. Indeed, as this Commission knows, the number of agents investigating mortgage fraud and the number of mortgage fraud cases under investigation steadily increased over each of the last several years.

The FBI's early commitment to confronting the mortgage fraud threat is illustrated by major mortgage fraud operations in 2004 and 2005. In 2004, Operation Continued Action, the FBI's first national take-down related to financial institution fraud (FIF), which includes mortgage fraud, resulted in charges against 150 individuals for their roles in inflicting \$3 billion in losses. In 2005, Operation Quick Flip, a joint, mortgage-fraud related operation between the FBI, the Housing and Urban Development's Office of Inspector General, the Internal Revenue Service, and the U.S. Postal Inspection Service, resulted in charges against more than 150 individuals for their roles in creating \$600 million in losses. The FBI followed these successful early efforts with major mortgage fraud operations in 2008, 2009, and 2010.

The number of agents and cases is not the end of the story, however. The FBI also redirected its efforts to investigate financial institution fraud schemes that have a larger impact on the public. In 2001, the FBI maintained over 1,300 cases in which the loss suffered by the

financial institution was less than \$25,000. Today, the FBI has just one case in this category. Conversely, over 70 percent of the FBI's mortgage fraud investigations represent losses to victims of over \$1 million. Thus, the FBI steadily increased both the quantity and the quality of its mortgage fraud investigations.

In short, it would be inaccurate and misleading to state that the FBI did not reprioritize mortgage fraud and did not devote appropriate resources to it. Over the last several years, and as Congress appropriated, the FBI has not only steadily increased the number of agents assigned to work mortgage fraud, but has also done so in a way that has maximized those resources.

Unfortunately, the mortgage fraud problem turned out to be more extensive than anyone anticipated. As with many other types of fraud perpetrated during the boom of the mid-2000s, the true extent of the mortgage fraud problem was not exposed until the market deteriorated. However, it is important to note that the FBI also warned of this potential gap in knowledge as far back as October 2004 when AD Swecker testified that "the true level of mortgage fraud is largely unknown." (*See* AD Swecker's testimony) This was the result of many factors. One of the main impediments was the lack of reliable information from the mortgage industry, which typically provided no estimates of the extent of mortgage fraud and, when it did, provided incomplete or inconsistent data. In this context, it is telling to look at the growth in the number of mortgage fraud related Suspicious Activity Reports (SARs), which steadily increased from 17,127 filed with the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") in FY 2004 to in excess of 70,000 filed in FY 2010.

Additionally, during the boom, the average investor may not have realized that he or she was the victim of mortgage fraud, and may have had little incentive to question the practices of the mortgage industry. Once the market deteriorated, of course, this situation changed. Thus, although the FBI recognized in 2004 that the conditions for a mortgage fraud epidemic existed, it did not know, and could not have known, just how extensive that epidemic would become.

It is also important to note that the FBI is a law enforcement agency, not a regulatory agency. It is not within the FBI's mission to regulate the mortgage industry or to take actions to stop its abusive practices. Nevertheless, in his 2004 testimony, AD Swecker advocated for changes in the system that would have provided a better picture of the mortgage fraud threat. (*See* AD Swecker's testimony) The FBI also reached out to the industry in an effort to prevent and detect fraud. In 2007, for example, the FBI entered into a memorandum of agreement with the Mortgage Bankers Association (MBA) to work together to promote the FBI's Mortgage Fraud Warning Notice. And the steady growth in agents and cases over the last several years, as well as the development of new and more effective strategies, shows that the FBI was willing to, did, and continues to devote significant resources to combat this threat.

- 2. Why did the FBI begin tracking mortgage fraud as a separate case classification only two years after its warning about mortgage fraud? Also, when it did begin tracking mortgage fraud separately, why did the FBI only have 120 funded staffing levels for mortgage fraud when two years before the FBI said they could prevent the next S&L crisis.**

As explained above, the FBI began a process of enhancing the effectiveness of its national mortgage fraud program in 2003. One of the first steps in this process was taken in June 2004, when the FBI consolidated the mortgage fraud program into the Financial Crimes Section of the FBI's Criminal Investigative Division. At the same time, the FBI began working towards an overall strategy to address mortgage fraud and also began collecting limited statistical information about the crime problem to help guide its efforts.

As the FBI gained experience and insight into the mortgage fraud threat, it determined, in 2007, that the program's effectiveness would be enhanced further by creating new investigative classifications specifically for mortgage fraud that would allow the FBI to better track, analyze, and report on mortgage fraud related matters. The new classifications show not only that a case is mortgage fraud-related but also the type of victim (e.g. federally insured institution, government agencies, or other entities) and the total estimated dollar losses. With separate and distinct mortgage fraud classifications, the FBI is able to more effectively monitor the resources dedicated to combat mortgage fraud. In short, the 2007 changes were a continuation of the FBI's efforts to increase the effectiveness of its national mortgage fraud program that began in 2003.

As also explained above, the true extent of the mortgage fraud threat was not known until the market deteriorated. The FBI devoted what it believed to be appropriate resources to confront the threat based on what was known at the time. As previously stated, over the last several years, and as Congress appropriated, the FBI has not only steadily increased the number of agents assigned to work mortgage fraud, but has also done so in a way that has maximized those resources.

- 3. Why did the FBI reduce the number of agents assigned to the white-collar crime program after their own warning about mortgage fraud?**

Although approximately 200 fewer agents today are working cases classified as White Collar Crime (WCC) than were working such cases in 2001, the combined number of personnel in the Financial Institution Fraud and Securities/Commodities Fraud category has actually increased. For example, from 2001 to 2010, the number of agents assigned to securities fraud investigations increased from nearly 200 to over 300. The FBI's commitment to staffing WCC investigative matters has never been stronger. With over 93% of its WCC agent resources assigned in its top four priorities of Public Corruption, Corporate/Securities/Commodities Fraud,



Health Care Fraud, and Financial Institution Fraud, the WCC Program staffing level is the single largest within the FBI.

- 4. The FCIC has received testimony stating that during the S&L crisis the banking regulators (OCC, OTS, the Fed, etc.) acted as “sherpas” for federal law enforcement, often directing them and working with them towards prosecution. This testimony also stated that the difference between the S&L crisis and this current crisis is that the cooperation that was available in the S&L crisis did not occur in the current crisis. Does the Department have a view as to why there was a difference?**

The Department, and the FBI in particular, has consistently worked in conjunction with banking regulators to identify potential investigations. Regulators make referrals to the FBI on a formal and informal basis. Conduct is also identified through SAR filings, the system of reporting by institutions regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. The system is operated by FinCEN.

As previously mentioned, the FBI currently has 25 mortgage fraud task forces and 67 mortgage fraud working groups across the country and is a member of the Administration’s Financial Fraud Enforcement Task Force. The Task Force is chaired by the Attorney General and is currently comprised of more than 20 agencies, including the SEC, the Commodities Futures Trading Commission, the Department of Treasury, the FDIC, and HUD. Such coordination allows us to maximize information sharing and to ensure that significant financial crimes are appropriately addressed.

The FBI also participates in the Securities and Commodities Fraud Working Group, a national interagency coordinating body established by the Fraud Section of the Department’s Criminal Division to provide a forum for exchanging information and discussing violation trends, legal developments, law enforcement issues, and investigative techniques. In addition, FBI corporate fraud and securities fraud program managers frequently meet with their counterparts at the SEC’s home office in Washington, D.C., to discuss threats, emerging trends, pending investigations, and to share information.

In 2004, as discussed above, as a result of cooperation among law enforcement (for example, the FBI, HUD’s Office of Inspector General, the IRS, and the U.S. Postal Inspection Service), regulators, and FinCEN’s SAR system, the FBI coordinated its first national enforcement operation related to financial institution fraud, which included mortgage fraud cases. *See* Bates No. FCIC\_REQ\_A000000553; *see also* Letter from R. Weich to P. Angelides re Department of Justice Responses to Questions for the Record (Apr. 16, 2010), at 2. The FBI, along with its law enforcement and regulatory partners, continued its focus on combating

mortgage fraud and coordinated another national enforcement operation in 2005. *See* Bates No. FCIC\_REQ\_A000000553. The sweep (Operation Quick Flip) resulted in 156 indictments/informations and an estimated loss figure of \$600,000,000. *See id.* A third national sweep was conducted in 2008 (Operation Malicious Mortgage) with an estimated loss amount of \$1,000,000,000. *See id.*

In 2009, Operation Bad Deeds, a joint law enforcement and regulatory operation targeting mortgage fraud crimes, resulted in charges against 41 industry insiders. These bankers, lawyers, brokers and accountants allegedly engaged in various mortgage fraud scams that collectively defraud lenders out of more than \$64 million in home mortgage loans on more than 100 properties across New York State. The takedown of "Operation Bad Deeds" was the culmination of a series of investigations conducted by the United States Attorney's Office for the Southern District of New York, the FBI, the New York State Banking Department, the HUD-OIG, the USSS, the USPIS, and the FDIC-OIG.

These national operations highlight, on a large scale, the products of the government's efforts to address the mortgage fraud problem. These national efforts depended upon close coordination and cooperation among law enforcement and regulators. Through the Financial Fraud Enforcement Task Force, the government has continued to build upon these efforts in addressing new and developing financial frauds.

In 2010, these efforts culminated in Operation Stolen Dreams—a three-and-a-half-month takedown of mortgage fraud schemes throughout the country. Organized by President Obama's interagency Financial Fraud Enforcement Task Force, the operation involved 1,517 criminal defendants nationwide, including 863 informations/indictments filed and 525 arrests of those who were allegedly responsible for more than \$3.05 billion in losses. Additionally, the operation has resulted in 191 civil enforcement actions, which have resulted in the recovery of more than \$196 million.

**5. Can the Department list and provide a brief description of the number of criminal referrals the FBI/DOJ have received from any federal banking regulator from 2004-2009 (an anonymous report is acceptable so as not to reveal any names).**

Although the FBI does not track individual referrals, wherever possible it coordinates with its regulatory partners in parallel investigations to both share information and to ensure the most suitable remedy is identified and those responsible are held accountable.

As mentioned above, the Department and the FBI have worked consistently in conjunction with banking regulators to identify potential criminal investigations. Regulators make referrals to the FBI and sometimes to United States Attorney's offices on a formal and informal basis. Criminal conduct is typically identified through the filing of SARs which are

frequently filed, or prompted to be filed, by banking regulatory agencies as a result of audits or in connection with failed institutions.

However, SARs are filed with FinCEN, not with the Department or the FBI. Although FinCEN provides the Department with access to SARs, neither the Department nor the FBI maintains statistics regarding those SARs to which they have been granted access. The SAR review teams include both agents and prosecutors from the United States Attorney's Offices. The Department uses SAR data in various ways to identify trends, assess risks, focus resources and generate investigative leads which may be developed into criminal prosecutions. The Department understands that FinCen maintains records of SARs filings and should be able to provide the Commission with a numerical response to this inquiry.

- 6. We have sent you the 2008 New York Times article regarding then Attorney General Mukasey's statements concerning the establishment of a national task force to combat mortgage fraud. Can you provide us with any background for that statement such as any reports, recommendations or studies prepared by or for the Department of Justice in support of the Department's position in this regard?**

The statements referenced in the June 6, 2008, New York Times article mentioned in your letter stem from a round table discussion Attorney General Mukasey hosted for reporters on June 5, 2008 at the Department of Justice. The full transcript of that round table discussion is enclosed for your convenience. While the discussion covered a wide-range of topics, the portion of the transcript relating to mortgage fraud can be found at the bottom of page 12. In that discussion, Attorney General Mukasey stated in relevant part:

I have a sense that it is a problem that arises in particularly the markets, many of them. A lot of them in the same way but that there is no Enron-type task force that is a proper response. I think what's a proper response is information sharing. Is getting familiar with the way in which it arises starting from over valuation of properties to turning a blind eye to the over evaluation to putting together securitization packages that are then marketed to not letting people know what the true terms of their mortgages are, to rating those security packages in a way that overstates their value by disregarding the risk and that has happened over and over again. Somebody who I met with characterized it as white collar street crime. That's a wonderful description and what we're trying to do and what the FBI has done is to establish several, they call them task forces, but they are in discreet locations making cases. I know two notable cases that have made it to the Eastern District of New York. There will be more and to prosecute it, will we see it.

While it is difficult to reconstruct what specific materials were used to prepare an Attorney General from a prior Administration, as further described in a 2008 FBI report on

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mortgage fraud (see [http://www2.fbi.gov/publications/fraud/mortgage\\_fraud08.htm](http://www2.fbi.gov/publications/fraud/mortgage_fraud08.htm)), by 2008, the FBI had 18 mortgage fraud task forces and 53 working groups in place. In addition, just prior to former Attorney General Mukasey's round table discussion, the Eastern District of New York indicted Olympia Mortgage (where Fannie Mae was one of the victims, press release can be found at <http://www.justice.gov/usao/nye/pr/2008/2008may08.html>) and within a week after the round table discussion, the Eastern District of New York unsealed an indictment against Bear Sterns (press release can be found at <http://www.justice.gov/usao/nye/pr/2008/2008jun19.html>). While we cannot confirm that these were the specific cases former Attorney General Mukasey was referencing in his remarks, these cases are illustrative of the focused work on mortgage fraud occurring in the Eastern District of New York, as well as across the country.

We hope these responses are helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich  
Assistant Attorney General

Enclosure



**U.S. DEPARTMENT OF JUSTICE**

**Office of the Press Secretary**

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**For Internal Use Only**

**Thursday, June 05, 2008**

**ROUNDTABLE WITH ATTORNEY GENERAL MUKASEY**

**U.S. Department of Justice  
Attorney General's Conference Room  
950 Pennsylvania Ave., NW  
Washington, D.C.**

**11:00 A.M. EDT**

**ATTORNEY GENERAL MUKASEY:** So, here we are again a second time I guess. Second time on the record. Third time and I haven't got anything prepared.

**QUESTION:** So what have you been up to lately?

**ATTORNEY GENERAL MUKASEY:** Here.

**QUESTION:** Here?

**ATTORNEY GENERAL MUKASEY:** Here. Record should reflect that he blew his nose at first. There's a lot going on. I've been up to FISA.

**QUESTION:** Tell us where that stands in terms of negotiation and how optimistic are you that they'll come up with something that you can accept?

**ATTORNEY GENERAL MUKASEY:** I'm very hopeful. I'm a hopeful kind of person. There are, as you know, we've got a bill through the Senate that we're very keen on, very happy with that I believe makes the compromises that have to be made and resulted from a serious process including hearings and presentation of evidence and negotiations and (inaudible). And that's – it is what it is. I'm told there are discussions going on between and among people in the Senate, people in the House, people in the

administration and that's all toward the idea of getting the bill. And that people come into and talk to me and are sort of more optimistic and less optimistic from minute to minute and I try to not have my mood go up and down.

**QUESTION:** Are you involved in these discussions with the Hill?

**ATTORNEY GENERAL MUKASEY:** Directly?

**QUESTION:** Yes, sir.

**ATTORNEY GENERAL MUKASEY:** On occasion. I mean I've had conversations with particular members of Congress. I had conversations early on with people in the House of Representatives when that was active. I've had some conversations but I'm not actively involved in discussions at this point.

**QUESTION:** Can you say whether it would be acceptable to the administration that at the end of the day there would be some provision for some kind of litigation? For example, having the U.S. be the defendant?

**ATTORNEY GENERAL MUKASEY:** As you describe it, no. What would be acceptable would be to keep the authorities that we have in place. That is the authority to conduct surveillance of foreign targets abroad and notwithstanding that there is and has been court review of procedures and making sure that that's what we're doing. Having us able to do that across the board and not have to go back to doing it on a case by case basis. And also, to have protection for the Telecoms from being sued for having come forward on 9/11 in response to a request that were assured came from the President and that they were assured involved them doing something lawful. That said there is provision for court review to make sure that the Telecoming question was in fact a participant. Obviously if they're not a participant they shouldn't be sued and for review of the propriety part determination that they got the assurances that I just described. There is some discussion about what the standard of the proof might be there.

**QUESTION:** This would be before the FISA board?

**ATTORNEY GENERAL MUKASEY:** Yes, hopefully.

**QUESTION:** It would all be going forward, right? It would not be acceptable to have – to take retroactivity off the table?

**ATTORNEY GENERAL MUKASEY:** Take retroactivity –

**QUESTION:** Protections.

**ATTORNEY GENERAL MUKASEY:** Correct. Off the table?

**QUESTION:** Right.

**ATTORNEY GENERAL MUKASEY:** Right.

**QUESTION:** Why is the administration willing to make an exception – excuse me. Having FISA court review it at all. Originally the White House was pretty adamant in saying that it wanted all out immunity with any deal that had – you know, you’re making what seems like a potentially serious concession.

**ATTORNEY GENERAL MUKASEY:** I don’t think it’s a potentially serious concession. It’s a statement that a court is going to review a determination or a recommendation that I make to determine number one, whether in fact the Telecom was a participant or not. If they weren’t – isn’t any reason for them to be the subject of litigation. And also to determine whether as the Senate bill stands now, whether it’s an abusive discretion for me to determine that they did it in response to a request that was – that they were told came from the President and they were told – said that what they were doing was lawful. And I don’t think that there was --

**QUESTION:** You just used the word “told” that came from the President – that the request came from the President. Will there be any requirement that the request was made in writing.

**ATTORNEY GENERAL MUKASEY:** It’s my understanding that these requests were made in writing. I mean I don’t understand anybody who simply responded to the telephone.

**QUESTION:** Or in person business.

**ATTORNEY GENERAL MUKASEY:** Right.

**QUESTION:** Have you been kept abreast of the arraignments this morning in Guantanamo Bay?

**ATTORNEY GENERAL MUKASEY:** I’ve been told that there area arraignments.

**QUESTION:** I mean did you get any details, watching the news at all?

**ATTORNEY GENERAL MUKASEY:** No. I was in a morning briefing this morning. I then met with people here as I usually do. I then went over to the disability rights section of the Civil Rights division to visit with some people there. There’s got to be a question behind the question.

**QUESTION:** Well, yeah. Yesterday you said that the Commissions would proceed in the best traditions of the American legal system.

**ATTORNEY GENERAL MUKASEY:** Okay and what’s happened --

**QUESTION:** Khalid Sheikh Muhammed this morning he said that he wishes to be martyred and he's already denounced his lawyers and he seems to be trying to muck up the process as was expected. Do you find that surprising at all?

**ATTORNEY GENERAL MUKASEY:** When I was a District Judge I had defendants come into court and make statements that were unusual. That's a part of the process. It's not a part of the process that we anticipated. It's not a part of the process we hoped would go on but it's a part of the process that the process can deal with. I don't think I ever had a defendant come into court and say he wanted to be martyred but I've had defendants say some pretty odd things. I don't think that Khalid Sheikh Muhammed making that particular statement somehow changes any part of the process.

**QUESTION:** He did say that he wants to be tried under the Shirrea Law and you know, is there anything that he can do that would make this illegitimate? Is there any way – if he represents himself and tries to bring Shirrea Law into the proceeding what can the judge do about that?

**ATTORNEY GENERAL MUKASEY:** A military judge is going to do what a military judge is going to do. I can tell you about one experience that I had that is barely analogous to that and that involves having an expert testify to the functions of an Imam under Shirrea Law and whether specifically the functions of Omar Burukman were within Shirrea Law. I kept it out because the government law isn't Shirrea Law. Now what the setting is that he might want to introduce Shirrea Law into the trial with and what issue it would go to is something I know nothing about and obviously the determination there is to be made by the judge who presides.

**QUESTION:** Yesterday DHS said they were going to start reporting detainee deaths to the Justice Department for some sort of oversight. Is there – yeah, I know. They are going to report them to the same agency, I guess, that deals with detainee deaths and state and federal prisons. Is there anything that the Justice Department can do or – to a you know, different department in regards to the immigration deaths?

**ATTORNEY GENERAL MUKASEY:** The notion of doing things to other departments is kind of a novel one. For me you can certainly share the information that we have on treatment of prisoners generally. The information that we have – that we get from state and local governments on their treatment of prisoners and resulted in civil rights actions if there are any and provide advice and help. Doing things to people is – I mean I think that suggests something more than that.

**QUESTION:** They seem to be expecting some sort of oversight.

**QUESTION:** It's BJS. It's Bureau of Justice Statistics. It's a statistics analysis agency within DOJ.

**QUESTION:** I thought they were asking whether BJS could do its own tabulations or something.



**ATTORNEY GENERAL MUKASEY:** I'm sure they are capable of tabulating information and I don't know any reason why we'd be unwilling to receive the information and help tabulate it. I can't think of a reason why not to do that.

**QUESTION:** Just to follow up on Jason's question here for a moment about the how to try these high value detainees. There's basically a choice now of either civilian court or the military commissions. In the remaining time that you're here, do you think that any energy will be expended on looking at a third option of a special terrorism court or some alternative to military commissions or civilian courtrooms in the U.S.?

**ATTORNEY GENERAL MUKASEY:** You say that consideration would be given to trying high value detainees in civilian courts. I understand that people talk about that sort of thing.

**QUESTION:** Well, let me quantify the premise of the question then. Just people caught up in the War on Terrorism. There's basically you know, we have the Zacharias Moussau model, the trial here or the military commissions wherever they may be. Will the administration pursue? Is there any work being done on the possibility of a third channel? A terrorism court of some kind? Congress passed and the President signed the Military Commissions Act of 2006. That was to establish the procedure that's being used in precisely this case and that's the procedure that's going to be used in this case. The case of Zacharias Moussau arose in the United States. I know a little bit about Zacharias Moussau. He is one of my alumni. I signed the order in the court originally. I gave him his first lawyer, his first hearing or two or three and that was a case that was prosecuted here. He was apprehended here; different kind of case.

**QUESTION:** But there had been people that had been enemy combatants and then ceased to be enemy combatants. Like what's his name – Padilla. Jose Padilla. So there are options but I'm just wondering regardless of the specifics of those cases, is there any interest in the administration? Will there be some time spent while you're here as Attorney General in exploring a possible third avenue of the terrorism court?

**ATTORNEY GENERAL MUKASEY:** I think to the extent that we're going to spend time and energy it's going to be on assuring that the military commissions process succeeds. We have people there who are helping with that. Obviously the principal responsibility with that is the Defense Department but I don't know of any organized effort to make up a third way.

**QUESTION:** Who's running the National Security Division on a daily basis now?

**ATTORNEY GENERAL MUKASEY:** Pat Rowan who is the designated successor to Ken Weinstein.

**QUESTION:** Are you going to try to get him confirmed? Are there plans to nominate him?

**ATTORNEY GENERAL MUKASEY:** No. Obviously the nominating done by the nominating party and we've been talking about it. I don't know now what the status of those plans is. But Pat Rowan is certainly the acting assistant that is in charge of the National Security Division and is (inaudible). Yes?

**QUESTION:** Is there any plan in place at all in the Department to transfer the Guantanamo detainees to federal facilities in the United States should the next President decide to close Guantanamo?

**ATTORNEY GENERAL MUKASEY:** No.

**QUESTION:** Have you made any recommendations on the issue of Guantanamo and how and whether it should be closed?

**ATTORNEY GENERAL MUKASEY:** No.

**QUESTION:** Do you expect that you will be asked that question? Obviously that comes up from time to time.

**ATTORNEY GENERAL MUKASEY:** It does come up from time to time. The key issue, I think, is what to do with the people who are there and what the alternative is to Guantanamo.

**QUESTION:** So what are your feelings? Should it be closed?

**ATTORNEY GENERAL MUKASEY:** There has to be a way of arranging for the cases of the people who are there to be adjudicated and or for arranging for countries to accept them and that's what we're working on.

**QUESTION:** I assume you read the reports a few weeks ago from Inspector General Fingerhut, the FBI's role in Guantanamo and the things that they witnessed in the way of abuses. I am just wondering your reaction in general to the findings of the Inspector General and more broadly, do you worry about the damage that that issue has done in terms of public credibility when you hear about the FBI agents and these aren't prisoners who are saying they did these horrible things to them. These are FBI agents who are saying that they say these things, witnessed these things. What affect do you think that has on the administration's credibility?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** There are a lot of components to your question.

**QUESTION:** Take any at all, if you want.

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** I'm going to try and take them all and if I leave any out you will tell me. Start out with the fact that I

think the report insofar as it involved the conduct of FBI agents was, by in large, positive; that FBI agents behaved in a professional way. There were some oversight that was not in place that should have been and has been put in place since. The FBI made no criminal recommendations as a result of its observations and/or conduct. Some people, some Defense Department people, were prosecuted for some of the things that went on in the early days at Guantanamo. That said, interrogation certainly by the Armed Forces is now confined by law to the Army Field Manual and the CIA has in place a program that has been reviewed by me and is lawful. And understand, also, I think that the FBI and the CIA approach interrogations from two different directions with two different points of view, and two different goals really. The FBI is an organization that's -- and if I'm going on too long you'll -- the FBI's an organization that's used to gathering evidence for presentation in court, and that's done in a particular way with particular issues in mind. The CIA gathers intelligence for use later on; and it's got other considerations in mind and other exigencies in mind. So you're talking about two very different cultures and two very different goals and two very different agencies.

**QUESTION:** Judge, can you talk about the department's review of corporate charging policies in light of this attorney/client privilege dispute? I understand you may have, you and the deputy may have met at the Chamber of Commerce recently and discussed this and just I'm just wondering where that stands.

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** There are some people who favor legislation. We think, and continue to think, that the McNulty memo is working and has worked. There were either no or a very, very, very, very small number of active requested waivers of the privilege (inaudible.) All of this relates to gathering information from and about corporations when there's been impropriety. Generally, it's been my experience and with my experience as a private lawyer that the main thing a corporation wants once it hits one of these situations is for it to be over. They want to get rid of the people who did it. They want to get the information into the hands of the prosecutors and they want to then proceed with their business; and that's what we generally try to do. Sometimes that involves, and it's on very rare occasions, we revoke\* the attorney/client privilege. The effective legislation would be to say that they can't get any benefit from that, which could have -- the law of unintended consequences operates very strongly and it's very hard to amend legislation. It's relatively tweak a letter or memo to take care of an actual or a perceived problem. But our experience has been that we gather information. There have been (inaudible) requests for the, kind of, full-blown waiver of the attorney/client privilege that I believe in and I understand the reason for it, it being privileged and I support it. But I understand also that if a corporation is believes it necessary or advises to give it up it ought to be able to get something in return.

**QUESTION:** So do you think you would tweak the policy instead of having legislation pushed on you? Is that the idea?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** If there's a need to tweak the policy the policy will be tweaked, and that arises independent of the question of whether someone wants to put something in legislation. I don't see a negotiation of, I'll

do this then I'll give you this tweak if you don't put any legislation. Legislation in this area could wind up helping -- we could wind up hurting the people it's intended to help. This very wise (inaudible) said that more tears are shed over the answered prayers than over unanswered prayers and this may be one of those situations.

**QUESTION:** Has it reached the point that you will tweak the policy or has a determination been made or anything?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** No, it hasn't. And in order to tweak something I need somebody to present a problem and a suggested --

**QUESTION:** There are plenty of people who are presenting that problem. As you might have heard during your meeting with people in the business community there are still a lot complaints about the memo.

**ATTORNEY GENEAL ATTORNEY GENERAL MUKASEY:** -- such as? I did --

**QUESTION:** That the waiver issue still has not been resolved; that it still gives the department way too much power.

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** If the complaint is that there should never be a waiver or that nobody should ever get any benefit for the waiver, what I'm telling people who say that is be careful for what you wish for. And they're very thoughtful people. They are; deadly serious, they are. I think they'll think it through.

**QUESTION:** Secretary Chertoff has talked publicly about steps he's taken at DHS to ease the transition to the next administration. What are you doing here in a national security context? Have you thought about that? Are you starting to enact anything?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** The best transition from my standpoint is FISA. Obviously if you put in place procedures for intelligence gathering, that's my principle worry; my principle concern. There are people who will develop transition strategies and procedures to that we don't simply walk out, shut off the lights, and wish whoever comes in good luck. I'm told that's not the way you do it.

**QUESTION:** What happens if come August you still do not have a resolution in place and the Protect America Act authorizations, which lasted a year, begin to sort of expire; that once would have been almost inconceivable. Is that now possible?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** It was inconceivable in the same sense in which it's now inconceivable. That is, as something that is so undesirable that it shouldn't happen because it puts us back right where we were before. Having to, on a case by case basis, make application to conduct foreign surveillance, which we shouldn't have to do, which takes people who should be involved in evaluating intelligence to work preparing applications on a case by case basis and



giving people (inaudible) abroad the benefit of the protection of the American law, which nobody ever intended them to have, including Congress. So, yes, in that sense it's unthinkable. I still hope and actually think that it won't happen.

**QUESTION:** Let me ask you a question about leaks and national security leaks in general; and obviously the department has expressed a lot of concern preceding your tenure especially about a number of leaks to the press and otherwise, and I wonder if, on the other hand, I don't know if we've seen any prosecutions arising from that. Can you just describe in general how those investigations are proceeding? And, as an example, would you expect anybody to be prosecuted in connection with the leak of the TSP program?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** I can't comment on any investigation or the progress of any investigation that exists. That said, people in government deal with classified information, which they promise not to disclose and which it is a crime for them to disclose. For them, because they differ with a policy or because they had an argument with somebody that morning then to go out and disclose it is inexcusable. It is also a highly deterrable offense in the sense that, you know, you're dealing with a very conscious audience who will respond if somebody who does that is prosecuted for it. And we don't force people to work here. Nobody works here at the point of gun. You can leave. But simply releasing information that you promised not to disclose and that it is unlawful for you to disclose because you think it will serve policy interests that you think isn't being served I think is inexcusable.

**QUESTION:** On a related note, Henry Waxman said he sent you a letter this week asking for your permission for the FBI to release some interviews they had with Scooter Libby that indicated that he was directed by Vice President Cheney to disclose the identify of Valerie Plame. Are you going to -- I understand the FBI has sent that information over here. Are you going to let that be released to the committee?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** I love reading about my correspondence in the morning papers. [Laughter.] But yes, the (inaudible) and -- after I read about it, and the response is being considered. Generally, these matters being how will the release of information to the folks on the Hill in connection with their oversight responsibilities is a matter of negotiation because we have interests of executive privilege to protect and that's not just a phrase. It means our ability to get and my ability and the ability of the other agency person to get frank advice from people without their believing that they're going to read about it someplace and issues of attorney/client privilege and so on. As a result, we talk about accommodations with Congress and generally manage to reach them. In some system, you know, that leaves everybody surely but not rebellious.

**QUESTION:** May I suggest one way to resolve the issue of Congress infringing on the Executive Branch; and you could **invite** --

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** Not infringing --

**QUESTION:** -- you could invite reporters to come review the [Laughter] -- we'd be happy to.

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** I don't want to say that that cure is worse than the disease [Laughter.]

**QUESTION:** Can I just follow-up though. How do you square that circle when we're talking about Executive privilege and making sure that people have frank conversations with executives and then what you said in response to the other question, which is when people leak classified information it's illegal and they should be prosecuted for it? Isn't the identify of a CIA agent classified or otherwise prosecutable?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** That was a subject that was litigated in a particular case on which I'm not going to comment other than to say that if there were a prosecution it would not be leaked.

**QUESTION:** Judge, in the past you've resisted calls for -- or to reopen the case in the Don Siegelman. In light of what PR investigations and (inaudible) prosecution in Alabama, Mississippi, Pennsylvania, and (inaudible) have you had a change of heart and maybe your staff has recommended (inaudible) investigations?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** No, selective prosecution is a legally prognostic offense that a person can make in the court by showing that people similarly situated were not prosecuted and that if he or she was prosecuted based on improper considerations; and that is something that any defendant free to show in open court. Any prosecution of a political figure is bound to be met and is often met with accusations that, for the prosecution, is political. It, as they say, goes with the territory

**QUESTION:** Speaking of prosecutions of political figures, when did you learn that FBI agents were going to raid Scott Block's home and offices?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** I can't remember the precise moment.

**QUESTION:** Days or hours before?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** Days rather than hours.

**QUESTION:** Is it problematic in any way that he's investigating the Justice Department at the same time the Justice Department is investigating him?

**ATTORNEY GENERAL ATTORNEY GENERAL MUKASEY:** No.

**QUESTION:** Can you elaborate?

**ATTORNEY GENERAL MUKASEY:** If there is probably cause to believe that somebody has committed a crime as is necessary in order to conduct a search then it is not problematic to investigate that person. That that person happens to be investigating or reporting to investigate the person or the organization that contains probably cause and is charged with following it is not problematic. It may be ironic or curious. It is –

**QUESTION:** There's a recent official, former official of the Office of Pardon attorney who said that the office is severely understaffed and has an enormous backlog and is in the sense sort of stuck in the mud. Have you been able to look at that at all and is that something that you think needs to be fixed?

**ATTORNEY GENERAL MUKASEY:** I haven't directly. If there's any office that's stuck in the mud it needs to be fixed. How we go about doing that is something that I should look at and will and you know what the function of that office is. It's to review applications for pardons and make recommendations Deputy A.G. and then it's principally his oversight responsibility but I don't want to be caught in a passing of the proverbial buck. If there's a problem, it should be addressed.

**QUESTION:** Can I just go back to the issue. You said there basically are two problems for shutting it down and one is what to do with the people who need to be returned and the countries don't accept them but you also said there has to be a way for cases that are there now to be adjudicated somewhere else is I guess what you mean and what are the options for the somewhere else?

**ATTORNEY GENERAL MUKASEY:** I didn't say somewhere else.

**QUESTION:** No, I'm assuming.

**ATTORNEY GENERAL MUKASEY:** In fact, have you visited Guantanamo?

**QUESTION:** Well, if it shut down though there would have to be somewhere else and the President said he's in favor of shutting it down and he's the Secretary of Defense. So I guess what I'm asking is have you been involved in discussions about where that somewhere else might be?

**ATTORNEY GENERAL MUKASEY:** No.

**QUESTION:** Okay.

**QUESTION:** Judge on another subject, the federal law enforcement issues violence in Mexico seems to be going from bad to worse and I'd like to know first where are your personal perceptions of the seriousness of the problems there and secondly, in terms of

concerns of a spillover across the border – how is this impacting your agency's and efforts to try to provide aid to the Mexican government?

**ATTORNEY GENERAL MUKASEY:** Okay. We are trying to give the Mexican government every assistance that we can and the violence that's going on there is a symptom of the fact that they have taken on a responsibility and made their determination to fight drug cartels. It is in a bizarre way an expected development or a development that signals some progress because the first response as I understand it of cartels to pressure was to run away. Then the response was to fight among themselves. They have now been driven into an area such that they are starting to fight back and they are fighting back in modes of vicious and totally -- way by assassinating law enforcement authorities and assassinating public officials. We're trying to give Mexicans every assistance that we can including the Etrace program, ATF, including providing units within Mexican law enforcement with information and including accepting when they extradite people -- major drug dealers. But we think that they're -- and they've made a commitment to fight this and they are literally fighting and dying over the same issue that troubles us and we're trying to minimize the flow of money down there and we're trying to minimize the flow of guns down there and minimize the flow of drugs up.

**QUESTION:** So from your point of view you're not disturbed by what you're seeing in terms of the deaths of eight federal agents and --

**ATTORNEY GENERAL MUKASEY:** Discouraged, yeah. I don't like seeing federal agents killed. They don't like seeing federal agents killed. I think it's tragic but it represents no failure of theirs. It represents any evidence at the seriousness of their commitment.

**QUESTION:** And the Merative (phonetic) plan from what we understand has run into some trouble insertion of language that probably would make it unacceptable in Mexico to accept the White House -- policy expressed concern about that this past week.

**ATTORNEY GENERAL MUKASEY:** I know about the Merit issues.

**QUESTION:** Human rights language.

**QUESTION:** There's some language being inserted in the Senate bill that suggests that the Mexicans have to do some kind of verification about their human rights records.

**ATTORNEY GENERAL MUKASEY:** I think the Mexicans need the Merative (phonetic) Assistance and deserve it.

**QUESTION:** At one of your first -- I think it was your very first roundtable like a couple months ago you were asked the housing mortgage crisis. You indicated you were still trying to get your arms around the National Law Enforcement -- what differences there should be in an Enron-type task force. The public concern is do you have a better sense of



how from national policy, national law enforcement policy, that attacking mortgage crisis and the fraud that goes along with it?

**ATTORNEY GENERAL MUKASEY:** I have a sense that it is a problem that arises in particularly the markets, many of them. A lot of them in the same way but that there is no Enron-type task force that is a proper response. I think what's a proper response is information sharing. Is getting familiar with the way in which it arises starting from over evaluation of properties to turning a blind eye to the over evaluation to putting together securitization packages that are then marketed to not letting people know what the true terms of their mortgages are, to rating those security packages in a way that overstates their value by disregarding the risk and that has happened over and over again. Somebody who I met with characterized it as white collar street crime. That's a wonderful description and what we're trying to do and what the FBI has done is to establish several, they call them task forces, but they are in discreet locations making cases. I know two notable cases that have made it to the eastern district of New York. There will be more and to prosecute it, will we see it.

**QUESTION:** Do you anticipate any changes or are you comfortable with the current approach?

**ATTORNEY GENERAL MUKASEY:** There's always more we can do. That said, I don't see what you call the Enron-type taskforce. This isn't that type of phenomena.

**QUESTION:** Judge, just to follow up, does the FBI have enough money to handle this? You know they lost – I guess they transferred 2000 agents to the criminal side of the house to the National Security stuff and I'm just wondering if you think they need a new budget to deal with this housing crisis or there's nothing that can be done over there?

**ATTORNEY GENERAL MUKASEY:** Nobody has enough money. Yeah, if they gave the FBI more money to use in particular ways could they use it? Sure. If they gave us more money could we use it? Sure. Are we doing the best we can with what we have? Yes, I hope so and if we're not then I --

**QUESTION:** Have you heard of any problems with the FBI over there in terms of money and dealing with this mortgage crisis?

**ATTORNEY GENERAL MUKASEY:** You mean has somebody told me we can't deal with the mortgage prices because we don't have enough money? No.

**QUESTION:** Or do we just have too few agents working on it?

**ATTORNEY GENERAL MUKASEY:** Has anybody made that complaint? No.

**QUESTION:** Judge, several cities including Washington are seeing a rise in gun crime and violent crime. There's some dispute over some of the President's budget cuts including from your department of the programs that people believe help that situation.

What are your thoughts on how to deal with the rising crime and whether or not that money can be restored?

**ATTORNEY GENERAL MUKASEY:** What we are trying to use is a coordinate strike force model in a particular region which allows us to coordinate state, local, and federal agencies to hit particular targets. That is – the rise in drug violence in particular cities is – I’m sorry – rise of gang violence in particular cities is a rise in particular cities. It’s not uniform across the country. It arises in particular places and what we found most successful is figuring out where and how to fight it in a coordinate kind of way so that the state folks aren’t doing one thing, the local folks another thing and us a third thing. We’re getting together and trying to spend the money the most intelligent way possible. That’s what we’ve tried to do.

**STAFF:** Guys, I think we’re going to have to wrap up here. If we could do two more quick questions.

**QUESTION:** You said in one of our early meetings you found your morning intelligence briefings extremely frightening. You’ve been doing this for some time now. Has your – have your thoughts on that changed? What would be your assessment of the daily intelligence National Security briefings?

**ATTORNEY GENERAL MUKASEY:** Yeah, it’s still frightening. There was always – I mean – and the same reasons. That is that it is a lot more varied and it comes from a lot more places than I had ever anticipated. That said, I think what I should have said at the time is there’s an upside too and that is because that’s what I’m seeing. It necessarily means that we know a lot more of what we knew and we can do a lot more than I thought we could do but yeah, it’s still – it’s not something you get used to. It’s not something I get used to.

**QUESTION:** I’ve been told that you’re working on revision of the Attorney General guidelines. Is that true?

**ATTORNEY GENERAL MUKASEY:** The Attorney General guidelines?

**QUESTION:** Apparently there’s something called Attorney General guidelines.

**ATTORNEY GENERAL MUKASEY:** For investigations generally?

**QUESTION:** No, National Security sections.

**ATTORNEY GENERAL MUKASEY:** That would involve investigations in general. The answer is am I working on it? Yes.

**QUESTION:** Can you talk to us a little bit about what changes might be coming down?

**ATTORNEY GENERAL MUKASEY:** No.

**QUESTION:** Just to clarify on that though. These were the guidelines first that were set by Attorney General Levi and then revised early in the Bush Administration.

**ATTORNEY GENERAL MUKASEY:** You know more about the history than I do.

**QUESTION:** But I want to make clear that I understand what it is that you're looking at and what you're revising. Are those the ones that you're looking at?

**ATTORNEY GENERAL MUKASEY:** I am revising guidelines relating to investigations.

**QUESTION:** Why?

**ATTORNEY GENERAL MUKASEY:** Because it's necessary to put in place regulations that will allow the FBI to transform itself as it is transforming itself into an intelligence gathering organization in addition to just and it's some just – a crime solving organization and to make sure that we have coherent regulations across the board so that we're not having investigations of – we're not having regulations relating to one subject that conflict with regulations relating to another.

**QUESTION:** But that wasn't the purpose of what Ashcroft did in revising the Levi guidelines? Are you now rolling back what Ashcroft did?

**ATTORNEY GENERAL MUKASEY:** I don't know what General Ashcroft did and there's a picture of General Levi up on the wall and the only way I know about what he did is from having spoken to his deputy who is my late partner.

**QUESTION:** All right. Thanks guys.

**ATTORNEY GENERAL MUKASEY:** Thank you all.

(Roundtable adjourned at 12:01 p.m.)