

[Unclassified]

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MEMORANDUM FOR THE RECORD

Event: Attorney General John D. Ashcroft

Type of event: Interview

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Special Access Issues: A portion of this interview was conducted at the TS/SCI level. This portion of the interview is not included as part of this MFR. Please note that this interview was taped.

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Team Number: 6

Location: Sixth Floor Justice Command Center Conference Room, Department of Justice

Participants - Non-Commission: Daniel Levin, David Ayres, Stuart Levy, William E. Moschella, and Paul Colborne

Participants - Commission: Vice-Chair Lee Hamilton, Commissioner Fred Fielding, Commissioner Richard Ben-Veniste, Daniel Marcus, Peter Rundlet, and Susan Ginsburg

Note: The statements quoted below are based on notes and not on the actual tape recording. While they are included with the sense that they are accurate, they should not be used as direct quotes until confirmed by the recording.

Introductory Remarks. The Attorney General (AG) began the interview with a statement that lasted approximately 20 minutes. Until noted below, the following emerged from the AG's introductory statement.

Pre-9/11. Ashcroft began by stating that he and the Department faced a number of challenges when he arrived. There was a clear need for reform. There had been some high-profile problems such as Ruby Ridge, Wen Ho Lee, Waco, etc. Furthermore, soon after he arrived, additional problems "matured." These included Robert Hanssen, the late discovery of the Timothy McVeigh documents, and the audit that showed that the Department had lost several guns and laptops. The Department had an unfocused culture and it needed clarity.

Ashcroft indicated that they had begun to address some of these problems prior to September 11, 2001, but he said that they were symptoms of larger "architectural difficulty" at the Department. Ashcroft said that the Immigration and Naturalization Service (INS) was the largest part of the Department of Justice (DOJ) and that "everyone agreed" that the biggest problems were with the INS. He said that they needed and planned to separate the services function from the enforcement function at INS.

Ashcroft said that it was clear that the FISA process needed repair. He said that the Chief Judge of the FISA Court (Royce Lamberth) came to him and said that he needed to fix it. There

were inaccurate affidavits and "we needed to deal with it." Ashcroft said that during the summer of 2001 there were increased threat warnings, but that their focus was overseas. Ashcroft said that he became aware of some problems that he discussed with Condoleeza Rice (and indicated that he would go into more detail on this during the classified portion of the interview).

Ashcroft stated that the Department (including the FBI) was focused on prosecution rather than prevention and he said that it was just "part of the culture." Ashcroft also referred to the artificial distinction between domestic and international terrorism. He said that there was a "culture of insularity" between the law enforcement and intelligence communities that had grown over the years and become a "substantial problem."

September 11 and thereafter. Ashcroft said that the attacks came as a "complete surprise" to him. He said that during the immediate aftermath there was a general belief that we were going to get hit by a follow-on attack. Ashcroft said that he would have been surprised to learn then that the next two years would pass without the U.S. being hit again.

Ashcroft said that it was clear to him that the FBI did not have a good handle on al-Qaeda and that a lot of things needed to be done quickly, including legislative fixes. Ashcroft said that he quickly instructed everyone to figure out what could be done. He advised his subordinates to "think outside of the box, but inside of the Constitution." He said that he wanted to consider all possibilities – legislative, administrative, regulatory, etc. He said that prevention became a serious priority. Ashcroft said that they focused their attention on information collection while, at the same time, they tried to make architectural changes.

Ashcroft said that the FBI reorganization is a "substantial part of what we have done." He said that they changed to focus of their priorities, worked to centralize their programs, and focused on prevention. He said that there was a realization that the FBI needed help – and that there are more than 600,000 law enforcement officers in the United States. With respect to changes, Ashcroft reported that there was a 95% increase in the number of counterterrorism (CT) sources within 16 months of 9/11; the number of FISAs increased by 615%, and the number of emergency FISAs (which tend to be CT related) also went up. He said that the FBI did no intelligence reports prior to 9/11 and that the FBI now has 25 full-time Reports Officers and that they have written over 1000 Reports.

Ashcroft called the so-called "Wall" between intelligence and law enforcement "a costly idea." He said that they were working to integrate intelligence and law enforcement, which he described as crucial to success. Ashcroft indicated that he was therefore opposed to the creation of an American MI-5. He said that the best investigation occurred by having the functions done together.

Finally, Ashcroft indicated that he recognized the need for them to put together evaluation metrics to make sure that their reforms are successful. He said that part of such evaluation is costly, not only in the actual monetary costs, but also of the cultural responses they have to be sensitive to. In this regard, he seemed to be concerned about the discrimination that Muslim-Americans could be subject to.

Ashcroft said that he hoped his staff would correct him when he was wrong during the interview.

[Start of Actual Interview by Dan Marcus]

Transition Period. When asked whether he was focused on CT issues or al-Qaeda during the period in late December, 2000, when he was nominated to be the AG until his confirmation, Ashcroft said that he was recently (he hinted that it was during preparation for the interview) reminded that there was a mention of CT being a responsibility of the AG in his briefing book. He said that we could go back and review the Senate's "interrogation" of him on the topic during his confirmation period, but he made clear that it did not occupy a significant part of the preparation for his confirmation hearing. He also stated that preparation for the job is not the same as for confirmation.

Pre-9/11 Focus on Counterterrorism. Ashcroft said that he was officially sworn in on the evening of February 1, 2001. When he was asked whether FBI Director Louis Freeh provided him with a briefing on CT, Ashcroft said that his first "briefing" by Freeh was during a moment during a small reception when Freeh pulled him aside to tell him about the recent discovery of Robert Hanssen's espionage. He said that he wanted a "session" on CT "from time to time," but that he was not sure he could remember any specific conversations about al-Qaeda. He did remember the conversations about Hanssen and related problems. Ashcroft said that during this time Freeh was focused on his own departure. Ashcroft said that he was focusing on the widely reported relationship problems between the DOJ and the FBI, which, he said, had fallen into disrepair. Returning to Hanssen, Ashcroft said that the situation was a "big deal," in part because the original focus was on the CIA as the origin of the mole. When they became aware that he was the problem, they wanted to catch him – "put his head in the noose" – without letting him provide more intelligence.

Ashcroft said that although he had a lunch with former AG Janet Reno after he took office to discuss some matters with respect to running the Department, including how to improve the culture there to prevent crime, he does not recall discussing the CT mission with her.

At this point, Ashcroft's Chief of Staff, David Ayres, interjected to remind the AG that Freeh had raised the topics of the Khobar Towers and U.S.S. Cole bombings. When Richard Ben-Veniste asked whether there were any memoranda reflecting these briefings, the AG indicated that he did not think so. When asked whether he had any understanding from Freeh that al-Qaeda was responsible for the Cole bombing, Ashcroft said that he did not recall that. He recalled that they did have some concerns with the Ambassador there about the level of security for the FBI, but he could not recall the details.

Interaction with Freeh. Ashcroft indicated that he had had some early discussions with Freeh about his desire to leave. Freeh had only told him that he would leave sometime in the summer. Ashcroft continued: "Then, I didn't hear from him. Next I heard that he was leaving." After learning from outside sources that Freeh was leaving, Ashcroft said that he called him up and asked him for a firm date for his departure as well as a letter of resignation. [The clear implication from this part of the discussion was that the lines of communication between the two were not great.]

Ashcroft agreed that he did not have any regular meetings with Freeh. Ayres interjected that the AG had "episodic" meetings with Freeh. Fred Fielding asked whether there were any regularly scheduled meetings with Freeh and Ayres said "no."

Thomas Pickard, Acting Director of the FBI. After Freeh left, Tom Pickard became the Acting Director of the FBI. Ashcroft was unsure whether he named Pickard to the position or if it happened by force of law. Ashcroft said that he did have regular meetings with Pickard as the summer of 2001 progressed. Pickard did tell him about elevated levels of "chatter." Ashcroft said that he asked Pickard whether they were receiving information about attacks overseas or in the United States and that Pickard said that they had no information about attacks in the U.S. [Ashcroft then confirmed this recollection with Ayres, who was in the meetings with him.]

Dan Marcus then presented two agendas of meetings between the AG and Pickard dated June 28, 2001 and July 12, 2001. Ashcroft was asked how often the meetings took place. Ashcroft responded that they *intended* to meet on a weekly basis, but that they had gone through Ashcroft's schedule and determined that Pickard and he met formally six times during the summer of 2001, on the following dates: June 22, June 28, July 12, July 17, July 26 and then not until August 22. [Ashcroft referred to a schedule handed to him by William Moschella in identifying these dates.] As to why there was such a gap between the last two meetings, the AG agreed with the speculation that he was probably on vacation while Congress and the President were out of town.

After reviewing the agendas, Ashcroft agreed that the update on CT would be one item among many discussed at the meetings with Pickard.

When asked his view of the adequacy of the FBI's response to the intelligence on the threats during the summer of 2001, Ashcroft said that he had accepted the FBI's assurance that the threats were overseas. When asked what he thought about the domestic side of the problem with respect to terrorism and al-Qaeda, Ashcroft said that when he asked whether there was a threat to the continental United States and they told him that there was not, he "sort of assumed that things must be in hand here and that whatever they were doing was adequate to respond." Ashcroft called this "a dangerous assumption to make."

Need for new leadership at the FBI. Ashcroft made the point that they were focused on getting new FBI leadership and to get that leadership confirmed. He said that the meetings with Pickard were more reports or updates on FBI operations – not a means through which reforms could be initiated at the FBI. Ashcroft said that the FBI needed a new culture. This (the reforms) was a job for the new Director.

Ashcroft said that first the White House had to conclude that Robert Mueller was the right person for the job. Ashcroft said that he was the right person for the job (he said Mueller had been a U.S. Attorney under Reagan and also under Clinton. He called Mueller "square jaw McGaw." He said that Mueller was not slick, but that he had a lot of faith in him. Ashcroft said that they spent some serious energy trying to get Mueller nominated.

Search for Hazmi and Mihdhar. Ashcroft was asked if he became aware of the search for Hazmi and Mihdhar in late August and early September, 2001. Ashcroft said that he did not recall knowing then and then confirmed with all of his staff present that he did not know about it at the time. Ashcroft noted that he only met with Pickard once in August and that they "didn't cover this kind of stuff in those meetings anyway."

Questioned later in the interview by Richard Ben-Veniste, Ashcroft was asked when he learned that the FBI was looking for Hamzi and Mihdhar. Ashcroft said, "I don't know" and Ayres interjected that "[W]e learned this months later." Ashcroft reiterated that he just did not know. Ayres said that they probably learned about this later from the PENTTBOM investigation. Ashcroft said that they were handling a lot of information at the time. When asked what his reaction to learning this news was, Ashcroft said that he did not remember how he felt at the time, but he is "disappointed" now that "we didn't find them." At this point, Ayres interjected again to say that "It is fair to say that it was clear from the early briefings that the FBI did not have a good handle on the al-Qaeda problem." Fred Fielding then asked when Ashcroft first heard about the flight schools and Ayres responded that he did not remember exactly, but that the Phoenix stuff [*i.e.*, the Phoenix Electronic Communication by Ken Williams] came out much later.

FISA Problems. Ashcroft said that FISA Court Judge Royce Lamberth came to him to tell him that there were problems in the FISA application process. Ashcroft said that he told Lamberth that he wanted to be partners with him to fix the problem. Lamberth was "exercised" and "distressed." Ashcroft said that Lamberth had already met with Mueller about these problems when Mueller was the Acting Deputy Attorney General. [*Follow up with Mueller on this during his interview.*] Lamberth had lost faith in the leadership of the Office of Intelligence Policy and Review (OIPR) and he was losing faith in the FBI due to all of the inaccuracies in the affidavits that are part of the FISA application. Lamberth said the problem required very serious consideration. Ashcroft was asked whether Lamberth discussed the "wall" issues with him and Ashcroft said he did not recall discussing this with Lamberth. Lamberth was concerned about the loss of integrity in the [FISA application] system.

FISA Court of Review Appeal. Ashcroft mentioned that they eventually decided to appeal the decision of the FISA Court for the first time ever after much internal discussion about whether to do it. Ashcroft said that they (he?) went to Royce Lamberth to ask him whether he minded if they appealed one of the Court's decisions [*i.e.*, the May 17, 2002 decision]. Ashcroft said that Lamberth was "first class" about it and said "fine, that's the way the system is supposed to work." Ashcroft said that they were worried about a backlash and some at DOJ had advocated leaving it alone and that they would figure out a way to work with whatever decision the (lower) FISA Court issued. But Ashcroft said that he thought the law needed to be clarified. He said that they had thought that the USA PATRIOT Act (Patriot Act) had fixed the problem. So, they decided to use the case as a test case, and Lamberth knew about it. And, Ashcroft observed, the FISA Court of Review ended up issuing an opinion that was "very helpful."

When asked what steps he had taken to fix the FISA process, Ashcroft said that he did not recall steps, except that he pulled the people involved together and told them to get it right - to stop making mistakes. And, he said, "I believe we made a change in leadership of OIPR." [Francis Townsend was replaced by James Baker.] Ashcroft said that he had several meetings

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with Lamberth over the course of the spring. The first meeting was in February (2001? 2002?). Then the AG suggested that he had correspondence between himself and Judge Lamberth that he suggested that they give us. *[Submit document request for this correspondence.]*

Ashcroft said that the "wall" persisted and he mentioned that Rule 6(e) was also a problem. Ashcroft said that the "wall" issue was not addressed until after 9/11. He said that there were many problems with the information architecture and that they had to find a way to make the old information work well as they created a new system.

Resources Question. Ashcroft was asked whether he was familiar with a March 2001 evaluation of a FISA project [REDACTED]. He said that he did not recall that briefing. Ashcroft was asked whether he was aware of any efforts by Freeh or Pickard to address the resource problems with respect to translators, intelligence research specialists, etc. and he said that he was not. He said "we had one guy who left [Freeh] and another guy who wanted to leave [Pickard] because his father was ill." (The implication was that these guys were not too focused on fixing problems as much as holding down the fort.)

James Ziglar, INS Commissioner. Ashcroft was asked whether he had a role in selecting Jim Ziglar to be the INS Commissioner. Ashcroft responded that he knew Ziglar when he was in the Senate and that Ziglar had been a major trouble shooter for an investment house. He said that Ziglar had been at the Department of Interior and "I thought he knew both the House and Senate and that he was well-regarded by many Senate Democrats." Ashcroft said that he did not know whether Ziglar was a Democrat or Republican and that he had been friends with Senator Kennedy. He said that Ziglar had been a Supreme Court clerk and that he "needed this profile since immigration reform was contentious." So, Ashcroft said, he pushed Ziglar's name to the White House. Ashcroft said that he was my candidate, but that he was not sure if others were pushing him as well, or not. Ashcroft said that it was fair to say that Ziglar was not picked because of his immigration experience, but that he picked people – such as Mueller – who were not "captured by the bureaucracies." Ashcroft said that he wanted people who could renovate bureaucracies. He recalled that the President had met with Vicente Fox to talk about Mexican immigration issues and that there are five to seven million undocumented Mexicans in the U.S. "It was a complex situation and we needed renovation."

Ashcroft was asked whether he could recall any discussions with Ziglar about terrorists penetrating the United States and he said that he could not recall any discussion of terrorism with Ziglar, but rather on fixing the integrity of the process. He said that the driving energy was to fix the situation with the Mexican border. Ashcroft said that Ziglar worked quickly to divide the INS into enforcement and service sections. "I thought he was making progress and it looked like he was reducing the immigration backlog." Ashcroft agreed that it was fair to say that the focus for the INS on the War on Terrorism started on 9/11, not before.

[THE INTERVIEW THEN COVERED TOP SECRET/COMPARTMENTED MATERIAL]

Day of 9/11. Ashcroft said that on September 11, 2001, he was on his way to Milwaukee to participate in an event to promote reading. He said that he was on a small plane, and guessed that it was a "Citation." He said that they were over Lake Michigan when he got a message to call the SIOC (Strategic Information and Operations Center, at the FBI headquarters). He said

that when he learned about the attacks, he ordered the plane to turn around and head back to Washington, D.C., but was told that they had to land in order to refuel. They landed to be greeted by many security officers on the ground. Ashcroft said that there was some initial discussion that they would not be allowed to go back to Washington, but he insisted. As they approached DC, they were put in a holding pattern outside of DC until a fighter jet could escort them in. Ashcroft speculated that the fighter was there to shoot them down in case their plane started to veer off course. He thinks that his plane was the last allowed to land at Reagan that day. As they were landing, he could see the smoke coming out of the Pentagon, which made the whole attack seem more real to him.

Ashcroft said that his wife was found and that they were sent to the remote location where other DOJ people had gone. The city was deadlocked and he was stuck in traffic. After a while, it became useless and he ordered the car to turn back and he went straight to the SIOC. He told his staff at the remote location to come in.

The SIOC was a chaotic setting. Earlier it was thought that one of the planes might be headed for the FBI headquarters building. He (and Dan Levin) guessed that he arrived at the SIOC between 1:00 – 2:00 p.m. Ashcroft said that the buildings were still burning and said that he could not recall whether the World Trade Center (WTC) buildings had fallen yet. During that initial period, their primary objective was to get planes out of the air. Ashcroft said that there was some antitrust conference going on at the WTC that day and they were trying to find out whether any DOJ attorneys had died. It was all very confusing, but Ashcroft said that he was able to talk to his staff.

Ashcroft said that the SIOC was the place to be to get information and so everyone wanted to be there. There was a question about a plane from Spain and they wondered whether they needed to send a plane out to shoot it down. He said that there was a room where the SACs (Special Agents in Charge) were reporting from around the country. Ayres interjected that Pickard was quickly assigned to conduct the PENTTBOM investigation.

Ashcroft said that he had no idea when he first heard that Usama Bin Laden was involved. *[Note: Ashcroft's staff prepared a timeline of his whereabouts during that day. REQUEST?]*

Ashcroft said that he was nominated to brief the House and Senate Members at 10:00 that night after he attended a meeting at the White House. He said the members wanted a lot of details that he did not have yet.

Initial Discussion of Investigation. Ashcroft was asked whether there was any discussion that day on what steps should be taken in the investigation. He responded that he thinks they did. He said that they knew they had to find out who did it and make sure that it does not happen again. "That was our first response." He said that, at that time, they anticipated that there would have been a more extensive support network and he thought that they would be finding them. He said that he was not sure when they identified who the hijackers were. Ashcroft said that they had briefings – by Mueller, Pickard, or Dan Levin (who had been sent over to serve as Mueller's Chief of Staff).

When pressed again about discussion on 9/11 about finding and apprehending and detaining people who might be involved in some way, Ashcroft said that it was "very clear" what was coming with respect to the investigation: he said that this was a whole new scale for terrorism in the world and that they could not let it happen again. Ayres interjected that they had other concerns early on; namely, concern about planes that had landed and individuals on those planes who might have been hijackers. They were concerned about securing the airports so that flights could get up and running again as soon as possible.

Use of Immigration Authorities. Ashcroft was asked whether there were any early discussions about using immigration law to detain people and get intelligence that way. He responded that he did not recall any that day. Ashcroft was asked whether he recalls discussions on this with Jim Ziglar within the SIOC on that day or shortly after that day and Ashcroft said that he was sure there was some discussion about using every means of authority to act. He said that he hoped he did this as early as the first day. Ashcroft described this as a "risk minimization process – that is what my job was."

When asked whether he recalled any discussions about what to do with those in the Muslim community, Ashcroft replied that they were all concerned about doing things within the law and "always within the Constitution" He explained that this was a period characterized by "the fog of war" – there was much confusion – "the FBI was working out of a parking garage in New York." Ashcroft said that shortly after 9/11 he called all of his people to the table and asked them to think of *everything* possible. Ashcroft said that it is important to recall that on the first day they thought 7,000 people had died in the attacks. Ashcroft said he acted quickly to direct all action. He said that he asked, "What else could be done? What legislation? What can the INS do? What can the FBI do?"

Ayres interjected to say that all of the components (of DOJ) were asked to come in and tell them what they could do – administratively, regulatory, and legislatively. This happened within a day or two of 9/11.

First draft of the Patriot Act. At this point, Ashcroft said that by the Sunday following 9/11 (which was on a Tuesday), "we had a pretty substantial piece of legislation put together." Ashcroft was asked if Viet Dinh drafted the Patriot Act and Ashcroft said, "I think he *coordinated* that." When asked why Dinh was asked to do it, Ashcroft said that this type of job is typically handled by the Office of Legal Policy.

Ayres interjected that, for the legislation, there were many sessions where many ideas were discussed, many ideas were rejected, many "did not fly." They worked to reach a consensus on what they should do legislatively. Ashcroft explained that "we wanted to err on the side of inclusion . . . we did not want to fail to consider options." He said a lot came out of these early "brainstorming" sessions.

Integration, Information Sharing and the FBI. Richard Ben-Veniste asked Ashcroft if, as he was thinking of innovations, he was thinking back about integration – both intra- and inter-agency. Ashcroft said yes, the FBI was always case-model oriented – information was in the custody of the individual agent. Ashcroft said everything was assigned to a case no matter what it was. All information on al-Qaeda was kept in the New York field office. Ashcroft said

that "you get situations where Phoenix doesn't talk to Minneapolis; information was farmed out, it was not maintained centrally." Ashcroft pointed out that previously a file could only be in one place at one time, but that electronic files can be everywhere at the same time. Ashcroft said that "this goes to the heart of the renovation of the FBI."

Ashcroft also said that "if you had a heart attack at the FBI, they wouldn't call a doctor, they would call an agent, because they thought that agents could do everything." Ashcroft did say that credit should be given to Freeh for bringing in Bob Dies from outside of the FBI to work on their information technology. Ashcroft said that the FBI will now have powerful linkage tools in computers, and that this is part of the current reform.

Ashcroft said that FBI's collection "heritage" is also one that subscribes to the rule of law. He contrasted this with the CIA, whose motto he joked was "On my honor, I'll do my best, to take what they give me, and steal the rest."

Richard Ben-Veniste noted that there are "reforms and there is legislation," and asked whether it was fair to say that Ashcroft did not get all of the information (about what happened and why) until well after the legislation creating the Patriot Act, and Ashcroft said yes. He said that the biggest thing about the Patriot Act is the removal of the "wall" so that information could be shared. Ashcroft mentioned that this has helped them on cases such as one involving a Florida professor.

Ashcroft was asked about the departure of several members of the Saudi family shortly after 9/11 and whether he was aware of the process and played any role in it. Ashcroft thought for a moment before saying that he was aware of "a bin Laden who lived in Boston" and that some Saudis left the country. He said he was not sure how the decision was made. Ashcroft was asked whether he was aware that the FBI was vetting the names of those who were going to leave and he said, "I can't say."

Ashcroft was asked about the widely reported meeting at which the President said to Ashcroft something along the lines of "Don't let this happen again." Ashcroft did not remember it clearly, but said that he thinks it would have been in a meeting with the President, not a "pull-aside." Ashcroft said that he was not sure if the President said it to him. [Some reports indicate that the President said this to Mueller.] But, Ashcroft said that he took away from the exchange the clear message that they should not let it happen again. Ashcroft noted that there was some tension in this order because no one can guarantee that it will not happen again: "it is a question of risk minimization." But it was clear to him that the President is focused on it. He said the President begins every day on the issue and "we know what the President's priority is."

Use of Immigration Laws. Ashcroft was asked about arresting and apprehending everyone who might be involved in the 9/11 plot immediately after 9/11. Ashcroft bristled at the characterization and interrupted the question to say that they were not arresting people for this, but rather for violating the immigration laws or for being material witnesses. Ashcroft said that "these were people associated with terrorism." When asked how they would determine who to arrest, Ashcroft said, for example, if they found a list of names in a terrorist's car, then they would go and find those people.

Note: At this point, as it was becoming clear that the remaining time for the interview was growing short and Richard Ben-Veniste suggested that it would be very helpful to the Commission if the Attorney General could meet with us again. Ashcroft suggested that we could submit some questions to him that he would respond to in writing. Lee Hamilton said that this was a reasonable proposal and indicated to the AG that the Commission was especially focused on the future and that he was interested in the AG's recommendations. During this discussion, Ashcroft mentioned that he could talk about the FBI's reforms for hours. He said that the FBI was an aggressive agency and that Mueller was driving reforms there. He said that the INS was more resistant. Then the interview resumed.

Effectiveness of Detention Program. Ashcroft was asked whether he had made any assessment of the effectiveness of the detention program and whether it had helped them actually identify individuals involved in terrorism. Ashcroft responded that it is difficult to assess the deterrence effect the program had as it is "hard to prove what didn't happen" as a result of the program. Ashcroft stated that it was his belief that terrorism has not abated and that the United States is still the target of preference. Ashcroft said that they want deterrence and that "deterrence is not a threat to our freedom." He said that when there are more police on the street, we feel more free to walk down the street at night."

Ashcroft said that 94% of people from countries identified as state sponsors of terrorism that are adjudicated and deemed to be deportable abscond after their hearing. He said there is an 18 to 1 ratio of absconders to those who leave. Ashcroft said of the absconder program that "we thought it was the right thing to do – and I still think it is." He said that he is focused on the risks.

In response to a question about whether they had actually identified a terrorist under this program, Ashcroft said that they would not have deported an individual if they could demonstrate that they were involved in a terrorist plot. He said the new paradigm is prevention oriented. He said that overall it is a successful program. Ashcroft said that they took people, who were in violation of the law, who were also associated with terrorism, and took them out of the country. He said that many of them were *associated* with terrorists, even if it was unclear that they were involved in terrorism. He said "they were fairly treated and they were adjudicated."

Voluntary Interview Program by the FBI. Ashcroft said that they undertook the voluntary interview program for three reasons: (1) they wanted to have law enforcement presence in the community; (2) they wanted the agents "off their duffs;" and (3) they were hoping to get some investigative leads.

Ashcroft explained that they did this again before the war on Iraq and that their questions were limited to two: (1) do you know how to contact us if you are harassed based on your national origin; and (2) do you have any information that will help us (in the war)? Ashcroft said that the effort resulted in very valuable information that was passed (to the Defense Department?).

Balancing the Benefits of these Programs. Ashcroft was asked if he had weighed the actual benefits of these programs (in terms of identifying terrorists) against the costs (in terms of

alienating some members of the American citizenry as well as some of our foreign partners). Ashcroft responded that there were ways – outside of the particular programs in question – that the government could reach out to these communities to improve relations. He said that he, (Assistant Attorney General for Civil Rights) Ralph Boyd, and the President himself had met extensively with members of this community.

[Note: Throughout much of the interview, Will Moschella pulls various talking points out of a three-inch thick three ring binder and hands them to the Attorney General as different issues are raised.]

Absconder Program. Ashcroft said that he thought the Absconder Program was the right thing to do, although he said that he did not “author” it. He agreed with the observation that the impact of the program fell mainly upon Muslims. Ashcroft said that the focus of the program was on people from certain countries and so the people from those countries were most affected.

NSEERS. Ashcroft also agreed that the recall aspect of the NSEERS program also primarily impacted individuals from certain countries.

Assessing the Results. When the suggestion was made that these programs did not lead to the identification of many terrorists, Ashcroft responded that they did not identify a lot, but some. He said that it only took 19 hijackers to conduct the attacks on 9/11 and that if they had nabbed the right one – perhaps Mohammed Atta, for example – then they might have prevented the whole attack. Ashcroft reiterated that he wants to do everything that he legally can do that might be of assistance to preventing terrorism. Ashcroft also said that there is a community of individuals among the Arab community that wants these security measures: “I suspect that the Saudis are *less* offended by these measures than they were before the May 12 Riyadh bombings.” Ashcroft said some in that community are grateful and “everybody is safer.”

When pressed about the costs that exist from these programs (including the resources allocated to performing them and the lost opportunity costs), Ashcroft said that the NSEERS program is required by law to be implemented by 2005 anyway and he said that all of the costs cannot be allocated to terrorism. Furthermore, Ashcroft said, there is a value just in enforcing the law – particularly in the immigration context – in order to give the law credibility and integrity. Ashcroft said that he thought the benefits of these programs were worth the costs and he would do them both again.

Ayres then interjected to say that it might be helpful for the AG to distinguish between the two programs (NSEERS and Absconder program). The implication was that the evaluation of the two would probably be different, but this was not pursued further. Ashcroft then noted that the NSEERS program is a program that many countries have and that we should avoid “making a mountain out of a bump.” Ashcroft said that the program is standard operating procedure around the world and so he did not understand the great offense other countries supposedly take.

Resources. Ashcroft agreed that a lack of resources from Congress is one issue, it is one of the problems. [Dan Marcus then ended the interview.]