

NLWJC- Kagan

Counsel - Box 009 - Folder 005

Roundup (ATF Etc.) [3]

1 chairman

2 The Chairman. Well, thank you, Senator Specter.
3 Senator Heflin wanted to come over and question, and we can
4 get his round of questions over. Then, Senator, I may have
5 to leave before so, if you will, will you recess until
6 Senator Biden gets back, if you would?

7 Senator Heflin. We have got 10-minute votes now, but
8 anyway I think maybe I can ask questions for 6 or 7 minutes
9 anyway.

10 This is a matter of an incident that occurred, and
11 there are other incidents that have been testified about
12 skits and other things. I have from black leaders and
13 people in the State a complaint generally about Federal law
14 enforcement. I tell you these are complaints. I am not
15 saying they are facts because I don't know all the details,
16 but over the period of time that I have been in the Senate
17 we have had constant complaints that law enforcement at the
18 Federal level has not been fair with blacks generally.

19 Of course, we have to realize we have gone through a
20 progressive stage. We have moved from a recognition of
21 problems and we have passed civil rights legislation, voters
22 rights legislation, and a lot of things have occurred. But
23 you still get complaints of unfair treatment, and there has
24 been some documentation relative to this as to some of the
25 aspects.

1 In a 1987 book written by Dr. Mary Sawyer called
2 Harassment of Black Elected Officials 10 Years Later, which
3 was a follow-up to an initial 1977 report, "The Dilemma of
4 Black Politics: A Report on Harassment of Black Elected
5 Officials"--now, this, of course, is only as to officials,
6 and I certainly say that each case has to be looked at like
7 a barrel that sits on its own bottom and the facts are
8 different throughout, but there are complaints that have
9 been made.

10 At a hearing in the House of Representatives back, I
11 believe, in 1988, then Congressman Mervin Dimali, I believe
12 is the way it is pronounced, placed before the House a
13 document from an FBI agent, Hirsch Friedman, concerning an
14 FBI policy named Operation Frumenschen, which was German for
15 "primitive man." He made some charges relative to that.

16 I continued to hear relatively the same situation, and
17 I am not saying that there is this or not, but I am just
18 saying that here we have an instance where you have racial
19 matters that have cropped up and there may be an underlying
20 culture, not just in the FBI, but in all the law enforcement
21 agencies. There are articles even that in career Justice
22 Department attorneys--that this exists. Again, I don't know
23 anything about it, but I suppose what I am directing is not
24 only the instance of the Good Ol' Boys Roundup or a skit or
25 various other things. The underlying aspect of this ought

1 to be investigated and there ought to be action that is
2 taken with the idea of eliminating that that exists in law
3 enforcement, or certainly minimizing it, if it exists today.

4 So I particularly want to ask in regard to your
5 investigation that you do not limit yourself to this one or
6 two instances that are there, but with an idea of making it
7 a thorough investigation, contacting some of the people that
8 have been involved, and perhaps maybe talking to some of the
9 groups of black leaders throughout the country about whether
10 or not there is that feeling and whether or not it is
11 substantiated by facts relative to an overall situation.

12 So I hope that you, Ms. Lau, will look into this from
13 the Treasury Department, but certainly in the other agencies
14 it ought to be looked at relative to these matters. We have
15 an instance where, you know, you can investigate this
16 instance and that, but if there is an underlying culture
17 that exists--and I am sure that it does not exist in the
18 vast majority, but if it exists in 10 percent or 15 percent,
19 then in that area where it does, it means that fairness is
20 not prevailing, and so I would suggest that you look into
21 that.

22 I guess my question would be how comprehensive are you
23 planning your investigation in regard to the underlying
24 matter that has cropped up in these instances?

25 Ms. Lau. Senator Heflin, because of the 120-day

1 deadline that the Secretary has asked us to produce this
2 report in, by necessity, we will be limiting the scope of
3 the investigation to the specific incidents regarding this
4 Roundup.

5 Senator Heflin. Well, is there any reason why it
6 cannot be expanded after the 120 days?

7 Mr. Magaw. Senator, when I came to ATF from the Secret
8 Service 21 months ago, we initiated immediately an ombudsman
9 program where anybody can pick up the phone and report any
10 of these incidents. I went throughout our culture, which I
11 said before is about 49 percent minority, and there are
12 basically seven minority groups within this bureau and I
13 meet with them three times a year. I sit across the table
14 and we spend 2 or 3 days talking about issues in this
15 bureau. What kinds of things are happening in this bureau
16 that are unfair for you either in training, assignment,
17 promotion, human relations, back and forth? Each time we
18 are identifying those, then we are correcting them.

19 It came to my attention a few months ago that there was
20 some sexual harassment going on in one of our offices. My
21 inspection team went out there and showed that it was true,
22 and I removed both supervisors immediately. You normally
23 don't do that in an office; you remove them one at a time.
24 But I removed them both. So we are working very hard to do
25 that.

1 The EEO program--I moved that from another position in
2 the bureau to inside my office so that when it is in my
3 office, I have to take full responsibility for it and am
4 doing so every day. So it is not pervasive in this culture,
5 but there are still bits and pieces of it out there and
6 wherever I find it, I am going to destroy it. I tell all of
7 our personnel everybody has one prejudice or another. It
8 may not have anything to do with race. It might be religion
9 or something else, but there has to be a fairness within
10 this bureau to each and every one. I won't try to get
11 inside your head and change your prejudice, but I will
12 change your actions."

13 Senator Heflin. Well, I think that is a good program,
14 but I didn't know that you had an ombudsman program and I
15 don't know how many other people know that there is an
16 ombudsman program out there. It seems to me that this is
17 enough evidence that there ought to be a broad, sweeping--
18 and then develop a program which will minimize, and there
19 has to be, in effect, some type of a check to determine it.

20 I appreciate the overall organization that has over the
21 years taken place in regard to reviews and the review system
22 overall, but complaints are there. I hope that each of you
23 would meet with groups of particular blacks that still
24 complain of this, and I am not just talking about my State,
25 but this is something that, well, several years ago, 4 or 5

1 years ago, we attempted to get a meeting of Southern black
2 leaders to meet with some of the officials and I don't think
3 it ever occurred because they felt like it might compromise
4 them relative to certain cases that they were investigating,
5 and that can be appreciated, and certain people could be
6 left out if they could be involved. But I think that the
7 overall matter does need to be addressed.

8 Ms. Gorelick. Senator, speaking for the Department of
9 Justice, first, let me assure you there is no limitation on
10 what our inspector general can and will look at, and if he
11 sees things during the course of his investigation into this
12 matter that raise particular questions, he will pursue them
13 wherever they go.

14 To your broader question, let me say that the Attorney
15 General has been open to any complaints, concerns, issues
16 regarding our enforcement policy generally. I am aware and
17 she is aware that particularly in the late 1980's, the black
18 community was concerned that there was targeting of black
19 public officials, and it is her desire that there be no
20 similar perception, certainly so similar reality in the Reno
21 Department of Justice, and we are very much open to hearing
22 any policy-oriented criticism or suggestion as to how we
23 might better and more fairly go about our job. So you have
24 my pledge that I will look at this.

25 Senator Heflin. Well, I am going to have to go vote

1 and I am going to have to leave right now, but at some time
2 or other I may later discuss with some of the other people
3 more in detail about this.

4 Thank you. We will stand in recess until somebody else
5 comes.

6 [Recess.]

7 Senator Feinstein. Ladies and gentlemen, if there are
8 no objections, I would like to reconvene this hearing and
9 take my time in asking questions.

10 I would like to ask each of the agencies involved this
11 question. What criminal investigations are now underway?

12 Mr. Magaw. In ATF, there were none when we turned all
13 of our materials over to the inspector general.

14 Ms. Lau. And at this point, our investigation is
15 considered an administrative inquiry until such time that we
16 identify any potential criminal violations.

17 Ms. Gorelick. Answering for the Department of Justice,
18 we have just begun an inspector general inquiry. He has the
19 power and authority to identify potential criminal activity,
20 and this is too preliminary a stage at this point.

21 Senator Feinstein. Mr. Freeh, do you have anything to
22 add to that?

23 Mr. Freeh. No, Senator, I don't. The information that
24 we have, which is very preliminary, is in the jurisdiction
25 now of the inspector general. If criminal activity or

1 criminal conduct surfaces, that would be investigated and
2 referred for prosecutive decisions in the normal course, but
3 I am not aware of any right now with respect to the FBI.

4 Mr. Constantine. My experience would be exactly
5 similar to Director Freeh's.

6 Senator Feinstein. So if there were affidavits from
7 people that said that there was illegal drug use at any of
8 these roundups, there would be a prompt and vigorous
9 criminal investigation?

10 Mr. Constantine. That is correct.

11 Mr. Freeh. Yes, ma'am.

12 Senator Feinstein. And if there were affidavits
13 submitted that acts of rape had been perpetrated, there
14 would be a criminal investigation? I believe there are such
15 affidavits, so I would assume that the agencies will conduct
16 a criminal investigation, and I would like to have a yes or
17 no answer to that question, if I might.

18 Mr. Constantine. Just speaking for DEA, any
19 allegations of criminal conduct--there would definitely be
20 an investigation of it as a criminal investigation and we
21 would turn that material over to the IG or work with them,
22 or whoever the prosecutor may be.

23 Ms. Gorelick. Again, speaking for the Department of
24 Justice as a whole, Senator, if there are allegations that
25 reflect criminal conduct, there will be a criminal

1 investigation.

2 Mr. Noble I would echo those sentiments for the
3 Department of the Treasury as well.

4 Senator Feinstein. I don't feel at liberty to make
5 this public at this time, but I have just looked at
6 affidavits to that effect and this really concerns me
7 greatly, not only generally the racial bigotry that took
8 place, but accompanying it, apparently, was excessive use of
9 alcohol, possible rape of women, and possible use of
10 narcotics.

11 I would like a commitment that these be checked out and
12 that full criminal action be taken against the individuals
13 responsible. Would I have that commitment from the
14 department heads present?

15 Mr. Noble I can commit to you--and I want to make sure
16 that whatever I say, I am not going to run into any conflict
17 with the inspector general, but we were committed to
18 investigating this in our enforcement capacity. The
19 inspector general has decided--and I respect her decision to
20 do it independently, but separate and apart from what we
21 have been forbidden from investigating, I think any sort of
22 criminal conduct that comes to her attention--I believe with
23 confidence she will refer it to the appropriate Federal,
24 State, or local agency responsible for such investigations.
25 I know Secretary Rubin--he said it to me and he said it to

1 John Magaw and our other bureau heads that he will not stand
2 for this.

3 One of the problems we have, Senator, and I just want
4 the record to be clear, is we have to find out who was
5 there. That has to be our starting point so we can get the
6 witnesses and find out exactly what has happened over the
7 last several years.

8 Now, Mr. Rightmeyer, as I understand it, was invited to
9 come here and testify. He has not. When he was first
10 served with an administrative subpoena by the inspector
11 general, he had the night before deleted all of the files
12 from his computer. If there wasn't anything bad going on,
13 why is he deleting this information? But I am confident
14 that we will get to the bottom of it, and I believe that
15 what Director Freeh has suggested might be something worth
16 doing, and that is maybe even with a little more emphasis.

17 I believe that Federal law enforcement agencies in the
18 Treasury Department ought to voluntarily sign an affidavit--
19 voluntarily, because the stain on our Department is so great
20 they ought to voluntarily sign an affidavit saying whether
21 they have ever attended the event; if so, when; if so, who
22 told them about; what did they see there. Then let us get
23 the whole net out there, casting a whole net out there to
24 find out who exactly attended this event, and I wouldn't
25 tolerate any less. That is what the American people should

1 expect, that we know whether each and every one of our
2 employees is willing to voluntarily sign an affidavit saying
3 whether they attended it, and if so, under what
4 circumstances.

5 Ms. Gorelick. Senator, again, for the Department of
6 Justice, with respect to the allegations to which you refer,
7 we will investigate them and we will pursue them if they are
8 within our jurisdiction, and if they are not within our
9 jurisdiction, we will refer them to the appropriate
10 authority who has jurisdiction.

11 Senator Feinstein. Well, I am sure the chairman of
12 this committee will convey to you the affidavits that have
13 been presented; they are blind affidavits, but the
14 affidavits that have been presented to us. What I want to
15 assure is that a criminal investigation takes place because
16 there is no excuse for that kind of behavior.

17 The Chairman. Could I interrupt for just one second?
18 The affidavits will be submitted to Ms. Lau and to the
19 inspector general for the Justice Department with the names.
20 We agreed with the affiants that we would do that, but we
21 have redacted the names for purposes of this hearing and
22 everybody else because of our agreement.

23 Ms. Lau. Thank you.

24 Senator Feinstein. I appreciate that, Mr. Chairman.
25 Mr. Chairman, one of my major concerns is that in the last

1 15 years I have seen sort of the rise of really
2 inappropriate behavior, often bordering on criminality. I
3 saw it when I was mayor in an incident called the
4 Rathskeller in California. We have all witnessed it with
5 the military at the Tailhook in Nevada. Now, we have the
6 good ol' boys in Alabama. We have had the In Memoriam
7 debacle here in Washington, D.C.

8 I just want to put out my thinking. My thinking is
9 that it may very well be time that there be a federally
10 drafted and passed code of conduct for behavior, both public
11 behavior and private behavior, for those who serve in the
12 military and those who serve in law enforcement in our
13 country because there seems to be event after event that
14 takes place with behavior that casts a pall over all the
15 good people in law enforcement nationwide.

16 I think I am going to see that the affidavits that I
17 just read are fully evaluated and investigated because I
18 just do not believe that we can allow inappropriate, very
19 often illegal conduct to take place by anybody in the
20 military or law enforcement people in their private time.
21 They take an oath of office. They are essentially sworn,
22 and with that oath, I think, come special responsibilities.
23 For me, I have now seen enough of it to indicate that we
24 need to look more deeply into this.

— 25 I would like to ask this question. How, under present

1 rules, does a top administrator or executive make sure that
2 an agency's employees know what is and what is not
3 acceptable behavior? Now, I know you all probably have
4 standing rules, but how are those reinforced? How do people
5 understand clearly, month by month, what acceptable behavior
6 is and is not?

7 Mr. Constantine. Let me just answer for the DEA. As
8 people enter the service presently in the academy, we have
9 expanded greatly the area of ethics and integrity and
10 training. To reinforce that, we started this year a special
11 inspection program within the agency whereby a high-ranking
12 inspector sits down with each and every one of the 7,200-
13 some employees and together they review all of the rules of
14 conduct that apply to the Drug Enforcement Administration,
15 at which point in time that employee signs, in essence, an
16 affidavit that he has read those rules, he or she
17 understands those rules, and the penalties for non-
18 conformance. We just started this about 6 months ago, but
19 it will happen annually for each and every employee within
20 the State police, for some of the reasons that I think you
21 have talked about.

22 Senator Feinstein. Director Freeh?

23 Mr. Freeh. Senator, in the FBI we have an extensive
24 training program. Every employee is required to receive so
25 many hours of training, not only beginning in Quantico

1 during the basic agent selection and training, but also in
2 the field with respect to diversity, cultural awareness,
3 including emphasis of matters such as sexual harassment and
4 off-duty conduct, which is, as I mentioned this morning, a
5 mandated standard both in the CFR of Title 28. Various
6 provisions of our manual which are regularly circulated to
7 the field describe that standard of conduct and the EEO
8 system that we have and the OPR system, which are
9 enforcement as well as corrective mechanisms.

10 It is always a topic when I visit a field office. I
11 have visited 50 of our field offices. I always speak
12 directly to this issue. We have done videotapes. We have
13 done training of literally thousands of our 24,000 people on
14 a regular basis. I have spoken out, I have spoken within.
15 I have made appointments which reflect that importance.

16 The SACs are personally held liable in terms of their
17 critical incident evaluation for not just enforcing fairness
18 in the workplace, but ensuring that conduct off duty is
19 fair, and if we are not doing enough, then we need to do
20 more.

21 Senator Feinstein. May I ask, then, that this
22 committee receive copies of all of the standing orders,
23 rules, and regulations, and any chronology as to how they
24 are, in fact, communicated through the ranks?

25 Mr. Freeh. Certainly.

1 Senator Feinstein. I appreciate that.

2 Ms. Gorelick. We will submit that for the record for
3 the Department.

4 I will tell you, Senator Feinstein, that the procedures
5 for training that you have heard about from the DEA and the
6 FBI are typical of the other law enforcement components
7 within the Department. It is an issue that the Attorney
8 General takes very seriously both in her own pronouncements
9 and the regulations that she has put out.

10 But also in response to your question about is it just
11 on paper or are you really making known to people what you
12 expect of them, she has mandated training in this area and
13 each of our components has done that and has put together a
14 training program.

15 Senator Feinstein. Mr. Noble?

16 Mr. Noble. Yes. The Department of the Treasury has
17 annual ethics training that is required of all of its
18 employees. The bureaus have rules of conduct that they are
19 required to read and initial annually. To follow up on
20 Deputy Attorney General Gorelick's comments as well, we have
21 town hall meetings, special agent-in-charge conferences,
22 office directors' conferences, meetings at main Treasury and
23 in the field.

24 I believe it is fair to say that no Treasury employee
25 can honestly say that he or she attended an event such as

1 the Good Ol' Boys Roundup because they didn't know any
2 better or because they hadn't received enough training or
3 because there weren't rules guiding their conduct. I feel
4 fairly confident that we have done enough training, but we
5 can always do more. But individuals have to assume
6 responsibility for their behavior both on the job and off
7 the job.

8 Senator Feinstein. So then what you are saying is
9 there would be no excuse for someone to say they didn't know
10 if any of the things that are alleged took place are
11 correct. Is that fair to say?

12 Mr. Noble. I would say that no Federal law enforcement
13 officer can say that he or she would be unaware of the cost
14 to their testimony and their credibility if it were known
15 that in their private lives or in some organization they
16 espoused or articulated or held racist, anti-Semitic, or
17 sexist views.

18 Senator Feinstein. Or if, at an event, they raped a
19 woman or they used drugs?

20 Mr. Noble. That goes without saying.

21 Senator Feinstein. Pardon me?

22 Mr. Noble. That goes without saying.

23 Senator Feinstein. Thank you very much.

24 Mr. Magaw?

25 Mr. Magaw. So as not to repeat the things that

1 Director Freeh and Mr. Constantine brought up, I would just
2 mention a couple of other things. What we are doing is
3 making sure that our ombudsman is dealing with all the
4 different groups and ethnic areas and ethnic personnel
5 throughout the bureau to make sure that the kinds of things
6 we think are happening out there are, in fact, happening.

7 They are dealing also--in fact, I meet next month for
8 the third time since I have been here with eight different
9 groups of personnel, to include our handicapped within our
10 organization, as well as the American Indians, the Asians,
11 all the different groups, to see how it is working within
12 the organizations in the back rooms, in the cars at night,
13 out on assignments. Is it working?

14 So, that is the way that I am trying to make sure I
15 stay on top of it, as well as when I travel to the field, as
16 Director Freeh said, and Director Constantine, it is very
17 clear when I talk to them. It is the very last thing I
18 cover at the end of my presentation, and that is diversity,
19 one team, fairness for all, no racism, no unfairness to any
20 individual whatsoever. They cannot mistake that. I could
21 pull out old notes from the 2 years I have been here, or
22 almost 2 years, and each time that I talk to them, that will
23 always be the last topic I talk to them about.

24 Senator Feinstein. I note my time is expired, but I
25 just want to establish for the record, then, that there is

1 no excuse for anyone who participated in any criminal act or
2 any of the racist behavior that allegedly took place. They
3 know better, and I think we have affirmed that. I
4 appreciate it.

5 Thank you, Mr. Chairman.

6 The Chairman. Thank you, Senator Feinstein.

7 Senator Biden has given me a little leeway here. I
8 just want to ask a question of you, Mr. Magaw. I have to
9 say that I have been impressed with all of your
10 forthrightness and your commitment to root this stuff out
11 and to do the necessary disciplining--assuming that these
12 facts are as they are, doing the necessary disciplining that
13 should be done.

14 But I want to ask you this, Mr. Magaw, because I am
15 very impressed with your forthrightness and I am very
16 impressed with what you have tried to do over there, not
17 just your chat with us today, but watching what you have
18 done since you have taken over. You have, in my opinion,
19 done a very good job and I am confident that you are
20 committed to holding accountable persons who engage in
21 misconduct. But some questions are being raised about that
22 commitment in light of a recent event and I personally want
23 you to have a chance to respond and I want people to know
24 what your position is.

25 I am referring to ATF's rehiring of two raid commanders

1 who had been discharged as a result of the Waco fiasco.
2 According to the Department of the Treasury's Waco report,
3 these two men, quote, appeared to have engaged in a
4 concerted effort to conceal their errors in judgment. They
5 lied to their superiors and investigators about what another
6 agent had reported. Their consistent attempts to place
7 blame on a junior agent were one of the most disturbing
8 aspects of the conduct of senior ATF officials at Waco,"
9 unquote. That is found on pages 193 and 206.

10 Now, they were discharged in October of 1994, but less
11 than 2 months later you rehired them, although not as
12 agents. Naturally, this is not a Waco hearing, which we
13 will hold, probably, in September, but can you understand
14 how some Americans would question ATF's full commitment to
15 addressing misconduct concerning the Roundup in light of the
16 rehiring of these two individuals, and would you care to
17 comment on that?

18 Mr. Magaw. Yes, I certainly can, Senator, and I
19 certainly can understand their concern. I came over here as
20 new to the situation, so what I wanted to do was--who were
21 these people? What have they done in the past? They
22 represented almost 40 years of outstanding service to this
23 Government between the two of them. They had families.
24 Especially, one of them has younger children to raise.

— 25 I looked then, also, at the incident, and if you

1 remember that day when the shots were being fired and all
2 those kinds of things, virtually everything from that day
3 on, as I saw it as a new person coming in, is that the
4 fingers were pointed to them and were pointed at them.

5 I talked to people that they interfaced with in the
6 days after that. They were at the hospital all the time.
7 Any of the things that they were questioned about, there was
8 any intent to hurt any individuals or to get anybody hurt or
9 killed as they went inside. All they saw was people
10 pointing the finger at them from all over this bureau, but
11 mostly from above them. So they found themselves isolated
12 and so they backed up and tried to defend themselves a
13 little bit. But, eventually, as they thought this thing
14 through, they did, as far as I am concerned, tell the truth
15 and there was no intention. Now, in spite of that, I fired
16 them.

17 Now, they have the ability to appeal to the Merit
18 Systems Protection Board, and during this appeal process I
19 saw occur in another section of this country something that
20 I had a problem dealing with, and I would like to, if I
21 could, divert to that for just a second.

22 If you remember "60 Minutes" when they criticized ATF
23 for being not only racially discriminatory, but females
24 having problems within this bureau, being grabbed by males,
25 their bodies being touched by males, one of our supervisors-

1 -clearly, every indication was that he committed that
2 violation. We fired him, and through the appeals, Merit
3 Systems Protection Board, I am now having to bring him back
4 in Chicago, Illinois--

5 The Chairman. You are kidding.

6 Mr. Magaw. --as a 14, with a badge and a gun. I can't
7 hardly say it, I am so upset about it.

8 Did I now, then, want that to happen with these two?
9 Did we have a strong enough case? When psychologists come
10 in and start talking about the mental frame of mind after a
11 horrendous--

12 The Chairman. So you made a value judgment is what you
13 are saying?

14 Mr. Magaw. I made a value judgment that we bring them
15 back. See, in law enforcement, the worst thing you could do
16 to me today is take away my badge and gun after 35 years and
17 say I can't practice law enforcement anymore.

18 The Chairman. Sure.

19 Mr. Magaw. That is what we did to them, but we also
20 are now taking advantage of their great experience in this
21 bureau, but not in the supervisory and certainly not in the
22 law enforcement area.

23 The Chairman. Well, I appreciate your explanation, but
24 you are having the same problem as Mr. Constantine has had
25 with having to put people on that really should be

1 disciplined because of the Merit Systems Protection Board.

2 Mr. Magaw. This one was just--

3 The Chairman. I am sorry to hear that. We had hoped
4 that that Board would work better than that. I need to go
5 to Senator Biden, but if you have a comment, Mr. Noble?

6 Mr. Noble. I simply wanted to follow up for the record
7 because there is so much misinformation out there about ATF
8 and what has happened since Waco and I just want the record
9 to be clear. I am going to be testifying Monday for as long
10 as they will ask me questions, but let me just make the
11 record clear.

12 Following Waco and the issuance of the report, Steve
13 Higgins, the Director of ATF, before the report was issued
14 and before he read it, announced his intention to retire.
15 On the day the report was issued, Secretary Lloyd Bentsen
16 put Associate Director Dan Hartnett on leave, Deputy
17 Associate Director Dan Conroy on leave, Senior Executive
18 Service Agent Troy on leave, Special Agent Hanowski and
19 Assistant Special Agent-in-Charge Sarabyn, on the day the
20 report was issued.

21 Now, Mr. Higgins eventually retired. He wasn't
22 implicated in the report. Mr. Hartnett retired. Mr. Conroy
23 retired. Mr. Troy lost his Senior Executive Service
24 ranking, and Special Agent Hanowski and Assistant Special
25 Agent-in-Charge Sarabyn lost their right to carry guns,

1 their right to carry badges, and their right to enforce
2 Federal criminal law, and to a law enforcement agent, that
3 matters.

4 So from the entire chain of command, from the Director
5 to the deputy raid commander, they are no longer in the
6 position to exercise discretionary authority in exercising
7 their rights as law enforcement agents to enforce Federal
8 criminal law. So the changes, the American people ought to
9 be told, were very profound and very significant.

10 The Chairman. Well, thank you for that explanation.

11 Mr. Magaw, I have great confidence in you. I think you
12 have really tried to operate this agency fairly and
13 decently, and I certainly would give you leeway with regard
14 to making these types of value judgment decisions that have
15 to be made.

16 But I am concerned that both of you have raised this
17 Merit Systems Protection Board and how they are forcing you
18 to put people back on who shouldn't be carrying a badge and
19 shouldn't be in these positions. To the extent that might
20 be a small part of this, and maybe a bigger part--I don't
21 know--we ought to maybe find some better way of doing this.
22 We would like to have your suggestions--let's put it that
23 way--especially Treasury's and Justice's, on that.

24 Mr. Magaw. One correction I just have to make in my
25 story. We won in the Merit Systems Protection Board, but

1 they lost it in the court of appeals. They said that the
2 information was too old and they weren't sure they believed
3 them.

4 The Chairman. I see. Well, I am glad to have that
5 protection.

6 Senator Biden, I am sorry that we infringed a little
7 bit.

8 Senator Biden. Mr. Chairman, I always think the
9 chairman should have extended prerogative. You were kind
10 enough to let me have it when I was chairman. I think you
11 should have it and I hope I get a chance to have it again.

12 [Laughter.]

13 Senator Biden. But all kidding aside, I do think you
14 should, for the record.

15 The Chairman. I will try not to take advantage.

16 Senator Biden. No, no. I really do. I think you
17 should have that prerogative.

18 I apologize. There have been 5 votes--I think it is 5-
19 -3 of which affected by State, that were on the floor. That
20 is why I have not been back, and now there is another vote
21 so this will be somewhat truncated.

22 The Chairman. I think I will go vote so I can get back
23 quickly, and you will finish and just recess until we get
24 back.

25 Senator Biden. Fine. Thank you.

1 I am going to have a chance to speak to all of you; I
2 have always had. I have not met Ms. Lau before, but all the
3 rest of you have been available to me and every member of
4 the Senate.

5 Ten minutes, okay. This is going to be even shorter
6 than I thought.

7 I want to make sure I understand. You are aware that
8 there are allegations floating around about criminal
9 behavior relative to women being abused at this Roundup.
10 Are you aware of that?

11 Ms. Gorelick. Senator, just before we walked in here
12 this morning, we were told that affidavits exist, and we
13 have been given redacted copies of affidavits and told that
14 the affiants would not object to the unredacted versions
15 being provided to our inspector general.

16 Senator Biden. Knowing you as I do--

17 Ms. Gorelick. I think none of us had this before this
18 morning.

19 Senator Biden. I didn't think you did. All I am
20 suggesting is that with all the work you and I did on the
21 violence against women legislation, I don't have any doubt
22 that this will be pursued, but I want the record to reflect
23 that wherever this takes you, you are going to go--wherever
24 this investigation takes you. Is that correct?

25 Mr. Freeh. Yes.

1 Ms. Gorelick. That is correct, yes.

2 Senator Biden. For all agencies included?

3 Ms. Gorelick. Yes.

4 Senator Biden. Number two, one of the things we are
5 going to hear a lot about, and I am sure a lot is going to
6 be written about is what legal standards can off-duty
7 Federal law enforcement agents be held to that may be
8 different, if any, to the average American citizen.

9 There is nothing in the law that says a group of white
10 supremacist idiots can't get together in the woods and hang
11 up signs like you saw here, or can't put on skirts like you
12 abhor, and so on. So before this is all over, we are going
13 to have questions raised about whether or not, if those
14 things occurred and how often they occurred--that maybe we
15 can't do anything about Federal agents.

16 Does the code of conduct--and there is a code of
17 conduct for all Federal law enforcement officers--does the
18 code of conduct--and a yes or no would be helpful in the
19 interests of time here--does the code of conduct say
20 anything about off-duty conduct? We will start with the
21 FBI, if I may.

22 Mr. Freeh. Yes, it does, Senator. It is clear and it
23 is unambiguous that an employee on duty or off duty shall
24 not, cannot engaged in--and the words are "criminal,
25 dishonest, immoral, or disgraceful conduct, or conduct

1 otherwise prejudicial to the Government." So that I would
2 answer with a resounding yes.

3 Senator Biden. Now, you as a former Federal judge will
4 know this better than all of us. What is the legal nexus
5 between that code and your ability to discipline, fire,
6 assuming it is not criminal conduct--if it is criminal, it
7 is obvious. What is the nexus between the existence of the
8 code and, assuming you find people did engage in infamous or
9 dishonest or immoral or notorious, disgraceful, which I
10 think we would all know if this things as outlined
11 occurred are, is there any case law that allows you to just
12 summarily fire those folks?

13 Mr. Freeh. Well, there is very strong case law.
14 Pickering and Connick are the two leading Supreme Court
15 cases, and what those cases and the derivative law says,
16 which is very strong, is that a law enforcement officer,
17 whether Federal, State, or local, because that person is a
18 member of a public agency whose effectiveness and efficiency
19 is directly related to the credibility and support in the
20 community, a very, very high standard of conduct on duty and
21 off duty can be enforced because it is balanced, the classic
22 balancing test between the compelling need of the Government
23 agency to perform its functions outweighing the personal
24 conduct. Also--

25 Senator Biden. Judge, is there any--I am sorry. I

1 interrupted you.

2 Mr. Freeh. I am sorry. Judges always go on too long.

3 Senator Biden. No, no, judges usually don't. Senators
4 always do, or at least this Senator does. But let me ask it
5 with a slightly different twist. Is there any legal
6 significance to a sworn Federal officer who takes the oath?
7 Do they, in effect, contractually sign on to this code of
8 conduct?

9 Ms. Gorelick. Senator, if I might answer that
10 question, the authority under which discipline would be
11 taken, including firing someone, is in Title V, Section
12 7513(a), which permits discharge for such causes that will,
13 quote, "promote the efficiency of the civil service." It is
14 under that provision that the cases that Director Freeh is
15 talking about have proceeded.

16 Senator Biden. That is the case for all the agencies,
17 is that correct?

18 Ms. Gorelick. Yes.

19 Mr. Freeh. Except we are not in the civil service,
20 which actually gives us more discretion in terms of a
21 dismissal.

22 Senator Biden. Is Alcohol, Tobacco and Firearms in the
23 civil service?

24 Mr. Magaw. Yes.

25 Mr. Noble. Yes. I would just like to add one point,

1 Senator. You know that you fought long and hard for
2 availability pay, and we have Federal law enforcement agents
3 who are given 25 percent above their base salary to be
4 available 24 hours a day in a condition such that they can
5 discharge their responsibilities effectively and
6 forthrightly. So I am saying even if we don't have these
7 other theories, they are getting 25 percent above base pay.
8 Therefore, I believe we ought to be able to control their
9 activity during their so-called private time.

10 Senator Biden. I know you well enough to know how
11 strongly you feel about this. What I am trying to get at
12 here for the record is whether there is a legal capability
13 of you being able to act on what I know your feelings are.
14 My guess is that if this were the good ol' days, knowing you
15 as I do, you would be inclined to take these good ol' boys
16 behind a good ol' barn and give them a good ol' whipping, if
17 you could, and so I don't have any doubt about that. I just
18 want to know what you all think at this point we can legally
19 do if the worst turns out.

20 The second question--and if someone has asked this,
21 please just tell me and we will move on and I will move on
22 to my friend from South Carolina and go vote, but there are
23 two things that concern me here, and I know that concern
24 you, but two things that concern me.

25 One, this Roundup has been going on a long time. I

1 have found law enforcement officers are a little like United
2 States Congresspersons and Senators and the rest of us.

3 There is not much that goes on within the law enforcement
4 community that law enforcement officers don't know about--
5 just the talk. What has kind of surprised me is that the
6 law enforcement community is acting like, God, they had this
7 Roundup, holy mackerel, a Roundup, and it has been going on
8 in different permutations since 1980.

9 The second thing that concerns me is I don't think it
10 is sufficient--I am not suggesting you do, but I don't think
11 it is sufficient just to find and discipline those who
12 attended. If they attended and supervisors who didn't
13 attend knew they attended, this is--you know how cops are.
14 If there is something like this going on in Schenectady,
15 they know about it in Buffalo and they know about it in
16 Nyack. This is not something that cops don't know about.

17 So what I want to know is are you going to be looking
18 at not only who attended, but why in the devil this--you are
19 all essentially new to the job; all this didn't happen on
20 your watch. Some of you are as new as a year and some of
21 you are as new as 3 years. I mean, this didn't happen on
22 your watch, but are you going to look into how come no one
23 knew this thing was going on? That is the question I ask.

24 Mr. Magaw. Senator, I have to tell you it did happen
25 on my watch because I was the Director of the Secret

1 Service, and so it did happen on my watch, but I have to
2 tell you I didn't know about it. So it is the first time I
3 know about it, so I don't want somebody to think it didn't
4 happen on my watch because I was there for 26 years and I
5 didn't know about it. So it did happen on my watch and I
6 don't want to back away from that.

7 Senator Biden. Are you going to be looking at that,
8 though, about whether supervisors knew?

9 Ms. Gorelick. Senator, for the Department of Justice
10 and its agencies, we certainly will be looking at that. I
11 would note that the preliminary numbers that we have
12 suggest, on average, over the past 12 or 13 years, perhaps 4
13 law enforcement agents out of a law enforcement population
14 of, on average, 20,000. So we may--and I am not suggesting
15 we have made any determination in a week's investigation--
16 have a somewhat different situation than I understand from
17 ATF.

18 Senator Biden. Okay. Well, I have personal confidence
19 in all of you. Four of you, I have known well and long for
20 a long time. One of the things I hope the American public
21 looks at--I hope the cameras are showing who we have here.
22 If we are investigating discrimination, we have a woman who
23 is one of the toughest lawyers I have ever known heading up
24 this operation for the Justice Department. We have a woman
25 who is doing this as the IG in this operation.

1 We have a black man who has been the guy in charge of
2 this operation, and we have a judge whose integrity has
3 never ever been questioned. We have a superintendent of a
4 police force, one of the largest police forces in the
5 country, who has, in fact, done this kind of thing and shown
6 his stripes, and we have a guy who never ducks who is here.

7 So I am prepared to say I will wait to see what you all
8 do because I have confidence in the fact that you have both
9 a legal, a professional and, quite frankly, a personal
10 interest from your point of view of making sure we get to
11 the bottom of this.

12 I thank you, Mr. Chairman, for allowing me to go on. I
13 am going to go vote, and the committee is yours, has it
14 always has been.

15 Senator Thurmond [presiding]. Thank you very much.
16 First, I want to commend the chairman of the Judiciary
17 Committee for convening this hearing. I welcome the members
18 of this first panel, who are largely responsible for Federal
19 law enforcement across the Nation.

20 Treasury Secretary Rubin has ordered a comprehensive
21 and independent investigation of the annual gatherings in
22 Tennessee reportedly attended this year by more than 300
23 Federal, State, and local law enforcement officers. This
24 hearing will help shed light on what has occurred at these
25 events.

1 We deplore racist activity and find it even more
2 reprehensible if practiced by law enforcement. We live in a
3 country where justice is blind and where the laws are
4 enforced even-handedly. The American people must have
5 confidence that this is a reality and not a goal. If law
6 enforcement officials have participated in the type of
7 activities reportedly occurring at these annual gatherings,
8 then they should be disciplined immediately. Public trust
9 must not be betrayed.

10 I believe it is incumbent upon those directing the
11 Federal law enforcement agencies to determine if the
12 reported racist activity at these events was unwelcome,
13 isolated conduct or was pervasive and with the willful
14 participation of Federal agents. Let me note
15 parenthetically that if a State law enforcement official
16 promoted this behavior, then they should be disciplined as
17 well.

18 Now, it strikes me that the wide net of invitees to the
19 Good Ol' Boys Roundup netted some who were not so good. It
20 is my hope that the intent of these annual gatherings has
21 been to provide an innocent and benign forum for law
22 enforcement to come together and socialize. I condemn
23 whatever racist activity was there and am anxious to learn
24 if it was the work of a few rogue individuals who attended
25 or whether this was a known theme for this annual event.

1 I will use the remainder of my time to ask a few
2 questions. Now, for the record, do any of the agencies or
3 Cabinet departments that you represent sanction or organize
4 the so-called Good Ol' Boys Roundup?

5 Ms. Gorelick. No.

6 Mr. Noble. No.

7 Senator Thurmond. Is that the answer of all of you?

8 Mr. Freeh. Yes, sir.

9 Senator Thurmond. Second, briefly, could each of you
10 tell this committee what you feel should be the precise
11 nature of inquiry into the activities at this annual event?

12 Mr. Noble. Speaking for the Treasury Department,
13 Senator, I believe it ought to be a comprehensive factual
14 investigation, which the inspector general, Ms. Lau, seated
15 to my left, has committed herself to doing. I believe we
16 ought to look forward, as well, to making sure that the
17 current rules and regulations and policies we have in place
18 can prevent this activity from occurring in the future.

19 Senator Thurmond. Do any of the rest of you have
20 anything you want to say?

21 Ms. Gorelick. At the Department of Justice, the
22 inspector general has been directed to undertake a complete
23 investigation of the involvement of any Department of
24 Justice personnel in the events of Roundup in light of the
25 policies of the Department, and he has not been restricted

1 in any way as to where that investigation might take him.

2 Senator Thurmond. Ms. Gorelick, I know you and hold
3 you in high esteem.

4 Ms. Gorelick. Thank you, Senator.

5 Senator Thurmond. As Deputy Attorney General, do you
6 have any reason to believe that there is a problem of racial
7 insensitivity within the ranks of Federal law enforcement?

8 Ms. Gorelick. I must say that until the inspector
9 general returns with his report, and he has only been at
10 this for a week, I would like to defer a comment on that.
11 In general, the Attorney General and I have tremendous faith
12 in our law enforcement agents and the leadership of our law
13 enforcement agencies. This event is terribly troubling to
14 both of us and it does challenge our assumption and our
15 direction that law enforcement agents act with fairness and
16 impartiality according to the rule of law.

17 Senator Thurmond. Director Freeh, do you have any
18 remarks you want to make?

19 Mr. Freeh. I would echo what the Deputy Attorney
20 General has said. The FBI in recent history has had serious
21 problems with respect to pockets and instances of racism. I
22 could name a number of them for you. It is our assumption
23 and certainly our hope that whatever these facts check out
24 to be with respect to FBI employees, on a worst case basis
25 it reflects the action of a few individuals who shouldn't be

1 and have no business being law enforcement agents, let alone
2 FBI agents. But at this point, I would want to see that
3 investigation and certainly would look very sensitively to
4 any trends or suggestions of more pervasiveness.

5 Senator Thurmond. Mr. Constantine, do you have any
6 remarks?

7 Mr. Constantine. Well, probably those covered by the
8 Deputy and Director Freeh, but the one thing--I think this
9 is a stain that hurts us all, but I think we have to put
10 things in perspective. There are 600,000-some law
11 enforcement officers in this country. Three hundred people,
12 I understand, attend this event. A significantly small
13 number of them seemed to have played a role in this really
14 despicable behavior, and I would not want to assess the
15 attitudes and reputations of law enforcement to people who
16 acted in what I think is almost a bizarre fashion and take
17 that as the norm.

18 I have dealt with police officers from around this
19 country for, as I have said, 35 years. I literally know
20 thousands of them. I have been in their company for dinners
21 and events, black and white, male and female, and I have
22 never heard racial comments; I have never heard the sexist
23 comments. By and large, these people are very professional,
24 committed individuals. I anxiously await the outcome and,
25 like everybody else, I hope it doesn't show that there is

1 anything systemic about this problem.

2 Senator Thurmond. Mr. Magaw, do you have anything
3 further?

4 Mr. Magaw. Senator, I believe the same that it is not
5 going to be systemic. There are bits and pieces of it.
6 Certainly, there is within ATF and we are addressing it.
7 Just remember that law enforcement is a cross-section of
8 America. It looks like America, it acts like America, and
9 there is no place in America where we don't have a few of
10 these problems, but I can guarantee you we are addressing
11 them.

12 Senator Thurmond. Mr. Noble, do you have anything
13 else?

14 Mr. Noble. Yes. I believe that the vast majority of
15 Federal law enforcement officers are honest, law-abiding,
16 non-bigoted people, but I believe that we have racists in
17 Federal law enforcement. The fact that this Good Ol' Boys
18 Roundup could exist for 15 years and we are just finding out
19 about it--I don't know how many other Good Ol' Boys Roundups
20 are going on in this country right now that we don't know
21 anything about.

22 What I will do is wait for the inspector general to
23 conduct her investigation, and I am sure, because of the
24 attention that this hearing is placing on this matter and
25 the reports are placing on this matter, we will find out

1 whether there are more events like this. But racism exists;
2 it exists in America and it exists in federal law
3 enforcement.

4 Senator Thurmond. Ms. Lau, do you care to say anything
5 now before we close?

6 Ms. Lau. No, other than to pledge that I will conduct
7 a thorough investigation into the concerns that have been
8 mentioned here.

9 Senator Thurmond. Senator Grassley?

10 Senator Grassley. Thank you very much. You know how
11 fresh you are when these meetings start, and then you expect
12 you are going to be maybe the third or fourth one to be able
13 to ask questions, and then you have 4 or 5 votes. I suppose
14 it is as frustrating for you as it is for us, but I am glad
15 to be able to be here with you.

16 I know that some of my colleagues have expressed some
17 confidence that this situation is going to be very
18 thoroughly taken care of. I hope you don't blame me if I
19 don't yet have that confidence. I will believe it when I
20 see it. Obviously, the problems we are dealing with here
21 aren't the only problems that we have in Government. In
22 fact, we even have problems on Capitol Hill, but we are
23 dealing with this one right now because it is within the
24 jurisdiction of our committee.

25 Since the investigation into the situation, a very

1 disgusting situation, we all agree, is going to be headed by
2 you, Inspector Lau, I just want to start out by reminding
3 the Treasury Department that just a little over a year ago,
4 maybe quite a bit over a year ago, it was in the Finance
5 Committee and I had the opportunity to ask Secretary
6 Bentsen--and you were assistant-secretary-to-be, Mr. Noble,
7 and I asked you about allegations and lawsuits against ATF
8 regarding race and sex discrimination. I was assured that
9 both of these problems were going to be looked into and
10 dealt with.

11 Now, if you have a chance to talk with victims or if
12 you even read the papers, I think you still get a very
13 strong impression that not much has been done now, with
14 these related shenanigans where women and minorities were
15 apparently discriminated against by Federal agents
16 continuing to occur under the noses of those who are
17 supposed to be in charge and are supposed to be dealing with
18 what looks like a pattern of misconduct. I think you also
19 know that we have affidavits alleging all sorts of horrible
20 activity, including rape and drug use.

21 Obviously, then, one of the big-picture issues here
22 involves ensuring public confidence in our law enforcement
23 institutions. In the last year, these institutions have
24 been involved with so much controversy, some of it self-
25 inflicted, that this confidence is being threatened. With

1 all due respect, those who make the feeble arguments at
2 hearings into these matters--and you have heard them--are
3 threatening this confidence that people ought to have. I
4 think that people that make those statements are really, in
5 a sense, in denial because with this kind of attitude, we
6 are never going to get to the real truth.

7 I tried to make this point last February when I
8 questioned you, Director Freeh, if you recall, on your
9 recommendation to promote Mr. Potts as your deputy. I know
10 that we will be getting to the Ruby Ridge tragedy in
11 September, but it is important to see it as a part of what
12 looks like a pattern of mistakes and misconduct.

13 ~~If you remember, back there in February in response to~~
14 my questioning, you were adamant that even though Mr. Potts
15 had been reprimanded for his bungling at Ruby Ridge, Mr.
16 Potts was, in your words, the best person for the job.
17 After a thorough investigation now, after the public heat
18 finally got too hot, Mr. Potts has been demoted. These
19 actions, I think, send a terrible message, and law
20 enforcement and public peace will be paying a terrific
21 price.

22 Now, that is kind of background and to some extent that
23 is history. Today, we have this situation about the good
24 ol' boys outing and a retired ATF agent who organized it
25 saying that nothing much really happened, but then he turned

1 around and destroyed evidence. This act of destroying
2 evidence alone reflects badly on the agency. What is more,
3 I understand there are witnesses with evidence that
4 discrimination did take place.

5 Now, given all this, as well as what has gone on with
6 other questionable investigations in this administration,
7 including the race and sex discrimination allegations
8 against the ATF that don't seem to be going anywhere, my
9 question to each of you now is why should the public or even
10 those of us in Congress believe that this administration
11 will actually get to the bottom of the latest controversy?
12 I don't care who starts.

13 Mr. Noble. Let me begin by saying that I was very
14 impressed with your question during my confirmation process
15 about what my own attitudes were about racial discrimination
16 and sexual discrimination and your inquiry of me personally
17 about what I would do with regard to the ongoing lawsuit.

18 You can imagine the pressure an African American feels
19 when he is responsible for 29,000 people, the vast, vast
20 majority of whom look nothing like him, at the same time
21 that there is a lawsuit that has been brought by African
22 Americans.

23 For me, I wanted more than anything to know that all of
24 my employees, male or female, white or black, had an
25 assistant secretary first and now an under secretary who

1 respects them, who thinks the world of them as a large
2 group. As an African American, too many times I have seen
3 one African American commit a crime and an entire race
4 attacked because of it, and I did not want the same thing to
5 happen to my people.

6 What I committed myself to was to observe the process,
7 to make sure that the process, the one that I live for, the
8 rule of law, would be followed to its end, and that at an
9 appropriate point when it was appropriate for the Under
10 Secretary of Enforcement to be involved in the process, I
11 would step in. That point occurred a day before this
12 published report with regard to the Good Ol' Boys Roundup.

13 I was asked, and each side agreed that I should
14 participate in the mediation process. So now I will
15 participate in the mediation process and attempt to be fair,
16 knowing that if I go too far in either direction, that group
17 is going to think, because I am black or African American, I
18 gave in too much. If I don't give in enough, then the
19 African Americans are going to think I am an Uncle Tom or I
20 am a sell-out. So I feel the pressure, but from the very
21 beginning I will let the rule of law run its course and I
22 will do my utmost to be fair when all is said and done.

23 Senator Grassley. Before we go on, you are going to
24 have some testimony later today that these discrimination
25 practices are a continuing problem at ATF. So it doesn't

1 appear that they have really been dealt with.

2 Mr. Noble. I will let Director Magaw address that
3 specifically. I can only tell you that what I have learned
4 in running enforcement components is you have got to find
5 people in whom you have the utmost confidence and trust in
6 their integrity, their ability, and their command of the
7 jurisdictional responsibilities for which they have been
8 placed in charge. Director John Magaw is someone in whom I
9 have a hundred percent confidence, so I will let him address
10 it.

11 Mr. Magaw. The African American suit is under
12 negotiations and we are trying to look at the kinds of
13 things that have happened to these African Americans since
14 they have been on this bureau and then try to come to a
15 proper and fair settlement.

16 In the meantime, I take issue with the fact that things
17 are as usual. When I came on, there was no ombudsman.
18 There was no black assistant director. There is now. Peer
19 groups--I see down with each group, to include the black
20 group, and listen to what they have to say three and four
21 times a year.

22 Every time that we have looked at promotion lists, when
23 blacks and other minorities are reachable and as competitive
24 as others I have tried to make sure that we have treated
25 them with fairness. I have tried to make sure that what

1 they are talking about about their evaluation, about the
2 training that we give them--that sometimes other groups get
3 more training and get better assignments, and therefore are
4 able to compete for promotion better--they are asking about
5 the evaluation system, that it may be slightly unfair to
6 them, and we are trying to correct that.

7 So all of those kinds of things I dealt with in the
8 last 10 years, you know, at the Secret Service as an
9 assistant director and a director. We were very successful
10 over there. We had those same kinds of problems about 12
11 years ago very close to going to a suit. So for them to say
12 that there is nothing different, then are these the leaders
13 of the suit who are very, very upset, and rightfully so,
14 because of the things that happened to them?

15 But also, sir, you need to reach out and get some of
16 the rank-and-file throughout the country and see if they
17 tell you the same thing. I don't they will. We are making
18 progress, we are on the right track, and I stand by what I
19 am doing and what I am trying to do every day.

20 Ms. Gorelick. If I might respond for the Department of
21 Justice, Senator Grassley, the investigation into this
22 matter will be undertaken by our inspector general. He is a
23 seasoned prosecutor. He is tough, he is independent. He
24 reports only to the Attorney General and to myself. He is
25 answerable to you. He has been fully empowered by the

1 Attorney General. He has a charter that is much broader and
2 much deeper and much more significant, in my view, than any
3 of his predecessors. The investigative activities of the
4 law enforcement components will be and has been solely at
5 his direction and control, and he has the full support that
6 he needs and he is amply empowered to investigate this.

7 Senator Grassley. How much time do I have left?

8 The Chairman. Your time is up, Senator, unless you
9 have something really exigent.

10 We will turn to Senator Thompson.

11 Senator Thompson. Thank you, Mr. Chairman. I guess we
12 are somewhat reaching the point of diminishing returns here.
13 We have all expressed our concern and outrage at what we
14 have heard, and you have expressed your commitment to get to
15 the bottom of it and I personally believe that you will. It
16 is a pretty simple exercise. It is complex in terms of
17 working it out, but as far as your mission, as I see it, it
18 is what happened and who knew about it, and you will get to
19 the bottom of that and come back.

20 I think it would be appropriate to make another couple
21 of comments. I think most of us--probably, the last thing
22 in the world we wanted to be a part of at this stage of the
23 game is to be a part of embarrassing our institutions which
24 are under attack, and especially our law enforcement
25 institutions that are so much under attack. I know that is

1 especially true in my case.

2 I have tried cases with and been out in the field with
3 agents of every agency represented at this table, and,
4 without exception that I can recall, all good people. I
5 never encountered anything like this, but the damage, I
6 think, right now is probably incalculable in terms of race
7 relations and in terms of what we have been trying to build
8 in this country and in terms of legislation--there will be
9 legislation that will come on the floor of the United States
10 Senate totally unrelated to this where this will have an
11 impact--and in terms of the morale of all the good law
12 enforcement people out there.

13 I spent a good deal of time Sunday with a retired FBI
14 agent friend of mine who was absolutely distraught at this.
15 Of course, the State of Tennessee--every time this has been
16 mentioned, usually it is in conjunction with the State of
17 Tennessee and Polk County. There is no more beautiful place
18 in the world than Polk County, and no better people. The
19 very idea that some people might think that this represents
20 even a fraction of the people of Tennessee or Polk County is
21 absolutely abhorrent to me, and I have had contact from
22 these people mostly concerned about that. So the
23 ramifications from all this are much broader even, I think,
24 than we realize.

— 25 I have been somewhat concerned already that there has

1 been some reaction from this that, after all, we are talking
2 about private property and we are talking about individuals
3 with the freedom of expression and all of that. That is
4 true. If people want to pay \$90 and travel hundreds of
5 miles to go out into the woods and act like fools, that is
6 their constitutional right, but they do not have a right to
7 spend one penny of Government assets in doing so. They do
8 not have a right to utilize one second of Government time in
9 doing so, and they don't have a right to do if they are
10 Federal law enforcement agents and, by that conduct, make
11 their job and their fellows' jobs that much more difficult.
12 I think that is exactly what we are dealing with here today.

13 Thousands of criminal defendants across this country
14 will now have another arrow in their quiver in every
15 conceivable kind of criminal prosecution now because of what
16 these relatively few people did down there from time to
17 time. The biggest hurt in this whole thing is going to be
18 to law enforcement and the good law enforcement people who
19 are out there on the job every day. Think of the
20 relationships between the black and white officers who go
21 out shoulder to shoulder and risk their lives together, and
22 what it does to that.

23 That is what we are dealing with. That is why it is so
24 important. I especially regret that it occurred in my
25 State, even though many other States were involved in it,

1 but it just goes to show how, in this modern age of
2 telecommunications, coupled with the extremely high level of
3 responsibility law enforcement agents have, it can allow a
4 handful of people to do just incalculable damage to all of
5 us.

6 I think this is especially serious for the ATF,
7 obviously. I can only speak for myself and I don't have any
8 conclusions on it, but I think there are a lot of good
9 people--you talk to a lot of good law enforcement people,
10 current and present, off the record and they wonder whether
11 or not the ATF has outlived its usefulness. I have seen all
12 the statistics about saving money and the prosecutions and
13 all of that, but those of us who have been in the business
14 know how you can read those things.

15 There are a lot of people who think that the alcohol
16 and tobacco part of it can be handled by other agencies and
17 the firearms part can be handled by another agency. We seem
18 from time to time to see another example of an agency
19 seeking to justify its existence. There was testimony over
20 on the House side yesterday where apparently false
21 information was given in order to give ATF jurisdiction into
22 an area that now is a national scandal.

23 So it is no reflection on you, Mr. Magaw. I have the
24 highest regard for you, but that is the background. I don't
25 know whether anybody has mentioned it here yet or not today,

1 but that is the background of what you are dealing with and
2 that is the level of seriousness I think this is to that. I
3 don't know whether this will tip the balance or not, but it
4 is something that I think needs to be looked at.

5 Mr. Magaw was kind enough to come in at my request on
6 July 13th and we had a nice meeting, forthright. I think he
7 is doing his best, but we mentioned at that time--we asked
8 whether or not there weren't records of some kind as to who
9 may have attended those meetings, and then I read in the
10 paper that 2 days after our meeting, apparently, those
11 records were destroyed. You had started your full
12 investigation 2 days prior to that meeting, so I don't think
13 that looks too good. We lost those records.

14 Ms. Lau. Senator?

15 Senator Thompson. Yes?

16 Ms. Lau. I issued a subpoena, an IG subpoena, to the
17 organizer of the event for computer records and any written
18 records--mailing records, attendee rosters. Unfortunately,
19 as you mentioned, the information had been deleted from the
20 computer. I issued a second subpoena, sent down a special
21 agent with assistance with the IRS chief inspector's office,
22 a computer technician, in order to recover the information
23 off the hard disks of Mr. Rightmeyer's computer.

24 Because we recovered the information in that manner, it
25 is taking a while to get that information in a usable

1 format, but we do have access to some information such as
2 that as a beginning point.

3 Senator Thompson. You issued two subpoenas?

4 Ms. Lau. Yes.

5 Senator Thompson. Do you recall the dates of those two
6 subpoenas?

7 Ms. Lau. Yes, I do. We first learned of this incident
8 last Thursday, July 13th. We issued the subpoena on
9 Saturday, July 15th. We issued our second subpoena--

10 Senator Thompson. Do you know when that subpoena was
11 served?

12 Ms. Lau. Excuse me. It was served on Saturday, July
13 15th.

14 Senator Thompson. The same day that according to news
15 accounts the documents were destroyed?

16 Ms. Lau. It is my understanding, according to the
17 investigator who spoke to Mr. Rightmeyer and served the
18 subpoena, that the information had been deleted the prior
19 day.

20 Senator Thompson. The prior day. That would have been
21 on the 14th?

22 Ms. Lau. Yes.

23 Senator Thompson. All right.

24 Ms. Lau. The second subpoena was served on Monday,
25 July 17th, and we spent a good portion of that evening and

1 the next morning working on the computer to retrieve the
2 information.

3 Senator Thompson. And you are still working on that?

4 Ms. Lau. We are still working on that.

5 Senator Thompson. Do you know whether or not you have
6 checked yet to see whether or not there are any records of
7 those who went on the rafting trips and those who may have
8 had to sign waivers to get on those rafts?

9 Ms. Lau. As I mentioned, we have just begun our
10 investigation. We have just recovered information such as
11 that.

12 Senator Thompson. Well, let me suggest you look at
13 that.

14 Ms. Lau. Yes.

15 Senator Thompson. I think you will find that those are
16 required, if they are still in existence.

17 Director Freeh, I understand there was some discussion
18 while I was gone about some of the topics that you
19 mentioned.

20 I see my time is up, Mr. Chairman.

21 The Chairman. If you have any critical questions--
22 because this is your State, I have allowed you just a little
23 bit more time.

24 Senator Leahy. Mr. Chairman, if the Senator has
25 another question, I am pleased to wait.

1 The Chairman. Sure.

2 Senator Thompson. I appreciate that. Maybe one more
3 brief line.

4 I agree with the Director. I have been concerned about
5 some of the things that I have heard about you can't
6 discipline anybody anymore. You can't do anything with
7 anybody, especially if they are on their own time and
8 especially if they are on private property. But I think you
9 pointed out that there are regulations in each of the
10 departments that apply to Government employees generally
11 having to do with conduct prejudicial to the Government.

12 You must show a nexus between the activity and the fact
13 that it makes it more difficult to do carry out their job.
14 But I cannot think of any closer nexus than this kind of
15 activity, if it is true. And I think the occasion also
16 indicates that for law enforcement officers, the standard is
17 higher, and it is easier to make that kind of nexus and
18 point out the egregious nature of it. But I would think
19 that as a part of all this, I would ask all of you to keep
20 in mind whether or not--we all want due process and we want
21 to make sure people are treated fairly. But once the facts
22 are established, I am not sure that we need this vast
23 regulatory scheme that Congress has imposed on everybody
24 that makes it almost impossible to fire incompetent people
25 or maybe other people who have done other things. I think

1 that that is part of what needs to be addressed here.

2 Mr. Freeh. I could not agree with you more, Senator.
3 Any system, even if it is an administrative legal system
4 that now says, as it does, that an employee can lie and
5 commit perjury in the course of an administrative inquiry to
6 protect himself or herself from the inquiry, and that by
7 itself is not a separate basis for dismissal, there is
8 something fundamentally wrong with that system.

9 Senator Thompson. No question about it.

10 Thank you, Mr. Chairman.

11 The Chairman. Well, thank you, Senator.

12 Senator Leahy, we will go to you now.

13 Senator Leahy. Mr. Chairman, I, like others have had
14 to miss part of this with a series of votes, although I have
15 had a running report back about it. I have looked at the
16 invitation that we had up here earlier, and the invitation
17 itself, it is safe to say that it is basically a neutral
18 document in everybody's mind, that the invite as it appears
19 is basically innocuous. Does anybody disagree with that?

20 The Chairman. Well, I would disagree with it because
21 it uses the term "Good Ol' Boys."

22 Senator Leahy. I understand, but it is probably--

23 The Chairman. I am sorry. You are not asking me.

24 Senator Leahy. Well, you are anticipating my next
25 question. I do not want you to take over for me. Relax

1 here, Orrin. But you find no note of criminality in the
2 invite. Is that correct? Would everybody agree with that?

3 Ms. Gorelick. Senator, I have to say for the
4 Department of Justice we are going to leave those
5 conclusions as to the meaning and import of documents to our
6 inspector general. I have glanced at these documents, but I
7 have made no judgment for the Department or even for myself.

8 Senator Leahy. Obviously, if the invite said
9 something, we are going to exclude people of any race, we
10 are going to have illegal sexual conduct or something like
11 that, I mean, that would jump out as being an obvious thing.

12 Now, aside from the terminology used, whether
13 politically correct or not, I am trying to look for things
14 that would be illegal. Now we go to the videotape that we
15 saw here. Has anyone determined when that videotape was
16 made? Has that been determined?

17 Mr. Constantine. It is our best information,
18 tentatively, that that was 1990, and I think that is the
19 statements of the individual who originally took the
20 videotape.

21 Senator Leahy. And do we know to what extent the
22 videotape has been edited or things taken out or anything?

23 Ms. Gorelick. This is an issue that is under review by
24 our inspector general. We have made no determination at
25 this point.

1 Senator Leahy. Now, then that goes to my next line of
2 questioning, and maybe I can go through it with each one of
3 you on this. Most of you I know. Ms. Lau, you and I have
4 not met before. Mr. Magaw, we first met when you were the
5 head of President Bush's detail in different times when I
6 would be at things with him. But let me ask you this: When
7 did somebody in a position to take administrative or
8 disciplinary action first hear of this, of the goings-on,
9 the obviously wrong goings-on that we have heard about, in
10 your organization, Mr. Magaw? When was the first that
11 somebody who should have taken either disciplinary or other
12 action hear about it?

13 Mr. Magaw. I believe it should have been questioned in
14 1980, Senator. There was a document--

15 Senator Leahy. 1980?

16 Mr. Magaw. 1980. In 1980, sir, there was a document.
17 Within the Bureau we have what is called executive notes or
18 the Director's notes to try to keep the field informed of
19 the things that are going on. Shortly after this event, in
20 1980, with the title of it and the way that it was set up,
21 it was just basically known that blacks were not invited. I
22 believe that there was a--I have the document. One page of
23 those notes had in there Good Ol' Boy Roundup. It talked
24 about 57 people attending it this year, and please plan to
25 come next year, it is going to be in Knoxville, and please

1 coordinate your visit through the Knoxville office.

2 Right there, that should have been picked up and
3 worked. That is my view. And I have that document.

4 First of all, even if you say one says Good Ol' Boy
5 does not mean anything, I do not agree with that.

6 Senator Leahy. I am not suggesting that.

7 Mr. Magaw. I know you are not. I know you are not.
8 But even the fact of the very last line, please coordinate
9 next year's event through the Knoxville Field Office, that
10 means phone calls, that means mailings back and forth. That
11 right there indicates that we should have picked up and
12 asked questions about that.

13 Senator Leahy. When was it first heard about either
14 the activity that has been alleged by some involving women
15 or the activities excluding African Americans or the
16 excessive drinking activities? When was that first heard
17 about in your organization?

18 Mr. Magaw. I do not know the answer to that question.
19 I am trying to think of all of the different things that we
20 have investigated and turned over to the inspector general.
21 It clearly deteriorated between 1985 and 1990 in terms of
22 the kind of things we are talking about: more drinking--in
23 fact, they went to having rules that, because there was so
24 much drinking, and you will have a better time if you do not
25 drink so much, and absolutely nobody drunk on the premises,

1 those kind of things. They had problems with fighting, and
2 they had to make a rule for that. So those expanded during
3 that particular year.

4 The female that we are talking about or the affidavits
5 this morning, I was not aware of those at all until this
6 morning. I was aware of the tendency to over-drink and
7 those kinds of things, but not these other criminal
8 accusations. So that first 1980 to 1985 was pretty much
9 family-oriented. The law enforcement officers came from
10 close by. They had their children with them. They had
11 their spouses with them. They did a lot of whitewater
12 rafting and those kinds of things. 1985 on, they started
13 coming from other States and other places, and it
14 deteriorated after that to the kinds of things that you are
15 talking about occurring here. And that is the best I can--
16 the best actual factual information I can tell you, sir.

17 Senator Leahy. Mr. Secretary, when is the first you
18 heard of it?

19 Mr. Noble. The first I learned about it was when the
20 front-page story in the Washington Times was published just
21 recently.

22 Senator Leahy. Ms. Lau?

23 Ms. Lau. The first I did hear of it was, of course, in
24 the newspaper and then for a discussion with Mr. Noble about
25 it.

1 Senator Leahy. Are the attorneys from the Civil Rights
2 Division or investigators from the Civil Rights Division
3 involved in this investigation, Ms. Gorelick?

4 Ms. Gorelick. Yes, they are consulting with the
5 inspector general.

6 Senator Leahy. Do we have a situation where FBI agents
7 investigate FBI agents, DEA agents investigate DEA agents,
8 or how is this being done?

9 Ms. Gorelick. The structure of our investigation is
10 that it has been assigned to the inspector general of the
11 Department of Justice. Each of the relevant components has
12 been instructed to make available their investigative
13 resources at the direction and control of the inspector
14 general as needed.

15 Senator Leahy. Judge Freeh?

16 Mr. Freeh. Senator, I first learned about it in the
17 newspaper article, and part of the inspector general's
18 inquiry, I am sure, is going to be at what level beyond the
19 seven FBI agents who attended it over the last 5 years, when
20 they first learned about it. I just do not know that at
21 this time.

22 Senator Leahy. You are not aware of whenever anybody
23 in a position to take either supervisory or disciplinary
24 action may have heard about this?

25 Mr. Freeh. Not at this time, sir, no.

1 Senator Leahy. Mr. Constantine?

2 Mr. Constantine. Senator, my answer would be similar
3 to the Director's. I first heard about it after the
4 newspaper article and since then have been trying to get
5 preliminary information. The numbers that we have
6 tentatively are very small. It would be difficult to
7 determine who beyond those very few numbers would have been
8 advised of the situation. I would think that the
9 investigation would be able to determine that as we go
10 along.

11 Senator Leahy. And you would use all normal
12 investigative techniques, including polygraphs, if
13 necessary?

14 Mr. Constantine. Whether or not people can be forced
15 to take a polygraph under civil service rules and
16 regulations is probably going to be something for the
17 lawyers to figure out.

18 Senator Leahy. Mr. Chairman, you have indulged me also
19 with a little extra time here. Let me just close and say
20 that the questions will be asked here. I have no question
21 in my mind that the six people here are the people who will
22 ask questions without fear or favor. I hope you understand
23 I mean that very much as a compliment. But I have stated
24 many times in this committee I think in many ways the most
25 satisfying public service I ever had was as a law

1 enforcement official. You have law enforcement of all
2 branches in this country given a great deal of power, a
3 great deal of responsibility. But it also means you also
4 give up some of the kinds of freedoms that you might feel
5 you have otherwise.

6 I think that law enforcement exists, and exists well,
7 to the extent that it is above suspicion or above criticism.
8 And we all know you cannot say, well, I do not have my badge
9 and my uniform on now so now I can be a racist, now I can
10 insensitive, now I can do things that would be a crime for
11 anybody else to do. In fact, in many ways the argument can
12 be made just the opposite, that you cannot raise hell and
13 you cannot do things others might be able to do, no matter
14 how reprehensible, just because they may not reach the level
15 of criminality. But in this case, where they reach the
16 level of criminality or not, I think they badly damage law
17 enforcement at all levels, and I think that is unfortunate
18 because the vast bulk of people, men and women in law
19 enforcement do not need that.

20 Thank you, Mr. Chairman.

21 The Chairman. Thank you, Senator Leahy.

22 We will turn to Senator DeWine now.

23 Senator DeWine. Director Magaw, let me direct my
24 attention to you, but if any of the other witnesses would
25 like to answer, I would invite them to answer as well.

1 Let me qualify my comment by saying that all the
2 evidence is not in. We are going to hear some additional
3 evidence today. The inspector general has talked about the
4 additional work that is going to be done, so my statement
5 certainly needs to be taken in that context. But I have
6 read, I think, everything that has been published in the
7 news media about this. I have read a summary of the
8 testimony of the witnesses, what we expect the witnesses
9 later on in the day to say. And to be quite candid, I get
10 the impression, correctly or incorrectly--and I would like
11 for you to comment on it--that there is a culture at ATF
12 that tolerates racism.

13 Someone a lot wiser than myself once said that the sins
14 of omission are much graver than the sins of commission.
15 You know, we are going to be held more accountable for what
16 we do not do than what we do. And, quite frankly, it is
17 hard for me to comprehend that this could go on for so long
18 and no one at ATF--and I do not just mean supervisors. I
19 mean nobody at ATF would look up and say, Wait a minute,
20 this is wrong, something is not right here.

21 You said in your testimony that one of the things that
22 you found was that the knowledge was widespread within ATF
23 that this was going on. It just seems to me that there has
24 to be a culture of tolerance of racism.

25 You know, I accept the fact and I assume that the vast,

1 vast majority of people at ATF are good people and are
2 certainly not racist. But that is not enough. I think what
3 we expect of law enforcement is that, at least in 1995, we
4 do not tolerate this anymore. We do not tolerate that type
5 attitude, because there has to be an understanding that that
6 type mental attitude, even among a small number of people in
7 an agency, is just wrong, and with all the problems that you
8 all, the six of you, have articulated so very well today,
9 and the members of this committee have.

10 So I would just like for you to comment on that. Is
11 that impression correct? Is it wrong?

12 Mr. Magaw. I think the--

13 Senator DeWine. Let me just add one more thing. I
14 congratulate you for doing this. You mentioned that you
15 have traveled all across this country and that you have
16 talked to virtually every ATF officer, whoever works through
17 ATF, and I think that is fantastic. I think that is a very,
18 very positive thing to have done.

19 But having done that, I am surprised you did not pick
20 up that or you did not pick up any problem out there.

21 Mr. Magaw. I am amazed, frankly, that I had not heard
22 about it before, because like I say, I spent 26 years in the
23 Secret Service and been in every State in this country and
24 in Tennessee and all over and worked with all these
25 organizations. I had never heard of it until the article

1 appeared in the paper. So I think that it might have been
2 well known; it just was not talked about very much.

3 The culture thing that you bring up, omission, and one
4 of the things I mentioned in my opening statement that I say
5 to our employees out there: if you see something going on
6 that is not right, you have to stand up. You cannot turn
7 your head or wink your eye or walk away from it.

8 We have had a couple of incidents throughout the
9 country where that kind of a thing has occurred, especially
10 where it is a racial or a female kind of thing. And so I am
11 addressing it very hard.

12 It is a little different culture than I was used to in
13 the Secret Service, but some of the problems that we faced
14 in the Secret Service 10 or 12 years ago and addressed at
15 that time I think have corrected that there and they have
16 not had these problems. My judgment is that those were not
17 addressed here until now, or until about 2 years ago. And
18 when I say culture is different, this group lives in a very,
19 very violent world. They live where guns are being shot
20 around them all the time. They are after guns. It is a
21 very violent world. BATF is a different culture. A lot of
22 this culture is undercover. So I try to look at that at the
23 same time.

24 But when I looked back, I really found, I think, what
25 is going to help me as we move forward. If you looked back

1 as late as the early 1970s, and you looked at where our
2 personnel were in this country, they were in the South.
3 They were in the belt that ran through the South when they
4 worked alcohol, moonshine, liquor distilleries, those kinds
5 of things. They have now been pushed all over the country
6 in the early 1970s, middle 1970s, and we really did not
7 prepare them to do that in training in terms of sensitivity
8 from laying in the swamps that it takes very difficult duty
9 to uncover some of those things.

10 As a result over these years, because they are all
11 controversial issues, every one we have--you know, we
12 collect almost \$14 billion in revenue, and we are a
13 regulator of all the controversial industries. So
14 everything that we touch is controversial. Having said
15 that, sometimes their funds are reduced, have been reduced
16 over the years because of all of these kinds of things. And
17 so what they did, instead of spending it on diversity
18 training and those kinds of things, their dedication said we
19 have got to get the job done. So they dumped the gasoline
20 in the tank of the automobile so that it could run every
21 day, but they did not take care of the tires or the oil
22 changes or the filters. They did not do the training and
23 the kinds of things--sometimes I look back historically, and
24 we took people off of working a street assignment one day,
25 and they are made a special agent in charge the next.

1 So as I look through all of that, that is all part of
2 the history. And what we are doing now is trying to very
3 clearly correct those things. There is an Assistant
4 Director for Training now. There was not 2 years ago.
5 There is an Assistant Director for Inspection that answers
6 only to me. There was not 2 years ago. They had no group
7 that planned technology. They had no group that looked down
8 the road 8 or 10 years.

9 So I am sorry for the long answer, but it really is a
10 big picture that will help you understand, Senator.

11 I was on the Highway Patrol shortly--their first black
12 there. They have handled it much better than maybe the
13 Federal Government has. The Secret Service identified it 10
14 or 12 years when I was right in the middle of it at the time
15 and helped develop those programs. So we are going to
16 institute those here, and we are just a little bit late
17 doing it, in my view.

18 Senator DeWine. Does anyone else want to comment on
19 whether or not there is, in fact, a culture of racism at
20 ATF? You do not have to. I mean, I am not--

21 Mr. Noble. No, I just want the record to be clear, and
22 I respect the Senators who have made it clear so far, that
23 the fact finding has not been complete. But if it is true
24 that 12 ATF agents participated in this event on an annual
25 basis, that means there are 288 other State and Federal and

1 local law enforcement officers whom we do not know about.
2 So 12 people out of 4,000, I do not take from that that,
3 therefore, the institution of ATF is a racist institution.
4 I hope that if there are other organizations--

5 Senator DeWine. Excuse me. My comment was not that it
6 was a racist organization. I want to be very clear on my
7 words. My comment was that there was a toleration, and I
8 think there is a very significant difference, because I
9 think the vast majority--and I am sure--of ATF agents are
10 great people. The issue is what you tolerate. And I am
11 only going on the Director's own statement, when the
12 Director said--and I will get the quote--"Knowledge was
13 widespread within ATF for a long time."

14 Now, let's just think of our own lives. People coming
15 back, they are saying what is going on at this event. You
16 know, I cannot believe that this information was not
17 disseminated fairly widely through ATF. It is not that the
18 people who heard it condoned it or liked it, but they
19 apparently did not do anything about it. That is the
20 problem. And I think with all due respect, that is a
21 fundamental difference from saying it is a racist
22 organization. I am not saying that in any way. It is a
23 question of what we tolerate and what we should tolerate in
24 1995 from what should be a premier Federal law enforcement
25 agency. It is a very high standard we are talking about.

1 Mr. Noble. I appreciate the distinction, and I
2 appreciate your clarifying it. But I just want to follow
3 through on one point, and that is in response to the
4 chairman's point about the term "good ol' boy" carrying a
5 pejorative connotation, certainly to people of color but I
6 would say a lot of people not of color as well. And I would
7 say, if we are going to be candid, let's survey all Federal
8 law enforcement officers and ask them whether they ever
9 heard of the Good Ol' Boy Roundup. Nothing more, just heard
10 of the Good Ol' Boy Roundup. And I bet you the numbers
11 would shoot through the ceiling here.

12 So, now, once you hear about it, what should you do?
13 And I think the Director is being very candid in saying we
14 should investigate it because there is this pejorative
15 connotation to it. And it has not been done, and it is
16 being done now, and we accept, all of us, responsibility for
17 its not having been done before now. But I think we have to
18 do it now.

19 Senator DeWine. My time is up, and let me just
20 conclude with a brief comment. I appreciate the chairman's
21 indulgence.

22 I have had the experience as a Member of Congress, a
23 Member of the Senate, and I am sure a number of my
24 colleagues have, of going to other countries that we call
25 emerging democracies. And the thing that has struck me,

1 whether we are in Haiti or whether we are in Guatemala or El
2 Salvador, one of the things that always strikes me is when
3 you talk to the people who are on the ground and try to
4 figure out what needs to happen so this country can go from
5 a fledgling democracy with a lot of problems to maybe a
6 democracy.

7 One of the things that we always--the answer that
8 always comes back is one of the key components and one of
9 the toughest things to achieve is to get the people's trust
10 of law enforcement, so that law enforcement can function as
11 we understand it to function in this country today. And I
12 think one of the sad things about this whole incident is
13 that, to some extent at least, that trust has been damaged
14 by this. I am not saying it has been broken. I do not want
15 to exaggerate. But it certainly has been damaged by this.

16 You know, you just think of--again, not to be
17 melodramatic--young people picking up a newspaper and
18 reading about this, and it is just not the thing that we
19 want them to see or hear about. I think everyone on the
20 panel agrees. That is the sad thing about this. This is a
21 very small number of people we are talking about, but the
22 sad thing is what it does, what impact it might have on our
23 young people, what impact it has on anybody's trust for law
24 enforcement. That is what is sad.

25 I appreciate the panelists, and I have confidence that

1 you are going to do everything in your power to find out
2 what the facts are, get the facts out, and that is what we
3 have to do. Thank you all very much.

4 Thank you, Mr. Chairman.

5 The Chairman. Thank you, Senator.

6 Senator Abraham, we will finish with you, and I am sure
7 the panel will be overjoyed.

8 Senator Abraham. They will probably be happy if I am
9 brief, so I will be.

10 I do not want to make a full opening statement here,
11 Mr. Chairman, but I think most of the questions, at least
12 the ones on my mind, have already been asked. So let me
13 just comment and follow up a little bit on Senator DeWine
14 said. I actually have a different kind of concern, although
15 I think it is of equal importance to the one he expressed,
16 and I suspect this panel shares it. It is the reason I am
17 happy that there seems to be at all levels a commitment to
18 pursue this to the fullest extent possible. And I think we
19 should join in that at this end because I think we all have
20 an obligation to do that for a very simple reason, which is
21 that too many decent law enforcement people across this
22 country will be painted negatively with the brush of this
23 incident.

24 A couple of weekends ago, I had occasion to speak to
25 one of the largest groups in my State and spent quite a bit

1 of time in that speech talking about what I consider to be
2 one of the most disturbing elements of the criminal justice
3 system right now, and that is the extent to which we see
4 trials turn from a determination of the guilt or innocence
5 of the accused into a trial of law enforcement and its
6 performance.

7 We are certainly seeing that today in a very highly
8 publicized trial, but I think it is a sort of approach that
9 we are going to see brought into many other proceedings in
10 the days ahead. And incidents such as this, I think, give
11 those on the defense counsel side of the ledger further
12 reasons to try to put the police on trial or to put the
13 Federal Bureau of Investigation on trial or whatever.

14 While certainly we know there have been things that
15 have happened that should not--and here there was obviously
16 that--I think the commitment really has to be from both the
17 congressional side as well as executive branch side to try
18 to make sure that we put an end to the perception that
19 somehow it is the law enforcement community that is wrong
20 instead of the people who are endangering the victims in
21 this society. That is, I guess, the perspective I am coming
22 from.

23 I also would just note--and I want to put this into the
24 record just because of the comments that were made a minute
25 ago--that I took some time before coming here to talk with

1 the people in the Detroit police force. Obviously, Detroit
2 is our largest city. It is a city whose population, a
3 majority of the population is minority population. Our
4 office talked actually with the chief of police who himself
5 is an African American, and they at least expressed the view
6 that their relationship with ATF has been a very positive
7 one. They do not view this as a hostile relationship. In
8 fact, they feel that the culture at that particular office
9 is a very positive one.

10 Sometimes, again, when people come up here, it is
11 always when they are sort of accused of something, and you
12 never hear any positive comments. I want to make sure that
13 we understand that there are some positive things going on
14 in this country as well with regard to relations between the
15 organizations and the culture within them.

16 The question I want to ask, though, just goes to this.
17 At this point--and I will just ask it to Mr. Magaw and
18 Director Freeh. What is it at this stage, at the highest
19 level person in your Bureau, you know, that you have
20 discovered who actually knew about these Good Ol' Boy
21 reunions prior to this year? Have you yet encountered
22 somebody and at what level is it in the organization?

23 Mr. Magaw. There are right now, in the beginning part
24 of the investigation, two that are special agents in charge
25 that were very young agents at the time when they went 16

1 years ago, and they went once or twice and did not go back.
2 We still have not gone through the entire list.
3 Information, we did the same thing that Director Freeh has
4 talked about, has made inquiry to our field, and we are
5 starting to get a lot of response back, which we are turning
6 over to the inspector general.

7 I did question specifically every one of my executive
8 staff, and none of them has been there.

9 Senator Abraham. Had they heard of it?

10 Mr. Magaw. Some of them had heard of it.

11 Senator Abraham. When they indicated that they were
12 aware of it, what was your response to them?

13 Mr. Magaw. My question was: How were you were of it?
14 What were the circumstances? Our legal counsel was aware of
15 it and explained to me that he had heard over a number of
16 years that they had it down there, not much different than a
17 golf tournament, although this was water rafting and sports
18 and those kinds of things, did not hear about all these
19 other negative kinds of things. In fact, one of his
20 attorneys almost drowned down there a few years ago in the
21 water rafting. So that stuff was not talked about. And if
22 you see on their application, they say if you are there, you
23 do not talk about what went on there. Nothing goes off the
24 grounds unless you do it with a good ol' boy, whatever that
25 might be.

1 So the overtones that we are getting now, and
2 especially with the affidavits that maybe some felonies
3 occurred, this is--

4 Senator Abraham. So the people here at the Washington
5 level who had heard of this had no knowledge of any previous
6 activities that either bordered on illegal activities or
7 activities that suggested the racial overtones and so on?

8 Mr. Magaw. It depended on how you questioned. If you
9 say was it your assumption that there were no blacks there,
10 they would say, yes, it is my assumption they would not have
11 felt comfortable there. But it was not that they were not
12 invited. It is just they would not feel comfortable there.
13 So if you press them into those areas, that is kind of the
14 answer that you will usually get.

15 Senator Abraham. And there was no suggestion to them--
16 or they did not feel any sense of responsibility being at
17 the national level to perhaps comment on this somehow to let
18 people know this?

19 Mr. Magaw. They sure do now, and I think our people
20 all over the country are very concerned that they did not
21 bring it forward before. And it was brought forward before
22 in a couple of places in the African American and black suit
23 that we were talking about. It was mentioned in there. But
24 it was all part of the African American suit, and nobody
25 said, hey, listen, let's pull that out and let's take a look

1 at that separate issue, because it wasn't that these kinds
2 of things were happening. They just said basically, well, I
3 do not think blacks are invited, I do not think they would
4 feel comfortable there, it is my understanding that blacks
5 are not welcome.

6 But, still, it is all kind of indicators out there, and
7 we should have picked upon it.

8 Senator Abraham. Director Freeh?

9 Mr. Freeh. Senator, all the high-level officials at
10 headquarters, at least the ones I have spoken to at the
11 Assistant Director level, no one was aware of this until we
12 read about it in the newspapers last week. Below that, I
13 frankly have not made those queries. The inspector general
14 I am sure will do that. We will fully assist in that. But
15 I do not know below that level who had knowledge as to the
16 longevity of it or at what time. But we will certainly help
17 them to find that out.

18 Senator Abraham. What standard would you apply
19 prospectively? I think it is kind of unfair sometimes when
20 we get to these settings and sort of begin behaving like
21 somebody should have done something, maybe. But
22 prospectively, what standard will you apply to anybody who
23 would be aware of this type of activity, not this particular
24 thing but maybe another? What level of responsibility are
25 you going to hold them to?

1 Mr. Freeh. I think the level both prospectively as
2 well as historically would be the same. First of all, if
3 there was knowledge by any special agent or any employee as
4 to the criminal conduct or the racial conduct being reported
5 here, at least being reported as we have seen it
6 preliminarily, I think the failure to act on that would be a
7 serious breach of responsibilities, both as an investigator
8 and as an administrator, because our code of conduct would
9 prohibit that behavior by a special agent, even off duty and
10 even with all of the due consideration given to First
11 Amendment protections. This would not be First Amendment-
12 protected speech or conduct. So I would hold them to a
13 level of responsibility.

14 Senator Abraham. That was really the kind of direction
15 I was headed. Is the code of conduct for your Bureau is one
16 that is a 24-hour responsibility or one that is only during
17 duty hours?

18 Mr. Freeh. Twenty-four hours.

19 Mr. Magaw. And, Senator, I think it is going to be
20 very, very important here, as the inspector generals finish
21 their report and the Directors get our reports, that we are
22 consistent. Because if we are not consistent across the
23 board, then the Merit System Protection Board is going to
24 throw all of these out. And so what we have got to do is
25 make sure that we are coordinating very closely across the

1 Board as these details become available.

2 Senator Abraham. And your code of conduct is a 24-hour
3 code of conduct?

4 Mr. Magaw. Absolutely.

5 Senator Abraham. Thank you very much, Mr. Chairman.

6 The Chairman. Thank you, Senator.

7 Well, I want to thank each of you for being here. Let
8 me just say this: As somebody who has been around here for
9 quite a while and has worked at Justice and Treasury all of
10 these years, I want to express to the public at large that I
11 have tremendous confidence in each and every one of you. I
12 have been appreciative that you have cleared the air here
13 today, because I think that people out there in the
14 hinterlands who have been worried about this, who have seen
15 press reports about this, have got to be concerned: Are our
16 top people, are they as concerned about this type of
17 activity or activities as they are? Frankly, I think it is
18 fair to say you are as concerned, if not more so.

19 Your remarks here today have been very much
20 appreciated. We want you to follow through. We want to
21 make sure--one of the spin-offs from these hearings is that
22 we hope every law enforcement officer in this country
23 understands what is going on here. They are people who are
24 going to be subject to examination. We expect the highest
25 caliber people in law enforcement. We expect them to be