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HEARING EXAMINING GRANTMAKING PRACTICES

AT THE DEPARTMENT OF JUSTICE

Thursday, June 19, 2008

House of Representatives,

Committee on Oversight and

Government Reform,

Washington, D.C.

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Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



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10 | The committee met, pursuant to call, at 9:30 a.m. in
11 | room 2154, Rayburn House Office Building, the Honorable Henry
12 | A. Waxman [chairman of the committee] presiding.

13 | Present: Representatives Waxman, Cummings, Kucinich,
14 | Watson, Davis of Virginia, Platts, Duncan, Issa, Foxx, and
15 | Sali.

16 | Also Present: Representative Walz.

17 | Staff Present: Phil Barnett, Staff Director and Chief
18 | Counsel; Kristin Amerling, General Counsel; Karen Lightfoot,
19 | Communications Director and Senior policy Advisor; David
20 | Rapallo, Chief Investigative Counsel; John Williams, Deputy

21 Chief Investigative Counsel; David Leviss, Senior
22 Investigative Counsel; Christopher Davis, Professional Staff
23 Member; Earley Green, Chief Clerk; Jen Berenholz, Deputy
24 Clerk; Caren Auchman, Press Assistant; Ella Hoffman, Press
25 Assistant; Leneal Scott, Information Systems Manager; Sam
26 Buffone, Staff Assistant; Miriam Edelman, Staff Assistant;
27 Jennifer Owens, Staff Assistant; Ali Golden; Larry Halloran,
28 Minority Staff Director; Jennifer Safavian, Minority Chief
29 Counsel for Oversight and Investigations; Keith Ausbrook,
30 Minority General Counsel; Steve Castor, Minority Counsel;
31 Ashley Callen, Minority Counsel; Larry Brady, Minority Senior
32 Investigator and Policy Advisor; Patrick Lyden; Minority
33 Parliamentarian and Member Services Coordinator; Brian
34 McNicoll, Minority Communications Director; Benjamin Chance,
35 Minority Professional Staff Member; Ali Ahmad, Minority
36 Deputy Press Secretary; and John Ohly, Minority Staff
37 Assistant.

38 Chairman WAXMAN. The meeting of the Committee will
39 please come to order.

40 At today's hearing the Oversight Committee will examine
41 the process used by the Justice Department to award millions
42 of dollars in grants to organizations that address national
43 juvenile justice initiatives. These grant awards were made
44 by the Office of Juvenile Justice and Delinquency Prevention,
45 which is headed by Administrator J. Robert Flores. Mr.
46 Flores is here today, and I thank him for testifying and for
47 his cooperation with this inquiry.

48 This Committee has held many hearings on waste, fraud,
49 and abuse in Federal contracting. We have also held hearings
50 on waste, fraud, and abuse in other types of programs such as
51 crop insurance and workman's compensation insurance, but we
52 have held few hearings on abuses in Federal grants.

53 In 2006, the Federal Government spent \$419 billion on
54 Federal contracts. It spent even more, \$488 billion, on
55 Federal grants, so examination of possible waste, fraud, and
56 abuse in grant programs is a high priority.

57 My staff has prepared a supplemental memorandum for
58 Members summarizing what we have learned from our
59 investigation. Last year the Justice Department held a
60 competition to select worthy grants for funding juvenile
61 justice programs. Over 100 applicants submitted proposals.
62 Career staff at the Justice Department then conducted a peer

63 | review of these applications, rating them against criteria in
64 | the Department's public solicitation and ranking them
65 | according to their numerical scores.

66 | Of the 104 proposals, the career staff ranked 18 as the
67 | best-qualified for funding. Mr. Flores largely ignored these
68 | recommendations. He did not fund the top-ranked program, did
69 | not fund the second-highest-ranked program. In fact, he did
70 | not fund any of the top five programs. Of the 18
71 | organizations recommended for funding by the career staff,
72 | only 5 were awarded funds. Instead, Mr. Flores chose to give
73 | the majority of the grant funding to five programs that his
74 | staff had not recommended for funding. One was an abstinence
75 | only program, two were faith-based programs, and another was
76 | a golf program. What is more, they appeared to have special
77 | access to Mr. Flores that other applicants were denied.

78 | Mr. Flores awarded a \$1.1 million grant to the Best
79 | Friends Foundation, an abstinence only organization that
80 | ranked 53 out of 104 applicants.

81 | The career staff who reviewed this particular
82 | application said it was poorly written, had no focus, was
83 | illogical, and made no sense. Documents provided to the
84 | Committee show that, while the grant was being developed and
85 | competed, Mr. Flores had multiple contacts with Elayne
86 | Bennett, the Founder and Chairman of Best Friends and the
87 | wife of Bill Bennett, who worked in the Reagan and Bush

88 Administrations.

89 Mr. Flores also awarded a half million dollar grant to
90 the World Golf Foundation that ranked 47 out of the 104. Mr.
91 Flores says that, despite the application's low ranking, the
92 grant was awarded on the merits. But the record before the
93 Committee raises questions that need to be addressed.

94 We know that Mr. Flores traveled to Florida in 2006 to
95 visit Foundation officials and play golf. We know that Mr.
96 Flores directed his staff to help the group with its
97 proposal. And we know that, before the peer review process
98 even began, a senior career official wrote that he was
99 certain the group would be funded because Mr. Flores' chief
100 of staff had said as much.

101 Mr. Flores awarded a \$1.2 million grant to Urban
102 Strategies LLC, a consulting firm, and Victory Outreach, a
103 ''church-oriented Christian ministry called to the task of
104 evangelizing.'' This grant application also received a low
105 ranking, 44 out of 104 applications, but the head of Urban
106 Strategies was Lisa Cummins, who formerly worked in the White
107 House Office of Faith Based Initiatives. Documents provided
108 to the Committee show that Ms. Cummins had several high-level
109 meetings with Mr. Flores and other Justice Department
110 officials before and after receiving the grant.

111 On the other hand, the Justice Research and Statistics
112 Association was the top-scoring group out of 104 applicants.

113 | It scored a 98, was universally praised by career employees
114 | for its effectiveness and good work. It provides training
115 | and technical assistance to State juvenile corrections
116 | workers, but it was not selected or funded.

117 | There is no question that Mr. Flores had discretion to
118 | award grants. He is entitled to use his experience and
119 | judgment in determining which grant applications to fund.
120 | But he has an obligation to make these decisions based on
121 | merit, facts, and fairness, and the reasoning for his
122 | decision must be transparent and available to the public.

123 | Not every official the Committee spoke with, including
124 | the Justice Department peer reviewers, the Civil Service
125 | program managers, and the career official in charge of the
126 | solicitation agreed with Mr. Flores' approach. In fact,
127 | nearly every one of them said his approach was neither fair
128 | nor transparent. Mr. Flores' superior, the Assistant
129 | Attorney General, told the Committee, ''I am for candor and
130 | clarity, especially when dealing with the people's money, and
131 | that did not happen, and I am upset that it did not happen.''

132 | The only exceptions to this view are Mr. Flores,
133 | himself, and Mr. Flores' chief of staff, who has now asserted
134 | her Fifth Amendment privilege against self incrimination and
135 | has refused to talk about this process.

136 | Yesterday I received a letter from the Nation's oldest
137 | organization devoted to fighting juvenile delinquency, the

138 National Council of Crime and Delinquency, and the Council
139 wrote, ``We have great concerns about the recent decisions on
140 grant proposals and how these have hurt the credibility of
141 the Office of Juvenile Justice and Delinquency Prevention.
142 We expended substantial time and resources in good faith to
143 prepare proposals. Now it seems that the review process was
144 far from fair.''

145 I hope today's hearing can answer the question being
146 raised by the Council and other groups. Ultimately, the
147 issue before the Committee is whether the grant solicitation
148 was a rigged game and whether it has best served children
149 across our Country. Today's hearing will give Members a
150 chance to examine this important question.

151 The staff has prepared a memo, and the documents and
152 transcripts it cites I would ask be made a part of the
153 hearing record.

154 Mr. DAVIS OF VIRGINIA. Mr. Chairman?

155 Chairman WAXMAN. Yes, Mr. Davis?

156 Mr. DAVIS OF VIRGINIA. Reserving the right to object, I
157 want to note for the record that it was just one hour before
158 the hearing today that our staff was given a copy of this
159 24-page supplemental memorandum. While more information is
160 always better than less information, the practice of
161 withholding these lengthy memos until right before the
162 hearing I think is prejudicial and not really in the best

163 interest of our operating in a bipartisan manner.

164 We are supposed to be conducting thoughtful and
165 deliberate oversight of Federal agencies and the business
166 they conduct, and today's hearing is not about the Department
167 of Justice or the Office of Juvenile Justice program; it is
168 about a publish thrashing of a very specific official. Far
169 too frequently we eschew oversight of agencies and instead
170 focus on overly personal attack on agency heads. We have
171 seen this with the attacks on the State Department IG, the
172 Administrator of GSA, and the Administrator of EPA.

173 When the Select Committee on Katrina examined what
174 happened on the Gulf Coast in August of 2005, we looked at
175 the actions of the Department of Homeland Security as an
176 entity, not just the Secretary. We looked at the actions of
177 FEMA as an agency, not just Michael Brown. We examined the
178 actions of the State of Louisiana, not just the governor.

179 Making oversight personal I think sometimes detracts
180 from the serious business.

181 Now, under the rules of the Committee, Rule 2
182 specifically, we are supposed to be informed three days in
183 advance of the purpose of the hearing, and in our opinion
184 this memorandum kind of changes that and personalizes it.
185 But I won't object simply because you and I have had a
186 discussion on this. We feel, again, more information is
187 better than less.

188 I would note, if we are going to start getting personal
189 on some of these issues, we should be focusing on individuals
190 like Scott Block, the Head of the Office of Special Counsel.
191 Earlier this week I wrote to you about the new reports of
192 Block that are forcing his employees to publish propaganda on
193 the websites of publications such as the Washington Post and
194 Government Executive. Over the last year we have compiled
195 sufficient evidence to show that Mr. Block should no longer
196 serve in this position of public trust. We have evidence he
197 used non-Governmental e-mail to conduct official business.
198 We have evidence he improperly called Geeks on Call to erase
199 computer files that may be subject to document requests
200 pertinent to an investigation of Block by the President's
201 Council on Integrity and Efficiency.

202 The U.S. Office of Special Counsel performs an important
203 role, and he has been criticized from the right and the left
204 on this. And just because he went after one Administration
205 official is no reason this Committee should give him
206 protection. This Committee's duty is to conduct meaningful
207 oversight on the agency, requires immediate attention.

208 But I will not object to the request. I did want to put
209 that in the record.

210 Chairman WAXMAN. If I might be permitted to respond, I
211 did send a letter to you, Mr. Davis, on June 11th, 2008,
212 explaining this issue of the supplemental memo. The rules

213 | require that three days in advance of a hearing a memo be
214 | distributed outlining what the hearing was all about.
215 | Supplemental memos are written by our staff. It is often
216 | incomplete until the very last minute, and there are other
217 | reasons, as well, that they may not be available. They are
218 | prepared for the majority staff. We make them available to
219 | the minority, as well, which I think is appropriate.

220 | I do take some exception to the idea that hearings are
221 | personal, especially when you close your comments about
222 | personal hearings by saying you want Scott Block
223 | investigated. Mr. Block, at your request, has gone through a
224 | transcribed interview, and we are taking your letter of last
225 | week under submission and we will talk further to you about
226 | that matter.

227 | Mr. DAVIS OF VIRGINIA. Thank you.

228 | Chairman WAXMAN. And I do recall many of your Members
229 | talking about how we need Sandy Berger to have his case
230 | reviewed over and over again. We even had Members saying
231 | that we needed Valerie Plame back here. That seems to me, if
232 | we are talking about personal attacks or concerns, they have
233 | been expressed by Members on the Republican side of the
234 | aisle.

235 | Now, have we engaged in investigations that are
236 | personal? I think we have looked at investigations that are
237 | more than personal. They involve people, but they involve

238 | how those people are doing their job and how they are
239 | spending taxpayers' dollars.

240 | You cited particularly the Inspector General of the
241 | State Department, who quit because his statements before us
242 | were inaccurate and, had we pursued the matter further, it
243 | would have offered him embarrassment.

244 | We pursued investigations about how GSA was handling
245 | contracts and brought in the head of the GSA, and in the
246 | course of our discussions with her and her staff found out
247 | that she was violating the Hatch Act.

248 | So these are not personal matters except when it
249 | involves individuals and how they are handling their
250 | responsibilities.

251 | I had never met Mr. Flores before this morning. I
252 | thanked him and am pleased that he is here to answer our
253 | questions. This is not about Mr. Flores; this is about the
254 | public's funds. If this were the Flores Foundation giving
255 | out grants to worthy recipients that Mr. Flores determined
256 | should receive money from his foundation, no one would ask
257 | him any questions. But Mr. Flores is the one in charge of
258 | giving out funds that are taxpayers' funds for very specific
259 | purposes after a peer review process by which the different
260 | potential grantees were rated.

261 | I think we need to explore why some grantees were
262 | favored and others not, even though there had been a ranking

263 | of what proposals met the test of merit as determined by
264 | those who were rating them based on the merit. So I regret
265 | that we weren't able to get to you the memo that we have
266 | distributed today and that will now be part of the record in
267 | advance. It would have been desirable, and we tried to
268 | accomplish that goal, but we are not always able to, nor are
269 | we required to under the rules.

270 | Mr. DAVIS OF VIRGINIA. Mr. Chairman, I will move to my
271 | opening statement and respond during that, if that is all
272 | right.

273 | Chairman WAXMAN. Yes, sir.

274 | Mr. DAVIS OF VIRGINIA. I am ready with my opening
275 | statement if you are ready.

276 | Chairman WAXMAN. Yes.

277 | Mr. DAVIS OF VIRGINIA. And I will just respond in my
278 | opening statement.

279 | Chairman WAXMAN. Okay. We have unanimous consent and
280 | the memo and documents will be made part of the record.

281 | [Prepared statement of Mr. Waxman and the memo and
282 | documents follow:]

283 | ***** INSERT *****

284 Chairman WAXMAN. I would now like to recognize Mr. Davis
285 for his opening statement.

286 Mr. DAVIS OF VIRGINIA. Thank you.

287 The difficulty is the three-page document that we were
288 given for the purpose of this hearing. There was only one
289 small paragraph that mentioned Mr. Flores. This talked about
290 grant-making by the Department of Justice, and it seems to me
291 if that was the subject of the hearing we ought to be hearing
292 from more people. We ought to be hearing from some of the
293 grantees and some of the people who thought they were
294 grantees where they could tell their story here on the record
295 and the minority would have an opportunity to question them,
296 as well. Instead, the difficulty of the hearing is that it is
297 just focused on one person, not the Department of Justice
298 grant process.

299 I would also note for the record that for years Congress
300 earmarked almost all of this agency's discretionary funds.
301 It was your side, Mr. Chairman, that suspended those
302 earmarks, and the sudden availability of tens of millions of
303 dollars in discretionary funds was supposed to be a boon for
304 the agency and the juvenile justice field. I understand that
305 there is some concern on your side that this was not done
306 appropriately. That is certainly an appropriate subject for
307 a hearing. But for those who don't like earmarks, this can
308 result.

309 I will never forget that I had an intermediate school in
310 my District, Glasgow Intermediate, that met all of the
311 criteria, scored very high for the Department of Education
312 under the previous Administration, and got nothing out of it,
313 and that was one of the reasons earmarks were born with a
314 Democratic Administration and a Republican Congress, where
315 some of our Members didn't feel they were getting what they
316 should.

317 I think we have every right to call people up here to
318 explain why they give grants. I don't dispute that at all.
319 I just wanted to note that this memo was by the majority
320 staff without consultation with the minority staff. Had we
321 known this was going to be the entire subject of this, I
322 think we would have responded appropriately and given perhaps
323 a different perspective.

324 In my judgment, this isn't a hearing about waste, fraud,
325 or abuse in the grant process, but I think it does open some
326 eyes in terms of how these are done. Mr. Flores is a big
327 boy. I think he will be able to answer why he made the
328 decisions. It is, in fact, elected leadership in departments
329 and elected Administrations that are elected by voters to
330 make these decisions, not just the professionals. They play
331 a role in this, but at the end of the day they are not held
332 accountable at the polls.

333 Let me just say, Mr. Chairman, in terms of Mr. Block, I

334 | only singled him out because I think this has been one of the
335 | more egregious issues that our Committee ought to be looking
336 | at, and I am happy to hear that you are taking this under
337 | consideration.

338 | There is no question that Federal grant programs are a
339 | legitimate subject of oversight. Billions of dollars are
340 | given to States, counties, localities, private organizations
341 | every year. We ought to know more about how grants are
342 | awarded and how the results of those programs are measured
343 | and evaluated.

344 | As I said before, I am afraid this hearing with just
345 | such a narrow focus on one unusual cycle of purely
346 | discretionary awards by DOJ isn't going to add as much to our
347 | understanding of the grant-making procedures as I think we
348 | could have. In a typical year the Office of Juvenile Justice
349 | and Delinquency Prevention within the Office of Justice
350 | Programs awards almost \$600 million to grantees. Most of
351 | that is usually allocated through block grants and
352 | Congressional earmarks, but in 2007, under a continuing
353 | funding resolution, without those earmarks DOJ officials
354 | asked for proposals, evaluated the applications, and made
355 | awards they determined met the statutory criteria set by
356 | Congress to fight juvenile delinquency.

357 | I think one of the issues we want to understand is how
358 | these decisions were made, but did these grants meet the

359 | statutory criteria or didn't they meet the statutory
360 | criteria. Within that, there is obviously a lot of
361 | discretion, and we can have a discussion of how these are
362 | made and get some insights into how departments make these
363 | decisions.

364 | After designating most of the money for large national
365 | efforts, a total of \$8.9 million was awarded to ten grantees
366 | through an open competition. As in any such process, there
367 | are winners and there are losers. Some of the losers cried
368 | foul and called their Congressmen claiming to be victims of
369 | an arbitrary, unfair, and unlawful evaluation and selection
370 | process. Unlike in the Federal contracting, where you have a
371 | procedures under bid protests, there really aren't any for
372 | the grant-making process, and so they understandably came to
373 | the Hill. These people who didn't get the grants, these
374 | groups, base their conclusion primarily on rankings of grant
375 | proposals produced by the internal Justice Department staff
376 | review by the professional staff.

377 | Some lower-scoring applications were funded, while those
378 | with some of the higher ratings were not, and some allege
379 | bias or a hidden ideological agenda on the part of the
380 | selection official, who is our only witness today.

381 | But it appears two flawed assumptions formed the only
382 | basis for those complaints. First, the premise that grant
383 | awards must automatically go to top-scoring applicants, that

384 has no basis, to my knowledge, in law and in regulation or in
385 practice. Second, the conclusion that broad criteria set out
386 in the solicitation cannot be refined in the award process,
387 that we deny a decision-maker otherwise virtually any
388 discretion in choosing between grantees. They have
389 discretion, and that is what I believe the law says. We may
390 or may not like it, and I think, again, you have every right
391 to probe into how these decisions are made.

392 These are called discretionary grants for a reason.
393 Under the law, Congress intended to give Executive Branch
394 officials of this or any Administration wide latitude in
395 determining what programs best prevent or address the
396 multi-generational social plague that is juvenile
397 delinquency. The burden of proof to support a claim that
398 Administrative action abused broad discretion is formidable.
399 Absent evidence of some nefarious predisposition for or
400 against certain applicants or proof of other improper
401 influences on the decision-maker, discretionary decisions
402 will not be overturned by administrative appeals or by
403 courts.

404 It is clear that some inside and outside the Justice
405 Department disagree with the decisions made by the program
406 administrator, Mr. J. Robert Flores, but those disagreements,
407 without more, simply replace one set of necessarily
408 subjective judgments with another. The final authority to

409 | make those judgments was vested in a Senate confirmed
410 | Executive Branch appointee, and it was the Congress that
411 | decided in fiscal year 2007 not to go the traditional route
412 | of funding these through earmarks.

413 | In effect, this hearing is little more than an attempt
414 | to earmark by oversight, to intimidate Executive Branch
415 | decision-makers into trimming their discretion to meet
416 | Congressional expectations. Instead, we should be talking
417 | about the factors and approaches that successfully combat
418 | Justice Department. We should hear testimony about programs
419 | that stressed development of positive life skills through the
420 | example of sports or other constructive activities, and we
421 | should examine data about programs that rigorously track the
422 | progress of their participants over a long term. We look
423 | forward to that oversight, as well.

424 | Thank you, Mr. Chairman.

425 | [Prepared statement of Mr. Davis of Virginia follows:]

426 | ***** INSERT *****

427 Chairman WAXMAN. Thank you very much, Mr. Davis.

428 We have with us as our witness Mr. J. Robert Flores. He
429 is the Administrator of the Office of Juvenile Justice and
430 Delinquency Prevention, OJJDP, at the Department of Justice.

431 Mr. Flores, thank you for being here.

432 It is the practice of this Committee that all witnesses
433 who testify do so under oath, so I would like to ask if you
434 would to please stand and raise your right hand.

435 [Witness sworn.]

436 Chairman WAXMAN. The record will indicate the gentleman
437 answered in the affirmative.

438 Without objection, we have Congressman Walz with us
439 today. As is our custom, I would ask unanimous consent that
440 he be allowed to participate today in the hearing.

441 Mr. DAVIS OF VIRGINIA. No objection. Welcome.

442 Chairman WAXMAN. Without objection, we welcome him to
443 our hearing.

444 Mr. Flores, I want to allow you to make your
445 presentation. Your written statement will be in the record
446 in full. We would like to ask you to see if you can keep
447 your oral remarks to around five minutes.

448 Mr. DAVIS OF VIRGINIA. Mr. Chairman, could I just ask,
449 if he needs more time, since he is the sole witness today,
450 that he be given additional time so he doesn't have to rush
451 through it?

452 Chairman WAXMAN. I think that is a reasonable request.

453 Mr. DAVIS OF VIRGINIA. Okay.

454 Chairman WAXMAN. We will allow you whatever time you
455 need to make your presentation.

456 Mr. DAVIS OF VIRGINIA. Don't take too long, but, you
457 know.

458 Chairman WAXMAN. So you have the clear discretion to
459 take as much time as you need, but not too long.

460 Why don't you go ahead.

461 STATEMENT OF J. ROBERT FLORES, ADMINISTRATOR, OFFICE OF
462 JUVENILE JUSTICE AND DELINQUENCY PREVENTION

463 STATEMENT OF J. ROBERT FLORES

464 Mr. FLORES. Chairman Waxman, Ranking Member Davis, I am
465 Bob Flores, the Administrator of the Office of Juvenile
466 Justice and Delinquency Prevention, a position I have held
467 since 2002. Thank you for the opportunity to appear before
468 the Committee and correct the record publicly on issues
469 surrounding the grants process in 2007.

470 By way of background, I have spent most of my
471 professional career working in the courts in the juvenile
472 justice world as an advocate for children. I have also spent
473 the vast majority of my career as a public servant, including
474 eight years as a career prosecutor within the Child
475 Exploitation and Obscenity Section of the Justice
476 Department's Criminal Division.

477 Over the last couple of months, allegations have been
478 made against me regarding my decisions concerning the 2007
479 national juvenile justice program solicitation. Each of
480 those allegations is false.

481 As my testimony will show and I hope this hearing brings

482 out, even a cursory review of the facts reveals these
483 allegations for what they are: an attempt to attack
484 decisions that, while disagreed with by some, were made under
485 the authority of law and within the Department's discretion
486 in a transparent and good faith manner.

487 I would also like to say at the outset that I am
488 appearing before the Committee today voluntarily, and I
489 intend to continue that cooperation fully with the Committee.

490 I am advised that as of June 12th, 2008, the Department has
491 produced over 12,000 pages of documents in response to the
492 Chairman's request, and I have submitted to questions by the
493 Committee staff.

494 Upon the conclusion of my remarks I look forward to
495 answering your questions truthfully and fully.

496 In 2007, OJJDP had a discretionary funding line of \$104
497 million. Decisions on what to fund are shared between the
498 Assistant Attorney General for the Office of Justice
499 Programs, who has final grant authority to make decisions,
500 and the OJJDP Administrator, who, based on experience and
501 expertise, makes recommendations within his discretion on
502 what to fund as defined by the JJDPA and Department rules.

503 Shortly after the 2007 budget was passed, I met with the
504 Assistant Attorney General for OJP, Regina Schofield, to
505 discuss how to address the needs of the large national
506 programs that received Federal funds for years prior. The

507 AAG made the decision to invite a number of organizations
508 that had received funding in prior years to apply for
509 specific amounts of money. Approximately \$71 million was
510 committed from invitation.

511 Over the next weeks the AAG and I discussed the number,
512 funding levels, and subject matter of the remaining
513 solicitations, and in the end five solicitations were posted,
514 including the solicitation at issue in this hearing, the
515 national juvenile justice program solicitation.

516 In response to the national program solicitation, OJJDP
517 received over 100 proposals. Once applications were received
518 and accepted for consideration, the proposals were subject to
519 an internal peer review process. I believe that the peer
520 review process is the first area where misleading information
521 has appeared in the media.

522 After an unauthorized leak of sensitive data, including
523 the names of OJJDP career staff who conducted the internal
524 peer reviews, the public and the juvenile justice field were
525 left with the impression that the applications had received
526 scores that related to their worthiness for funding rather
527 than what is actually the case: that the application was
528 well written, made sense, and clearly demonstrated that, if
529 funded, the applicant could carry out the work proposed.

530 The peer review process can't be used to determine the
531 value of one grant against another because the panels don't

532 | see all the applications. They are unaware of what else may
533 | be proposed and what other programs of a similar nature have
534 | already been or may be funded. Simply put, the peer
535 | reviewers lack the information necessary to make such
536 | judgments.

537 | Moreover, as set forth in the solicitation, peer review
538 | scores were meant to be advisory only.

539 | In determining what programs should be funded under the
540 | national program solicitation, I relied on peer review
541 | scores, staff-prepared program summaries, and a review of
542 | budgets and applications. The deadlines we were working
543 | under were extremely tight, and the OJP deadline for
544 | submission of grant award packages from my office was set for
545 | July 31st. All of OJJDP worked hard to make the deadline,
546 | including working through a weekend to get reviews done.

547 | I also brought my experience to bear on the process.
548 | Relying on my six years of experience as Administrator and
549 | nearly 25 years of experience working with children's
550 | programs, directly with kids, handling sexual abuse and
551 | exploitation investigations and prosecutions, and access to
552 | research and data across all of the office's spectrum of
553 | work, I considered the needs of the programs and the field,
554 | what works, and how to advance OJJDP's entire mission, and on
555 | that basis I made you recommendations.

556 | I met with Ms. Schofield in person on two separate

557 occasions to discuss my grant recommendations. At the end of
558 the first meeting she requested I prepare a decision
559 memorandum for her signature setting out what each
560 organization did, where each fit within the peer review
561 scores, and the amount of money I was recommending. I
562 prepared that memorandum, submitted it, and the Assistant
563 Attorney General signed that memorandum, accepting my
564 recommendations.

565 Media reports have accused me of creating secret
566 categories known only to me to allow me to choose only
567 certain organizations for funding. This is false.

568 First, there was no way I could know who would apply and
569 under what solicitation until after I received the list of
570 applicants.

571 Second, I didn't know what the proposals would be until
572 they were submitted, nor the size of the amounts requested.

573 The categories that were used on the spreadsheet that
574 accompanied the memo were there to help me organize in my own
575 mind, as I did when I originally reviewed the applicants, who
576 had applied, what they were proposing, and to help explain
577 that to the AAG. No confusions about my recommendations was
578 ever voiced by AAG Schofield, and the process she required
579 was consistent with law, regulation, and policy.

580 Moreover, every memo for every solicitation I submitted
581 to her and she signed had the same information. No questions

582 | were raised about those presentations, either.

583 | While some may disagree with my decisions, they were
584 | made in accordance with the law, within Department rules, and
585 | in good faith to address the needs of our children who find
586 | themselves in the juvenile justice system or at risk of
587 | contact with it. I believe that an objective view
588 | demonstrates that no important area of juvenile justice was
589 | overlooked, and awards were geographically diverse, as well.

590 | I have received extensive criticism because I supported
591 | a single program that is abstinence based. That program is
592 | known as the Best Friends Foundation. What was not reported
593 | was that I also sharply reduced their funding request and
594 | reduced the number of years of funding because of the overall
595 | budget constraints we as an office faced. It was also not
596 | reported that the program keeps girls in school and improves
597 | their education and life outcomes.

598 | Likewise, the First Tee program's good work has been
599 | pilloried simply because golf stereotypes live on. Some have
600 | reported the program's use of golf, but they failed to note
601 | that the First Tee's primary goal is not to make golfers of
602 | youth participants, but to use golf as an environment in
603 | which to engage kids so that they can be taught specific
604 | skills.

605 | In addition, because of a relatively new school-based
606 | program and efforts to reach needy kids, of First Tee

607 participants, 20 percent are African American, 8 percent are
608 Hispanic, 4 percent are Asian, and 43 percent are girls.
609 What was also missing from reports is that the program has
610 been evaluated and shown to work.

611 In conclusion, OJJDP has made great progress on a wide
612 array of problems facing our kids and families. The awards
613 in 2007 continue that work.

614 I ask that my full written statement be included in the
615 record and would be pleased to answer any questions that the
616 Committee might have.

617 Thank you, Mr. Chairman. Thank you, Mr. Davis.

618 [Prepared statement of Mr. Flores follows:]

619 ***** INSERT *****

620 Chairman WAXMAN. Thank you, Mr. Flores.

621 We want to now proceed to questioning. Let me ask
622 unanimous consent that we start off with ten minutes on each
623 side. I will use five minutes of my ten. Mr. Davis will
624 decide whether he wants to use his full ten or not. Whatever
625 he doesn't use, he can reserve. Then I want to yield to Mr.
626 Cummings, who is going to be back here, my second five as
627 well as his five, so he will have a ten-minute round

628 Without objection, we will proceed on that basis.

629 Mr. Flores, I thank you again for being here today and
630 for your statement. There are several groups I want to ask
631 you about, and I will begin with the Justice Research and
632 Statistics Association. It was one of the 104 groups that
633 applied for a national juvenile justice grant. Are you
634 familiar with that group?

635 Mr. FLORES. I am, sir.

636 Chairman WAXMAN. Was it evaluated by the peer review
637 team that assessed the merits of each applicant?

638 Mr. FLORES. Yes, it was.

639 Chairman WAXMAN. And where did it rank?

640 Mr. FLORES. I believe it ranked at the top of the peer
641 review scores.

642 Chairman WAXMAN. It was number one. What was its score?

643 Mr. FLORES. I believe it was some place in the 98,
644 received a score of 98.

645 Chairman WAXMAN. Are you familiar with the Kentucky's
646 National Partnership for Juvenile Service?

647 Mr. FLORES. Yes, sir, I am.

648 Chairman WAXMAN. And that went through a peer review
649 process. Where did it rank?

650 Mr. FLORES. Again, it was near the top. I don't
651 specifically remember.

652 Chairman WAXMAN. It was number two.

653 Mr. FLORES. Okay, sir.

654 Chairman WAXMAN. Are you familiar with the Texas A&M
655 University proposal?

656 Mr. FLORES. Yes, I am.

657 Chairman WAXMAN. And where did it rank among the 104
658 groups?

659 Mr. FLORES. Somewhere in the top three.

660 Chairman WAXMAN. That was number three. What about
661 Minnesota's Winona State University's proposal? Where did it
662 rank?

663 Mr. FLORES. I believe it was number four, Mr. Chairman.

664 Chairman WAXMAN. Number four. Finally, are you familiar
665 with the Virginia group, CSR, Inc., and their proposal? It
666 went through the peer review process. Where did it rank?

667 Mr. FLORES. I am familiar with CSR. That is an
668 organization that we currently use and provide funding to,
669 and they, I believe, ranked five in their application.

670 Chairman WAXMAN. And it was a score of 95?

671 Mr. FLORES. I believe so, sir.

672 Chairman WAXMAN. How many of these top five rated groups
673 did you decide to fund?

674 Mr. FLORES. None, sir.

675 Chairman WAXMAN. I want to make sure I understand this.
676 There were 104 groups that submitted applications for
677 national juvenile justice grants. The five groups I just
678 asked you about were the highest rated by your staff, and you
679 decided against funding any of them; is that right?

680 Mr. FLORES. Yes, sir.

681 Chairman WAXMAN. Now, how many career employees were
682 part of the peer review team?

683 Mr. FLORES. The career employees, again, were from the
684 demonstration programs division. One of the components was
685 in my office. I don't remember know whether or not they also
686 had other employees from the Department from our office chip
687 in to really work. As I said, I do very clearly want the
688 record to be clear this was an internal peer review. It was
689 done by career staff in my office at my direction.

690 Chairman WAXMAN. How many people were involved in the
691 peer review process?

692 Mr. FLORES. Well, if I can, the way it was set up is
693 that there were teams of two people who reviewed about seven
694 or eight different applications, so on the whole maybe

695 fifteen to twenty people who were involved.

696 Chairman WAXMAN. Fifteen to twenty people. You
697 obviously disagreed with their work and concluded that their
698 judgment was flawed. Did you fire or reprimand any of these
699 employees?

700 Mr. FLORES. Well, sir, with all due respect, I didn't
701 disagree with their peer review ratings. I am assuming that
702 they did what they were asked to do, which was to compare the
703 application to the solicitation requirements and to give them
704 a score. But, as I said in my opening statement, that does
705 not equate with a decision that they made or were
706 recommending that this was the best program. Again, because
707 they met in teams of two and they only reviewed seven or
708 eight, given the fact there were more than a hundred
709 applications, no team saw even 10 percent of all the
710 applications.

711 So, again, I want to make sure that the Committee is
712 clear. It wasn't that I disagreed; I, in fact, paid very
713 special attention to that, because generally speaking I think
714 the top 25 percent of scored applicants make up a pool of
715 very good applications, because, again, what the staff is
716 telling me when they take a look is saying these folks have a
717 good logic model, the presentation makes sense, and they will
718 be able to do, if they are funded--

719 Chairman WAXMAN. Let me tell you how strange this

720 | appears to me. Taxpayers fund a process to determine the
721 | most worthy programs for funding. The proposals must meet
722 | strict criteria and are intended to help children, but none
723 | of the top five proposals were approved for funding.

724 | Let me ask you another question. I believe the Best
725 | Friends Foundation received funding; is that correct?

726 | Mr. FLORES. Yes, sir, it did.

727 | Chairman WAXMAN. And where did it rank among the 104
728 | groups?

729 | Mr. FLORES. Again, I don't know what number it ranked,
730 | but I know that it received a score of 79.5.

731 | Chairman WAXMAN. It, as I understand it, came in at 53
732 | with a score of 79.5. And you decided to fund them, but you
733 | didn't fund the Justice Research and Statistics Association,
734 | which your staff ranked as the top applicant and had a score
735 | of 98. I just find that very, very peculiar. It is one of
736 | the reasons I wanted to have you here to pursue it.

737 | I only have a few seconds left, so I am going to now
738 | recognize Mr. Davis for his ten-minute interval.

739 | Mr. DAVIS OF VIRGINIA. Can you tell us, these top scores
740 | are just peer reviews in terms of how these proposals are
741 | written, right?

742 | Mr. FLORES. That is correct, Mr. Davis. They reflect
743 | whether or not the applicant met the requirements of the
744 | solicitation requirements and whether that proposal was

745 cogent, made sense, and, if funded, would be able to do what
746 they set out to do.

747 Mr. DAVIS OF VIRGINIA. That doesn't necessarily mean
748 they met the priority that you may have in Justice for policy
749 purposes; is that correct?

750 Mr. FLORES. That is correct. And it also does not mean
751 that we have not funded similar programs using other funds of
752 money or that Congress has provided other dollars where we
753 have already made an investment to the tune of tens of
754 millions of dollars in that particular area.

755 Mr. DAVIS OF VIRGINIA. So, for example, the Justice
756 Research and Statistics Association, which was the "top
757 rated," why wouldn't you have funded them in this case?

758 Mr. FLORES. Well, again, we had provided funding in
759 1998. In 2006 we gave them \$3.5 million. In 2006 there was
760 \$210,000. This is a contract that allows us to do evaluation
761 and performance measures. Because of changes that we have
762 made to try to bring all of that together and better organize
763 it, that particular grant application, even though it was a
764 well-presented one, did not--there was no need again for us
765 to provide funds for that process.

766 Mr. DAVIS OF VIRGINIA. Okay. You felt it was being met
767 in other ways?

768 Mr. FLORES. Yes.

769 Mr. DAVIS OF VIRGINIA. And so why waste the Department's

770 | money twice if you were trying to do this a different way?

771 | Mr. FLORES. That is correct.

772 | Mr. DAVIS OF VIRGINIA. Okay. Let me ask the two
773 | controversial ones. One was the World Golf Foundation in
774 | Florida; secondly, the Best Friends Foundation. The majority
775 | seemed to make much of these. These had been funded in
776 | previous years, had they not, when you didn't have
777 | discretion?

778 | Mr. FLORES. Yes. There was an earmark, I believe, in
779 | 2003 or 2004, and then in 2005 I provided \$250,000 as a
780 | discretionary award. In 2006 I did not provide any
781 | discretionary funding for the organization.

782 | Mr. DAVIS OF VIRGINIA. But there had been Congressional
783 | pressure in the past through the earmark process to fund
784 | these programs, right?

785 | Mr. FLORES. Yes.

786 | Mr. DAVIS OF VIRGINIA. So it would be naive to think
787 | that somehow you on your own, because of friendships or
788 | playing golf or something, had just decided to fund these
789 | this year, because there had been Congressional intent shown.

790 | In fact, I think on the World Golf Foundation I had signed a
791 | letter for that. That was First Tee. That helps a lot of
792 | kids for a lot of different reasons.

793 | Do you want to explain your purpose in funding these two
794 | for us?

795 | Mr. FLORES. Sure. First, I just want to be clear--

796 | Mr. DAVIS OF VIRGINIA. We know there was a Congressional
797 | intent. I think that is established in the record, so you
798 | are not alone on this on wanting to fund these. This would
799 | have been the will of Congress. It may not have been Mr.
800 | Waxman's will or some of the others. I don't know if they
801 | voted for these or not. But this had been Congressional
802 | intent.

803 | What was your intent?

804 | Mr. FLORES. Well, going all the way back to my
805 | confirmation, Mr. Davis, Senator Biden had asked a number of
806 | questions pertaining to girls' programs and the situation
807 | facing girls because the arrest rate seemed to be going up at
808 | a time when boys' rates were going down, and even when it
809 | started to decline it was declining at a slower rate.

810 | During my tenure, I have really made an effort to try to
811 | focus on girls and really bring them into the process. As a
812 | result, the reason we funded Best Friends was because they
813 | were doing a tremendous job keeping girls in school, keeping
814 | them from getting pregnant, keeping them from engaging in
815 | substance abuse activities. And in the District of Columbia,
816 | for example, the girls who have come through that, the high
817 | school girls who go through that program, Diamond Girls,
818 | there is a 100 percent graduation rate. In the District
819 | where we know we have, unfortunately, a number of challenges

820 | with schooling, that is a phenomenal program. So they are
821 | not only present in D.C., they are present in California in
822 | Los Angeles and in a number of other places, as my formal
823 | statement points out.

824 | With respect to the First Tee program, I will be very
825 | candid with the Committee. The first time I came into this
826 | job I looked at it and said, Well, why can't the PGA fund
827 | this entirely? There is a lot of strong corporate support,
828 | why can't they do it by themselves? I didn't make a rash
829 | judgment, however. I talked with our staff. The career
830 | staff really liked the program.

831 | Mr. DAVIS OF VIRGINIA. The PGA does make a huge
832 | investment in that program.

833 | Mr. FLORES. Yes, they do, as does corporate America, so
834 | for every dollar of Federal funds, there is actually a
835 | substantial amount of leveraging that goes on. Plus, these
836 | First Tee programs are now all over the United States, and
837 | they have also launched a school-based program so that they
838 | can take their training and their materials and bring them
839 | into the physical education programs of a number of schools.

840 | And this is one of the best parts of it: they are now
841 | able to move into really needy areas through the school
842 | systems, elementary schools, and really use that as a way of
843 | getting kids. As we know, we do have an obesity issue. We
844 | have got a number of issues.

845 Mr. DAVIS OF VIRGINIA. Let me ask the question on golf.
846 Teaching inner city kids to teach golf, is that really the
847 priority of the Department?

848 Mr. FLORES. No. The priority of the Department is to
849 find ways to engage kids so that we can teach them life
850 skills, so we can teach them about honesty and commitment and
851 putting aside immediate gratification and really working to
852 gain skills, and so that is what the parents see. This
853 program has been evaluated by the University of Virginia and
854 Nevada Las Vegas, and Arizona, and found to be successful.
855 So this is a program where a lot of folks are coalescing
856 around it to build community support to help the neediest
857 kids. I think for us those are the kids who would likely end
858 up in the juvenile system if they don't get some help and
859 some support.

860 Mr. DAVIS OF VIRGINIA. Let me just note, First Tee does
861 a breakfast up here every year. Tim Fincham is a law school
862 classmate of mine, and was actually Congressman Good's moot
863 court partner at the University of Virginia Law School. Mr.
864 Fincham, just for the record, was a Democratic candidate for
865 Commonwealth Attorney in Virginia Beach before he became head
866 of the PGA. But they feature each year First Tee and what
867 they are doing for kids around the Country.

868 I went to the first meeting really because I got to meet
869 Jack Nicklaus. I had no idea what First Tee was. I was

870 | actually very, very impressed with this program and how it
871 | had actually turned kids' lives around, give them something
872 | to get up for in the morning, give them some focus, teach
873 | them some discipline.

874 | But that was your thought process, as well. This was my
875 | process in Congress of being one of many signatories from
876 | both sides of the aisle to support this, and you at this
877 | point have funded it this particular year.

878 | Mr. FLORES. I did, sir.

879 | Mr. DAVIS OF VIRGINIA. Most of these programs I gather,
880 | the top 50, top 60 programs, were good programs; is that
881 | correct?

882 | Mr. FLORES. That is correct. If you take a look at the
883 | scores, you really, even when you go down to the top 25
884 | percent, which is the top quintile of scores, you really have
885 | very good programs represented there. This is not a question
886 | that there aren't good programs and that is the reason they
887 | weren't funded.

888 | There was very limited amount of money in this
889 | particular solicitation, only \$8.6 million. I think the
890 | field also was greatly disappointed when they saw--you know,
891 | they were hoping that there would be a \$104 million
892 | solicitation and there wasn't, and so there was a lot of
893 | expectation in terms of what would be available. So I think,
894 | again, expectations were not matched by the reality.

895 Mr. DAVIS OF VIRGINIA. Let me ask you this: do you at
896 all look at the Congressional Districts that these would go
897 into, and would these help a Member? Was there any pressure
898 from anybody to say this recipient is in a Member's District
899 and they need political help and we would like you to fund
900 it?

901 Mr. FLORES. Absolutely not.

902 Mr. DAVIS OF VIRGINIA. Did that ever come up in your
903 consideration or anybody's discussions with you?

904 Mr. FLORES. No, sir.

905 Mr. DAVIS OF VIRGINIA. All right. Thank you very much.

906 In peer review, as well, when these grades come out, you
907 don't have the same grader grading every single application,
908 do you?

909 Mr. FLORES. No.

910 Mr. DAVIS OF VIRGINIA. So you may have, in terms of a
911 score of 98 versus a 90, a different group giving gradings
912 that has basically subjective, different criteria? You may
913 have someone that is an easier grader than someone else; is
914 that possible?

915 Mr. FLORES. It is not only possible; it is actually
916 reflected in the materials that we submitted to the
917 Committee. Some of the peer review scores differ five, ten
918 points.

919 Mr. DAVIS OF VIRGINIA. So if I just get the right person

920 reviewing it, I am going to have a higher score going in,
921 correct? Or the wrong person, a lower score?

922 Mr. FLORES. Initially that is the case, but we do make
923 efforts to try to weight those and to come up with a way so
924 that we can have some way of comparing apples to oranges.

925 Mr. DAVIS OF VIRGINIA. Well, you may do that, but that
926 wouldn't be reflected in these documents, would they?

927 Mr. FLORES. No.

928 Mr. DAVIS OF VIRGINIA. So you have to then take a look
929 at understanding who was grading what. That would be a
930 factor in your decisions. It wouldn't be just openly
931 expressed, right?

932 Mr. FLORES. No, Mr. Davis. I think on that, when I get
933 those scores, what I tend to do is to look to make sure that
934 I am selecting from a pool of qualified organizations, and
935 that generally--

936 Mr. DAVIS OF VIRGINIA. In other words, if they all have
937 a pass rate?

938 Mr. FLORES. Yes. That is correct.

939 Mr. DAVIS OF VIRGINIA. And they have to meet a certain
940 criteria, and after that you look at a number of other
941 factors?

942 Mr. FLORES. Absolutely.

943 Mr. DAVIS OF VIRGINIA. And I would gather then, from the
944 way these are listed, once they meet that criteria, whether

945 | it is 99 or 87, doesn't matter that much in the selection?

946 | Mr. FLORES. No, it doesn't, because, again, even the
947 | applicants are told in the solicitation that these peer
948 | review scores are advisory only. It is part of what we take
949 | into consideration. If I only looked at the peer review
950 | scores, there would be no need for an Administrator for this
951 | office. You could simply just automatically push these
952 | dollars forward without any thought or any effort to try to
953 | cover the entire mission of OJJDP.

954 | Mr. DAVIS OF VIRGINIA. Would it have been better just to
955 | rate these pass/fail if you don't take them into
956 | consideration?

957 | Mr. FLORES. Well, I am not sure. I think I would have
958 | to really think about that. But clearly the scores that are
959 | in the top 25 percent, top 30 percent, depending upon how
960 | they are clustered--in this particular grant we did not have
961 | a lot of scores at the bottom, so things were really pushed
962 | up very high. We had, obviously, some that scored horribly,
963 | but that is at the beginning. Once I get that, I have to
964 | really look at many other issues in order to be fair not only
965 | to the applicants, but also to be fair to the needs of the
966 | field, and to make sure that our mission actually is carried
967 | out.

968 | Mr. DAVIS OF VIRGINIA. Thank you.

969 | Chairman WAXMAN. Thank you, Mr. Davis.

970 I am going to use a little bit of the time I had.

971 Mr. Flores, your peer review team gave a ranking, they
972 gave a score, and next to each program they had an R for
973 recommended, and for those that did not receive a high score
974 it says not recommended, NR. So it isn't as if all of these
975 had been recommended by the peer review; some were
976 recommended and some not recommended. And, as I understand
977 it, the two that had just been discussed were in the NR
978 category.

979 I have been a critic of earmarks. The reason I am a
980 critic of earmarks is that I think Government funds ought to
981 go based on merit, not based on the political clout of
982 individual Members of Congress. That is why I urged people
983 to stop the earmark process so we can develop something based
984 on merit.

985 Here you had all of this money to be distributed based
986 on merit because the Congress did not put in earmarks. The
987 reason Congress did not put in the earmarks is because
988 Congress couldn't get a budget through, an appropriation
989 through; it was just on a continuing resolution. So Justice
990 had the obligation to decide on the merits. For you to take
991 into consideration that there had been a lot of Congressional
992 support for a golf thing, that is not your job. Your job was
993 to decide it on the merits. I just wanted to make that point
994 out of the time that I still have reserved to me.

995 I now want to recognize Ms. Watson for five minutes.
996 Ms. WATSON. I want to thank the Chairman for this
997 hearing today.

998 Mr. Flores, on May 17th of 2007 the Justice Department
999 issued a public solicitation with ten priority funding areas,
1000 but on July 17th, when you wrote your decision memo
1001 recommending applications for funding, you set forth eight
1002 priority areas, some of which were the same as the public
1003 solicitation, but most of which were different.

1004 Now, what we have been hearing you say today is that was
1005 a misleading press report and they have mischaracterized your
1006 actions and that false press report claimed that you had
1007 secret criteria only known to the Administration. So these
1008 criticisms aren't coming from the press, they are coming from
1009 your own staff. And the Committee interviewed several
1010 officials in your office, including Civil Service employees,
1011 the career program managers, and even your politically
1012 appointed supervisor. None of them said that they had heard
1013 of your categories before they saw your July 17th memo.

1014 So the question is: if there were your real priority
1015 areas for the office, why didn't you share them with your own
1016 staff?

1017 Mr. FLORES. Thank you for the question. That has been
1018 an area of substantial confusion. Let me just say again, if
1019 you take a look at the memorandum that I submitted to the

1020 Assistant Attorney General, what you will see very clearly
1021 under the recommendations are that I listed the categories
1022 that were part of the solicitation: building protective
1023 factors to combat juvenile delinquency, reducing child
1024 victimization, and improving the juvenile justice system.

1025 Within those, though, one of the things that I wanted to
1026 do, because there were so many different types of
1027 applications, so many different types of work that were being
1028 proposed, I needed to provide a way to explain what those
1029 things were. So what I did was, within those categories, I
1030 identified, in essence placed a label on what those programs
1031 did.

1032 So for example, with respect to the building protective
1033 factors, we were very clear in the solicitation. We actually
1034 said sports programming would be one of those things within
1035 that category. So when I listed on page three of that memo
1036 the World Golf Foundation, I again highlighted how that fit
1037 into the category one, which was utilizing sports-based
1038 outreach efforts directed at high-risk youth.

1039 It has been mischaracterized that these were secret or
1040 preexisting categories. That is not the case. These were
1041 the way that I was able to explain where those fit in into
1042 the overall categories.

1043 If you take a look at the remainder of the memo you will
1044 see that I was consistent with that throughout.

1045 I would also note that I submitted an additional four
1046 other memoranda under this particular funding flow, Part E,
1047 and all of the memos took the same form, provided the same
1048 kind of information. Again I would note there was never any
1049 question prior to them being signed by the Assistant Attorney
1050 General that there were any questions.

1051 Ms. WATSON. I am concerned about your own priorities. I
1052 represent a city called Los Angeles, and it is a city that
1053 gave the world the Crips and the Bloods. I am very concerned
1054 when I look at your set of your own priorities. They don't
1055 necessarily match with the DOJ criteria.

1056 Our Chair made reference to earmarks. He has been
1057 concerned about them, because we wanted to be sure that there
1058 were some criteria that we all agreed upon, and so we never
1059 know when a person is focusing on their own areas what the
1060 priorities are, will affect that area.

1061 I am concerned that you say very little about
1062 integrating minorities, disproportionate minority contact and
1063 improving juvenile detention and the correction centers. Too
1064 many of our youth, African American youth and Hispanic youth
1065 in our city end up in lockups.

1066 I want you to explain to me why you haven't set as a
1067 priority and you have--well, I say you didn't share that with
1068 your staff. You just came up with this set, as I understand.

1069 So how do you explain veering off and putting your own

1070 targets in place rather than the criteria of DOJ?

1071 Mr. FLORES. Ma'am, Congresswoman, I would first say a
1072 couple things. Gangs are an incredibly high priority for the
1073 Department and for my office. In Los Angeles, we have had a
1074 long-term relationship with the mayor's office since my
1075 tenure to really focus on gangs. In fact, it has been so
1076 successful it was the model that was recommended by Connie
1077 Rice for the mayor's office to adopt. The last that I know
1078 is that the mayor's office is in the process of funding, to
1079 the tune of \$150 million, more or less, the in essence
1080 replication--

1081 Ms. WATSON. Can I just interrupt you? I am looking at
1082 the list, and I am sure you have that list, and it says
1083 disproportionate minority contact and improved juvenile
1084 detention and correction centers. I made reference to it
1085 when I opened. I don't see it on your list of priorities. I
1086 don't know what you put in place. You said you worked with
1087 the mayor. Is that the mayor of Los Angeles?

1088 Mr. FLORES. Yes, ma'am.

1089 Ms. WATSON. Okay. Well, I don't see it reflected in
1090 your priorities. I am looking at, on the other side of this
1091 paper, your priorities. I think you have the same list that
1092 I have. So can you explain why there is not an emphasis, or
1093 are you referring to something that was already there? These
1094 are different priorities.

1095 Chairman WAXMAN. The gentlelady's time has expired, but
1096 go ahead and answer the question.

1097 Ms. WATSON. Thank you, Mr. Chairman.

1098 Mr. FLORES. If I could get a copy of the document you
1099 are holding, ma'am, I would be happy to provide those answers
1100 to you as quickly as I can after the hearing.

1101 Ms. WATSON. In writing? Thank you.

1102 Mr. FLORES. Absolutely.

1103 Ms. WATSON. I will take it down to you.

1104 Mr. FLORES. Thank you.

1105 [The referenced information follows:]

1106 ***** COMMITTEE INSERT *****

1107 Chairman WAXMAN. Mr. Duncan?

1108 Mr. DUNCAN. Thank you, Mr. Chairman.

1109 Most of the time when I come to these hearings I have a
1110 briefing beforehand or do some reading beforehand and know a
1111 little bit more about it. Because of other things I was
1112 working on, I really didn't know much about what this hearing
1113 was about until I got here, but I can tell you that I have
1114 been reading some of this material and I see that this
1115 program has given money to the Boys and Girls Clubs of
1116 America. That is one of the finest organizations in the
1117 Country. I am very familiar with their work in Knoxville and
1118 around the Country. The Cal Ripken Foundation, I have read
1119 about the work that they do with young people. The DARE
1120 program, I have spoken at DARE graduations teaching kids
1121 about drugs. Mr. Davis mentioned that.

1122 But we get to these grants. You know, every Federal
1123 contract is a sweetheart deal of one sort or another, almost.
1124 They all go to former Federal employees or companies
1125 associated who hire former Federal employees, and the Defense
1126 Department is the biggest example of that. They hire all the
1127 retired admirals and generals and then they get contracts,
1128 sweetheart contracts totaling in the billions.

1129 If I add this up, I think these grants come to about \$8
1130 million that we are talking about here specifically, but I
1131 can tell you I am familiar with the first two programs. We

1132 | built a par three golf course in an African American section
1133 | of Knoxville, and the work that the First Tee program does
1134 | with these kids is just fantastic, in my opinion.

1135 | I didn't know what the Best Friends organization was. A
1136 | staffer just told me a few minutes ago that it is a program
1137 | to teach inner city girls in the District about problems that
1138 | can come with premarital or under-age sex, and so forth, sex
1139 | education. I see they said it is headed up by the wife of
1140 | Bob Bennett, who is one of the most respected lawyers in this
1141 | city. I sure see nothing wrong with that.

1142 | I don't know about what some of these others are. What
1143 | is the Enough is Enough program? Do you know what that is?

1144 | Mr. FLORES. Yes. That is an organization that is
1145 | working to educate parents and families, as well as
1146 | communities, on the dangers and risks of internet predators,
1147 | internet pornography, and has actually testified numerous
1148 | times before the Congress as experts on that work.

1149 | Mr. DUNCAN. Well, there is sure nothing wrong with that.
1150 | What is the Latino Coalition for Faith and Community
1151 | Initiatives?

1152 | Mr. FLORES. They are a great organization that works
1153 | with a lot of small local community faith-based and community
1154 | organizations that are targeting Hispanic kids with great
1155 | need. And one of the things that they do is that they make
1156 | sure that the money that these smaller groups receive is

1157 managed properly, that they can participate in the audit
1158 process, that they get technical assistance and support in
1159 actually administering those Federal funds. So what they do
1160 is they are really a point of leverage for us to make sure
1161 that we increase both the responsibility over those Federal
1162 funds, and make sure that we know effectively how those
1163 programs are being run.

1164 Mr. DUNCAN. You know, I can tell you every one of these
1165 things sound very defensible to me, and a lot better than
1166 many of the things the Federal Government does. What
1167 happens, you know, we are not machines here. Every human
1168 being, whether he or she wants to admit it or not, we all
1169 have feelings, opinions, prejudices, beliefs. Those enter
1170 in. They can talk about having objective ratings. What you
1171 have got, all the staff people who worked on these, their
1172 feelings, their opinions, their prejudices, their beliefs
1173 entered into their rankings. Whoever takes your place as
1174 head of this program is going to have those same feelings and
1175 prejudices and feelings. He or she is going to favor some
1176 organizations over others.

1177 What you have here apparently, you have got very few
1178 winners and you have got a whole lot of losers, and
1179 apparently this is come about from one or more sore losers in
1180 this process. I don't see anything wrong with what you have
1181 done.

1182 Thank you very much.

1183 Mr. FLORES. Thank you.

1184 Chairman WAXMAN. The gentleman has a minute or two.

1185 Would you yield to me?

1186 Mr. DUNCAN. Yes.

1187 Chairman WAXMAN. Well, we ought to say that all these
1188 grants ought to be distributed based on Mr. Flores'
1189 decision-making, but instead we had a whole set of criteria
1190 and people to review them and to make recommendations in
1191 order to decide on the merits. Well, if merit is being
1192 whatever Mr. Flores wants, why bother with the rest of that
1193 process?

1194 Mr. DAVIS OF VIRGINIA. Will the gentleman yield? I
1195 mean, I he took those--Mr. Flores, you took that into
1196 account, didn't you?

1197 Mr. FLORES. Yes, I did.

1198 Mr. DUNCAN. It wasn't that these ratings by the
1199 professional staff were irrelevant, was it?

1200 Mr. FLORES. No. They were important in establishing the
1201 pool of qualified applicants.

1202 Mr. DAVIS OF VIRGINIA. Okay. Thank you.

1203 Chairman WAXMAN. The gentleman's time is expired.

1204 I would like to now recognize Mr. Cummings.

1205 Mr. CUMMINGS. Thank you very much, Mr. Chairman.

1206 I certainly was listening very closely to the line of

1207 questioning by Mr. Duncan. I have a tremendous amount of
1208 respect for him, but there are some things that I think were
1209 not quite kosher in all of this, and that is what I want to
1210 deal with.

1211 Mr. Flores, I would like to ask you about the grant to
1212 the World Golf Foundation.

1213 Before I start, I would like to say that I don't know
1214 very much about this organization. I know that they came in
1215 to meet with staff and they were helpful. I know that Former
1216 President Bush is their honorary Chair, so I assume they do
1217 good work. But when the career staff in your office reviewed
1218 the proposal from the World Golf Foundation, they found
1219 significant problems with its design elements and its lack of
1220 focus. They concluded that the proposal did not adequately
1221 explain how funding this group would advance juvenile
1222 justice. The peer review team ranked this proposal 47th out
1223 of 104.

1224 On Monday you told the Committee staff in 2006 you took
1225 a trip to Florida to visit the World Golf Foundation at their
1226 annual meeting. We have the agenda from the meeting, and it
1227 shows that on Friday, February 17th, there was a golf outing
1228 at the Slammer and Squire Golf Course. Are you familiar?

1229 Mr. FLORES. Yes, I am.

1230 Mr. CUMMINGS. We have a picture of this course so you
1231 can see what it looks like. The agenda says that the golfing

1232 | was followed by lunch and awards.

1233 | When my staff asked you about this on Monday, you told
1234 | them you played golf on this trip; is that correct?

1235 | Mr. FLORES. Yes, sir, I did.

1236 | Mr. CUMMINGS. Mr. Flores, in 1989 Congress passed the
1237 | Ethics Reform Act, which states that no officer or employee
1238 | of the Executive Branch ``shall accept anything of value from
1239 | a person seeking official action from, doing business with,
1240 | or conducting activities regulated by the individual's
1241 | employing entity.'' In 2006 the World Golf Foundation had a
1242 | grant from your office. In fact, that is why you went to
1243 | Florida to meet with the officials; is that right?

1244 | Mr. FLORES. Yes, sir.

1245 | Mr. CUMMINGS. But the green fees for this course are in
1246 | the hundreds of dollars, so if the World Golf Foundation
1247 | played for your game, then you received something of value,
1248 | which would seem to be a violation of the Ethics Reform Act.

1249 | So let me ask you this, Mr. Flores: when you played at
1250 | Slammer and Squire in 2006 did you pay for your round of
1251 | golf?

1252 | Mr. FLORES. I did not pay for it at the time because the
1253 | way that this situation came up was after the dinner I was
1254 | told that there would be a golf outing the next day and that
1255 | I could fill in a foursome, so I took the opportunity to do
1256 | that, which gave me a chance to talk with those folks during

1257 | the course of the day and then also to meet with people after
1258 | the round was over.

1259 | Mr. CUMMINGS. Mr. Flores, let me ask you this, because I
1260 | don't have much time.

1261 | Mr. FLORES. Yes, sir.

1262 | Mr. CUMMINGS. We have a copy of the receipt that was
1263 | provided to the Committee last night. It is my understanding
1264 | that you did pay, which I would like to put up on the screen.
1265 | The date of this receipt is yesterday, and it shows that you
1266 | paid \$159 yesterday. Why did you wait until yesterday to pay
1267 | for a round of golf that happened two years ago?

1268 | Mr. FLORES. Again, when I signed up to play I made
1269 | efforts that day to pay for it, but they were not set up.
1270 | Again, there was no Federal funding tied to this golf round
1271 | for any of the other participants either. Everyone was
1272 | paying their way. After I asked for an invoice. They told
1273 | me that they would just go ahead and send me a bill. I had
1274 | staff follow up on that on several occasions, never received
1275 | one, and so I continued from time to time to follow up until
1276 | we contacted Kelly Martin, and she was able to give us a
1277 | cost, because this was tied into also, as you had pointed
1278 | out, sir, prizes and other things that I was not part of and
1279 | wasn't involved in. So when that cost was finally given to
1280 | me, I immediately paid it.

1281 | Mr. CUMMINGS. All right.

1282 Mr. FLORES. It wasn't that large an amount of money. I
1283 simply gave them a credit card and they charged it against
1284 that.

1285 Mr. CUMMINGS. Well, Mr. Flores, you say you can explain
1286 it and I think you just did, but I hope you can understand
1287 how it appears to the taxpayer and other grant applicants.
1288 You go to Florida in 2006 and play golf with officials from
1289 the World Golf Foundation who paid for your green fees. The
1290 next year you disregard the recommendations of the career
1291 staff and award the Golf Foundation hundreds of thousands of
1292 dollars in grants, and you don't pay the Golf Foundation back
1293 until the day before you are called to testify.

1294 The appearance is that the playing field was not level.
1295 And no matter what Mr. Duncan says, we are talking about
1296 level playing fields. Your actions cast a taint over the
1297 entire process. No matter how great the Boys and Girls Club
1298 is, no matter how great the Cal Ripken Club is--and, by the
1299 way, I financial management from Baltimore, so I fully
1300 support that club, and I know Cal Ripken personally. That is
1301 why there are laws against accepting this kind of gift that
1302 you took from the Golf Foundation. Do you understand that?

1303 Mr. FLORES. Yes, sir.

1304 Mr. CUMMINGS. Based on the documents and interviews, it
1305 appears that you met personally with Joe Barrow, the
1306 Executive Director of the World Golf Foundation, on June 6th,

1307 | 2007, along with your Chief of Staff, Michelle Deconti.

1308 | Mr. FLORES. Yes.

1309 | Mr. CUMMINGS. This was right in the middle of the grant
1310 | application process. The public solicitation had gone out,
1311 | and applicants were busy drafting and submitting their
1312 | proposals which were due in about a week. Were you giving
1313 | the World Golf Foundation special treatment by meeting with
1314 | Mr. Barrow at the time?

1315 | Mr. FLORES. No. I try to meet with anyone who wants a
1316 | meeting as quickly as we can get those meetings set up. We
1317 | also provide, during this time, technical assistance to
1318 | anyone making an application so that they have an idea as to
1319 | not only how to submit the application, but the nitty gritty
1320 | in terms of dealing with the computer systems and all those
1321 | kinds of things.

1322 | Mr. CUMMINGS. I am glad you said that, because I want to
1323 | ask you this: you say that you didn't give Mr. Barrow
1324 | special treatment by meeting with him, but the record shows
1325 | that you rejected the requests of other groups for meetings.
1326 | For example, you didn't meet with the President of Parents
1327 | Anonymous, a great organization, who requested a meeting a
1328 | week earlier. According to the e-mail sent by one of your
1329 | staffers, you had an understanding with your office that you
1330 | wouldn't take such meetings.

1331 | Here is what the e-mail said. ``Per our understanding,

1332 | these calls were to be handled by program managers and to
1333 | protect you from folks beating down your door saying that you
1334 | were not available.'' Is that is correct? Open door for one
1335 | and others will follow? You know how the grapevine works. I
1336 | mean, is that your position?

1337 | Mr. FLORES. I have great respect for Parents Anonymous
1338 | and I have worked and appeared at their organization several
1339 | years in a row as their keynote speaker. I knew that they
1340 | were asking for funds. I knew that they would probably be
1341 | applying for funds. At that time the decision was that we
1342 | would try and meet with as many people as we could, but we
1343 | couldn't meet with everyone, and that is the reference there
1344 | in that e-mail, I believe. I know that I have seen that, but
1345 | I can't remember the specific language. But the goal
1346 | obviously was, since my schedule was pretty tight, was to
1347 | make sure that I was not going to get an individual meeting
1348 | with every single person who wanted to have one.

1349 | Mr. CUMMINGS. But do you understand what the appearance
1350 | is?

1351 | Mr. FLORES. Yes, sir, I understand that sometimes, even
1352 | when we are trying to make the best decision you can, the
1353 | appearance is not necessarily in line with that.

1354 | Mr. CUMMINGS. After meeting with the World Golf
1355 | Foundation on June 6th, you and your chief of staff, Michelle
1356 | Deconti directed Jeff Salawaski, the career official in

1357 | charge of the peer review process, to inform the World Golf
1358 | Foundation personally of solicitations and help them apply
1359 | for this solicitation, but Mr. Salawaski told the Committee
1360 | that he thought this was special treatment.

1361 | Mr. Flores, do you think you gave the World Golf
1362 | Foundation special treatment as Mr. Salawaski testified
1363 | before our Committee?

1364 | Mr. FLORES. No, sir.

1365 | Mr. CUMMINGS. And so, Mr. Flores, let me put one
1366 | document on the screen. This is an e-mail from Mr. Salawaski
1367 | on June 8th, just two days after your meeting. It states,
1368 | ``World Golf made the grants.gov deadline. I am certain we
1369 | are funding because Michelle has said as much.`` When he
1370 | says Michelle, he is referring to Michelle Deconti, your
1371 | chief of staff who has refused to talk to the Committee and
1372 | invoked the Fifth Amendment. Did you know that?

1373 | Mr. FLORES. Yes.

1374 | Mr. CUMMINGS. Did you know she invoked the Fifth
1375 | Amendment before this Committee?

1376 | Mr. FLORES. Yes, I did.

1377 | Mr. CUMMINGS. Does that concern you?

1378 | Mr. FLORES. That is her right under the law.

1379 | Mr. CUMMINGS. I didn't ask you that. I said does it
1380 | concern you?

1381 | Mr. FLORES. I don't have any concerns about that, sir.

1382 Mr. CUMMINGS. Why would Mr. Salawaski, a career
1383 official, think that the fix was in and it was certain that
1384 the World Golf Association would get a grant? Why is that?

1385 Mr. FLORES. I don't know.

1386 Mr. CUMMINGS. The documents show that you were having
1387 direct meetings with the World Golf Foundation at the same
1388 time you were refusing others. You were directing your staff
1389 to provide assistance they weren't providing others. And
1390 your chief of staff was saying you had already decided to
1391 fund the application before the peer review process had even
1392 begun. If that isn't special treatment, I don't know what
1393 is, and it creates a significant problem, whether grants are
1394 being given to the Cal Ripken Foundation or anybody else. It
1395 is a question of level playing field, it is a question of
1396 fairness, and it is a question of making sure that when
1397 taxpayers' dollars are being spent, they are being spent on
1398 the basis of equity, parity, and a process that everybody is
1399 subjected to fairly.

1400 With that, I am extremely concerned, and I think you
1401 should be, too.

1402 With that I yield back.

1403 Mr. FLORES. Mr. Cummings, could I respond? Would that
1404 be all right?

1405 Ms. WATSON. [Presiding] Yes.

1406 Mr. FLORES. I just want to say very clearly the decision

1407 | to fund or not to fund was mine. It was not Ms. Deconti's or
1408 | anyone else. I was certainly getting information from
1409 | people, my career staff as well as my other colleagues, but I
1410 | made that decision, and I made that decision after taking a
1411 | look at the merits of it, not because I had had a
1412 | conversation or a sit-down meeting with anyone.

1413 | There were people there in the groups that did not
1414 | receive funding that I have talked to, I have talked to on
1415 | the phone, I knew very much a lot about their program.

1416 | For example, the Winona State University proposal is an
1417 | excellent proposal. The problem with that, though, is that
1418 | we are already making, to the tune of, it, over \$15 million
1419 | investments in child abuse and neglect. So the suggestion
1420 | that somehow because someone gets to sit down and have a
1421 | conversation with me and has redress to the Government that
1422 | that is leading to my making a judgment simply on that basis,
1423 | I am not prepared to accept that.

1424 | Ms. WATSON. Time is up.

1425 | Mr. Sali?

1426 | Mr. DAVIS OF VIRGINIA. I have two and a half minutes
1427 | first before Mr. Sali, if that would be all right with the
1428 | Chair.

1429 | Ms. WATSON. Absolutely. Mr. Davis?

1430 | Mr. DAVIS OF VIRGINIA. I am intrigued. I mean, as you
1431 | get the peer group review underneath you, they are looking at

1432 | an individual application and how it is written vis-a-vis the
1433 | criteria, but they don't understand how everything fits
1434 | together, how you may have too much funding in child abuse or
1435 | not enough in drug prevention; isn't that right?

1436 | Mr. FLORES. That is correct.

1437 | Mr. DAVIS OF VIRGINIA. And so ultimately you could have
1438 | the top rated ones could all be in one area and you wouldn't
1439 | get coverage in others. Isn't that one of the reasons that
1440 | they have you make the decision within the Department instead
1441 | of just being done through a computer?

1442 | Mr. FLORES. Yes, sir.

1443 | Mr. DAVIS OF VIRGINIA. Or through peer review? I mean,
1444 | I think that is the point.

1445 | Mr. FLORES. Yes, sir.

1446 | Mr. DAVIS OF VIRGINIA. And these are tough decisions,
1447 | and I may not think it is appropriate to have you called up
1448 | here when people write a good proposal and don't get it and
1449 | have you explain it. It keeps everybody on their toes when
1450 | you have to do that. But I want to make the point that I
1451 | think you have made it clear in each of these cases why you
1452 | went the way you did. People can agree or disagree with it.
1453 | These are judgment subjective calls, and somebody else
1454 | sitting in your position might have made a different decision
1455 | than you did. But that is not waste, fraud, and abuse. That
1456 | is just a difference of opinion. There is no violation of

1457 | law that I see here or no violation of regulation. These are
1458 | just judgment calls that you, as a Senate confirmed
1459 | Administration appointee, have to make along the way.

1460 | It is a little disheartening sometimes to see underlings
1461 | complain about it, come to the Committee and complain about
1462 | this, but you will find this, particularly at Justice, where
1463 | some of the career staff who have different political views
1464 | often go to the press or to somebody else and start
1465 | complaining about it. But they are not elected to run the
1466 | Government, you are as an Administration appointee elected to
1467 | run the Government and to make these decisions.

1468 | We can disagree all day about it, but that is the way it
1469 | works. And Congress has had the ability in the past to
1470 | earmark these programs and they chose not to do it in 2007.

1471 | So for Members who do not like it, you can look back at
1472 | that budget process and say, we made a mistake; we should
1473 | have done it, we'd do a better job of it. That is the option
1474 | you have.

1475 | And I go back again to Glasgow Intermediate School,
1476 | which met a very high criteria for an educational grant under
1477 | the previous Administration and didn't get it and the money
1478 | went somewhere else, and I asked appropriate questions at the
1479 | time and met with the Administration officials making it, and
1480 | I was satisfied at the end of the day that it really wasn't a
1481 | political call, but my first opportunity to earmark that

1482 | grant I did the next time around and it has helped that
1483 | school as if it had been able to fund all of these it would
1484 | have done the same.

1485 | Now, I think, Mr. Sali we are ready to go to.

1486 | Chairman WAXMAN. [Presiding] Thank you, Mr. Davis.

1487 | Mr. Sali, you are recognized.

1488 | Mr. SALI. Thank you, Mr. Chairman.

1489 | Mr. Flores.

1490 | Mr. FLORES. Good morning, sir.

1491 | Mr. SALI. The National Partnership for Juvenile Services
1492 | submitted a grant application and, as a part of that program,
1493 | there is a juvenile detention center in Coldwell, Idaho,
1494 | 90-bed facility, that has been run by a gentleman by the name
1495 | of Steven Jett, apparently since 1993. I understand that
1496 | they are pretty proud of their program there and that they
1497 | have a pretty good record with the facility there.

1498 | I understand that that grant application was ranked
1499 | number two. Without going into an awful lot of detail, I
1500 | understand that the applications that were ranked 39th, 42nd,
1501 | 44th, and 53rd all received funding, but this proposal that
1502 | was ranked number two did not receive funding, in spite of
1503 | the fact that it appears to be a very good program.

1504 | I recognize that you have been put in place to make
1505 | decisions and use your judgment. On the other hand, I hope
1506 | you will recognize that this does raise eyebrows when the

1507 | number two program does not get funded and these other
1508 | lower-scoring applications do get funded.

1509 | Can you explain to me the reasoning why National
1510 | Partnership for Juvenile Services, which was ranked number
1511 | two, was not given funding, but these other lower-ranking
1512 | proposals were? What were the factors upon which your
1513 | judgment was based on that particular case?

1514 | Mr. FLORES. Thanks for the question. I appreciate that.

1515 | First of all, the proposal overall was to create a new
1516 | center, a new national center to explore confinement issues,
1517 | so this was not funding that was going to go directly to a
1518 | particular detention facility or a particular corrections
1519 | establishment. This was really designed to create a new
1520 | center, which would explore these confinement issues, promote
1521 | best practices, conduct data collection efforts, and also
1522 | provide technical assistance.

1523 | The Office of Juvenile Justice and Delinquency
1524 | Prevention, that is our job. So in my view this was
1525 | requesting the creation of an organization that was going to
1526 | mirror very much what we already do.

1527 | For example, our office, Congressional funding comes to
1528 | our office that we administer to the tune of, I think,
1529 | usually around \$80 million a year that goes to States that
1530 | they can use for disproportionate minority confinement, which
1531 | is DMC. I am sorry to use those acronyms--disproportionate

1532 minority confinement. We provide, as a result of a set-aside
1533 that Congress has, I think, wisely built into the statute,
1534 technical assistance and training, and on more than one
1535 occasion we have actually used folks connected to a number of
1536 the organizations that would be made up by the NPJS.

1537 I also looked at the requirement. I took 2007, sir, to
1538 be an anomaly, that we probably would not see in 2008 again
1539 part E with no earmarks, and so I was looking at how do I
1540 make the best decision with one-year funding, because I can't
1541 make really long-term decisions where I am going to create a
1542 new center, in essence, provide that initial funding, and
1543 then not be able to continue that level of support. I know
1544 what goes into creating these national centers. It is
1545 expensive. It is hard to get the infrastructure dollars.

1546 So rather than build new infrastructure, I decided up
1547 front, after looking at what had actually come in--because I
1548 didn't know until I actually saw the list of organizations
1549 that had applied--that, based on the dollars being requested
1550 and the types of work that were being proposed by all of the
1551 top-scoring grantees, that I would not invest in the creation
1552 of new centers.

1553 That was my thinking on that. It wasn't that the idea
1554 is not a good one and that if private funding were available
1555 for that or we were in a different type of budget environment
1556 that we might not go ahead and do that, but under the

1557 | circumstances we only had \$8.6 million to award under this
1558 | grant solicitation.

1559 | If I had taken the top three centers, one center was
1560 | promoted by NPJS, the other two were put out by NCPC, one on
1561 | girls and one on violence prevention, I think, if I recall
1562 | correctly, that would have taken up the entire budget. We
1563 | would have only been able to make three awards.

1564 | I did not know, did not have the confidence that I did
1565 | with other organizations that I could really reduce their
1566 | funding and they would still be able to do the work that they
1567 | were proposing.

1568 | That was my thinking process, sir.

1569 | Mr. SALI. Thank you, Mr. Chairman.

1570 | Chairman WAXMAN. Okay. The gentleman has completed his
1571 | questioning and time has expired.

1572 | The Chair recognizes Ms. Foxx.

1573 | Ms. FOXX. Thank you, Mr. Chairman. I don't have any
1574 | questions at this time. Thank you.

1575 | Chairman WAXMAN. Okay. Who is next? Mr. Issa?

1576 | Mr. ISSA. Thank you.

1577 | The fundamental challenge, it seems, that you face is
1578 | that all of you are Senate confirmed individually. Does that
1579 | create a bit of a conflict, in your mind, of the chain of
1580 | command? And I am not trying to put you on a hot spot, but
1581 | in a sense isn't it usual to have a Senate confirmed leader

1582 | who then essentially has the allegiance of people that are
1583 | not Senate confirmed beneath him, and that is not the case
1584 | here. Does that create some conflict in your mind or some
1585 | question?

1586 | Mr. FLORES. With all due respect, it is just the system
1587 | I am in, so we have attempted to deal with it. I have got
1588 | some great colleagues, both appointees as well as the career
1589 | staff, who work very hard on these issues.

1590 | Mr. ISSA. And I realize that every ambassador is
1591 | confirmed, in addition to the people above them, but the
1592 | reason I ask the question is your allegiance, if you will, is
1593 | it to a certain extent to interviews, promises, the attitudes
1594 | necessary to get confirmed versus, if you will, the
1595 | priorities of those above you or below you?

1596 | Mr. FLORES. No. Sir, I took an oath to do the best job
1597 | I possibly could, to defend the Constitution, to abide by its
1598 | laws, and that is where my--as I have told my staff, it is
1599 | about the children. These are our kids, not somebody else's
1600 | children that we are worried about. That is what I worry
1601 | about.

1602 | Mr. ISSA. So you would say that there is no priority
1603 | based on any political consideration; that even though you
1604 | are all political appointees confirmed by the Senate, you are
1605 | not beholding to either the appointer or the confirming
1606 | Senate?

1607 Mr. FLORES. No, sir.

1608 Mr. ISSA. Okay.

1609 Mr. FLORES. My responsibility is to make sure that these
1610 kids get help.

1611 Mr. ISSA. Okay. And up until now I think you have
1612 focused solely on the so-called priorities for funding, but
1613 isn't it the case that your boss, Ms. Schofield, had
1614 priorities of her own?

1615 Mr. FLORES. Yes, she did.

1616 Mr. ISSA. You funded the Native American Children's
1617 Alliance that was at her request because of her own
1618 priorities; isn't that true?

1619 Mr. FLORES. Yes.

1620 Mr. ISSA. Isn't it true that the Native American
1621 Children's Alliance received the same score, an 82, that
1622 World Golf received?

1623 Mr. FLORES. I believe that is right.

1624 Mr. ISSA. So in the case of a tie, it is a political
1625 decision?

1626 Mr. FLORES. Yes. I think, again, she had priorities,
1627 she had information, and she had an understanding of the
1628 overall mission not just of OJJDP but of OJP, and so she
1629 moved to do that.

1630 I would just note for the record that my understanding
1631 is that there was insufficient funding in the solicitation

1632 | pot for the national programs, so she actually identified
1633 | \$250,000 in de-obligated funds and made those available on
1634 | top of the money that was available for the national program
1635 | solicitation, and that was something that only she could do,
1636 | because those are dollars she controls.

1637 | Mr. ISSA. Okay. And typically grant awarding year a
1638 | contractor is hired to review the grant applications and
1639 | score each application, but for fiscal year 2007 OJJDP--that
1640 | is not a catchy name--decided that the solicitation entitled
1641 | for 2007 national juvenile justice programs, the applications
1642 | would be reviewed by internal peer reviews. Was that wise to
1643 | essentially bring them into what you sort of admitted is a
1644 | political environment?

1645 | Mr. FLORES. Well, I think that in this particular case
1646 | it was. We were working under tight deadlines, and the staff
1647 | was being asked not to opine as to the worthiness of these
1648 | applications, but they were being asked to determine whether
1649 | or not the applications were sound and to create a pool for
1650 | me.

1651 | Mr. ISSA. So you weren't reviewing which would get the
1652 | best bang for the taxpayers' dollars, but rather whether the
1653 | applications were accurate?

1654 | Mr. FLORES. Well, whether they were complete and well
1655 | presented. That was the peer review portion. The other
1656 | question really focused on me, and that was my responsibility

1657 | to make recommendations.

1658 | Mr. ISSA. So would it be fair to say that if, in fact,
1659 | you are looking for completeness of applications and then, I
1660 | family will, priorities of individuals, and you don't have an
1661 | independent grant peer review grant process that evaluates
1662 | the quality of the return on investment to the
1663 | stakeholders--in this case the taxpayers--that, in fact, this
1664 | is charity more than it is return on investment?

1665 | Mr. FLORES. No, sir. Those are considerations that I
1666 | make when it gets to my desk in terms of the peer review.
1667 | For example, that is one of the reasons that I thought the
1668 | First Tee program was such a valuable asset, because they
1669 | leverage a lot of private dollars and other dollars that come
1670 | into the organization.

1671 | Those are the issues that I do, in fact, ask. That is
1672 | the reason why we didn't go with JRSA, the number one rated
1673 | peer review scored program, because we had already made some
1674 | changes within our office, and to go ahead and fund them
1675 | would have wasted those dollars.

1676 | Likewise, you know, we are always looking. Texas A&M
1677 | proposal, which was identified by the Chairman a little while
1678 | ago, that was a locally State-based program. That wasn't
1679 | even national in scope. Those are just things that, again,
1680 | on my responsibility as the appointee, when I am trying to
1681 | prepare my recommendations to the final decision-maker.

1682 Mr. ISSA. Thank you.

1683 Thank you, Mr. Chairman.

1684 Chairman WAXMAN. Mr. Platts?

1685 Mr. PLATTS. Thank you, Mr. Chairman.

1686 Mr. Flores, I, for one, appreciate your service to our
1687 Nation and our citizens and the importance of your work
1688 because it does deal with children and how we deal with
1689 preventing juvenile delinquency and all the related issues
1690 that go with that.

1691 I do have some specific questions. I apologize for not
1692 hearing your previous testimony. Hopefully I won't be too
1693 repetitive of what you have already addressed.

1694 It does come from an applicant in my District, a
1695 longstanding, well-regarded, 30-year history, and some
1696 questions they have raised as ones trying to fairly
1697 participate and compete.

1698 I know you have talked a little bit about the criteria,
1699 the priorities, the categorical priorities that were set for
1700 what you were looking for for applications in this round. My
1701 understanding, from my constituent agency, is that, in
1702 essence, after the deadline passed, additional new priorities
1703 were applied that were not delineated to the applicants. If
1704 I understand from your testimony earlier, from my staff, is
1705 that you did address that, that you had an initial screening
1706 and then you applied some additional priority review.

1707 I guess my question is: why would that not have been
1708 shared with the applicants up front, what you are looking
1709 for, rather than them go through a process? If you have got
1710 priorities, why have them go through the process of applying
1711 if it is really not in the area that you are looking to
1712 prioritize?

1713 Mr. FLORES. I really do appreciate that question,
1714 because I think there has been a lot of concern about that
1715 issue.

1716 When I sat down with the Assistant Attorney General to
1717 come up with the remaining solicitations after the
1718 invitations had been made and we knew what the dollars would
1719 be for these other solicitations, we had a choice: we could
1720 either be fairly narrow and put out a national program
1721 solicitation that really wasn't a national program
1722 solicitation, it was, again, a subject matter solicitation,
1723 much like the others we have done--prevention, intervention,
1724 substance abuse, mentoring, those kinds of fairly specific
1725 issues.

1726 Mr. PLATTS. Yes.

1727 Mr. FLORES. It was my decision to put out a broad
1728 national program solicitation. Intentionally, if you take a
1729 look at the solicitation, there were three very broad
1730 categories.

1731 Mr. PLATTS. Right.

1732 Mr. FLORES. What I wanted to signal to the field was,
1733 while it may not be a lot of money, and I don't believe that
1734 we let people know what the amount of money is. That would
1735 have been unusual in any event. I wanted to at least
1736 encourage people, give people an opportunity to bring before
1737 me great programs. I mean, I know a lot about what is going
1738 on in the field because I get a lot of information across my
1739 desk and my staff is very good about that, but I don't know
1740 everything. So I was waiting to get this information, and
1741 people applied. I had no idea who was going to apply and
1742 what for.

1743 Once those came in and I saw the peer review scores, I
1744 had to come up with a way of putting them into categories.
1745 It wasn't that I had categories prior to seeing what was
1746 there, but, for example, JRSA--again, the top peer review
1747 scored organization--they are in the statistics, data,
1748 evaluation business, so that is kind of the heading that they
1749 were under, and there were other similar kinds of
1750 organizations all the way throughout the top 25 percent.

1751 We had a number of centers that were being proposed,
1752 whether it was by NCPC or by the National Juvenile
1753 Partnership, so these are not, contrary to what they have
1754 been suggested to be, special little categories that I had
1755 that I didn't tell anybody about. These were the descriptive
1756 labels and the categories that I had when I saw what was

1757 | actually on the table. So there was nothing new introduced,
1758 | but I had to then figure out from those groups that actually
1759 | applied which ones now, looking at the entire JJ funding
1760 | universe, which ones made sense.

1761 | Mr. PLATTS. My understanding is that in the initial
1762 | three broad categories there are subcategories totaling about
1763 | ten specific areas, three under two of them and four
1764 | subcategories under the third, so you had ten, and you had
1765 | your applications, and then, in response, you did this
1766 | additional review that you are talking about, and that of the
1767 | 104, I think it is, or so applicants, that less than 20 were
1768 | then eligible based on the additional criteria that was put
1769 | forth as part of your review.

1770 | Mr. FLORES. Yes. I had to make a value judgment within
1771 | those categories, seeing now who had actually applied, which
1772 | I felt were more important than others. Yes, I did.

1773 | Mr. PLATTS. More important, or eligible by a certain
1774 | criteria being applied?

1775 | Mr. FLORES. No. More important based on who was there.
1776 | I know this sounds like semantics, but it is really not. I
1777 | am trying to figure out, for example, who--

1778 | Mr. PLATTS. Let's take that assumption. I am going to
1779 | run out of time here. I guess I am. If I can complete this
1780 | question, Mr. Chairman, if that is okay? Thank you.

1781 | Let's take that it wasn't new criteria, because that was

1782 | my first concern, because if there is additional criteria it
1783 | should have been out there from the beginning. But assuming
1784 | it is not new criteria but just further scrutinizing the
1785 | applicants, which wasn't my understanding, I guess in your
1786 | answers to Mr. Issa's questions you said that the panels that
1787 | did the review--I wasn't sure why it was staff versus outside
1788 | experts to get some additional input--but the panels that
1789 | were reviewing were not for worthiness, but just if they were
1790 | sound, basically complete.

1791 | I guess it doesn't seem like you gave much weight really
1792 | to the panels and their scoring process, because once you had
1793 | all those scores you really didn't weight those scores. You
1794 | did an additional review of your own to get who is going to
1795 | be really provided funds.

1796 | I guess I am uncertain of why go through the scoring
1797 | process, why have that peer review with all these 25 panels,
1798 | do that scoring, if it is going to come to you and then you
1799 | are going to do the weighting of the 104 applicants as
1800 | opposed to saying, All right, we have 104, here is how they
1801 | scored, maybe I am going to narrow it to the top 25 and then
1802 | look at those. But it seems like that is not what you did.
1803 | You started over with all 104. I am not sure why you even go
1804 | through that scoring process up front.

1805 | Mr. FLORES. I did not go through all 104. I confined
1806 | myself to around the top 25 percent, top quarter of the

1807 different applications that came in. And it is really very
1808 important for the staff. In this case they are more than
1809 competent to go through that. They know budgets. They know
1810 program submissions. They have seen a lot of these
1811 solicitations. They really can do an incredible job in terms
1812 of whether or not the proposal is internally consistent and
1813 has a logic model that works. Those kinds of things are
1814 important.

1815 Once I get that, I use that to create a pool. That is
1816 where I pull from. I don't go just anywhere in the list. I
1817 really take that into consideration.

1818 Mr. PLATTS. So you did, in essence, eliminate the lower
1819 three-quarters?

1820 Mr. FLORES. Yes, sir.

1821 Mr. PLATTS. Okay.

1822 Chairman WAXMAN. The gentleman's time has expired.

1823 Mr. PLATTS. Will we have another round, Mr. Chairman?

1824 Chairman WAXMAN. Yes, if we have time.

1825 Mr. PLATTS. Thank you, Mr. Chairman.

1826 Chairman WAXMAN. Mr. Walz?

1827 Mr. WALZ. Thank you, Mr. Chairman and Ranking Member,
1828 for extending this courtesy to allow me to come before you
1829 today.

1830 Mr. Flores, thank you for being here.

1831 I represent the First District of Minnesota. That

1832 | includes Winona State University. At Winona State
1833 | University, that is where the National Child Protection
1834 | Training Center is housed, and the mission of this center is
1835 | the only federally-funded program that has as its goal the
1836 | significant reduction if not elimination of child abuse in
1837 | the United States, and has a practical, concrete, peer
1838 | reviewed plan to achieve this goal. They trained over 10,000
1839 | prosecutors, social service workers, teachers in all 50
1840 | States across the Nation, and has been recognized and
1841 | recognized by the peer review process as one of your top four
1842 | grant recipients or, in this process, I guess, suggestions.

1843 | I will have to be quite honest with you. I do have a
1844 | bias in this. I am a public school teacher. I started as an
1845 | elementary, middle school, and high school teacher, and I am
1846 | a parent of two small children. The elimination of child
1847 | abuse and the cost to this Nation morally is incalculable.
1848 | The financial impact of it is estimated somewhere around \$78
1849 | billion, as you are well aware, because you are leading a
1850 | Department that is number one priority is to address this
1851 | issue.

1852 | Have you been to Winona State and the National Child
1853 | Protection Training Center?

1854 | Mr. FLORES. I have not, sir.

1855 | Mr. WALZ. We will extend you that invitation. Winter is
1856 | the best time to come.

1857 [Laughter.]

1858 Mr. FLORES. And I am listening to where we are going
1859 here.

1860 Chairman WAXMAN. Can you golf in the winter time?

1861 Mr. WALZ. We are listening to the questions here and I
1862 understand and I am listening and trying to get a handle on
1863 this.

1864 Winona State sent in a letter then after they were
1865 denied, after they were ranked fourth out of all of these,
1866 and it said because of the number of quality of applicants
1867 received, the selection process was highly competitive. A
1868 peer review panel reviewed applications against the criteria
1869 set out in the solicitation.

1870 And then they sent back what was wrong or what was
1871 right, and it came back with a list of strengths only. Some
1872 things like project offers both innovative approach and
1873 advancement of current practices. Clear connection between
1874 goals and objectives desired of the program in the reduction
1875 of child abuse. Detailed description of specific program
1876 implementation, strategies detailed. And the last one said
1877 this: ``Applicant clearly has the organizational capacity
1878 and experience to manage the project.'' Okay.

1879 And I listened to what you are saying, and you said, I
1880 have to make the final determination. It was very specific
1881 that child abuse reduction was one of the criteria that was

1882 put out to them. Hundreds and hundreds of hours were put
1883 into the application process. They met all these. And yet,
1884 when it came out, you awarded a grant to Victory Outreach,
1885 who said, thank you but we don't have the organizational
1886 capacity to take the grant and they handed it back. You were
1887 told that by the peer review process and you still awarded
1888 the grant.

1889 In retrospect, would it be wise to take some of the
1890 suggestions from the peer review process, like whether they
1891 can spend the money or not?

1892 Mr. FLORES. Mr. Walz, first let me say I am very
1893 familiar with the work that Victor Vieth and the organization
1894 do at Winona and I support it 100 percent. I am a former
1895 prosecutor and have done these kinds of cases, so this is
1896 also very important to me as a dad of both a boy and two
1897 girls.

1898 What I will say is this: we had very little funding in
1899 this particular pot. The Justice Department administers a
1900 number of very closely related training programs. We have
1901 the National Children's Alliance, which funds child advocacy
1902 centers across the Country which provide very similar
1903 training and support. We had awarded a \$700,000 grant to the
1904 National District Attorney's Association, which is a related
1905 entity, as you know. They are associated with the
1906 organization at Winona.

1907 So, based on looking at how much money we were already
1908 investing in terms of child protection, child sexual abuse
1909 and exploitation, the fact that I had recommended a \$700,000
1910 award to NDAA, I did not feel that we could go ahead and
1911 continue to fund out of a pot of money which was just \$8.6
1912 million.

1913 Mr. WALZ. On that line of logic, though, it brings me
1914 back to the Best Friends. You went ahead and offered Best
1915 Friends \$1 million out of this, even though they were far
1916 lower, 80th or something, out of this group, even though the
1917 Bush Administration had put \$213 million previously into
1918 this. So the argument is we are already funding the child
1919 abuse things, there is no more need for this, whatever. That
1920 is a tough argument to make when you went ahead and funded
1921 one that the Bush Administration said was fully funded and
1922 you went ahead and gave them more anyway.

1923 I am trying to understand. I guess my process comes to
1924 what many of the Members are saying here. Are we paying
1925 those panels to review this, because I would like to have the
1926 IG look at this, because if those panels are totally
1927 disregarded and the hundreds of hours that are spent by
1928 people out in there, we are wasting taxpayer money.

1929 My problem is on the criteria of this. If this is going
1930 to be that Director Flores is going to decide, put that out
1931 in the grant application. Put down whatever you want, but at

1932 | the end of the day Director Flores will decide. That may not
1933 | be what I agree with, but at least that is going to be a fair
1934 | and honest answer on this, because I see no reason. It was
1935 | specifically directed to address child abuse, and now you are
1936 | saying it was a pot of money and we moved it around.

1937 | They, in their best faith effort at Winona State
1938 | University and Victor Vieth, did everything the grant asked.
1939 | Their peer reviewed process said you did everything that we
1940 | asked. Others that didn't do that and couldn't spend the
1941 | money were awarded the grant, and I am trying to wrap my mind
1942 | around this. I am not here to debate with my colleagues the
1943 | merits of the Golf Association, which I fully think does what
1944 | they say they are going to do, nor the Boys or Girls Clubs,
1945 | but, as the Chairman has said, there is a very interesting
1946 | defense of arbitrary earmarking going on from people in this
1947 | room. That doesn't make any sense to me if we are trying to
1948 | streamline focus.

1949 | As I read to you again, this is the only one you fund
1950 | that has a practical, concrete peer reviewed plan to achieve
1951 | this.

1952 | And you said at the end, Mr. Flores, you are just trying
1953 | to make sense of how this all fits together in the criteria
1954 | of what you are doing. Are you doing that through
1955 | qualitative analysis, or how are you coming up with what fits
1956 | in the overall plan?

1957 Chairman WAXMAN. The gentleman's time has expired.

1958 Do you want to respond to that?

1959 Mr. FLORES. Mr. Walz, Congressman, I do take into
1960 consideration not just information that is subjective, but we
1961 have a substantial amount of hard data in terms of the
1962 different programs that we evaluate. We do a substantial am
1963 the of data collection in our office. We fund that. So it
1964 is not a question of my not being aware of the utility and
1965 the importance.

1966 But I would say again that the Department, in particular
1967 my office, funds a substantial arm the of child abuse and
1968 neglect work. This is not something that is not important to
1969 me. I certainly hear the agitation in your voice, and your
1970 heartfelt feeling that I made a bad decision.

1971 Chairman WAXMAN. Mr. Flores, I am going to have to
1972 interrupt you because we are running out of time and we want
1973 to close out the hearing and give each side an opportunity to
1974 make further comments.

1975 I want to point out that you said you restricted
1976 yourself to the top quarter, and yet Best Friends is not even
1977 in the top 50 percent.

1978 You state in your testimony you believe you awarded
1979 these grants in a transparent and good faith manner, but that
1980 is not what we have heard from other officials at the
1981 Department of Justice. We talked to five current and former

1982 officials, including Civil Service program managers, career
1983 supervisors, and even a Bush Administration appointee, and
1984 every single one of them came to the opposite conclusion.

1985 Let me give you an example. We interviewed one of your
1986 program managers who served as a peer reviewer on this
1987 solicitation, and we asked her whether the process was
1988 transparent. She said no. We asked whether it was fair, and
1989 she said absolutely not. And we asked her whether it served
1990 the taxpayers' interests, and she said no it does not.

1991 We also interviewed your Associate Administrator, Jeff
1992 Salawaski, and this is someone with 18 years of experience
1993 who supervised the peer review process. He was familiar with
1994 other Justice Department funding streams. Here is what he
1995 said. ``Whatever factors you are going to use to weigh and
1996 sort out the pool should be very clearly produced in the
1997 solicitation so that everyone understands that.'' When we
1998 asked him whether he thought the process was fair or
1999 transparent he said no.

2000 We also interviewed your superior, the Assistant
2001 Attorney General for Justice programs, Regina Schofield, and,
2002 like you, she was a Senate confirmed Presidential appointee.
2003 She told us, ``You can't create categories after grants have
2004 been received because there is no transparency in the
2005 process.'' She said it is not fair to the grantees, and she
2006 said you did not have candor or clarity in your process. She

2007 | said, ``I am for candor and clarity, especially when dealing
2008 | with the people's money, and that did not happen and I am
2009 | upset that it did not happen.``

2010 | We wanted to interview your Chief of Staff, Michelle
2011 | Deconti, but she refused to answer our questions and invoked
2012 | the Fifth Amendment against self-incrimination.

2013 | Mr. Flores, it seems that you are the only person at the
2014 | Department of Justice who thinks your process was fair,
2015 | transparent, and served the interest of the taxpayers.

2016 | I am not asking you to respond, but I just want to make
2017 | that as my closing comment and will be pleased to receive
2018 | comments from you further in the record, but I do think that
2019 | is important to set all of that out.

2020 | We have a unanimous consent request that two letters be
2021 | submitted to the record, one that I sent to Mr. Davis and the
2022 | other that he sent to me. Without objection, that will be
2023 | the order.

2024 | Mr. DAVIS OF VIRGINIA. Thank you.

2025 | [The referenced information follow:]

2026 | ***** COMMITTEE INSERT *****

2027 Chairman WAXMAN. I would like to now turn it over to Mr.
2028 Davis for any closing comments.

2029 Mr. DAVIS OF VIRGINIA. Mr. Chairman, just a couple
2030 sentences. Mr. Platts wanted one clarifying question, if we
2031 could do that very quickly.

2032 Mr. PLATTS. Thank you, Mr. Chairman. Thank you, Ranking
2033 Member.

2034 Just a follow-up, Mr. Flores. In getting to how you did
2035 the scoring and how you took it, you said your second review
2036 was taking, in essence, the top 25 percent. The applicant
2037 that I have been contacted by was scored first in their panel
2038 and 87.5 on the score, and I guess I don't understand how you
2039 are saying you took the top 25 percent when five of those
2040 that were funded were ranked 47th, 42nd, 33, 53, and 26, that
2041 being the only one that would be in the top 25 percent.

2042 If you took the top 25 percent, how did four of those
2043 others that were way out of the top 25 percent make that
2044 second cut, and especially when they were ranked in their
2045 panels, one was number five in a panel, one was number six in
2046 the panel? How do you reconcile that if you took the top 25
2047 percent? And you said you give great weight to the staff
2048 reviews, because they are the ones who are administering
2049 these programs.

2050 Mr. FLORES. Congressman, do you have a copy of the
2051 decision memo? Is that what you are looking at? I just want

2052 | to refer you to some parts of that. If you have a copy of
2053 | that, what you will see is that I was referring to the top.
2054 | Ultimately they fell into the top 20 percent of peer review
2055 | scores, not the actual out of 100 they were 50 or 47. I was
2056 | going by the scores.

2057 | That is what is really relevant, not the number where
2058 | they fit in, because conceivably they could have all gotten
2059 | scores of 98, 99, 97, and they would have all been clustered
2060 | at the top. We still would have had to make some kind of
2061 | decision.

2062 | The point that I would make is that, again, I had to ask
2063 | questions once I looked at the top-scoring pool of
2064 | applicants. So yes, if you take a look at the decision memo I
2065 | actually made sure that the specific peer review score was
2066 | part of each of the award recommendations so that there would
2067 | be no confusion over what the score was that each of those
2068 | organizations received.

2069 | Chairman WAXMAN. We are going to run out of time here.

2070 | Mr. DAVIS OF VIRGINIA. Let me just make one quick point,
2071 | because we have to go vote. Number one is that the scores
2072 | were different scorers, so you had one person scoring under
2073 | one criteria or another, and you are comparing almost apples
2074 | to oranges when you look at the score because you have
2075 | different people with different criteria, and some are more
2076 | lenient than others scoring.

2077 I would just note thank you very much.

2078 Mr. PLATTS. Thank you, Mr. Administrator. Thank you,
2079 Mr. Chairman.

2080 Mr. DAVIS OF VIRGINIA. There is no indication here that
2081 any laws were broken or any regulations. What we have is a
2082 disagreement, obviously, among grantors, grantees, and
2083 Members--this is why we fight over earmarks the same
2084 way--over some of your decisions. I may or may not agree
2085 with the decisions, but I think you have, at least to my
2086 satisfaction, explained why you made them.

2087 Just one quick clarifying note. The Assistant Attorney
2088 General, Regina Schofield, her program was funded way down,
2089 the Native American Children, but you funded that, but she
2090 had the ability to overrule your decision, did she not, if
2091 she didn't like it?

2092 Mr. FLORES. Yes.

2093 Mr. DAVIS OF VIRGINIA. And in her testimony she never
2094 said there were any violations of law or regulations, just a
2095 disagreement on these, and she chose not to overrule. So I
2096 just add that.

2097 Mr. Waxman, thank you for holding this hearing.

2098 Mr. Flores, thank you. You have acquitted yourself
2099 well. Thank you.

2100 Mr. ISSA. Mr. Chairman, I don't want to speak but just
2101 to ask that, considering the scope of this hearing, it

2102 | certainly should open Pandora's Box to look at whether or not
2103 | in the future we regulate grant writing in a way that would
2104 | prevent this kind of discretionary in the absence of some
2105 | sort of review process, so I would hope the Chairman would
2106 | look at the broader picture and hold a follow-up hearing on
2107 | how we could improve Government.

2108 | Chairman WAXMAN. I think you have raised a very good
2109 | question. If we are going to have awards granted on merit
2110 | and there is a process for merit, then that should dictate
2111 | the selection, maybe with some discretion but grants should
2112 | be based on merit. If they are based on the whims of the
2113 | people in charge, then we ought to clarify that, but the
2114 | Congress ought to look it over to see whether we think it
2115 | makes sense for the American people.

2116 | That concludes our hearing. We thank again Mr. Flores
2117 | for being here. We stand adjourned.

2118 | [Whereupon, at 11:30 a.m., the committee was adjourned.]