S. HRG. 107–769

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 2778

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2003, AND FOR OTHER PURPOSES

Department of Commerce
Department of Justice
Department of State
Federal Communications Commission
Federal Trade Commission
Nondepartmental witnesses
Securities and Exchange Commission
The judiciary

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

TUESDAY, FEBRUARY 26, 2002

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:01 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Mikulski, Leahy, Kohl, Murray, Reed, Gregg, and Domenici.

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

STATEMENT OF JOHN ASHCROFT, ATTORNEY GENERAL

OPENING REMARKS OF SENATOR ERNEST F. HOLLINGS

Senator HOLLINGS. General Ashcroft, they have a vote on and maybe it would be better for your presentation if we run to get that vote and come back quickly.

Attorney General ASHCROFT. Sure.

Senator HOLLINGS. Let me then call the committee to order. There are two votes. We will at least let you present your statement here. It will be included in its entirety. We welcome you to the committee and you can highlight your statement as you wish or deliver it in full. I think that would be the better way, since we have two votes.

ATTORNEY GENERAL OPENING STATEMENT

Attorney General ASHCROFT. Mr. Chairman and members of the subcommittee, I am honored again to appear before this subcommittee to present the President's budget request for the Department of Justice.

First, an overriding priority of this Department of Justice and of this budget is to protect America against acts of terrorism and to bring terrorists to justice. Since my last appearance before you, America and the world have been awakened to a new threat from an old evil, terrorism.

I appear before you today acknowledging that September 11 alerted us to a danger that a number of you on this subcommittee have labored long and hard to mitigate and to prevent. To the degree that we find ourselves in a position to respond effectively to the challenges posed by terrorism, it is because of your foresight.

I appreciate the leadership of the members of this subcommittee in providing to the Department of Justice the necessary resources to meet the terrorist threat and to improve the Nation's border security. Your direction to develop an interagency counterterrorism plan, conduct preparedness exercises, to train and equip the Nation's first responders, maintain a counterterrorism fund for emergency circumstances, all of these things have made this a safer Nation.

The fiscal year 2003 budget request that I present to you today builds upon your support and seeks to enhance further the Department's ability to prevent and combat terrorism, and even as the men and women of the Department of Justice go about the urgent task of protecting America from terrorism, we do so within a framework of justice that upholds other goals, as well. Indeed, our dedication to identifying, disrupting, and dismantling terrorist networks will help ensure the fair and vigorous enforcement of the law in other areas. We remain committed to reducing the demand and supply of illegal guns, enforcing the gun laws, and protecting civil rights. We recognize, however, the need to prioritize our commitments and to husband our resources. Today, more than ever, lives depend on the careful understanding of our responsibilities and the exemplary performance of our duties.

For fiscal year 2003, the President's budget requests $30.2 billion for the Department of Justice, $23.1 billion in discretionary funding and $7.1 billion for the Department's mandatory and fee-funded accounts. Federal law enforcement programs increase by 13 percent over funding enacted in the fiscal year 2002 Department of Justice Appropriations Act.

COUNTERTERRORISM BUDGET REQUEST

The Department's fiscal year 2003 budget seeks $2 billion for program improvements and for ongoing activities funded in the fiscal year 2002 counterterrorism supplemental. Resources are also requested for improving immigration enforcement and services, enhancing Federal detention and incarceration capacity, reducing the availability of illegal drugs, and supporting proven programs aimed at reducing drug use, providing services for the Nation's crime victims, protecting civil rights, ending trafficking in human beings, providing streamlined resources to support State and local law enforcement, and defending the interests of the United States in legal matters.

To help secure our Nation's borders, we are proposing program improvements totaling $856 million, including $59.1 million from fee-funding for the Immigration and Naturalization Service. Of this amount, $734 million is dedicated to improving border security. We are requesting $362 million to begin a multi-year effort to provide a comprehensive land, sea, and air entry-exit system for the United States and $372 million to hire 570 new Border Patrol agents and

additional immigration inspectors to improve air, sea, and land ports-of-entry inspections.

As a result of the attacks of September 11, the FBI, with the cooperation of other Federal, State, local, and international law enforcement, is conducting the largest criminal investigation in history. In the 2002 counterterrorism supplemental, this subcommittee led Congress in providing much-needed assistance to the FBI in responding to and investigating the terrorist attacks, and we are deeply grateful for your leadership in this respect. Our 2003 budget builds on this assistance with a request of $411.6 million, including funding for 263 new FBI special agents; $223 million for increased intelligence, surveillance, and response capabilities; $109 million for information technology projects; and $78 million for enhanced personnel and information security.

The establishment of the Joint Terrorism Task Force program has enhanced the FBI's ability to promote coordinated terrorism investigations among FBI field offices and their respective counterparts in Federal, State, and local law enforcement agencies. Our budget seeks $15.7 million to support a total of 56 Joint Terrorism Task Forces throughout the country. That is one in each FBI field office.

As accused terrorists are brought to justice in the Federal court system, there is an increased need for enhanced security measures. To support the heightened security required by the United States Marshals Service at the Federal courthouses, our budget seeks $34.7 million to close security gaps at courthouse facilities, with the greatest physical security deficiencies being addressed. Also, it seeks the resource to purchase new security equipment for new courthouses and for those undergoing significant renovation. It seeks those resources to provide additional security personnel for terrorist-related court proceedings and to provide security staffing to keep pace with the opening of new courthouses and the creation of new judgeships.

Another critical element in our battle against the terrorist threat is working to develop and enhance interoperable databases and telecommunications systems for the Department's law enforcement activities. Our budget seeks $60 million to continue narrowband investment in radio infrastructure for key areas such as New York and along the northern and southwestern borders.

DRUGS BUDGET REQUEST

As I mentioned earlier, our efforts to combat terrorism enhance enforcement of the law across the board. The heightened vigilance of law enforcement and the increased awareness and sense of responsibility of citizens spills over into more effective enforcement of the law in all areas and we are working to reduce both the demand for and the availability of illegal drugs. Drugs not only weaken the fabric of our society, but also threaten our national security.

The Organized Crime Drug Enforcement Task Force program is the centerpiece of the Department of Justice's drug strategy to reduce the availability of drugs. That task force, OCDETF, combines the talent of experienced Federal agents and prosecutors with support from State and local law enforcement, thereby uniquely positioning OCDETF to conduct multiple coordinated investigations

across the country to root out and eliminate all pieces of a drug organization.

For fiscal year 2003, our budget seeks $14.8 million through OCDETF to provide field support for DEA's Special Operations Division coordinated investigations. The Department's fiscal year 2003 budget also seeks $13 million for drug abuse and crime prevention programs under the Office of Justice Programs. Our budget includes $52 million for the drug courts program, $77 million for the residential substance abuse treatment program, and that is a 10-percent increase in funding over fiscal year 2002.

VOTING AND CIVIL RIGHTS ENFORCEMENT

Essential to this republic is the freedom and privilege of every citizen to vote. The Federal Government has become an active participant in establishing rules for the conduct of elections on matters ranging from voter registration to protection against discrimination. In fiscal year 2003, the Department requests $400 million for a new 3-year program, and in the 3 years that would total $1.2 billion, for States to improve State and local jurisdictions' voting technologies and administration, including voting machines, registration systems, voter education, and poll worker training. This new program will provide States with matching grants for election reform, so the $1.2 billion should have the impact of a $2.4 billion investment.

The Department of Justice is charged with protecting the civil rights of all Americans. Our fiscal year 2003 budget seeks $3 million for the Office of the Inspector General to address a statutory requirement of the USA PATRIOT Act for the review of complaints alleging abuses of civil rights and liberties and to provide audit oversight of the Department's counterterrorism programs. Further, we request $2.8 million to promote effective investigation, prosecution, and response to hate crimes.

Senator HOLLINGS. General, if you could hold on there, we have only 2 minutes to vote.

Attorney General ASHCROFT. I understand. Thank you.

Senator HOLLINGS. We will be right back. The committee will be in recess.

The committee will come to order. I apologize, Mr. Attorney General, but you are used to this. Have you completed your statement?

Attorney General ASHCROFT. I would like to continue with my statement, if I may.

Senator HOLLINGS. Please do.

OTHER JUSTICE DEPARTMENT REQUESTS

Attorney General ASHCROFT. Thank you, Mr. Chairman, members of the committee. We at the Department of Justice are committed to building and strengthening an immigration services system that is effective, that ensures integrity, and promotes a culture of respect. We are making good progress toward achieving President Bush's goal of a 6-month average processing time for all applications. To help ensure additional progress, our budget request seeks $40 million to begin implementation of the administration's comprehensive restructuring of the Immigration and Naturalization Service.

The Department of Justice is charged with safe, secure, and humane confinement of detained persons awaiting trial, sentencing, or awaiting immigration proceedings. The need for Federal detention bed space has more than doubled in the last 5 years, from 32,000 detainees in 1996 to 67,000 detainees in the year 2001.

To enhance coordination, to manage the rising detainee population, and exercise financial control of Federal detention operations, which are currently the responsibility of the INS, the Marshals Service, and the Bureau of Prisons, the Office of Detention Trustee was created by Congress last year. That was a wise decision. As you recommended in the fiscal year 2002 conference report, our budget proposes to consolidate the $1.4 billion under the detention trustee to provide bed space for the anticipated detainee population in the custody of the Marshals Service and the INS.

For the Bureau of Prisons, our fiscal year 2003 budget seeks $348.3 million for additional prison activations and for the completion of construction previously authorized by Congress.

Finally, following the September 11 terrorist attacks, Congress passed and the President signed into law legislation establishing the September 11 Victims Compensation Fund of 2001. The value of approved claims through the fund is estimated at $5.4 billion through 2004. Our fiscal year 2003 budget reflects $2.7 billion in estimated victim compensation payments. In addition, the Department's budget includes a total of $41 million for the administrative costs of the fund's special master.

Mr. Chairman, as you well know, September 11, 2001, changed our Nation, redefined the mission of the Department of Justice. Defending our Nation and its citizens against terrorism is our top priority. To fulfill this mission, we are devoting all resources necessary to eliminate terrorist networks, prevent terrorist attacks, bring to justice those who kill Americans in the name of murderous ideologies.

Chairman Hollings, Senator Gregg, members of the subcommittee, what I have outlined for you is the principal focus of President Bush's fiscal year 2003 budget request for the Department of Justice. Our request builds upon the firm foundation laid by Congress in the days and weeks following September 11, a foundation of resolve backed by resources and American strength married to American purpose.

I want to thank you for your leadership and for the leadership of this subcommittee both in providing the Department critical additional funds in the wake of the terrorist attacks and in supporting the work that lies ahead.

And if I may, I would like to thank the members of your staff, those for whom we so rarely pause to offer public expressions of our gratitude, Lila Helms, Jill Shapiro Long, Dereck Orr of the majority staff, Jim Morhard, Kevin Linskey, and Katherine Hennessey of the minority staff. They all work on an ongoing basis with Justice officials and our staff at the Justice Department to enhance the safety and security of the Nation.

PREPARED STATEMENT

I thank you for your facilitation of this hearing and for your service to the American people and I want to thank them in the same

way. I look forward to working with you on this project proposal and other issues, and Mr. Chairman, I thank you for allowing me to make this statement.

[The statement follows:]

PREPARED STATEMENT OF JOHN ASHCROFT

Mr. Chairman and Members of the Subcommittee: I am both honored and pleased to once again appear before the members of this Subcommittee to present the President's budget request for the Department of Justice. For fiscal year 2003, the President's budget requests $30.2 billion for the Department of Justice, including $23.1 billion in discretionary funding and $7.1 billion for the Department's mandatory and fee-funded accounts. Included in the total amount requested is $548 million for Civil Service Retirement System and Federal Employees Health Benefits Program costs which are currently funded centrally through the U.S. Office of Personnel Management. The first and overriding priority of this budget supports the top priority of the department: to protect America against acts of terrorism and to bring terrorists to justice. The challenges we face are complex and unprecedented.

The Department's fiscal year 2003 budget seeks $2 billion for program improvements and ongoing activities funded in the fiscal year 2002 Counterterrorism Supplemental to support our number one priority. Resources are also requested to address several of the Department's other priorities, including: improving management of immigration services and enforcement; enhancing federal detention and incarceration capacity; reducing the availability of illegal drugs and supporting proven programs aimed at reducing drug use; providing services for the Nation's crime victims; addressing civil rights; providing streamlined resources to support state and local law enforcement; and legal representation and defense of U.S. interests.

PREVENTING AND COMBATING TERRORISM, INCLUDING SECURING THE NATION'S BORDER

In response to the heinous attacks on September 11, 2001, the full resources of the Department of Justice, including the Federal Bureau of Investigation, the Immigration and Naturalization Service, the U.S. Attorneys offices, the U.S. Marshals Service, the Bureau of Prisons, the Drug Enforcement Administration and the Office of Justice Programs, were deployed to investigate these crimes and to assist survivors and victim families. In addition, to combat the threat of terrorism, I have directed the Department of Justice, including all 94 U.S. Attorneys' offices and 56 FBI field offices, to begin implementing the USA PATRIOT Act that was passed overwhelmingly by Congress and signed by President Bush. This offensive against terrorism will enable law enforcement to make use of new powers in intelligence gathering, criminal procedure and immigration violations. With these new provisions, the fight against terrorism will have the full force of the law while protecting Constitutional civil liberties.

The world has changed dramatically since my last appearance before this Subcommittee. You have been instrumental in making sure that our government is poised both to respond to and prevent future terrorist attacks. I appreciate the support of this Subcommittee and that of the Congress in providing the necessary resources required by the Department of Justice to meet the challenges presented by terrorism and to improve the Nation's border security. The Counterterrorism Supplemental appropriation passed this fiscal year provided much needed resources to enable the Department to both prevent future attacks and investigate the terrorist attacks on our country. The fiscal year 2003 budget request that I present to you today builds upon this support and seeks to further enhance the Department's ability to prevent and combat terrorism.

Border Security

Illegal overstays of visitors and others coming temporarily into the United States pose a potential risk to homeland security. Overstays result in approximately 40 percent of individuals remaining in this country illegally. Currently, our Nation does not have a reliable system to track the entry and exit of these individuals in order to determine who may have overstayed. In addition, we do not have sufficient ability to detect, identify and locate short-term visitors who may pose a security risk to the United States. In the wake of September 11, 2001, the need is more urgent than ever to secure the safety of our citizens and our homeland. To secure gaps in our Nation's borders, we are proposing program improvements totaling $856 million and $187 million for ongoing activities funded in the fiscal year 2002 Counterterrorism Supplemental appropriation.

In addition, this budget will support an increase of over 2,200 new positions for INS. This request will enable the INS to deploy additional enforcement personnel together with advanced, state-of-the art technology and systems to better prevent illegal entry into the country, target individuals who threaten our safety, and thereby undermine the security of our Nation, and assist with non-citizens entering and exiting the United States. Components of the Border Security initiative include implementing a comprehensive Entry/Exit system, deploying force multiplying equipment, and integrating separate information systems to ensure timely, accurate, and complete enforcement data.

Our fiscal year 2003 budget includes a total of $380 million, of which $362 million is new funding, to provide initial funds for a multi-year effort to develop a comprehensive land, sea, and air Entry/Exit system for the United States. The new Entry/Exit system will provide enhanced information technology and upgraded facilities along our Nation's borders. This budget also increases personnel for INS to carry out its enforcement mission. For fiscal year 2003, we are seeking $141.3 million to hire 570 new Border Patrol agents and for other border security related increases; which would complete the addition of the 5,000 agents authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by the end of fiscal year 2003. This will increase the number of Border Patrol agents to a record level of more than 11,000 agents, more than double the level in 1993. Specifically, this request includes $76.3 million to hire, train, and deploy an additional 570 Border Patrol agents, $25 million to re-deploy approximately 285 Border Patrol agents to the Northern Border, $10 million for twin engine helicopters, $2 million for a comprehensive study of INS law enforcement compensation, and $28 million to enhance INS' ENFORCE database and processing system and add biometric equipment.

INS must balance its resources between its dual responsibilities of facilitating legal travel across our borders—tens of millions of people a year cross our borders—and detecting those who should not be allowed to enter the United States. To facilitate achievement of these goals in the post-September 11th world, our budget requests $85.9 million to enhance air, sea and land ports-of-entry inspections. These additional resources will enable the INS to hire, train, and deploy 700 additional inspectors to enhance security at air and sea ports-of-entry and 460 inspectors to enhance border security at land ports-of-entry.

The INS Intelligence program provides strategic and tactical intelligence support to INS offices enforcing the provisions of the Immigration and Nationality Act, and assists other federal agencies in addressing national security issues. INS intelligence efforts also support coordination of anti-smuggling/terrorism strategies with the FBI; completion of a U.S.-Canada bilateral common threat assessment among all concerned agencies on border zones' vulnerabilities; and increased automation in the intelligence collection and analysis process. The fiscal year 2003 budget includes an enhancement of 78 positions and $10 million to expand the INS intelligence program.

In the days following the September 11th terrorist attacks on America, homeland security received a new and urgent emphasis within the law enforcement community, including the INS. To provide the INS with adequate resources to meet this challenge, our budget requests $6 million to enhance INS' participation in Joint Terrorism Task Forces (JTTF). JTTFs are a critical component of our coordinated law enforcement strategy. This funding will enable INS to enhance its support of the FBI's investigation into the September 11th terrorist attacks. These task forces conduct investigations of other foreign threats to national security and work cooperatively with other federal law enforcement and intelligence agencies, placing particular emphasis on disrupting and dismantling terrorist cells and supporters in the United States by using criminal and administrative tools.

Our budget also seeks resources for additional legal positions to litigate special interest cases involving issues of terrorism, foreign counterintelligence, national security and other sensitive matters, such as cases involving human rights abuses. Special interest cases require multiple levels of coordination throughout the government, and attorneys must frequently work with other law enforcement and intelligence agencies both inside and outside the United States.

To effectively combat the terrorist threat that faces our Nation, the INS must have a sufficient physical and information technology infrastructure to support and protect its employees. To support our facility and security needs, the fiscal year 2003 budget includes an increase of $145 million for construction and an additional $13 million and 172 positions for security upgrades. The Department's construction request for INS will provide for the planning, design, and construction of INS facilities along the border. Many of the Border Patrol and Inspection facilities were built prior to the 1970's and cannot accommodate the tremendous growth in the number

of agents. The requested resources for physical security enhancements will allow INS to implement security improvements at 157 locations nationwide based on vulnerability to terrorist attacks and general security requirements.

Our fiscal year 2003 budget also seeks $83.4 million and 15 positions to expand and upgrade INS computer systems, including desktop computers, network servers, re-engineered data communications and enhanced computer security. INS data communications technology has not kept pace with increased demand. These resources are required to design, build and sustain an information technology infrastructure that can accommodate INS' steadily increasing workload and rapidly growing workforce. An additional $3.7 million is requested to fund training needs to expand fraudulent document training, curriculum development, materials and incidental expenses related to the Trafficking Victims Protection Act of 2000.

Enhancing the FBI's Counterterrorism Capabilities

As a result of the events of September 11, 2001, the FBI, with the cooperation of other Federal, state, local and international law enforcement, is currently conducting one of the largest criminal investigations in the history of the United States. Because of the support of this Subcommittee and that of Congress, the FBI was provided $745 million in the fiscal year 2002 Counterterrorism Supplemental appropriation for costs to respond to and investigate the September 11th terrorist attacks, including additional resources for Trilogy (the FBI's information technology upgrade program), the National Infrastructure Protection Center, Computer Analysis Response Teams, intelligence production, technical programs, and other programs. Given that Congress must consider myriad funding priorities, Director Mueller and I are very grateful for these additional resources provided to the Bureau. The men and women of the FBI continue to be on the front line of our Nation's efforts against terrorism, working in concert with other Federal, state and local agencies to prevent additional terrorist attacks and to bring to justice those who commit crimes against our citizens and our interests. The work of the FBI is critical to winning this war.

Timely and useful intelligence is key to preventing terrorist attacks. The FBI's efforts to identify and neutralize terrorist activities require a comprehensive understanding of current and projected terrorist threats. In order to enhance the FBI's counterterrorism programs, our budget seeks $411.6 million in program improvements, including additional resources to enhance information technology projects, surveillance, intelligence, investigative and response capabilities, the aviation program, and security. Our budget also reflects $238 million in funding for ongoing activities funded in the fiscal year 2002 Counterterrorism Supplemental appropriation.

For information technology critical to the FBI's efforts to combat the threat of terrorism, our total budget request for the FBI includes an increase of $109.4 million to support several new and ongoing projects. These resources will support projects such as the FBI's efforts to scan and digitally store 5 million documents related to terrorist groups and organizations, data management and warehousing, collaborative capabilities, information technology support for Legal Attachés, continuity of operations for FBI Headquarters and offsite facilities, state-of-the-art video teleconferencing capabilities and increased staffing and funding to support FBI mainframe data center upgrades. Funding is also sought to perform necessary maintenance on enterprise-wide legacy systems, applications and the Trilogy network.

The FBI's Information Assurance initiative will unite security policies, procedures, technologies, enforcement, administration, and training into a comprehensive proactive program. Maintaining adequate system security safeguards is critical. Our budget includes $48.2 million in additional funding for this program. Our budget also seeks an additional $29.9 million to enhance other security programs at the FBI, including funds for headquarters and field personnel, security training and background investigations of personnel who are granted access to FBI information or facilities, guard services and other items.

The Department's fiscal year 2003 budget requests $61.8 million in additional funding to enhance the FBI's surveillance capability to collect evidence and intelligence. These resources will enhance both physical and electronic surveillance capabilities and enable automated sharing of information collected as electronic surveillance intelligence and/or evidentiary material.

Our budget also seeks $46.1 million for the FBI's aviation program to fund personnel, aviation assets and operational support. Resources are also sought to expand several critical components of the FBI's overall counterterrorism program, including $31.6 million to expand the FBI's response capabilities, $32.3 million to provide enhanced technical program support, $21 million to enhance the National Infrastructure Protection and Computer Intrusion Program's ability to respond to computer intrusions and threats, $7.7 million for additional analytical capacity throughout the

FBI, and $6.4 million for the FBI's Strategic Information and Operations Center and the New York field office's operation center.

The establishment of the Joint Terrorism Task Force (JTTF) program has enhanced the FBI's ability to promote a coordinated effort among FBI field offices and their respective counterparts in Federal, state and local law enforcement agencies in connection with terrorism investigations. Our budget seeks $15.7 million to support a total of 56 JTTFs throughout the country. Additional resources will fund rental space and renovation of offsite facilities, as well as operational expenses, such as state and local overtime and supplies. To continue support for the FBI's toll-free line for collecting tips from the public on suspected terrorist activities, an additional $1.5 million is included in our budget request.

Additional Enhancements To Counterterrorism Infrastructure

As accused terrorists are brought to justice in the Federal Court system, there will be a need for enhanced security measures. The United States Marshals Service protects the Federal Courts and ensures the effective operation of the judicial system. To support the heightened security measures at federal courthouses as a result of the September 11th attacks, our budget seeks $34.7 million to: (1) close security gaps at courthouse facilities which have the greatest physical security deficiencies; (2) provide security equipment for new courthouses and those undergoing significant renovation; (3) provide additional security personnel for terrorist-related court proceedings; and (4) provide security staffing to keep pace with the opening of new courthouses and the creation of new judgeships. To enhance the ability of the U.S. Marshals Service to participate in the FBI's Joint Terrorism Task Force program, we are seeking $2.4 million in fiscal year 2003. Nine million in additional funding also is being requested to provide increased security and detainee staffing along the Southwest Border.

Another critical element in our battle plan against the terrorist threat is working to develop and enhance interoperable databases and telecommunications systems for the Department's law enforcement activities. The pooling of information resources capabilities can greatly increase efficiency and decrease the time involved in cases. For these efforts, our budget seeks $60 million to continue narrowband investment in radio infrastructure for key areas such as New York and along the Northern and Southwest borders. An increase of $23 million is also requested to continue the development and deployment of the Joint Automated Booking System and a joint fingerprinting system, that integrates INS' IDENT fingerprinting system with the FBI's IAFIS system. To support additional information and anti-terrorism physical security measures at the Drug Enforcement Administration, we are requesting $24.7 million.

The fiscal year 2003 budget request for the Department seeks $35 million in the Attorney General's Counterterrorism Fund to reimburse DEA's Special Operations Division for the cost of providing intelligence support to the FBI and other agencies conducting counterterrorism activities. This funding will complement the FBI's own intelligence capacity by providing additional collection and analysis capabilities to fight terrorists. For the Department's Office of Intelligence Policy and Review, $2 million is requested to address an anticipated increase in Foreign Intelligence Surveillance Act requests. The Department's budget request also includes $3 million to assess the vulnerability of chemical facilities.

Counterterrorism Coordination in the Department of Justice

Consistent with Section 612 of the Department's fiscal year 2002 Appropriations Act, the President's Budget includes a proposal to enhance coordination of the Department's counterterrorism efforts. Our proposal will consolidate this coordination effort in the Office of the Deputy Attorney General. The budget includes a total of $2 million to fund a permanent cadre of well-qualified staff to support the Deputy Attorney General in coordinating all Department of Justice efforts to protect the United States against the threat of terrorism. Under the proposal, I have directed the Deputy Attorney General to be the individual responsible for coordinating all functions of the Department of Justice relating to national security, particularly the Department's efforts to combat terrorism directed against the United States. To assist the Deputy Attorney General in this effort, I am also establishing the National Security Coordination Council (NSCC) of the Department of Justice, which will be directed by the Deputy Attorney General. The NSCC will coordinate policy, resource allocation, operations, long-term planning and information sharing. The NSCC will also be a repository of expertise and a forum through which the Deputy Attorney General will be prepared to represent the Department in interagency forums. Mr. Chairman, we are committed to working with you, Senator Gregg and members of the Subcommittee to strengthen the Department's counterterrorism programs.

SUPPORTING VICTIMS OF CRIME

The World Trade Center, Pentagon, and Pennsylvania tragedies were moments of indefinable horror and grief for this Nation. Although no amount of assistance can ever begin to compensate the surviving victims of the September 11th tragedies or the families and loved ones, the Department is committed to using the resources available to help victims and families of those who were physically injured or killed as a result of the terrorist attacks on September 11th. While we can never undo the damage that has been done, this fund will assist thousands of individuals and families in rebuilding lives that were shattered by the indiscriminate evil of terrorism.

Following the September 11th terrorist attacks, Congress passed and the President signed into law the Air Transportation Safety and System Stabilization Act (Act). The Act established the September 11th Victim Compensation Fund of 2001 (Fund) to provide a permanent and indefinite appropriation for making payments on approved claims to personal representatives of deceased individuals and those physically injured as a result of the terrorist-related aircraft crashes that day. The value of approved claims, through 2004, is estimated at $5.4 billion. Our fiscal year 2003 budget reflects the $2.7 billion in estimated payments for Victim Compensation payments. In addition, the Department's budget includes a total of $41 million for the administrative costs of the Fund's Special Master.

For the Department's Crime Victims Fund, we are seeking $50 million to fully fund the Emergency Terrorism Reserve and to provide $25 million in additional assistance for the states. The Emergency Terrorism Reserve may be used by the Department to respond to incidents of terrorism and mass violence by providing supplemental grants to states for victim compensation and victim assistance and by providing direct compensation to victims of international terrorism occurring abroad.

IMPROVING MANAGEMENT OF IMMIGRATION SERVICES AND ENFORCEMENT

The Administration is committed to building and strengthening an immigration services system that ensures integrity, provides services accurately and efficiently, and emphasizes a culture of respect. The INS is tasked with upholding this commitment and ensuring that resources are used effectively to manage and deliver immigration services. Our restructuring plan for INS will create the organizational structure to support the President's goal of achieving a 6-month average processing time for all applications. Mr. Chairman, I am personally committed to working with you and the Members of the Subcommittee on the INS restructuring proposal so that we may improve benefits processing and strengthen enforcement of our immigration laws. For fiscal year 2003, our budget request seeks $40 million to begin implementation of the Administration's comprehensive restructuring of the INS. To attain the President's goal of a six-month processing time for all applications, we are also seeking an additional $50.5 million from fee collections. An additional $1.5 million is sought to enhance the statistical capabilities of INS' Office of Policy and Planning and to expand the successful Alternatives to Detention program.

For the Executive Office of Immigration Review, the fiscal year 2003 budget seeks an additional $10 million, including $800,000 in redirected resources, to coordinate with INS initiatives, which are anticipated to increase the Immigration Judge caseload and the Board of Immigration Appeals caseload by 27,800 cases.

MANAGING INCREASED FEDERAL DETENTION AND INCARCERATION CAPACITY

The Department of Justice is charged with the safe, secure, and humane confinement of detained persons awaiting trial, sentencing, immigration proceedings or removal from the United States. The need for federal detention bed space has more than doubled in the last five years, from 32,000 detainees in 1996 to 67,000 detainees in 2001. This dramatic increase has resulted in greater dependence on state and local governments and private contractors to provide bed space for federal detainees. Currently, the INS, U.S. Marshals Service and the Bureau of Prisons are responsible for detaining prisoners. To enhance coordination, manage the rising detainee population, and exercise financial control and efficiency in federal detention operations, the Office of the Detention Trustee was created in the Department of Justice. For fiscal year 2003, our budget proposes to consolidate $1.4 billion under the Detention Trustee to provide bed space for the anticipated detainee population in the custody of the U.S. Marshals Service and the INS. Our budget seeks an increase of $95.6 million for the Department's detention programs. Total funding includes resources to accommodate detention space for housing INS detainees, to house U.S.

Marshal detainees, and to fund the increase in the oversight capabilities of the Office of the Detention Trustee.

For the Bureau of Prisons, our fiscal year 2003 budget seeks $348.3 million for additional prison activation and completion of previously authorized construction projects. Specifically, $206 million is included to continue construction of a medium security facility, a secure female facility, and to expand three other facilities. For additional prison activations and an institutional population adjustment, $142.3 million is included in our fiscal year 2003 budget. This additional funding will provide resources to activate four new facilities, including Federal Correctional Institution (FCI)—Glenville, West Virginia, United States Penitentiary (USP)—Big Sandy, Kentucky, USP-McCreary County, Kentucky, and USP-Victorville, California, and to expand USP Marion, Illinois and FCI Safford, Arizona. These facilities will add over 5,000 critically needed beds to reduce overcrowding.

REDUCING THE AVAILABILITY OF ILLEGAL DRUGS AND SUPPORTING PROVEN PROGRAMS AIMED AT REDUCING DRUG USE

Today, more than ever, drug enforcement can play a critical role in protecting our national security by starving the financial base of criminal organizations and depriving them of the drug proceeds that may be used to fund terrorist activities. Drugs not only weaken the fabric of our society, but also threaten our national security. The recent attacks perpetrated on our Nation illustrate the connection between drug trafficking and terrorist attacks. In Afghanistan, the Taliban, which controlled opium production and directly taxed the drug trade, opened its doors to Osama Bin Laden and the al Qaeda organization. Drug trafficking provides terrorists a steady source of resources to finance their operations. Our budget includes a $17.4 million resource reprogramming proposal, utilizing prior year resources available to DEA, to implement an Afghanistan Initiative, Operation Containment, that will employ a multi-faceted approach to identify, target, investigate, disrupt and dismantle transnational heroin trafficking organizations in Central Asia. The established link between the proceeds generated from the sale of Afghan heroin and terrorist activities makes combating heroin production in Central Asia critical to the security of the United States.

The Organized Crime Drug Enforcement Task Force (OCDETF) program is the centerpiece of the Department's drug strategy to reduce the availability of drugs. OCDETF combines the talent of experienced federal agents and prosecutors with support from state and local law enforcement, thereby uniquely positioning OCDETF to conduct multiple coordinated investigations across the country to root out and eliminate all pieces of major drug organizations. For fiscal year 2003, our budget seeks an increase of $14.8 million through OCDETF to provide field support for DEA's Special Operations Division coordinated investigations. This funding will enhance OCDETF's ability to conduct complex, multi-district investigations developed from Special Operations Division intelligence and coordination. These resources will be used by DEA and the Department's Criminal Division; and will also be used to fund state and local overtime.

DEA conducts financial investigations to detect and disrupt the international and domestic flow of illicit money. To support these financial investigations and enhance regulatory and cooperative and public-private efforts to prevent money laundering, our fiscal year 2003 budget proposes a program improvement of $4.1 million. For fiscal year 2003, we are also seeking $24.6 million for DEA's Diversion Control program. These resources will be used to strengthen DEA's enforcement capabilities to prevent, detect, and investigate the diversion of controlled substances, particularly OxyContin®. Increasing abuse of OxyContin® has led to an increase of associated criminal activity.

The Department's fiscal year 2003 budget also seeks $13 million for drug abuse and crime programs under the Office of Justice Programs. Specifically, we are seeking $4 million to expand the Arrestee Drug Abuse Monitoring (ADAM) program to 10 additional sites. The ADAM program is the only federally funded drug use prevalence program that directly addresses the relationship between illicit drug use and criminal behavior. ADAM data assist practitioners and policy makers in understanding, anticipating and responding to their community's changing drug problems. Our budget also includes $52 million for the Drug Courts Program, a $2 million increase, and $77 million in funding for the Residential Substance Abuse Treatment Program, a 10 percent increase in funding over fiscal year 2002.

ADVANCING CIVIL RIGHTS

Essential to our republic is the right of every citizen, from every walk of life, to be treated equally under the law. This includes every citizen's right to vote. The

Federal Government has become an active participant in establishing rules for the conduct of elections on matters ranging from voter registration to protection against discrimination.

In fiscal year 2003, the Department requests $400 million for a new three-year program (totaling $1.2 billion) to improve state and local jurisdiction's voting technologies and administration, including voting machines, registration systems, voter education, and poll worker training. This new program will provide states with matching grants for election reform. This proposal is consistent with the recommendations of the National Commission on Federal Electoral Reform headed by former Presidents Ford and Carter. The Office of Justice Programs (OJP) will have primary responsibility for administering the program, in consultation with the Department of Commerce's National Institute of Standards and Technology, which will provide expertise on voluntary technical standards.

Our budget seeks $2.8 million to promote effective investigation, prosecution, and response to hate crimes. This amount includes $1.5 million to study the effect of hate crime legislation by examining 6 sites that have hate crime laws and 8 with little or no such legislation; and $1.3 million to develop and provide hate crimes awareness training and technical assistance, and to disseminate successful program strategies. Our fiscal year 2003 budget also seeks $3 million for the Office of the Inspector General to address a statutory requirement in the USA PATRIOT Act requiring the review of complaints alleging abuses of civil rights and liberties, and to provide audit oversight for the Department's counterterrorism programs.

ENHANCING THE DEPARTMENT'S LEGAL ACTIVITIES

The Department of Justice is often described as the largest law office in the Nation. We serve as counsel for the citizens of this Nation and represent them in enforcing the law in the public interest. For fiscal year 2003, our budget seeks $32.5 million for the Civil Division to increase its use of automated litigation support (ALS) services to successfully resolve extraordinarily large and document-intensive cases. ALS is an indispensable method of managing millions of pages of documents, performing electronic discovery, executing court-ordered trial presentation systems, and generating real-time transcripts. In addition, to address the burgeoning defensive docket in United States Attorneys Offices, our budget seeks an additional $2 million. These resources are necessary to adequately defend the government from unwarranted claims and to fairly resolve meritorious claims. Our budget requests an additional $11 million to complete the third and final phase of the overall telecommunications convergence initiative in United States Attorneys Offices throughout the Nation: implementing Internet Protocol telephony. This convergence will enable the U.S. Attorneys to encrypt all transmissions, share resources and use telecommunications bandwidth more effectively, and reduce overall operating and maintenance by establishing a common, standardized telecommunications infrastructure.

For the United States Trustee Program (USTP), we are proposing an additional $6.3 million from fee collections. Specifically, our budget requests $5.8 million to enable USTP to develop systems to more effectively uncover material misstatements in bankruptcy schedules and statements of financial affairs. An increase of $500,000 is requested to establish a pilot program and curriculum to provide personal financial management instructions.

STREAMLINING ASSISTANCE AVAILABLE TO STATE AND LOCAL LAW ENFORCEMENT

The fiscal year 2003 budget proposes a refocusing of spending directed toward state and local assistance. This budget refocuses and redirects funding toward core Federal counterterrorism prevention and investigations. Between last year's appropriation and next year's budget proposal, discretionary spending on Federal law enforcement grows almost 19 percent. Meanwhile, the Administration also refocuses and redirects state and local assistance; although funding through the Department of Justice decreases, the President's budget includes new funding for first responder preparedness through the Federal Emergency Management Agency.

For fiscal year 2003, we propose a new $800 million program, the Justice Assistance Grants Program (JAGP), that consolidates the Local Law Enforcement Block Grant (LLEBG) and the Byrne Formula Grant Program into a single grant program under the Community Oriented Policing Services (COPS) program. Consequently, we are proposing to eliminate the LLEBG and Byrne Programs in their current form. The consolidation of these two programs should result in a simplified application process for participating state and local governments, and greater flexibility for local law enforcement agencies in the use of block grant funds. States may use these resources for statewide initiatives, technical assistance and training, and support for rural jurisdictions in the areas of enforcement, prosecution and court programs, pre-

vention programs, corrections programs and treatment programs. Local funding may also be used for these purposes and can be combined with funding from other jurisdictions to form regional projects. This program also includes $15 million to facilitate the USA Freedom Corps by encouraging citizen participation in law enforcement, community safety and terrorism preparedness; and $60 million for the Boys and Girls Clubs.

Also, within COPSs, we are seeking $65.6 million in targeted assistance to police departments. This amount includes an increase of $15.6 million for the Police Corps, a scholarship and training program designed to improve local police response to violent crime by increasing the number of officers on the beat with advanced education and training. It also includes a total of $50 million for COPS Technology Grants. To improve the mechanisms for ensuring state court-based data are properly transferred to the criminal record, we are seeking an additional $25 million. These resources will enhance the capability of the FBI's National Instant Check System to provide immediate feedback. Our budget also seeks an increase of $6.1 million to expand the Internet Crimes Against Children Task Force Program by establishing a regional task force in at least 40 states and expanding capacity-building activities through research, training and technical assistance.

The fiscal year 2003 budget provides over $3.2 billion for state and local law enforcement grant programs. However, it also prioritizes scarce federal resources and includes proposed reductions and eliminations of some of the current grant programs. Reductions are made primarily in the following areas: (1) Byrne Discretionary and Formula grants; (2) Local Law Enforcement Block Grant; and (3) State Criminal Alien Assistance Program.

OTHER IMPORTANT ACTIVITIES

Our budget seeks $48.5 million to enhance several items of critical importance to the Department. Specifically, we are seeking $36.5 million to enhance various FBI data management and warehousing techniques and to provide new administrative support and financial systems. Additionally, $10 million is sought to begin planning and initial deployment of a new Departmental Financial Management System. This funding will provide much needed resources to address financial system material weaknesses cited by the Department's auditors. For the FBI, our budget also seeks $867,000 for the Federal Convicted Offender Program to manage and type federal convicted offender DNA samples, purchase equipment, and fund miscellaneous expenses related to this effort. The DNA Analysis Backlog Elimination Act of 2000 authorizes the FBI to collect DNA samples from individuals convicted of qualifying offenses. The USA PATRIOT Act of 2001 expands the list of qualifying offenses to include terrorism-related offenses and other crimes of violence.

CONCLUSION

Chairman Hollings, Senator Gregg, Members of the Subcommittee, I have outlined for you today the principal focus of President Bush's fiscal year 2003 budget request for the Department of Justice. I look forward to working with you on this budget proposal and other issues.

Thank you. I would be pleased to answer any questions you might have.

Senator HOLLINGS. I thank you, General Ashcroft, for the outstanding work you have been doing on counterterrorism. I think the committee will want to help you continue your progress. I want to get into a couple of things there.

I think being hardfast on law enforcement is not inappropriate when the enemy has infiltrated you, you do not know who they are and everything else like that. You have got to be on the side of extreme care.

NEED FOR SPECIAL COUNSEL IN ENRON CASE

Let me ask about the Enron matter now. I commend you. You have recused yourself, not that there is a conflict of interest but there could be a conflict of interest, and I understand the same with your chief of staff and even the U.S. Attorney's Office for the Southern District down there in Texas. They have had to set themselves aside due to all kinds of contacts.

Now the case is in the hands of our friend Larry Thompson. On that score, I am worried about it for the simple reason that he has been deputized and continues to be the Deputy Attorney General in charge of counterterrorism in the Department of Justice, which is a full-time job. Credit goes to our distinguished ranking member who was there and chairman this time last year for having the first real full hearing of the entire Cabinet on counterterrorism. The fact was, on September 11, that is what we were debating, this subcommittee's appropriations on counterterrorism.

But right to the point, you do not want the Department of Justice to go all the way through with this case, whatever the result is and say, well, wait a minute, the fellow that was in charge, he was for 20 years working with the law office that represented Enron and Arthur Andersen, so he does not have a conflict of interest but the appearance of a conflict of interest is still there, just like with yourself.

I do not see how these are not extraordinary circumstances—you have got chief executives committing suicide, you have got all the evidence being shredded over 1½ months and everything else of that kind, all of them taking the Fifth Amendment and what have you. You do have extraordinary circumstances so you have got to use the highest care to make sure of the impartiality. And like I said, there is no use to come to the end of the investigation and then say, well, wait a minute, this is a gentleman who worked in that law office, as you well know, for some 20 years.

There should not be the least appearance of a conflict. It ought to be Archibald Cox or some individual of your own choosing, and under the law, you can appoint a Special Counsel and that would end any misgiving that anybody could have about the final report. What is your comment?

Attorney General ASHCROFT. When presented with these issues, I have given my duty to carry out the responsibilities that have been entrusted to me very careful consideration. I have had a very, very careful awareness of and adherence to the Government-wide regulations and rules regarding conflicts of interest and these rules set forth various relevant factors, including financial and personal relationships, and any decision on these matters, obviously, is very fact-specific.

Based on the careful review of the applicable laws and regulations that apply to all Government workers and in light of the totality of all the circumstances, I believe that it was my responsibility to recuse myself.

Senator HOLLINGS. Right.

Attorney General ASHCROFT. Once I recuse myself, I do not make further judgments about the case. I do not involve myself in the case.

Senator HOLLINGS. No, but you know your Deputy Attorney General intimately and you work closely together. You still do, I take it, I hope so, on counterterrorism. You have testified very strongly here this morning about the efforts made in the Department of Justice on counterterrorism and the officer in charge under the law right now is that same Larry Thompson. So, I mean, you recused yourself, but you are working with him closely.

If you had an outside individual like an Archibald Cox that would be at your selection, then there would be no question. I just hate to see all this good work done and then an accusation of a conflict come at the end of the road. This thing is going to live with us for a long time, apparently, from the effect it has had on the market and you can see all the different happenings in different committees.

Senator Stevens and I actually recommended a select committee, rather than have all this duplication. Right now, for example, at my Commerce Committee, we are having Mr. Skilling and Ms. Watkins up for the second time and they will probably appear four more times at least on the Senate side and five or six more times over on the House side.

So I think to really get to the bottom of everything and save time and what have you, and on behalf of the Department of Justice's best interests and you, the Attorney General, I understand that you have recused yourself, but why do you not recuse Thompson?

Attorney General ASHCROFT. Further judgments about this matter regarding other people or myself are inappropriate once recused. I have recused myself and withdrawn myself from this matter. It is my responsibility under the Government-wide regulations and rules and guidance to make that judgment. Once I have done that, I do not deal with the matter further.

Senator HOLLINGS. Then we can bring up Mr. Thompson. You are saying that he has to deal with it, is that right? You have given over the Attorney General's job to Larry Thompson? You have still got the authority under the law.

Attorney General ASHCROFT. My responsibility——

Senator HOLLINGS. I hear your statement, but, I mean, you have still got the responsibility under the law.

Attorney General ASHCROFT. I have the responsibility in accordance with the Government-wide rules and regulations in settings where I believe the totality of the circumstances might provide a basis for an appearance or an actual conflict of interest to withdraw myself, and I have done so, and having withdrawn myself, I will not have further involvement in this matter.

Senator HOLLINGS. We asked that Larry Thompson appear with you. Why did he not?

Attorney General ASHCROFT. I am not able to answer that, sir. I will urge Mr. Thompson, when inquired of by the committee, to make himself available to the committee. We want to work with this committee.

Senator HOLLINGS. I appreciate it. Let me just get into one other matter, then, because I hope on the first round—I am delighted to see the attendance that we have—to hold ourselves probably to 10 minutes at the most on the first go-around.

ANTITRUST ENFORCEMENT CLEARANCE AGREEMENT

With respect to the Department of Justice's memorandum of understanding with the Federal Trade Commission that came to our attention last month here in January, that, in essence, as I see it, would change jurisdiction from the FTC to the Antitrust Division the media mergers and the matters of antitrust and Federal Trade Commission conflicts of interest and everything else of that kind,

the public interest particularly. The Federal Trade Commission has a broad jurisdiction, intentionally so, a concurrent jurisdiction in a sense with the antitrust laws, but it has got a broader charge than the Antitrust Division in respect to the public interest and it can head off antitrust violations and it does not get into the technicality, it can get into intent and everything else of that kind, and has worked extremely well. Why? Why is that being done?

Attorney General ASHCROFT. As you have appropriately stated, there is concurrent jurisdiction in the Federal Trade Commission and the Antitrust Division of the Department of Justice in regard to Hart-Scott-Rodino notifications of proposed mergers. To negotiate on each case when it comes before on an ad hoc basis provides a delay in the context of a statute, which requires rather prompt action or else there is a presumption that the merger is to go forward.

We believe that the antitrust laws and the antitrust enforcement are very important. Let me just say that competition is the basis for American productivity and success and we think it is an arena that needs to be safeguarded and the allocation and decisions made here should be merit-based and not driven by other considerations.

In conferring with past leaders of the Departments, both the Department of Justice and the Federal Trade Commission, we have a letter signed by seven of them that states that it would be helpful to allocate these resources and to make an agreement to allocate these resources rather than to wait for each case to come up, basically, to recognize the expertise that is being developed in working on these cases. You mentioned, I think, the telecommunications and media arena.

Senator HOLLINGS. Right.

Attorney General ASHCROFT. Over the past 5 years, for example, there have been 45 such cases. They have all been handled by the Department of Justice and there is an expertise there that has been assembled in the Department of Justice to handle these cases. Over the course of the past 10 years, I think the numerics are something like 154 cases handled by the Department of Justice with about 22 cases handled by the FTC, although the FTC handled small cable merger cases in local areas rather than the large cases.

It seemed to make sense that these agencies get together and agree that where there is an expertise that has been developed, we could have a kind of allocation, which is understood and roughly divides the work, but focuses on and capitalizes on the capacity and expertise of these agencies in resolving these issues in favor of preserving and protecting the competitive marketplace.

I think that that is an important aspect of making sure that we have vigorous and effective antitrust enforcement, and it is with that in mind that this idea took shape. I think I have answered your specific question. I do not know that I should go further in explaining the concept.

Senator HOLLINGS. I am back to the expertise within the intent of Congress. You are right in what you say, but the intent of Congress was that they have concurrent jurisdiction because the Federal Trade Commission does not have to prove a criminal act and they have broader authority. You can have a monopoly and not use

the monopoly to thwart or damage trade, for example, or competition, but you could have that monopoly not being exercised in the public interest and that is why the Federal Trade Commission looks at these things.

We in the Congress have been working with this jurisdiction issue. There is the intent of Congress and now you are going to start legislating. You are going to take it away. Under the proposed memorandum of agreement, there are not going to be any more media cases before the Federal Trade Commission. I am chairman of the Commerce, Space, Science, and Transportation Committee. We have authorizing responsibility for the Federal Trade Commission and they did not come running and say, wait a minute, they did not ask us. They did not ask anybody in Congress. The consumer groups come running and tell me, they say, they did not ask us, and when we look into it, Mr. James asked Mr. Simms, his law partner, whom I take it he is going back to practice with when he gets through with you. That does not look like it is up to snuff.

Attorney General ASHCROFT. May I comment on that?

Senator HOLLINGS. Yes, sir, please do.

Attorney General ASHCROFT. Both the leadership of the FTC and the leadership of the Antitrust Division initially conferred with past chairmen of or past directors of their divisions, both Republican and Democrat, to help develop this list as a working arrangement to, in some ways, formalize what has been an informalized agreement. As you mentioned, telecommunications and media over the last 5 years, it is 46 major cases at the Justice Department, none at the Federal Trade Commission. So this is not changing things substantially, it is providing a framework in which these things are done more promptly so that the work does.

Now, I just wanted to indicate that the conferring was bipartisan and with individuals who were experienced in this process by both the—it is my understanding, this is what I have been told, I was not at any of these meetings—by both the Chairman of the Federal Trade Commission and his predecessors, both Republican and Democrat, and in the predecessors to Mr. James in the Antitrust Division, both Republican and Democrat, and seven of the previous leaders in this arena have indicated in a letter that they believe a concept of providing this kind of framework, certainly not something that would make it impossible to adjust. As a matter of fact, it should be a flexible framework.

But this framework would help expedite our capacity to work in these matters and to do the work that the Congress has assigned, and that is the spirit in which that agreement was developed and I think it has the potential of being helpful rather than—in the 30-day clock that begins running when the filing is initially made, sometimes over half that time period has been lost because a decision has not been made which agency is going to pursue the matter. That makes it rather short, the 2-week interval during which a request for documentation and information would be generated, and I think the idea that is commended by the past chairmen and directors of these departments and is commended by this kind of framework is that you get better opportunity to work immediately during the 30 days without losing time.

Senator HOLLINGS. As you say, we look at the people who really have a direct interest and who enacted the law. I have been with it 35 years and with that authorizing committee, Federal Trade Commission, I cannot find anybody in the Congress that says that is a good idea. I will ask that the distinguished Attorney General review that very closely for us.

Senator Gregg.

ATTORNEY GENERAL RECUSALS

Senator GREGG. Thank you, Mr. Chairman.

General Ashcroft, it was not going to be the line of questioning I was going to pursue, but I was interested in the questions that the chairman asked you regarding recusal. He may have a valid point. I am not familiar with Mr. Thompson or his background involvement here, but he may have a very legitimate point here.

I am wondering, I presume that when you made your decision to recuse yourself, it was based on the fact that when you were involved in Government in another role, specifically as United States Senator, you may have received contributions from Enron or you may have voted on issues which had a direct impact on Enron, such as issues involving the marketability of power, is that correct?

Attorney General ASHCROFT. I think it is clear to say that the totality of circumstances surrounding my responsibilities and my history led me to believe that in accordance with the guidelines in a matter as sensitive as this matter, where there could be criminal prosecutions that I should——

Senator GREGG. I think your decision was a correct one. I would just note that I suspect if you were to apply the standard you applied to yourself to the Congress, we would have to recuse the majority of Members of Congress.

Attorney General ASHCROFT. I have thought about that, and without trying to give legal advice to the Congress——

Senator GREGG. Do not.

Attorney General ASHCROFT [continuing]. I do note that——

Senator GREGG. It is a comment. It does not need a reaction.

Attorney General ASHCROFT. I just would note that I have a unique responsibility as Attorney General to oversee criminal investigations, which may, in the eyes of some and certainly in the calculations of others, make a difference.

Senator GREGG. I understand the difference there.

I wanted to follow up, though, on one of the issues involving terrorism, and I appreciate the courtesy you showed this committee in acknowledging our efforts in this area under the chairman's and my efforts. Other members of this committee have been extremely involved. Senator Mikulski has been extraordinarily involved in this issue.

TRANSFER OF NDPO AND ODP TO FEMA

We have tried to develop a variety of different efforts to support the fight against terrorism and most of it was done before 9/11. One of the decisions we made early on was that we needed one-stop shopping for local and State officials to be able to come to the Federal Government and find out where to go, what to do, and how to get information and how to get support for their people, and we

started something called the NDPO, which unfortunately withered on the vine at FBI because I do not think the FBI wanted to do it. Then the responsibility of NDPO was taken over by OJP.

The question I have for you is, when a crisis occurs, and I asked you this question when we had our joint hearing back a few months ago, back 1 year ago——

Attorney General ASHCROFT. I hope I can remember my answer.

Senator GREGG. I remember your answer, and I am sure it will be the same today.

Attorney General ASHCROFT. I am afraid you do.

Senator GREGG. When a crisis occurs, who is responsible at the site, at the event?

Attorney General ASHCROFT. It is our understanding, and we believe it is the case that the FBI is responsible for crisis management.

Senator GREGG. That is correct.

Attorney General ASHCROFT. For consequence management, which is once the site has been secured and for things like the investigative purposes, consequence management moves to other individuals.

Senator GREGG. I guess the follow-up to that question is this. If the FBI is going to be on site and is under—as you know, this committee directed that every State develop a statewide domestic preparedness plan. I think we have received almost every State in now with a——

Attorney General ASHCROFT. We have about 46 States that have submitted their plans.

Senator GREGG. And that was as a result of an initiative out of this committee. One of the things we wanted in that plan was coordination with the Federal Government, and I believe this is primarily accomplished through the FBI. If the FBI is on site, in charge, and is going to be in a command position over the resources that arrive once the disaster has exceeded local capabilities recognizing that the first group on the ground is going to be the first responders—the local police, fire, and medical—should these people not have gone through the Department of Justice training programs or a process which gave them entree into the Department of Justice versus some other agency?

Attorney General ASHCROFT. Well, that is—we certainly believe that the Department of Justice will continue to do a lot to train and we would expect that the nexus between our FBI presence in crisis management and those who are at the scene would be a well-developed relationship. I believe you may be headed toward a question about focusing some of these resources in another agency, and the President has made the decision that integrating some of those resources in FEMA would provide the right kind of cooperating continuity of people who work with first responders. There are different views on that.

Senator GREGG. I said OJP before. I meant ODP. But the issue is, what is the role here of FEMA? What is the role of ODP? What is the role of FBI in the first responder training initiatives? To step back even further, again at the initiative of this committee, we set up five training sites, which have turned out to be superb. I think they are doing a superb job. Eighty thousand people have gone

through those, first responders. These training centers have all been under the direction of ODP. How long did it take us to get those sites up and running and get ODP orchestrated in a way that it was able to effectively run people through those different training exercises? You were not there then, so you may not recall.

Attorney General ASHCROFT. It took some time, and I think that there has been great value in the training and that value has been understood and is appreciated. So while I support the administration's position of moving this matter to FEMA, I do not have to repudiate the fact that much of what you have done and what these hard-working individuals have done has been a great success. I think you are correct in characterizing the training as having been very valuable and the development of the plans by the States as being very constructive. So much work has been done that has been successful.

Senator GREGG. I think it almost took us 2 years to get this thing up and running, and I am just wondering if, when we transfer it over to FEMA, we are going to see a significant disruption in their program. FEMA is not a grants organization. It is a response organization. It has never handled grants and it has never handled the management of this type of a grant structure. I am just wondering if you or anybody in your office has made an evaluation as to how much time it is going to take to reorganize this thing at FEMA period and what are we talking about in terms of a gap as a result of this transfer?

Attorney General ASHCROFT. I know that there are transition plans in terms of transferring the responsibilities in funding and it is thought that there would be a lot of transition of personnel and I think it is——

Senator GREGG. They have already sent letters to people at Justice asking them what they are doing and when they are coming to FEMA, have they not?

Attorney General ASHCROFT. I have not seen such letters, but I understand that there is an expectation that people will move and that would minimize any kind of disruption. But I do not know of any study that has evaluated the transfer for purposes of finding out what kind of gaps would be developed.

DECISION ON FEMA TRANSFERS

Senator GREGG. My time is about up, but let me ask you one last question on this because we worked very hard to get this working right and we have got it working right and now we are taking the chairs and we are moving them around the deck. Maybe it is going to work better as a result of it. But I have not necessarily been convinced of this, although I give the benefit of the doubt to the administration because you have got the final call on these and this is an issue of such significance.

But can you give us a little background as to what Justice's position was in the debates leading up to this decision? Did you agree with the FEMA decision?

Attorney General ASHCROFT. You know, when the President asked me to be the Attorney General of the United States he asked that I advise him, but he asked that I advise him privately and I think it would be inappropriate for me to start down the road——

Senator GREGG. Well, what advice did you give to FEMA?

Attorney General ASHCROFT. Pardon?

Senator GREGG. What advice did you give to FEMA? I do not ask you for the advice you gave the President. I know that that is——

Attorney General ASHCROFT. In handling these issues, do the very best you can. This is very important.

And now that people are focused on it—as you well know, very few people had your sensitivity to this issue of terrorism, and prior to September 11, I think we only had four States that had submitted plans and we had asked for plans but States had not made this a priority. There are others, obviously, now. I think the rest of the country has arrived where you have been for some time in understanding the urgency of this. So we have made a lot of progress recently and will continue to make progress and some of the grants are now being made, which I would expect to continue to be made.

Senator GREGG. I appreciate those gracious remarks and with those I will certainly stop asking you questions.

Senator HOLLINGS. Senator Mikulski.

FIRST RESPONDERS FUNDING

Senator MIKULSKI. Thank you very much, Mr. Chairman and Senator Gregg and, of course, the Attorney General.

Senator Gregg and Mr. Chairman, as you know, I chair the subcommittee that funds FEMA. I, too, want to very much support the administration in its efforts on homeland security. I met with Governor Tom Ridge and Joe Allbaugh from FEMA exactly on this transfer. It is my position that I do not want to poach on this subcommittee or on the Justice Department but would hope there could be some type of discussion on this.

Tomorrow, I will be holding a hearing on FEMA and its preparedness for the future and also this particular matter, because I want to be sure that FEMA is prepared, just generally in its consequence management responsibility, that we do the best job for the first responders, who are police and fire, and at the same time that we do not raid the money in our COPS program to fund the Office of Domestic Preparedness.

Colleagues, I invite you to come to the hearing tomorrow, whether you are on the subcommittee or not, because, one, I value you, and also, Senator Gregg, when you chaired this committee, your leadership was really commendable on the counterterrorism. You did get momentum, organization, and money, I believe, into the ODP. So I think there is a lot of conversation that needs to go on with Governor Tom Ridge, with us, with other representatives in the administration.

Again, my concern is, what is the best support that we can give to the first responders? What is the best way to do that? And at the same time—those are organizational issues—I am deeply troubled that in looking at the COPS on the beat—I will call it the COPS on the beat—program that there have been reductions in universal hiring, the schools program, the COPS technology, and others to move it over to ODP.

Mr. Attorney General, am I right in that assessment? Let us join together here, because I am not into—before I get it, I think we

have got a lot of talking to do, or if I get it at all. I am not interested in what subcommittee or in what agency. What I am interested in is the empowerment of the first responders.

But Mr. Attorney General, in all of this talk of reorganization and consolidation, are we cutting the COPS program to fund ODP and move it over as there is a possibility of transition to FEMA, or have I misread the appropriations?

Attorney General ASHCROFT. I think it would be unfair to say that the transfer, the administration's transfer of ODP to FEMA is based on a cut in the COPS program. First of all, let me say how much I appreciate your goal-oriented approach to the ODP matter. Frankly, I support the administration's move and I think it is clear that we need to find the way that would best serve those first responders. You have characterized that wonderfully.

Now, the COPS program has been a miraculous success. It is one of those things that Congress hopes will happen when it sets up a program. It was designed to provide funding for 100,000 new police officers. I think funding was eventually provided for up to 111,000 new police officers. The police officers were to be funded for a period of time during which a local agency would have the option of understanding how valuable the additional police presence would be. My staff tells me that at the end of these police exposures as a result of Federal funding, 92 percent of the police forces then continue these officers because they have understood the value demonstrated by the presence of these officers in the community.

Now, what is happening is that this program has succeeded——

REDUCTION OF COPS PROGRAM

Senator MIKULSKI. Mr. Attorney General, I do not mean to interrupt you. I am not trying to be brusque. According to the analysis that I got, COPS is cut by almost 80 percent, ending the police hiring program, the COPS in school program, cutting the COPS technology program by two-thirds. Are those factual statements or has my briefing material been incorrect?

Attorney General ASHCROFT. I think what we have demonstrated here is that the program has succeeded in getting the number of cops that were anticipated and it will continue to pay those who have been hired until their term is finished, but the objective of the program having been met, there is no further funding for additional hirings beyond 100,000 in this area.

ROLES IN CRISIS MANAGEMENT

Senator MIKULSKI. I see. I would like to switch gears now to an issue raised by Senator Gregg, the whole issue of who is in charge. In our marathon hearings of over 3 days of hearings in terms of our preparedness on the issue of counterterrorism, the issue of who is in charge came up. I think we really need to clarify that, Mr. Attorney General, because it is true FBI is crisis and FEMA is consequence, but at a local response, it is often the mayor and his or her local police chief or fire chief that are in charge at the scene. When the FBI arrives, it is not to manage the crisis nor the coordination of the agencies for evacuation, medical treatment, et cetera, it is to treat it as a crime scene, and that has also resulted, it

seemed in both—well, certainly in the anthrax situation—a lot of bumping into each other over what was the primary responsibility, the management of the public health incident or treating it as a crime scene.

Could you tell me, what is the FBI's role in crisis management or is it really to be law enforcement and to treat it as a crime scene, looking for evidence for future prosecution against these thugs, and we feel both very passionate about these despicable attacks, but do you see where I am? The mayor thinks he is in charge.

Attorney General ASHCROFT. First of all, we want to work cooperatively with everyone regardless of who is in charge, but I think it is important. You raise a very important issue, and I would indicate to you that perhaps of greatest importance is that the first thing we want to do when the FBI has a responsibility for crisis management is to prevent the next attack. Prevention is our first priority. It misstates or misunderstands our priority to think that prosecution is our first priority.

Very frequently, events that are terrorist-related are not isolated. We learned that painfully in the September 11 disaster, when, as a matter of fact, some American citizens who were flying on the last plane, which landed on Pennsylvania soil instead of Pennsylvania Avenue, they took the matter into their own hands.

The first responsibility of the FBI is to learn what can be learned and try to determine whether there is some other part of this——

Senator MIKULSKI. If I have got some time here, let us take the anthrax situation. Let us take, whether it was at Brentwood or whether it was here with us, the FBI arrives on the scene. The CDC arrives on the scene. The Capitol Police arrive on the scene. We are leaving the scene. A lot is going on here.

Now, when the FBI arrived, did they evaluate, in looking at their situation, did they say, our job then is to prevent the next anthrax attack? What did the FBI do there and what did the FBI do in New York? Was it looking to prevention? I am sure there was an international alert and all of those things, but do you see my point? What do they do when they arrive at the scene?

Attorney General ASHCROFT. Well, they try to secure the scene and part of that securing the scene is to try and make sure that we do not have additional people put in jeopardy, to try and learn if there is additional explosives to go off, whether there are charges placed or other things——

Senator MIKULSKI. Oh, you are in charge of the scene?

Attorney General ASHCROFT. The FBI has a crisis management responsibility. Until the scene is secured in that respect, the FBI has that responsibility.

Senator MIKULSKI. Does it override a mayor and the police and fire chief?

Attorney General ASHCROFT. We believe that the FBI manages the scene during the time of crisis, and we do not override but we work with and help coordinate these efforts.

Senator MIKULSKI. Do you see my point?

Senator HOLLINGS. I understand it.

Senator MIKULSKI. I appreciate the Attorney General, but I think the FBI has a very mixed role here, and an honorable role, so we

are not disputing that. I do believe that prevention, the FBI's role in prevention is absolutely critical. I believe its expertise in explosives and other things are absolutely crucial. Its international networks, et cetera, are crucial. But it is also my observation that it is the local executive and their first responders that are really the initial being in charge. So we need a lot to talk about, and Mr. Attorney General, we also look forward to talking with you about the FBI, its preparedness in order to protect us.

I think my time is expired, but I really would like to thank my colleagues. Our hearing tomorrow is in the morning and we would invite you to be as vigorous as you want in the FEMA questioning.

Senator HOLLINGS. We thank you, Senator, for your leadership and understanding of the duplicity here.

Senator Reed.

LIBERIAN DEFERRED ENFORCED DEPARTURE

Senator REED. Thank you very much, Mr. Chairman. Thank you, Mr. Attorney General.

Let me first thank you and commend you for your treatment of the Liberian community in the United States. Last September, at the direction of the President, you extended DED, deferred enforced departure, for these people. We have a large population of Liberians in Rhode Island, and as you well know, for 10 years now, they have been in limbo. They came here with temporary protective status. That has been revoked. Now you have allowed them to stay. And as you are aware, I am sure, the last 2 weeks have seen another turn for the worse in Liberia with attacks on the capital and chaos.

I would like to work for a longer-term solution so that every year, these people do not wait until the last hour and you and the President have to step in and defer their departure. I hope I could work with you on that, Mr. Attorney General, and I wonder if you might give us some comments on your perspective at the moment on the Liberian situation.

Attorney General ASHCROFT. First of all, let me commend you for your sensitivity to this problem. The compounding difficulties, which are a result of recent developments do not make the situation any easier. The current designation of the Liberian deferred enforced departure designation expires on September 29 of this year, and prior to that date, the Immigration and Naturalization Service must coordinate with our Department of Justice, with the Attorney General's office, with the National Security Council and the Department of State to determine whether or not we should further extend. I can imagine that it is very difficult for individuals to look down into the future and not know whether there is going to be an extension or not.

I would be very happy to confer with you about any attempt that you wanted to make, and I understand that you have filed bills to help resolve this. I guess that another bill has been filed in the House. Has Congressman Kennedy done so?

Senator REED. That is right.

Attorney General ASHCROFT. I would be happy to confer with you about those measures. The situation obviously is chronic. It is not something that just has arisen and has gone away. It is a long-

term situation and it is one which, if something is not done on the long term, we are going to have to keep dealing with it on an interim and short-term basis.

NICS—GUN SHOW LOOPHOLES

Senator REED. Thank you, Mr. Attorney General. Let me turn now to another issue with respect to the war on terrorism. After September 11, you sent to the Hill numerous pieces of legislation designed to give you the full panoply of authority to preempt and prevent terrorist attacks. But from my standpoint, there was one glaring omission and that was the failure to recommend the closing of the gun show loophole.

As you well know, in many parts of this country, unless the State has a background check law, a private seller at a gun show is not forced or required to conduct any type of background check on a potential purchaser, and this is not just an academic situation. In September of last year in Detroit, Ali Boumelhem was convicted of illegally obtaining weapons which he shipped to Lebanon, apparently for the benefit of the Hezbollah. He was using his brother to buy weapons from a licensed dealer because he was a felon and could not survive a thorough background check. It turns out that prior to 1998, he would buy the weapons himself, simply lie about his felony, and since there was not a NICS check, he got away with it.

In addition to that, there have been reports that last November, Conor Claxton, a man accused of being a member of the Irish Republican Army, testified in Federal court in Fort Lauderdale that he and his associates had gone to south Florida gun shows to buy thousands of dollars worth of handguns, rifles, and high-powered ammunition to smuggle to Northern Island.

On October 30 in Texas, Mohammad Navid Asrar, a Pakistani, pleaded guilty to immigration charges and illegal possession of ammunition and authorities said that in the last 7 years, Mr. Asrar had bought several weapons at gun shows, including handguns and rifles. I do not know if he bought them from a licensed dealer or a private dealer to be exact. He is suspected to have links to al Qaeda.

So this is not an academic exercise. As you well know, too, we have found in the safe houses in Afghanistan manuals that instruct terrorists to exploit our lax gun laws, and so I would hope that we could deal with this issue promptly as we have dealt with so many others by closing the gun show loophole in a comprehensive way and I wonder if you could give me your thoughts on that.

Attorney General ASHCROFT. First of all, I agree with you that we need to make sure that we keep the guns out of the hands of these individuals who would terrorize and disrupt our freedom. In the event that the Congress makes changes in that respect, I will enforce those changes substantially.

I have taken steps on my own to direct better enforcement of our laws which prohibit the acquisition of guns by illegal aliens. I have directed in the NICS system that the immediate determination rate be improved so that we will improve our accuracy to ensure that prohibited persons, including prohibited aliens, do not receive firearms in violation of the law. I requested that the FBI send all non-

citizen firearm purchase requests to the INS Law Enforcement Support Center to check against INS databases. The FBI expects this process to be fully automated by late fiscal year 2002, so sometime close to fall. All non-citizen checks will be delayed until all the INS systems are queried and the responses evaluated by the FBI so that we do not have people falling through the cracks. The FBI estimates that approximately 3 percent of the incoming call volume will be sent through this procedure of special checks with the INS. Only NICS checks for non-citizens will be affected by this process, not other NICS checks.

In addition, I would cite two improvements that are made, not to say that others could not be made, but on June 28, I directed the FBI to increase to the fullest extent practicable the percentage of NICS checks resulting in an immediate response of "proceed" or "deny," because if there is too much lag, it is just a "proceed" that comes as a result of no action.

In September, the FBI implemented an enhancement to the NICS system, a logarithm that filters out false positive hits and records erroneously matched records, pardon me, erroneously matched to descriptive data of the purchaser against the NICS database. As a result, the NICS immediate determination rate has increased by 5 percent so that we do not have an absence of determination, which results in an inappropriate authorization.

So I think this is a challenge and one that we need to work on and I am doing administratively what I believe we can do to keep the guns out of the hands of those prohibited aliens.

Senator REED. Mr. Attorney General, if I understand the system, if one was a non-citizen, approached a private seller at a gun show in a State without a background check, none of these provisions would be triggered at all?

Attorney General ASHCROFT. If the person is not a federally licensed vendor, you are correct.

Senator REED. And that is the whole purpose of the gun show loophole bill, to apply to these non-federally licensed vendors, so——

Attorney General ASHCROFT. Licensed vendors at gun shows are already covered.

Senator REED. I commend you for your enhancement of the licensed dealers. The hole, the vulnerability, the gap which this very, very astute and ruthless terrorist organization looked to and tried to exploit is the non-licensed dealers.

Attorney General ASHCROFT. The President supports closing, I believe, the gun show loophole as you describe it.

Senator REED. So you would support legislation that would close the gun show loophole?

Attorney General ASHCROFT. This administration does support closing the gun show loophole.

Senator REED. Would you send a proposal up here? I already have a very good proposal, but you might consider looking at it.

Attorney General ASHCROFT. Thank you.

Senator REED. Thank you, Mr. Attorney General. One more issue with respect to this whole area, because I believe it is an important one. I believe you, from your response, obviously understand how important it is.

NICS CHECKLIST

After September 11, I met with some officials from the Department of Justice and the Bureau of Alcohol, Tobacco and Firearms. They indicated to me that immediately after September 11, the audit log of approved gun sales was checked under the NICS system with the Government's terrorist watch list. That also was reported in the New York Times. And so it was clear that in the wake of the tremendous crisis, in the wake of looking everywhere for possible terrorists and terrorist attacks, these NICS records were deemed to be vitally important to be looked at.

But you intervened shortly thereafter to prohibit any type of comparison of terrorist watch lists and NICS records. You indicated your interpretation of the law that such a comparison was not appropriate. I will disagree on that issue, but it raises a fundamental question.

Again, in the space of all of these proposals to aggressively attack terrorism, you did not send a proposal up here to ask Congress to clarify the use of the NICS list in comparison with the terrorist watch list. Would you be in favor of doing that? I know Senator Schumer and I are sponsoring legislation to affect that or clarify the situation.

Attorney General ASHCROFT. May I just clarify a moment what I believe happened?

Senator REED. Yes, please.

Attorney General ASHCROFT. At the request of the Bureau of Alcohol, Tobacco and Firearms, ATF, about 180-some names were checked against the NICS audit log, which includes information about approved gun transfers. The counsel at the FBI developed reservations about that in light of his belief, which I believe to be appropriate, that the law prohibits the use of NICS records for anything other than auditing the NICS system with one exception. If in auditing the NICS system you detect a violation of the law, that can be referred for prosecution.

If that law is to be changed, I believe that it will have to be changed statutorily. And in the event that it is changed statutorily, we would have continued—were it to be changed, we would continue on a course that had originally been started but was withdrawn when counsel for the FBI decided that it had not proceeded appropriately.

It is my understanding that I intervened in that setting. It is my understanding that counsel for the FBI said, wait a second, we are outside the limits of our authority and we are in a prohibited area in accordance with the law which was enacted relating to NICS.

Senator REED. Thank you, General, for clarifying the situation, but as I understand the situation now, the operative rule is that these lists cannot be compared—the NICS list cannot be compared with a terror watch list. Is that the operative rule today, the law?

Attorney General ASHCROFT. When the NICS process is made, checking whether or not to issue a gun, the NICS system can inventory databases to find out if the individuals are ineligible. But any NICS record that is maintained is not eligible after that point for subsequent cross-reference to other investigative efforts.

Senator REED. Just a final point to clarify my understanding. You said in your response that the ATF had requested access to the NICS list to check some type of watch list, that you did not intervene, but that the counsel for the FBI intervened and stopped that process so there was no cross-checking of lists. Am I led to believe that if——

Attorney General ASHCROFT. I think there may have been some cross-checking done——

Senator REED. Right, but it was terminated——

Attorney General ASHCROFT. It was terminated——

Senator REED [continuing]. Before it was complete.

Attorney General ASHCROFT. That is correct, and I would be corrected if my staff were to tell me that I had intervened, but I thought that the FBI counsel——

Senator REED. No. No. Mr. Attorney General, I do not want to leave that suggestion if it is not supported by the facts. The point I want to establish, I want to understand what the law is today because you seemed to imply in your response that except for the inhibitions of the FBI general counsel, this process would have continued, and then I thought I heard you say——

Attorney General ASHCROFT. No. No. I agreed with his judgment on the statute.

Senator REED. Okay.

Attorney General ASHCROFT. I need to clarify one other thing——

Senator REED. Yes, Mr. Attorney General?

Attorney General ASHCROFT [continuing]. Which my staff is helping me on this detail. Denials in the NICS system are available for——

Senator REED. These are the approved purchases we are talking about?

Attorney General ASHCROFT. It is approved purchases, and persons who are denied and subject to prosecution for attempting to purchase a gun illegally.

Senator REED. Again, I think our exchange at least suggests an ambiguity in this issue which might require legislative correction, and again, your support for such would be appreciated.

Attorney General ASHCROFT. Thank you.

Senator REED. Thank you very much, General.

Senator HOLLINGS. I am delighted to recognize our former chairman, Senator Domenici.

COUNTERTERRORISM RESPONSIBILITIES

Senator DOMENICI. Thank you very much, Mr. Chairman.

First, I want to say to the Attorney General, in this new war we have, the war on terrorism, you have a very big job and the Justice Department has a lot of responsibility. I commend you for the way you have handled the job so far and, hopefully, you will remain vigilant and things will continue to break our way under your leadership.

This subcommittee has a lot to do with the success of your office in the war on terrorism. People talk about how we are going to engage America in this war, and right here at this table in this subcommittee, when we finally write up this appropriation bill, we will

have a lot to do with how we are going to engage ourselves in this war.

While that is going on, there are a lot of programs that are part of the great American ongoing scene that you have to fund and operate. I have at least 8 or 10 that intrigue me and that I am interested in, some of them having New Mexico impacts. I am not sure I will get them all asked. If I do not, I will bundle them up and submit them to you and would ask that you submit your answers to the committee in whatever the chairman says, 10 days, 2 weeks, whatever is his requirement.

Attorney General ASHCROFT. We will try and be very prompt.

MENTAL HEALTH COURTS

Senator DOMENICI. I want to quickly cover mental health courts and just say to you that we are experimenting across the land with a very small program, $4 million, to set up mental health courts. It is only for misdemeanors, but I think people would be shocked in this country if they knew that the jails of our cities and counties house more mentally ill people than do our hospitals or institutions that we have set up in an effort to help the mentally ill. There are more of them in our jails, in our county jails, in particular, than there are in our hospitals, which is a rather frightening approach indicating that America has got some resources that it ought to put in the right places.

We started with mental health courts and I would like to ask you if you would have your staff give you a quick briefing on the mental health courts and ask if you could see your way clear to support them. They are new. They will handle misdemeanor cases. What happens is the entire framework of this small court system, of this new mental health court program, gears itself to the problems of misdemeanors of mentally ill people. There is a special way to treat them, a certain kind of help that is available. I think it is a very small amount of funding to put up, even though you are burdened with many programs, to see if we cannot do better in this area. Would you comment on that, please?

Attorney General ASHCROFT. First of all, I am very pleased to ask my staff for an additional briefing on this matter. One of the things that is a responsibility of our judicial system is to try not just to punish the offender, but to prevent future difficulties. In remediating offenses of those who are mentally ill, sometimes the close supervision that comes in a so-called mental health court setting can be valuable. I appreciate your mentioning it to me and will ask for additional information in accordance with your request from those who are responsible in the Department for these issues.

VAWA—NEW MEXICO

Senator DOMENICI. I thank you very much. Now on behalf of the State of New Mexico, I want to ask you—I will submit this narrative also so I will not have to use the time of the subcommittee, but New Mexico has been denied funding in its efforts with reference to violence against women. We have an office, like most States do, with reference to violence against women. It turns out that New Mexico's statute, which is supposed to enable us to receive the money, is not written exactly as your lawyers think it

should be written. Therefore, New Mexico is being denied its grant because we have not met the statute properly and have not passed legislation that puts us in a position to qualify.

I think the denial under those circumstances, especially since the grant was given heretofore with the same facts, it is more than we ought to take as a State. I would ask you if you would consider it a good faith effort, and if you would, give New Mexico a 1-year waiver so they might proceed and not lose the money while they get together with the State legislature and attempt to rectify the statutory shortcoming.

Attorney General ASHCROFT. I am aware of this unfortunate situation. It is my understanding that the State legislature recently passed domestic violence legislation necessary to comply, and if they have not, that is another situation. But it would be very pleasing to be able to rectify this, and absent their having done so, I will consider your request.

Senator DOMENICI. I believe you will find that they have not rectified it.

Attorney General ASHCROFT. They have not.

Senator DOMENICI. They are out of session. They do not come back in until a call and there will not be a call this year. I think we really ought not be left without the money, and if you would take a look into this situation, we would appreciate it.

Attorney General ASHCROFT. Thank you.

RADIATION EXPOSURE COMPENSATION PROGRAM

Senator DOMENICI. Thank you very much. You also have another area, just to recognize the diversity of what you do, a radiation exposure compensation program.

Attorney General ASHCROFT. Yes.

Senator DOMENICI. Now, this is a very serious program. Nobody wanted it at the beginning because it cost so much money that subcommittees asked why they should be charged with those large amounts of money when the budgeteers are not giving us enough, nor are the appropriations chairmen giving us enough money. But we have, one way or another, finally set this program where it is sailing along. We had a very disgraceful situation, as you probably know, where certain recipients, entitlees, were walking around with IOUs in today's world, literally an IOU from the Federal Government saying, we ran out of money but we owe you as compensation under these particular radiation exposure statutes.

I have a series of questions, following our attempt to set this program straight with an amendment that I was privileged to offer. I would ask you, if you can, for the record, to submit to us information on whether all the IOUs have been paid, for instance. Would you break down a category on the number of claims paid State by State? There are about eight or nine questions so that we will know that you are focusing on the program, and you are getting on with spending the money that is there.

You should know and the Senators should know, that after all of this effort, we do have plenty of money because we have open-ended it out of frustration. Since we do not know what the amount is, we have said, as much money as you need to pay IOUs. Do you have any observations regarding the program? In any event, will

you answer our questions so we will know the status of the program?

Attorney General ASHCROFT. I will answer your questions, Senator, and my observation is that IOUs are a one-way street. I do not think the Federal Government, when it comes time April 15, likes to get an IOU from you, so when we have to pay our bills, we ought to give.

I would add that the enactment of the National Defense Authorization Act for Fiscal Year 2002 ensures that funding will be available to pay the claims——

Senator DOMENICI. That is right.

Attorney General ASHCROFT [continuing]. Including $172 million in fiscal year 2002 and $143 million in fiscal year 2003. Our estimates, we believe that these amounts will be sufficient to ensure that the Government actually pays the meritorious claims of Americans who lost their health, and in some cases, whose lives were lost.

I will be happy to receive the list of specific questions and to make written responses to them. I think we are making great progress, not as a result of any great work by the Department, but the Congress stepped up to the plate here and provided a basis for us to do this in a far better way.

Senator DOMENICI. I thank you very much, and I thank the Senators here who helped when that amendment was offered on the defense authorization bill and everybody supported getting the IOUs paid. It seemed to be a situation you would not like to go home and answer to your constituents. I told them I would never come back to their area until it was fixed. It was fixed, and I went back to see them.

SANTA TERESA PORT OF ENTRY

IOUs have left the scene.

I have two other questions with reference to ports of entry in New Mexico that I will just raise briefly with you. We have a little port of entry called Columbus. It desperately needs to be open all day and all night because it is the only port in that area that can handle that kind of a commercial load. We need somebody to look at when you are going to be able to provide the additional personnel needed for this port to do its job.

We have a brand new port called Santa Teresa, which I am stating so that your staff will know of my concerns. It has a similar problem. It is underfunded and they have to cut back on their services because we do not have enough staff to keep it open.

I might say to my fellow Senators, when the United States of America declares that we are going on alert, we all wonder, what does that mean? I can tell you, with reference to ports of entry, it means that they clamp down tremendously on those going through. As a result, if you do not give them more personnel, the lines get enormous and the backlogs get extreme because we are on alert and we are checking the cars and trucks more carefully than we would otherwise.

But nobody recognizes the problem they have with money, and I am asking in this regard that you take a look. These ports are really doing their job with way too little money in terms of the per-

sonnel they need. Do you have an observation or comment regarding either of these two ports?

Attorney General ASHCROFT. Well, I spent some time on the Southwest border, particularly in the El Paso sector and over to Santa Teresa, which is—and we are pleased that we have that facility there and it is an exemplary facility and there are hard-working people there, but there is no question that it is stressed. Inspectors from the El Paso point of entry have been detailed to assist so that we could get to a 24-hour, 7-days-a-week basis there at Santa Teresa. The two new positions are to be deployed to Santa Teresa in this fiscal year, so we hope to be making progress.

You are correct that when we go on high alert, it stresses us and it stresses the country commercially. We came close to having some of our manufacturing concerns in America be incapable of continuing manufacturing because the part streams that came from Canada and Mexico to these manufacturers were curtailed. In a system of just-in-time inventory, you threaten to be unable to continue.

So we will address these issues regarding Santa Teresa and Columbus, did you say?

Senator DOMENICI. Columbus, yes.

Attorney General ASHCROFT. I do not remember having been to Columbus, and I hope that means I have not been there——

Senator DOMENICI. I do not think you would have. It is a very small port, and if you went to the El Paso region, it is quite a distance, about 1 hour and 15 minutes' ride.

Attorney General ASHCROFT. I think we went to Santa Teresa, which has got some new facilities there——

Senator DOMENICI. Brand new.

Attorney General ASHCROFT [continuing]. Very nice facilities. But we will work in this respect.

Senator DOMENICI. Thank you very much. Thank you, Mr. Chairman.

Senator HOLLINGS. Senator Murray.

Senator MURRAY. Thank you very much, Senator Hollings, for having this committee hearing. I really appreciate the opportunity to ask some important questions from the Attorney General. Welcome to you for being here today.

Attorney General ASHCROFT. Thank you.

DOD PARTICIPATION IN NORTHERN BORDER SECURITY

Senator MURRAY. Mr. Attorney General, last December, you announced that the administration would send the National Guard personnel to the northern border to help with border security issues. This is an extremely important issue to my State. People's lives have been impacted. The economy has been impacted. We have a tremendous amount of traffic going back and forth across the border that since September 11 has really halted and slowed and caused tremendous distress to those communities. So your announcement was extremely important and I really appreciate the fact that some relief is on the way. But more than 2 months have passed since that announcement and not a single Guardsman has yet been deployed to the border.

Now, I have been working closely with Governor Ridge, the Department of Defense, and the Washington National Guard. Governor Ridge has been really good to work with. In the last week, he has gotten personally involved in this and I really do appreciate it. But it is kind of astounding to me, when our borders are so important, and we all understand that now, why it has taken 2 months for the northern border to get help and I wish you could explain that to us on this committee.

Attorney General ASHCROFT. Well, first of all, let me agree with you that we need to have the right kind of inspecting capacity and deployed resource on the northern border. We have about 5,500 miles of border with Canada and we have had fewer than 400 people staffing, manning that border, as opposed to the Southwest border, which has about 2,000 miles and we have had 9,000 people on the Southwest border.

Senator MURRAY. We are acutely aware of that in my State.

Attorney General ASHCROFT. So we, in the midst of the situation, and we have had some threats regarding even terrorism. As you know, one individual, the millennium bomber, came across the northern border in your area, and fortunately, our sensitivity to terrorism and its potential allowed us to intercept that situation.

But we were able to iron out the funding and other resource allocation matters with the Department of Defense and the memorandum of agreement, or MOA, was signed on February 15. About 700 Department of Defense personnel will assist and we should have those moving very quickly, now that the agreement has been signed. But the Department of Defense, obviously, is engaged in other very serious responsibilities and these—I wish we had been able at an earlier time to reach the kind of understandings about the deployment. We have been keenly aware of both threats to our security that could exist and the impairment to commerce that comes when you have to have a setting where you do not have adequate personnel.

So we are going to have those individuals. They will be assisting in physical inspection of vehicles——

Senator MURRAY. Do you know when they will be actually on the ground in our States?

Attorney General ASHCROFT. Senator, I think I have to—I hear that the DOD personnel are expected to be in place in 2 weeks. I do not know if that means in Washington. I will be happy to try and learn specifically when we can expect that to happen.

[The information follows:]

NATIONAL GUARD DEPLOYMENT

The Immigration and Naturalization Service (INS) signed a Memorandum of Agreement (MOA) with the Department of Defense (DOD) on February 15, 2002. Under this MOA, DOD will provide port-of-entry security, perform physical examination of vehicles, and manage traffic flow as well as provide limited air and intelligence support to assist in monitoring potential illegal activity along the northern border. All DOD personnel providing support to the Border Patrol under the MOA were on duty on the northern border by March 18, 2002. The support consists of a total of 6 aircraft with 63 pilots and crewmen. In addition, there are a total of 16 DOD personnel to support the Sector Intelligence Centers (SIC).

One aircraft with 11 pilots and crewmen and 5 support personnel for the SIC are assigned for duty in Washington state. Mobilization of 29 DOD personnel to Washington state ports-of-entry (POEs) to assist Immigration Inspectors began on March 15, 2002. As of March 19, 2002, all 29 DOD personnel were on duty at POEs.

LIMITATIONS ON AGREEMENT WITH DOD

Senator MURRAY. We would really appreciate knowing that. One of my concerns is that the MOAs are only for 179 days. Do you think that is an adequate amount of time?

Attorney General ASHCROFT. Well, we have asked for the kind of long-term commitment to the northern border in this budget request that we believe we can hire long-term professionals as part of INS, the Border Patrol, to undertake these responsibilities. We believe that is an attainable and achievable matter with what we believe will be the appropriate resourcing.

Senator MURRAY. I agree with you, what we really need to do is to get the Customs/INS/Border Patrol agents in place and not just rely on the Guard, but I am concerned that 179 days will not be long enough, particularly when budgets here take quite a bit of time to get through and people need to be hired and trained. Will you support us on an extension of that if 179 days proves to not——

Attorney General ASHCROFT. I will do everything I can to make sure that we secure the border properly, and I would be willing to make a request for additional help.

Senator MURRAY. I appreciate that response.

Senator HOLLINGS. You have actually got $25 million in here for 285 Border Patrol agents to be transferred from the Southwest border to the Northwest border. I just visited the Border Patrol school down in——

Senator MURRAY. Last year's budget did make increases. We need to make further increases in the budget today, but it is going to take a while.

Let me ask you one other question on this. It is my understanding that the deployment order for the National Guard to the border will be conducted in accordance with Title X and that the Guardsmen will be deployed without any weapons. Now, my concern is that deploying these soldiers unarmed really severely limits their ability to guard the border because it will now fall upon the INS and the Customs Service agents to protect the soldiers in addition to securing the border. Is that how we envision the National Guard helping us and do you support the decision to deploy the Guard under Title X?

Attorney General ASHCROFT. Senator, the Guard is going to provide assistance to the immigration inspectors, examiners, and Border Patrol. We believe that that assistance is going to be very valuable in helping us carry over until we can put our own people there.

I am not in a position—I do not know. I will have to just say, I am not sure what would be the need for or benefit to asking the Guard to be armed. There is a little sensitivity here that I think is important for us to note. The border between the United States and Canada is not a militarized border and we do not want to signal that it is and our friends in Canada are sensitive appropriately that we do not signal that we are somehow arming the border.

So one of the reasons we want to use conventional resources promptly and Border Patrol and INS resources is that that, again, puts us back in the sense of regularity about the way we would en-

force the border. It may be with that in mind that this determination has been made, but the best part of my answer was when I said I do not know, and I will have to try and get back to you.

Senator MURRAY. I do appreciate that, but I think you should know there is a concern that we are deploying a number of people unarmed and it is not easy to be out there on a border patrol, as I think you well understand, and I think there is a concern that because this is under Title X that unarmed personnel on the border will just mean that our Border Patrol will have more people to protect. I would appreciate hearing back from you when you know that.

Attorney General ASHCROFT. Thank you.

[The information follows:]

ARMING THE NATIONAL GUARD

The position of the Department is that the National Guard personnel activated by the Department of Defense (DOD) to provide support to the Immigration and Naturalization Service (INS) on the northern border not be armed. The reasons for this are:

—The DOD personnel assigned to provide aviation support to the Border Patrol remain subject to DOD rules for the use of force, which states that the soldiers will not be armed.

—DOD personnel assigned to support INS will not participate in the pursuit, surveillance, search, seizure, apprehension, arrest, investigation, interrogation or detention of any individual; or any other form of law enforcement activity.

—DOD personnel will not be placed in a position or be required to perform a task that calls for the use of force, lethal or non-lethal.

—No DOD aircraft or aircrew will be required to land or conduct operations in a "hot" zone.

—An armed INS Border Patrol agent will be transported aboard each flight of DOD aircraft.

—An Immigration Inspector will directly supervise DOD personnel while on duty at the port.

—The 16 DOD personnel supporting the Border Patrol Sector Intelligence Centers will be working in an office environment.

REDUCTION OF THE COPS PROGRAM

Senator MURRAY. Mr. Chairman, I do not have much time yet and I know Senator Mikulski asked about the COPS program. Let me just reiterate my concern about that, as well, and the program cuts to that.

We are asking a lot of our local law enforcement since September 11. I have received dozens and dozens of letters from our local law enforcement officers from all over our communities who are deeply concerned that they are getting a real double standard here, where we are asking a lot of them to protect citizens in situations none of them envisioned a year ago, and cutting the COPS program says to them that we are not going to stand behind our commitment to help them. So I hope that we can reinstate this program in our budget and that we can do the right thing to support the cops that are working so hard to protect our citizens today.

Attorney General ASHCROFT. Thank you.

Senator HOLLINGS. Very good. Senator Kohl.

Senator KOHL. Thank you very much, Senator Hollings.

Mr. Attorney General, good to see you.

Attorney General ASHCROFT. It is a pleasure to see you.

PROJECT CHILD SAFE

Senator KOHL. Mr. Attorney General, in last year's CJS bill, we included a provision calling for the Justice Department to develop a safety standard for child safety locks and to report to Congress by January 15. This standard has not yet been developed, and until it is, no Federal funds can be spent for the distribution of safety locks. We included this language after the Consumer Product Safety Commission released a study which found that 30 of the 32 safety locks then available on the market could not pass the most basic safety tests.

While we continue to believe that the purchase of a safety lock should be mandatory, we also strongly believe that the locks, obviously, must work. Can you tell us which experts the Justice Department is working with to write the report and can you tell us when it will be completed?

Attorney General ASHCROFT. First of all, I thank the Senator for this inquiry. The Office of Justice Programs has been working with the Consumer Product Safety Commission and with a group known as the American Society of Testing and Materials to develop the national standards for gun safety locks. I have been told that those standards should be available in the next 60 days, sometime during April of this year, and I would hope that that is an accurate forecast. I know that it was mandated by January, but they are obviously not here.

Senator KOHL. So are you saying that——

Attorney General ASHCROFT. April is the projected date, and we are working with the Consumer Product Safety Commission and the American Society of Testing and Materials in the development of the standards.

SAFE EXPLOSIVES ACT

Senator KOHL. All right. Thank you so much.

Mr. Attorney General, as you know, Senator Hatch and I have introduced legislation that creates uniform Federal regulations for the sale or purchase and the possession of explosive materials. In some States today, it is easier to get enough explosives to take down a house than it is to buy a gun, to get a driver's license, or even to obtain a fishing license. The Safe Explosives Act that he and I authored would extend the same requirements currently in place for interstate purchases of explosives to intrastate purchases.

Mr. Attorney General, can you tell us whether the Justice Department supports this legislation?

Attorney General ASHCROFT. First of all, we are in the process of reviewing the legislation, which I think, if I am not mistaken, that is the measure you submitted on February 14 with Senator Hatch and Senator Cantwell and maybe Senator Schumer, I think were the parties. This certainly seems like the kind of objective that we ought to be able to support and I cannot announce a final conclusion on a study of the legislation at this time, but we will continue to review it and look forward to working with you on it. It is the kind of objective that we ought to be able to work together on to support.

REDUCTION OF THE COPS PROGRAM

Senator KOHL. I know that Senator Mikulski talked about the COPS program and Senator Murray mentioned it herself. I do not want to belabor it unless there is something that you have not said yet with respect to that. All the indications are that the COPS program has been successful. As you know, it is a way in which we at the Federal level help to support the hiring and deployment of officers, which is clearly a good thing, or at least we all think it is a good thing. The 80 percent cut in funding would indicate that you all do not think it is such a good thing. Correct that misinterpretation if that is what it is that I have.

Attorney General ASHCROFT. Let me just say to you that I think it is a good thing. I think it has worked very well. The objective of the legislation was to make it possible for the law enforcement community in America to understand and develop 100,000 new officers on the street. I do not know of a Federal program that has been more successful in that respect.

Funding was, I think, for 111,000 eventually, and the most important part about that was that as the funding expired, in something like 92 percent of all the cases, the local law enforcement officials said this was a good idea. The purpose of the statute was to introduce us to the value of these additional law enforcement officers, and we are going to pick up that cost and continue with those officers.

So there are two groups of people that say that this has been successful. One group says this has been successful. This is a program that worked, that achieved its objective. Now we can do some other things. Another group says, this is a program that worked. It is successful. We ought to do more of this.

So, frankly, I think that is where we are. Certainly, the Department of Justice is gratified by the success of this program and I wish all of our programs had the 92 percent sort of endorsement ratio of after having been in place, that they were so successful that the local authorities thought they were willing to put up the money to continue them. That is a wonderful endorsement.

The decision on the part of the administration to do some other things that relate to the Federal Government's responsibilities with the resources is not a repudiation of the success or value of the program, which I think everyone agrees is one of the most successful programs we have ever had.

Senator KOHL. I do not know what to take of your answer, so I am just going to sort of leave it there. I think you are saying it is a great program, it has been a great success, and we are moving in another direction, which is okay. I mean, I appreciate that.

Attorney General ASHCROFT. I think that is a fair characterization, Senator. It accomplished its purpose. It said to local law enforcement, try some of these people for a period of time, see if they are worth it. They concluded that they were. It demonstrated the fact that hiring more people makes a difference in the quality of life and the level of crime and I think——

Senator KOHL. Does it say that, in your honest judgment, we have reached the limit of——

Attorney General ASHCROFT. No, I think it says that——

Senator KOHL [continuing]. The limit of what success there is in hiring additional law enforcement?

Attorney General ASHCROFT. I think it says that it has demonstrated very clearly that if you put additional resources into the law enforcement mix, you can improve the quality of life for people. That having been demonstrated, for local decision makers, they need to decide whether they want to put more resources into law enforcement or whether they feel that they are at the right level. The program initially was designed to demonstrate that concept.

I think it is clearly and overwhelmingly understood. A 92 percent endorsement rate backed by funding at the local level indicates that the law enforcement officials know and local decision makers know that if they want to devote additional resources, they can probably expect to see additional return in public safety.

Senator KOHL. I thank you. I thank you, Mr. Chairman.

Senator HOLLINGS. I thank you.

Senator Leahy, the chairman of our Judiciary Committee as well as a distinguished member of our Appropriations Committee.

Senator LEAHY. Thank you.

Senator HOLLINGS. Like Kato's famous couplets, you can make your own little laws and sit attentive to your own applause.

Senator LEAHY. I am impressed, Mr. Chairman. I really am. I will wait for the full translation of that. We Northerners have to work on that accent just a bit.

Senator HOLLINGS. Oh, yes. That is all right.

Senator LEAHY. I actually served with the distinguished Senator from South Carolina for over a quarter of a century on this committee.

Attorney General Ashcroft, I apologize for not being here earlier. I am also the chairman of the subcommittee that handles foreign aid and the administration was testifying on the foreign aid budget and I was at that.

POSTCONVICTION DNA

I will put my full statement in the record. I do appreciate these hearings, Mr. Chairman. I have written a number of letters over the past several months to the Department of Justice and I realize we have had some difficulty with the mail, but almost miraculously, within hours of this hearing, all these—I have been waiting for answers for several months—they suddenly got answered.

In fact, I received one letter I sent 6 weeks ago concerning the Department's decision to set aside its plans to offer $750,000 in grant money for postconviction DNA review programs. I just want to make sure I understand the answer. I had asked the question, does the Department intend to use alternative funds for postconviction testing grants? The response said you have asked NIJ to look into DNA initiatives. Is this a way of just saying we are not going to spend a dime on postconviction DNA testing? I realize out of a $30 billion budget it is $750,000, but insofar as that was specifically in legislation, what is going to happen?

Attorney General ASHCROFT. First of all, I agree with you that these hearings are valuable and they do provide a basis for a better service through the mail.

My staff indicates to me that a number of your letters were answered very recently, and that is appropriate.

Senator LEAHY. It focuses one's attention.

Attorney General ASHCROFT. Thank you. Just to give you an idea, in terms of what we requested for DNA work in the next year's budget——

Senator LEAHY. No. No. What about the $750,000 that is there now?

Attorney General ASHCROFT. The $750,000, I believe, is the money that was allocated to assist New York in identifying victims that died in the World Trade Center——

Senator LEAHY. We voted tens of billions of dollars to make available for New York and elsewhere in post-September 11. Out of those billions of dollars, there was not money for that DNA testing, or the $20 billion that the President reassured New York they were getting, there was not money for that? We had to take it out of the postconviction DNA program? Is this just a nice way of saying, hey, we do not like that program, so let us——

Attorney General ASHCROFT. I think it is——

Senator LEAHY [continuing]. Cloak it in terrorism and say we are going to give it somewhere else?

Attorney General ASHCROFT. No, I do not think that is an accurate characterization.

Senator LEAHY. I am just asking. I am just a lawyer from a small town in Vermont and I do not understand how you figure it in the big city, but it just seems to me that out of the billions of dollars for post-September 11 terrorism things that we could have found the money there and not had to take it out of this program, which had been specifically authorized.

Attorney General ASHCROFT. I have asked about this and the answer that I have been given is this, and I believe it is the appropriate answer, that the Director of the National Institute of Justice had some concerns about the $750,000 project, about the methodology and the usefulness of the eventual findings from the proposed research project, which would have provided almost no funding for the actual testing of convicted offenders for DNA.

Moving this resource to provide and meet these other needs, I think, reflects not a repudiation of the value of postconviction DNA studies, but it reflects the fact that this did not appear to be a study which was going to return the kind of value on postconviction DNA that was appropriate and, therefore, was seen as an opportunity to support the effort to assist the identification in the World Trade Center.

Senator LEAHY. Are we ever going to have money for postconviction DNA testing?

Attorney General ASHCROFT. In our proposal for this year, next year, pardon me, fiscal year 2003, the DNA breakout is convicted offender backlog reduction, which is a postconviction sort of thing, $15 million requested; DNA no-suspect backlog reduction, that is where you have DNA from the crime scene, at $25 million; a DNA lab improvement program, $35 million is requested; and DNA research and development, $5 million is requested. Now, all of those——

Senator LEAHY. But there is no money in between now and then?

Attorney General ASHCROFT. Okay, yes.

Senator LEAHY. It is a heck of a note if you are on death row and it comes up prior to——

Attorney General ASHCROFT. Let me go over this year's resources. The convicted offender backlog reduction component is $26 million that is available this year. The DNA no-suspect backlog reduction amount this year is $35 million. The DNA lab improvement is $35 million. And the DNA research and development fund is at $5 million again for this year.

Senator LEAHY. All right. Let me ask you an area where I am not sure I fully understand your answer, Attorney General, but let me do a follow-up question and hope I get the answer prior to our next budget hearing, or maybe we will have an authorizing committee hearing.

NORTHERN BORDER SECURITY

I know Senator Murray asked about the northern border and the Justice Department budget calls for substantial increases in funding for border security. That is something I have called for for years, certainly especially since September 11. In fact, I included language in the PATRIOT Act authorizing tripling the number of Border Patrol agents, INS inspectors, Customs Service officers. The President's budget builds on what we did in the appropriations bill last year, Mr. Chairman, and I think that is on the right track.

I note your budget calls for half of the new Border Patrol positions to be on the northern border. It is silent about the percentage of new INS inspector positions to be assigned to the northern border. Why not a similar earmark for inspectors? Are they needed?

Attorney General ASHCROFT. Well, let me say this, that I believe inspectors are needed on the northern border. We are, as I mentioned to Senator Murray, eager to have the assistance of the National Guard troops to assist us with inspections and other processing at the borders. We need for those borders to be open and working and regular and free-flowing and secure all at the same time.

I have visited the northern border with that in mind and I was distressed in my recent visit to see people reassigned from the rest of the country there. So I know that filling in there has made it difficult across the board now.

Senator LEAHY. But General, I live an hour's drive from that same northern border and you could send up National Guard. They are not trained the way Border Patrol are. They are certainly not trained the way INS inspectors are. I can tell you right now, not from any expertise but just going to that border, we need INS inspectors, we need Border Patrol, both, not just from a security point of view but from a very significant economic point of view.

Canada is our largest trading partner. Talk with your fellow Cabinet member, Secretary Abraham, and ask him what happens with Michigan, for example, if you cannot move things, a free-flow through. That is going to affect all the way down into your State of Missouri. It is not just security. We want people to move back and forth, plus the fact that we have a wonderful advantage of having a country as friendly as Canada next to us.

We authorized, for example, $50 million for INS to improve technology for monitoring that northern border and to purchase additional equipment. Does your budget request money under that authorization? These are the things I would think we need.

Attorney General ASHCROFT. The President's budget on the northern border would reflect about a 148-percent increase over the authorized individuals from the year 2001. In particular, in the next year's budget, we are seeking an enhancement of 150 individuals in inspectors on the northern border. We are——

Senator LEAHY. Are those INS?

Attorney General ASHCROFT. Yes, sir. The use of the National Guard is not to suggest that we think the National Guard has the capacity to do this with the expertise of the INS. It is designed to be a fill-in measure to try and help us in a stopgap way pending the development of the additional INS resources and the training and the hiring which is obviously a challenge.

Senator LEAHY. I would ask that you look very closely at that, because you and I are in agreement. It should not be the job of the National Guard. I have great admiration for the National Guard. I am the co-chairman of the Guard Caucus. But I want them for the things they are trained to do. They have helped out since September 11. Within a matter of hours, the Vermont National Guard was flying patrols around the clock over New York City, our F–16s based out of Burlington, Vermont, armed with sidewinders. They did that for a very long time. The Guard in your State of Missouri has been one that has responded very well. They all do.

But we need INS inspectors, we need Customs agents, we need those who are trained for this very specialized thing. Just as we could not ask them to go out and do some of the things the Guard does, it is not good to have the Guard be asked to do that when we can put these personnel along our northern border.

STATE AND LOCAL ASSISTANCE GRANTS

The administration is going to repackage a number of Justice Department grant programs, cutting their funding. Programs targeted for elimination include the State and local law enforcement block grants, they got $400 million, I believe this year; Byrne law enforcement block grants for efforts to improve our State and local courts, and they got, what was it, about $500 million this year. The plan would cut more than $1.6 billion from the $2.5 billion appropriated this year for State and local law enforcement grants put into a new $800 million justice assistance program.

It would be very serious, coming from a rural State. We rely, a lot of rural States, a lot of rural areas of large States rely on these grants to combat crime. They have proved very, very effective for State and local law enforcement agencies. How does this new justice assistance program, which results after you cut $1.6 billion out of the money we give to local and State law enforcement now, how does this really help?

Attorney General ASHCROFT. Well, we believe the program will be an effective program of assistance with the kind of flexibility and capacity of the recipient governments to enhance security. There is obviously a need for us to do some things federally that we have not done, and as we seek to find ways to have the re-

sources to do federally, it is not as possible for us to be as generous as we might otherwise be with funding in providing assistance at the State and local level.

Senator LEAHY. But you were a Governor and you were an attorney general of your State. I was a State prosecutor. We both know that in law enforcement, most law enforcement is done at the State and local level and done best and our people want it done that way. I mean, you like to know that you can call your local police department or you can have your local district attorney respond or your sheriff or State police or whatever else.

I think you may very well want to look at that, because I know that the Congress is going to look at the fact that do we really improve the safety in the small towns of Missouri or Vermont or South Carolina or anywhere else if we are cutting back on the, whether it is the Byrne grants or anything else that have gone to those small communities or to the States.

I would suggest you look very closely at that because I am not convinced that that is going to improve law enforcement. I mean, we have seen crime come down every year for 8 years, but part of that has been because of our dramatic increase in money to the COPS program and other things over those 8 years to help.

TRILOGY

One other area I would ask you to look at is an FBI initiative, I think it is an extremely important one, the Trilogy program to upgrade their information technology. The counterterrorism supplemental for 2002 included almost $250 million for advanced computer equipment and software. The FBI has requested another $109 million in fiscal year 2003. But the law requires—as important as this is, the law requires you, that is, as head of the Justice Department, and the FBI to submit quarterly status reports on Trilogy. That is in the fiscal year 2001 law. That has not been done. Will you be able to start providing a current status report on Trilogy?

Attorney General ASHCROFT. Senator, I will have to get back to you on what the situation there is. I can——

Senator LEAHY. I know you want to follow the law. We just want——

Attorney General ASHCROFT. I do want to follow the law. It is my responsibility to enforce the law. Frankly, I want to be very responsive to you and to members of this committee and to the United States Congress. I have a great respect for the law. The delivery of Trilogy software has not been delayed. The expedited network and desktop rollout will help the FBI. Let me make an inquiry about the appropriate reports and let me make a report as promptly as I can. I will be happy to do that.

[The information follows:]

STATUS REPORT ON TRILOGY

The Department of Justice (DOJ) appreciates the support that Congress has given its Trilogy information technology upgrade project, and understands the oversight role that Congress plays in ensuring that the large amount of funding that it has provided is used appropriately. Indeed, Trilogy is one of the FBI's top priorities, and it must be managed and executed properly.

The fiscal year 2001 Appropriations Act directed the FBI to submit quarterly status reports on the implementation of the Trilogy plan to the Appropriations Committees. The DOJ and FBI take this reporting requirement seriously and have worked diligently with each other and with the Office of Management and Budget over the last year to comply fully with this requirement and expedite the review process so that timely reports can be transmitted to Congress.

The first quarterly report was transmitted to Congress on June 29, 2001. The second and third quarterly reports were jointly transmitted to Congress on February 26, 2002.

The fourth report was prepared by the FBI but did not include the most recent information on accelerated Trilogy implementation. Therefore, the FBI decided to submit it with the fifth report to provide a more updated and accurate description of the Trilogy program as it currently stands. The fifth report reflects recent developments regarding Trilogy acceleration and fully explains how the program has been accelerated and improved to reflect the FBI's response to the terrorist attacks. The fourth and fifth quarterly reports were jointly transmitted to Congress on March 19, 2002.

In summary, DOJ and FBI take reporting requirement responsibilities very seriously and remain committed to keeping Congress informed on the progress of the Trilogy program. At this time, DOJ has transmitted the first five quarterly status reports to Congress. The FBI is currently working on the sixth report.

Attorney General ASHCROFT. May I just—I may have created a wrong impression in response to one of the questions about local law enforcement in saying that, in some instances, we have had to allocate our resources to Federal responsibilities. I think, overall in the President's budget, assistance to local and State agencies will have a substantial increase. But as it related to the programs you mentioned, some of them are less than they were previously.

But I would be happy to present you and I will provide an accounting of that, but I think it is between $1.8 and $2 billion of overall increase for State and local law enforcement in the budget request this year in recognition of the point you are making, that law enforcement at the local and State level is very important to national security.

[The information follows:]

STATE AND LOCAL FUNDING

While there is a reduction and consolidation of DOJ state and local grant programs, the Administration proposes an overall increase in federal resources in fiscal year 2003 that are targeted to support the state and local emergency first responders. These federal funds are consolidated within the Federal Emergency Management Agency's $3.5 billion request.

TOBACCO LITIGATION

Senator LEAHY. How much total funding do we need to continue the tobacco litigation?

Attorney General ASHCROFT. We have asked in this budget for about $25 million——

Senator LEAHY. Is that going to be enough?

Attorney General ASHCROFT [continuing]. For this year's expenditures. That would be combined with perhaps other resources to assemble the kind of database, evidentiary database and the organization of the hundreds of thousands of documents that are necessary. We believe that is an amount that is appropriate to and will provide a basis for us to sustain the lawsuit in this year, to continue the lawsuit and to continue to prosecute the lawsuit vigorously.

Senator LEAHY. If it is not enough, do you have other sources where you can get money?

Attorney General ASHCROFT. We have sources that have been used previously that relate to the health care fraud and abuse fund. I believe that is one of the sources that have been tapped from other agencies that have provided available resources to help sustain the cost of developing the evidentiary basis for the trial.

Senator LEAHY. Mr. Chairman, I will put my other questions in the record, but I wonder if I might have the indulgence of the Chair to ask one more question.

Senator HOLLINGS. Sure, all you want. Go ahead.

CIVIL RIGHTS OF ARAB AMERICANS

Senator LEAHY. How about Federal civil rights enforcement? There were a rash of crimes against Arab and Muslim Americans after September 11. Some were shocking. One, a man who shot, as I recall, one person who was not a Muslim but he just shot him dead. He was a Sikh. When asked why, he said, "Because I am an American." Well, that shames all Americans and I know you share my views on that and I thought President Bush's statements, strong statements against that kind of discrimination against fellow Americans was very, very good and I publicly praised the President for that and the Department of Justice for speaking out on it, too.

Now, when you came before the Senate Judiciary Committee in December, you said the FBI has commenced approximately 300 Federal criminal investigations involving post-September 11 attacks on Arab or Muslim Americans or others based on their ethnicity, their actual ethnicity, or in some cases, of course, their perceived ethnicity.

But you say that, to date, there have been only eight Federal cases resulting from approximately 300 investigations, so in about 97 percent, there were none. Even if you count all the State prosecutions, there appear to be about 60 total cases out of 300 investigations. Is that because there was nothing there or is this because of a policy determination on such hate crimes?

Attorney General ASHCROFT. This Justice Department and this administration will prosecute hate crimes vigorously whenever the evidence provides a basis for that kind of prosecution. I thank you for commending the President. His leadership was immediate after September 11 in visiting mosques and convening leaders of the Muslim faith. I personally visited mosques myself and——

Senator LEAHY. And I commend you for that, too.

Attorney General ASHCROFT. We have worked with local prosecutors in developing cases wherever that was appropriate and wherever that was the right course of action. The deplorable settings where individuals struck out, injured, killed individuals based on ethnic differences is intolerable. We have made every resource that we could possibly make available to help in this respect devoted to it.

If you look carefully at the incidents, the graph of the incidents was that early on, there was a higher, very high—pardon me, let me be careful about this—the incidence of offense was high at the early stages and went down dramatically as we worked in the enforcement area. We will continue to work with local authorities and with Ralph Boyd, the Assistant Attorney General for Civil Rights

and the Criminal Division of the U.S. Attorney General's Office as well as the Criminal Division of the Civil Rights Division of the U.S. Attorney's office.

Senator LEAHY. Would you ask them, then, to give me updated figures on the number of complaints made, the number of investigations made, but then the number of prosecutions that resulted?

Attorney General ASHCROFT. I will be very happy to provide you with complete data.

[The information follows:]

HATE CRIMES SINCE 9/11

The Federal Bureau of Investigation (FBI) initiates hate crime investigations based upon receipt of sufficient information from a source known to be reliable. Federal hate crime statutes require a crime to be motivated by bias and specify that the criminal behavior interferes with a "Federally protected activity." The "Federally protected activities" are specified in the statutes and must be present for a federal prosecution. Additionally, some matters labeled by the victims as a "hate crime," are in fact "hate incidents" that do not rise to the level of a criminal act which fall within the FBI's civil rights jurisdiction. Therefore, investigations are initiated only when, after reviewing a complaint, it is determined that there is sufficient information to establish that a crime was likely committed and that potential federal jurisdiction exists.

The FBI has initiated 332 hate crime investigations involving Arab/Muslim/Sikh-American victim individuals/institutions since September 11, 2001. Since March 14, 2001, of the 332 investigations, 167 cases are ongoing and 165 have been closed. Additionally, approximately 85 individuals have been charged with state or local crimes in connection with the aforementioned 332 hate crime investigations.

The United States Attorneys' Offices do not track the number of Arab-American victims. However, a new criminal program category called Hate Crimes Arising Out of Terrorist Attacks on the United States was created post September 11, 2001. From its inception through March 14th, 56 criminal referrals have been received and 9 federal cases have been filed under this new category.

HATE CRIMES LEGISLATION

Senator LEAHY. Have you taken a position on S. 625, the hate crimes legislation introduced by Senator Kennedy that was reported out of the Judiciary Committee and was sent to the full Senate?

Attorney General ASHCROFT. No, we have not.

Senator LEAHY. Will you be?

Attorney General ASHCROFT. I do not know. I have not seen the legislation.

Senator LEAHY. We wrote to you about it. I got an answer back that expressed support for another bill that was introduced in a prior Congress. Would you be able to get me the Department's position on S. 625?

Attorney General ASHCROFT. We will be happy to receive your request and respond to it.

[The information follows:]

HATE CRIMES LEGISLATION

The Department's position on the pending hate crimes legislation is informed by our recent experience in responding to bias-motivated crimes which have unfortunately arisen in the wake of the tragic events of September 11. Since that date, the Civil Rights Division, which prosecutes bias-motivated crimes under several existing federal statutes, has investigated over 300 cases of alleged discriminatory backlash against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans.

Additionally, the Department recently indicted Darrell David Rice for the 1996 murder of Julianne Marie Williams and Laura "Lollie" S. Winans in the Shen-

andoah National Park. The four-count murder indictment specifically invokes a federal sentencing enhancement that was enacted to insure justice for victims of hate crimes. In this case, the federal sentencing enhancement provides for increased punishment if the fact finder at trial or, in the case of a plea of guilty or nolo contendere, the court at sentencing determines beyond a reasonable doubt that Rice intentionally selected either victim as the object of the offence because of the victim's actual or perceived gender or sexual orientation. If convicted of any of the charges in the indictment, Rice could face the death penalty.

The Department of Justice appreciates the leadership Senators Kennedy and Hatch, as well as other members of Congress, have shown on the important issue of hate crimes. Your leadership is reflected in the fact that the Senate Judiciary Committee has now voted to send S. 625 to the full Senate. As your question notes, in my previous responses to the Committee I observed that then-Governor Bush indicated during the Presidential campaign that he supported Senator Hatch's proposed hate crimes legislation, which was introduced during the 106th Congress and which shares several features with S. 625. As I explained in my earlier response, these common features include provision by the Attorney General of assistance in the investigation or prosecution of any violent crime that constitutes a felony and is motivated by animus against the victim by reason of the membership of the victim in a particular class or group; grants by the Attorney General to state and local entities to assist in the investigation and prosecution of such crimes; and the appropriation of $5,000,000 for the next two fiscal years to carry out the grant program.

As you know, S. 625 is an important proposal which would amend the federal criminal code in numerous significant respects. The Department of Justice continues to review and evaluate the constitutional and policy issues raised by the proposed amendments to the federal criminal code in S. 625. At the same time, we are continuing to fulfill our important mission of enforcing the existing laws relating to bias-motivated crimes that fall within federal jurisdiction.

Senator LEAHY. Mr. Chairman, I appreciate this very much. The hate crime things worry me very much as an American. I know they do you. My maternal grandparents came to this country not speaking a word of English and I know that they faced a lot of prejudice because of that. Both my grandfathers were stonecutters in Vermont. My paternal grandfather died when my father was barely into his teens.

At that time, Vermont was a far different place. My father used to, in looking for work, the signs were either no Irish need apply or no Catholics need apply. The Italian side of my family, again, the very same thing. I know from your own deep faith how abhorrent you find those days, as I do.

But we want to make sure, all of us, whether in the Department of Justice, the administration, or the Congress, that we do not find ourselves going back to that kind of a dark time in our country. We have gone way beyond that in Vermont, fortunately. But the ability to judge people based on their race or religion always lurks beneath the surface and we all have a responsibility to make sure that this country, which is founded on ideals that go way beyond that, stick to those ideals.

Thank you. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you, Senator.

[The statement follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. Chairman, I join you in welcoming Attorney General Ashcroft to the Subcommittee today. During the past year the Justice Department has confronted the unprecedented and daunting challenge of protecting the United States against international terrorism in the wake of the attacks of September 11, 2001, and the subsequent anthrax attacks. The Justice Department, under the leadership of the Attorney General, deserves credit for sustaining the confidence of the American people in the government's ability to assure their safety.

I want to congratulate the Attorney General and the vast array of law enforcement and other officials, for the completion of a peaceful and secure Winter Olympics. I know that the Attorney General was personally involved in making sure that security was strengthened for public events away from the Olympics facilities.

While the Attorney General and I have not always agreed on particular actions, I respect the strength of his commitment. We worked together on the USA PATRIOT Act last year and demonstrated that the Congress and the Executive Branch can work together to combat terrorism and protect individual rights.

Today the Attorney General seeks to describe and justify a $30.2 billion budget request for the Department of Justice in fiscal year 2003, which includes $539.2 million to continue on-going initiatives funded in the fiscal year 2002 Counterterrorism Supplemental. I support the Administration's decision to give high priority to combating terrorism, including border security. We have a duty, however, to take a closer look at details that may not have been considered when the Supplemental was adopted last year.

In addition, just in the last day, I have received seven responses from the Department to outstanding requests for information about the activities of various Department components. These hearings are very useful in prompting responses, and I thank the Chairman for convening the hearing and the Attorney General for his attention to my questions.

BORDER SECURITY

The Justice Department's budget calls for increased spending on border security, and that proposal is a step in the right direction. I am confident that the Congress will continue on its path toward fulfilling the goal that we included in the USA PATRIOT Act of tripling the number of Border Patrol agents, INS Inspectors, and Customs Service officers, and I am grateful that the Administration appears supportive of that goal. The security of our borders is not and should not be a partisan issue. We must all recognize that our northern border needs to be made dramatically more secure, and we must be willing to provide the necessary funding. This budget is a good start, and I hope we do more to make sure that the Northern Border gets the additional personnel and equipment it needs.

The Northern Border provisions added to the anti-terrorism bill, enacted last October, authorize a tripling of border security on the U.S.-Canada boundary. Efforts since then to begin implementing the Northern Border provisions have originated in Congress and have met resistance from the White House. The President's new budget plan is the first movement by the Administration toward those goals. The budget calls for a $1.2 billion increase for INS law enforcement efforts, from $4.1 billion in 2002 to $5.3 billion in 2003. That increase would more than double the number of Border Patrol agents and INS inspectors. In his budget, the President has also said that new hiring should focus particularly on the Northern Border.

The President also proposes a $300 million increase in the Customs budget for staffing and technology. The President's focus on Northern Border needs applies here as well and this subcommittee may want to provide more direction to the Customs Service on where to display new staff.

FEDERAL BUREAU OF INVESTIGATION

The Justice Department component with plans to grow most sharply is the Federal Bureau of Investigation. Over a two-year period the FBI budget will increase from $3.25 billion in fiscal year 2001 to $4.32 billion in fiscal year 2003. The Judiciary Committee held FBI oversight hearings last year at which some members raised the questions about whether the FBI needed more money or just better management.

Director Robert Mueller is making management reforms. He announced the first phase of his FBI reorganization in December. I praised his action as responding to the need to strengthen FBI intelligence, security, and information management. He and Deputy Attorney General Thompson are now taking a wider look at ways to streamline the FBI responsibilities to enable greater focus on detecting prevention and the investigation of terrorists. This may require a shift of certain types of criminals to be handled by other federal agencies and state law enforcement. The Judiciary Committee will hear from Mr. Mueller and Mr. Thomson on their plans and the realignment of criminal law enforcement tasks.

One of the most important FBI initiatives is the TRILOGY program for upgrading the Bureau's information technology. The Counterterrorism Supplemental for fiscal year 2002 included $237 million for advanced computer equipment and software under the TRILOGY program, and the FBI requests another $109.4 million in fiscal year 2003 for information technology projects including TRILOGY. I support these

investments. From an oversight perspective, however, I am disappointed that the Justice Department and the FBI have failed to submit quarterly status reports on TRILOGY as required in the Appropriations Act for fiscal year 2001. Such reports are especially important to monitor the effectiveness of planning and testing for new software. I urge the Attorney General to provide a current status report on TRILOGY to the Congress as soon as possible.

Over the past seven years, the growth of the FBI's Joint Terrorism Task Forces (JTTF) has strengthened national counterterrorism efforts with full-time participation by other federal agencies and state and local police personnel, co-located at dedicated facilities with support funding in 36 FBI field offices. Director Mueller plans an increase in these task forces to all 56 offices, and I support this plan. After the September 11th attacks, you formed separate Anti-Terrorism Task Forces were established by the Attorney General in each U.S. Attorney's office. Former FBI executives have publicly raised serious concern that the new Task Forces would "undermine the capabilities of the nation's primary agency responsible for the prevention and investigation of terrorist activity." Although a memorandum from Deputy Attorney General Thompson, dated October 25, 2001, indicates that FBI JTTFs retain primary authority for operational and investigative matters not related to prosecutions, the concern expressed by these former FBI executives about the divided responsibility for investigations through duplicative task forces should be addressed.

For example, the U.S. Attorneys' Anti-Terrorism Task Forces are coordinating the current program for interviews of 5,000 nonresident aliens using state and local law enforcement personnel. The results are to be compiled in a new database for U.S. Attorneys being designed by the Justice Management Division. The development of a new database suggests a long-term investigative role for the U.S. Attorneys-led Task Forces using state and local law enforcement personnel. The potential for divided leadership and accountability is troubling. Moreover, it is not clear whether the Attorney General's Guidelines for FBI investigations would apply to the investigative activities of the U.S. Attorneys' Anti-Terrorism Task Forces. These are all questions which I look forward to discussing with the Attorney General.

IMPROVING STATE AND LOCAL LAW ENFORCEMENT

The Community Oriented Policing Services ("COPS") Program has been a resounding success since its inception in 1994, the COPS Program has awarded over $7 billion in grants to law enforcement agencies, putting more than 114,000 new law enforcement officers on the street, and is credited for reducing the crime rate and getting more police officers on the street. I support the full funding of the program to keep COPS on course to fund an additional 36,000 law enforcement officers by the end of 2005 to help maintain communities and reduce crime.

The Administration's fiscal year 2003 budget cuts COPS by almost $500 million. Congress appropriated $1,050,440,000 for the COPS program for fiscal year 2002. Enactment of this budget would mean an end to police hiring grants and school resource officers; and drastic reductions in technology, equipment, and support staff grants on which State and Local law enforcement agencies heavily rely. The request proposes to cut the Universal Hiring Program by 100 percent, cut the COPS in Schools program by 100 percent, and cut the COPS technology program by 67 percent.

The overall budget for COPS does not increase, as the Administration claims. It proposes to cut more than $1.6 billion from the $2.5 billion appropriated for fiscal year 2002 for state and local law enforcement grants, and, in an accounting shift, combines what is left into a new $800 million Justice Assistance Grant program. The budget request places that new grant under the COPS account, making it appear as if overall COPS funds increase, when, in fact, they do not. The Administration merely repackages many of DOJ grant programs, and then cuts their funding.

Grant programs targeted for elimination include the State and Local Law Enforcement Block Grants (LLEBG), which received $400 million this year; Byrne law enforcement block grants for efforts to improve state and local courts, which received $500 million for fiscal year 2002; and aid for states incarcerating illegal aliens, which got $565 million this year.

I also support full funding of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program to make grants to states, for use by states and local units of government, to improve the functioning of the criminal justice system, with emphasis on violent crimes and serious offenders, and to enforce state and local laws that establish offenses similar to those in the Federal Controlled Substances Act. It has proven to be a highly effective and widely praised grant program to state and local law enforcement agencies. For fiscal year 2002, Congress authorized $594,489,000 for the Edward Byrne Memorial State and Local Law Enforce-

ment Assistance Program, of which $94,489,000 was for discretionary grants and $500,000,000 was for formula grants under this program.

The Bureau of Justice Assistance (BJA) makes Byrne Program funds available through two types of grant programs: discretionary and formula. Discretionary funds are awarded directly to public and private agencies and private nonprofit organizations; formula funds are awarded to the states, which then make subawards to state and local units of government. I support maintaining the discretionary grant component of the program.

The President's budget proposes to level-fund the Bulletproof Vest Partnership (BVP) Grant Program at $25.4 million, even though, through the Bulletproof Vest Partnership Grant Act of 2000, Congress authorized $50 million for fiscal year 2003 for the successful program that protects the lives of local and state law enforcement officers.

To better protect our nation's law enforcement officers, Senator Campbell and I introduced the Bulletproof Vest Partnership Grant Act which became law in 1998. That law created a $25 million, 50 percent matching grant program within the Department of Justice to help state and local law enforcement agencies purchase body armor for fiscal years 1999–2001. Senator Campbell and I sponsored the Bulletproof Vest Partnership Grant Act of 2000 to build upon the success of this program by doubling the annual funding to $50 million for fiscal years 2002–2004. It improves the program by guaranteeing jurisdictions with fewer than 100,000 residents receive the full 50–50 matching funds because of the tight budgets of these smaller communities. For larger jurisdictions with populations at or over 100,000, the program pays up to 50 percent of each applicant's total vest costs, based upon any remaining funds. Specific funding levels for larger jurisdictions are determined once all applications have been submitted. Given the projected number of eligible jurisdictions and the limited funds available, the BVP already may not have sufficient funds to provide 50 percent for applications from larger jurisdictions. The law also allows for the purchase of stab-proof vests to protect corrections officers and sheriffs who face violent criminals in close quarters in local and county jails. I support for the full funding of $50 million for the Bulletproof Vest Partnership Grant Program for fiscal year 2003.

PROTECTING CIVIL RIGHTS

In contrast to the President's proposed budget, I support an increase in funding for our nation's essential civil rights enforcement agencies. This funding would allow the Department of Justice Civil Rights Division to add positions to prosecute hate crimes, deter the victimization of migrant workers, combat police misconduct, fight housing discrimination, eliminate discrimination against persons with disabilities, and protect fundamental opportunities. I am also disturbed by what could be interpreted as a shift in focus away from effective civil rights enforcement. Immediately after the September 11 terrorist attacks, the President addressed the nation and reminded us all that racially, ethnically, and religiously motivated violence would not be tolerated. I commend the President for his public words on this critical issue. It is important that the President and Department of Justice match this admirable rhetoric with real enforcement and maintain the Department's longstanding leadership role in national civil rights enforcement during these difficult and eventful times.

The President's proposed budget appears to fall short of the rhetoric. While that budget calls for increased funding for many components of the Department of Justice, these increases do not reach the Civil Rights Division, the chief federal body charged with actually enforcing U.S. civil rights laws. While I support efforts to fund election reform in the states and provide education on hate crimes enforcement to state and local authorities, these efforts are simply no substitute for maintaining a vibrant federal enforcement role in securing our most basic civil rights. These rights, all protected by the enforcement efforts of the Civil Rights Division, include voting, employment, housing, and disability rights as well as the rights of institutionalized persons, protection against police abuse and corruption, protection for victims of trafficking, and hate crimes enforcement.

As one example, the problems of racial, ethnic, gender, sexual orientation, and religious discrimination and violence, unfortunately, stubbornly persist within our borders. We were reminded of these problems by the rash of crimes against Arab and Muslim Americans after the September 11 attacks. These acts, and indeed all acts of discrimination, cut at the very heart of what the terrorists hope to destroy in the United States our tolerance and our diversity. In recent answers to questions which you provided based upon you December 6, 2001, appearance at the Senate Judiciary Committee, you note that the FBI has commenced approximately 300 federal crimi-

nal investigations involving post-September 11 attacks on Arab or Muslim Americans, or others, based upon their actual or perceived ethnicity. You indicate, however, that to date there have only been eight federal cases resulting from these approximately 300 investigations. In short, there has been no federal prosecution in over 97 percent of these investigations. I would be remiss if I did not point out this significant gap between the President's admirable rhetoric and the enforcement actions of the Justice Department since September 11 and ask why is it that the Department is prosecuting so few of these violent crimes?

A second example where rhetoric has outstripped enforcement involves the protection of voting rights. During your confirmation hearing, you recognized that "[v]oting is a fundamental civil right" and pledged if confirmed that you would "work aggressively and vigilantly to enforce federal voting rights laws." You assured this Committee that "[i]t will be a top priority of a Bush Department of Justice, part of what I hope would be its legacy." Unfortunately, the President's budget request did not call for any additional resources for the Department's Voting Rights Section, even though there have been recent press reports critical of the Department's role in delaying a redistricting plan for congressional seats in Mississippi are disturbing.

COMBATING CYBERCRIME

Technology has ushered in a new age filled with unlimited potential for commerce and communications. But the Internet age has also ushered in new challenges for federal, State and local law enforcement officials. These challenges were clearly evident as our nation's law enforcement officials investigated the recent cyber hacker attacks. Congress and the Administration need to work together to meet these new challenges while preserving the benefits of our new era.

The Leahy-Dewine Computer Crime Enforcement Act, which authorized a $25 million Department of Justice grant program to help States prevent and prosecute computer crime, is intended to help States and local agencies in fighting computer crime. Grants under the bipartisan law may be used to provide education, training, and enforcement programs for local law enforcement officers and prosecutors in the rapidly growing field of computer criminal justice. All 50 States have now enacted tough computer crime control laws. They establish a firm groundwork for electronic commerce, and protecting this part of our critical infrastructure. Unfortunately, too many State and local law enforcement agencies are struggling to afford the high cost of training and forensic work needed to realize the potential of State computer crime statutes. I support funding for these important initiatives.

CURBING DRUG TRAFFICKING AND ABUSE

Drug use and abuse is a contributing factor to spousal and child abuse, property and violent crime, the spread of AIDS, workplace and motor vehicle accidents, and absenteeism in the workforce. The Senate has already passed a version of S. 304, the Hatch-Leahy Drug Abuse Education, Prevention, and Treatment Act to aid States and local communities in their efforts to prevent and treat drug abuse. It establishes drug treatment grants for rural States and authorizes money for residential treatment centers for mothers addicted to heroin, methamphetamines, or other drugs. This legislation also will help States and communities reduce drug use in prisons through testing and treatment. It will fund programs designed to reduce recidivism through drug treatment and other services for former prisoners after release. In addition, this bill will reauthorize drug courts and authorize juvenile drug courts. Finally, the bill directs the Sentencing Commission to review and amend penalties for a number of drug crimes involving children. The bill will authorize $1.4 billion in appropriations over four years. I hope that the Congress will send this bill to the President soon and that the Justice Department will work with us for full funding of the programs it authorizes.

IMPROVING FORENSIC SCIENCE SERVICES AND REDUCING THE DNA BACKLOG

Forensic science is widely accepted as a key to effective administration of justice, but State crime laboratories are now seriously bottlenecked. Backlogs in many laboratories have impeded the use of new technologies, such as DNA testing, in solving cases without suspects and reexamining cases in which there are strong claims of innocence as laboratories are required to give priority status to those cases in which a suspect is known. Timeliness and quality concerns in the forensic science services threaten the administration of justice in the United States. Two years ago, Congress passed the Paul Coverdell National Forensic Sciences Improvement Act, which authorizes the appropriation of $134.7 million for fiscal year 2003 to improve State forensic science services for criminal justice purposes. Congress also passed the DNA Analysis Backlog Elimination Act of 2000, which authorizes the appropriation of $40

million for fiscal year 2003 to reduce the backlog of untested DNA samples in our nation's crime labs. I support full funding of each of these programs.

ENRON RECUSAL

Senator HOLLINGS. General Ashcroft, with respect to closure here on this Enron matter, you recused yourself not because you had a conflict of interest but there could be an appearance. Similarly, your chief of staff could be an appearance. All the U.S. Attorneys down in the Southwest District of Texas have set themselves aside so there could not be any appearance of a conflict there. Yet you try to isolate yourself from reality and give it to the Deputy Attorney General who has got an appearance of a conflict in that he is coming from the firm that represented both Enron and Arthur Andersen. You do not want to leave all that work done and still have an appearance of impropriety, I would think, is that not the case?

Attorney General ASHCROFT. Sir, I am from this matter recused, but it is my understanding that the career ethics officials at the Department have indicated that this is not a matter which would trigger additional activity. It is not a matter for me to handle since I am recused from this issue.

Senator HOLLINGS. No, you designated him. You did not recuse yourself from that responsibility. You designated the Deputy Attorney General and the law says under extraordinary circumstances—you can go back. We had extraordinary circumstances with Waco and that was all settled when the Attorney General then appointed our friend, Senator Danforth from Missouri, and he made his investigation and that ended all the controversy about it.

Now you have got it all boiling up with respect to how powers are going to be and who has got a conflict of interest and everything else, so we could bring Mr. Thompson up. I am confident that he is an honorable individual. I know he is from an outstanding law firm. I think our friend General Griffin Bell, the former Attorney General, heads up the firm, so I have got no question about it. But to have him come and say, well, only 2 percent of the work, or only 1 percent of the work, or I never did any of that work, that was up on the 10th floor or whatever it is, does not satisfy the public feeling in response, because I am feeling it. I am trying to sort of testify before you, giving you a chance.

We can haul him up. There is no reason to try to embarrass him or drive home the point. You can clear it up immediately by picking out an Archibald Cox or someone like that and then there is no more question. That is what you intended to do when you recused yourself. It was not to give it to somebody else who needed to be recused, is that not the case?

Attorney General ASHCROFT. I recused myself after carefully reviewing the guidelines that are provided in the Government, with the advice of the ethics professionals in the office, that for me to persist would be inappropriate. I did so without making any specific judgments about other individuals that might have the same responsibility to make evaluations, cooperating with the career ethics officers at the Department. I did not make decisions for the other individuals who recused themselves and obviously have not tried to make decisions for those to supercede the judgment of the Career Ethics Office or to interfere with the decision making in a

matter about which I am recused because I do not want to be involved in a matter where it has been determined that I should not be involved.

Senator HOLLINGS. And you determined that you should not be involved on account of—you did not have a conflict of interest with Enron. It could have been an appearance due to the contribution they made in one of your campaigns, I think, is that not the case?

Attorney General ASHCROFT. Considering the totality of the circumstances, we decided in conjunction with the ethics officers that it was appropriate for me to recuse myself.

Senator HOLLINGS. That almost sounds like the Fifth Amendment these fellows are taking.

Let us go right to the job. You have got a full-time job and Larry Thompson is the Deputy Attorney General in charge of counterterrorism. He ought not to have any other thing on his mind. And you are still the Attorney General. You cannot recuse yourself from reality. You have got to get with the program and make a decision. Now, if the decision is that that you have made and it is going to stand, so be it.

FEMA TRANSFERS

Let me move to another thing that you and I are totally familiar with, and that is, having been Governor, we have dealt with disasters. Last year, I think FEMA had, of the 45 disasters, whether they were earthquakes or hurricanes or tornadoes or what have you, forest fires, there was only 1 with respect to terrorism, or the 2 at the Pentagon and in New York on 9/11. We know that FEMA is now doing a heck of a good job from what I can understand.

I remember way back with Hurricane Hugo, we had to sneak in the marines from Parris Island to help us because they could not come unless they were ordered to by FEMA, and similarly with Hurricane Andrew. I will never forget, I was on the phone with Governor Lawton Chiles at the time down in Florida saying, hurry up, they are ready to go. They are right at Fort Bragg. They are ready to fly in with tents, stoves, everything else, set up a little city down there at Homestead, and it took him 4 or 5 days to get it through with FEMA, but we are doing a way better job now. We have got it straightened out and there is more or less a process developed for hurricanes and other natural disasters.

Incidentally, since I mentioned Homestead, the first police that you saw on TV that night after the weather had cleared were police officers, 42 Spanish-speaking police officers from the city of Charleston with generators, water supply, and everything else. The police force of Homestead had been wiped out. Their homes had washed away and they were trying to care for their families. So they have helped us and we helped them and a culture of cooperation has developed with that regard.

This particular subcommittee was asked to consider giving State and local counterterrorism programs to FEMA by Vice President Cheney and we considered it. However, we kept it under the Attorney General's Office per the PATRIOT Act, that was only signed on October 26, less than 4 months ago. The Attorney General shall make grants described in subsections (b) and (c) to States and units of local government to improve the ability of State and local law

enforcement, fire department, and first responders to respond to and prevent acts of terrorism. That is the first paragraph of the PATRIOT Act on first responders.

Yet the President has submitted a budget that decimates local law enforcement, decimates the cops on the beat, decimates the school resource officers, and the first responders. The Office of Domestic Preparedness (ODP) got $650 million in this particular budget, 2002's budget, but for next year they get zero. It is my understanding that the response that you have received of disapproval has been bipartisan and unanimous from what I can learn. I have not heard anybody in the Congress say this is a good idea, or in law enforcement.

We just had a hearing last week on security, seaport security to be exact. We had the Commissioner of Customs. We had the Commandant of the Coast Guard. I had two mayors of the two biggest cities practically in the State of South Carolina, and one Democratic and one Republican, and just out of curiosity, I said, let me ask you a question about the Office of Domestic Preparedness (ODP). Do you think it ought to stay where it is or be transferred to FEMA where ODP has developed, as Senator Gregg has just pointed out, a training consortium at Fort McClelland, Nevada, New Mexico, Texas, Louisiana, and now first responders across the country are getting the training they need. We have gotten, like you have testified, 46 plans, like you testified, a miraculous success.

And you and I have been in politics a long time. We do not mess with something that is working just to give it to Joe Allbaugh who does not know anything about domestic preparedness. He has never been associated with it in his life, or anybody at FEMA. That is a non-starter as far as this subcommittee is concerned.

We had not been consulted about moving ODP other than the testimony we had back in May, and at that time, our Republican chairman, Senator Gregg, was in charge and he communicated that with the administration. Yet you come with next year's budget and decimate the local law enforcement programs and transfer ODP.

Incidentally, let me commend you on the new FBI Director. He has been working with local law enforcement. In fact, the first thing he said at the chiefs' conference and so forth, I think it was up in New York, that he was going to start working with them and they gave him a standing ovation. Mueller is on the right track and everybody prides themselves on you and the Attorney General and the Justice Department.

In fact, the Republicans said, wait a minute, on this airline security. We want it under the Department of Justice. When it passed the Senate, we had passed it out of our committee with the Department of Transportation. They said, no way. We want it with the Department of Justice, and we got a unanimous vote, all Republicans and all Democrats. But in order to get stuff moving in that conference, I went back to the Department of Transportation.

With ODP, within the Department of Justice, you have got the confidence. You have got the abilities. You have got the training. You have got the culture developed. You have got the money. We cannot say we are fighting counterterrorism when we are mixing up everybody in new assignments and everything else of that kind.

In this committee's opinion, and you can see on both sides, there is no support whatsoever for transferring ODP. You are the best witness we have got that this should not be transferred. You testified positively about how ODP is working in your Department.

I yield to you, and I want to thank you for your appearance here today, but I want to yield to you if you have got any comment.

Attorney General ASHCROFT. I am grateful for the work that has been done. I would again reiterate the fact that had it not been for this committee and the membership of this committee that understands the threat of terrorism, we would have been far less prepared and far less capable of handling this matter in the way that it has been handled. The chairman and Senator Gregg have both had an ability to foresee these needs. That is commendable.

I want to thank the members of our Department that have done a good job. I believe they have done a good job in moving in this direction. But this administration has made the decision, and I support that decision, and I believe that we can make a change which will provide for excellent service. As Attorney General, that is my responsibility and I will do what I can to pursue it if that is the final outcome of this debate.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. The committee is indebted to you for your appearance here today. It will stay open with respect to questions to be submitted by the members here and give you a reasonable time to respond.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

ANTITRUST DIVISION

Question. General Ashcroft, could you provide the Committee the number of workyears, number of FTE's, and funding levels for media antitrust cases handled by the Antitrust Division for each of the last 10 years. Can you provide that same information for telecommunications cases?

Answer. The requested information for media matters is provided in Attachment 1. The information for telecommunications cases is in Attachment 2.

ATTACHMENT 1.—ANTITRUST DIVISION—MEDIA MATTERS

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002 [1]
Salary	$298,889	$159,730	$346,326	$169,344	$496,152	$1,167,189	$1,685,266	$1,350,313	$1,765,304	$1,211,448	$767,062
Benefits	46,328	25,557	61,300	24,894	84,842	191,419	283,125	232,254	284,214	212,003	141,139
Travel	12,963	8,663	18,502	12,611	41,681	93,684	62,002	14,628	13,157	10,576	13,586
Rent/Comm/Util [2]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	14
Printing	.....	363	689	.....	6,635	7,332	31,344	10,201	.....	8,858	468
Services	11,876	8,987	15,059	18,833	75,881	90,869	225,002	19,026	232,348	34,845	12,686
Supplies [2]	.....	.....	.....	.....	.....	4,843	.....	.....	.....	.....	11
Equipment [2]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Subtotal [3]	370,056	203,300	441,876	225,682	705,191	1,555,336	2,286,739	1,626,422	2,295,023	1,477,730	934,966
Expert Witness [4]	.....	6,091	3,181	1,723	117,809	216,784	474,542	47,143	397,961	175,743	7,271
Total	370,056	209,391	445,057	227,405	823,000	1,772,120	2,761,281	1,673,565	2,692,984	1,653,473	942,237
FTE	5.3	2.7	5.9	2.9	9.1	20.5	25.3	19.8	26.1	18.6	12.5
Number of Staff	58	27	47	22	63	114	127	140	161	118	95

[1] As of February 28, 2002.
[2] Expenditures for Rent, Communication and Utilities, and Supplies and Equipment were allocated from general Division accounts not identified by matter and used for multiple Division matters irrespective of commodity area.
[3] Antitrust Division appropriation funding.
[4] Department of Justice Fees and Expenses of Witness Account.

Notes:
Consistent with information previously provided to the Senate Appropriations Subcommittee by the Federal Trade Commission, "Media Matters" includes enforcement actions and substantial investigations in the general media, Multichannel Video Programming Distribution (MVPD), radio and television sectors.
Financial, FTE and staff data is not available by commodity area for quick look preliminary investigations prior to issuance of a case number. In addition, due to incomplete time reporting by commodity area, employee salary and benefit values for 1996 and prior years may not be fully reflective of total effort.

ATTACHMENT 2.—ANTITRUST DIVISION—TELECOMMUNICATIONS MATTERS

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002 [1]
Salary	$163,001	$296,328	$984,682	$420,947	$305,432	$1,383,073	$977,535	$1,268,149	$1,778,268	$558,690	$130,348
Benefits	25,265	47,412	174,289	61,879	52,229	226,824	164,226	218,122	286,301	97,771	23,984
Travel	2,584	8,234	30,079	61,570	8,646	57,676	30,018	8,704	13,098	3,012	.....
Rent/Comm/Util [2]	.....	.....	.....	.....	6,251	.....	.....	.....	.....	.....	.....
Printing	317	.....	310	1,286	990	.....	383	16,374	12,626	2,443	.....
Services	1,619	12,828	492,965	83,084	67,518	156,770	7,373	86,447	835,199	1,302	.....
Supplies [2]	.....	57	.....	.....	.....	.....	.....	.....	.....	.....	.....

ATTACHMENT 2.—ANTITRUST DIVISION—TELECOMMUNICATIONS MATTERS—Continued

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002 [1]
Equipment [2]	.....	.....	.....	.....	.....	3,400	.....	.....	.....	.....	.....
Subtotal [3]	192,786	364,859	1,682,325	628,766	441,066	1,827,743	1,179,535	1,597,796	2,925,492	663,218	154,332
Expert Witness [4]	11,696	8,100	51,813	27,605	256,635	18,444	48,969	144,350	1,549,848	11,400	.....
Total	204,482	372,959	1,734,138	656,371	697,701	1,846,187	1,228,504	1,742,146	4,475,340	674,618	154,332
FTE	3.4	5.7	18.1	7.2	4.9	22.1	15.7	21.8	28.1	8.6	1.7
Number of Staff	31	45	80	43	64	102	76	89	113	78	30

[1] As of February 28, 2002.
[2] Expenditures for Rent, Communication and Utilities, and Supplies and Equipment were allocated from general Division accounts not identified by matter and used for multiple Division matters irrespective of commodity area.
[3] Antitrust Division appropriation funding.
[4] Department of Justice Fees and Expenses of Witness Account.

Note:
Financial, FTE and staff data is not available by commodity area for quick look preliminary investigations prior to issuance of a case number. In addition, due to incomplete time reporting by commodity area, employee salary and benefit values for 1996 and prior years may not be fully reflective of total effort.

COORDINATION BETWEEN AGENCIES

Question. Department of Transportation officials have been quoted in recent press articles saying that the United States-Mexico border could be open to long-haul Mexican trucking operations by June of this year. As you know, last year the Congress required additional safety measures be implemented both at the border and by the Department of Transportation before the Administration could open the border to long-distance Mexican-domiciled trucks operating beyond the current commercial zones.

What level of coordination has there been between the Department of Transportation and your agencies on establishing or increasing operations at the border in anticipation of this influx of Mexican trucks? Please describe.

Answer. The Department of Transportation's (DOT) NAFTA Land Transportation Implementation Working Group includes representatives from the Immigration and Naturalization Service, the U.S. Customs Service, the Internal Revenue Service, the Department of Commerce, and the Department of Justice's Environment and Natural Resources Division. The working group has met twice to make plans for a Land Transportation Conference to provide information to the United States, Canadian and Mexican carriers. The conference will be held May 28 through 31, 2002.

The DOT Land Transportation Standards Sub-committee (LTSS) met with Canadian and Mexican delegations in October 2001, to discuss issues relating to cross border operations including plans for an outreach program.

BACKGROUND CHECKS

Question. The United States is required by the USA PATRIOT Act to begin conducting criminal background checks on drivers of commercial motor vehicles that haul hazardous materials, yet there is no agreement for doing criminal background checks on Canadian and Mexican drivers that haul similar hazardous materials.

Answer. The DOT Federal Motor Carrier Safety Administration (FMCSA) is the regulating authority for motor carriers. The FMCSA has published regulations in the Federal Register. Mexico-domiciled motor carriers, their vehicles and their drivers operating in the United States are subject to all of FMCSA's safety requirements. Section 350 of the DOT Appropriations Act prohibits Mexico-domiciled motor carriers from transporting hazardous materials in a placardable quantity beyond the border zones until the United States has completed an agreement with the Government of Mexico ensuring that drivers of such placardable quantities of hazardous materials meet substantially the same requirements as United States drivers carrying such materials.

Question. Given the security concerns associated with our borders since September 11th, how can we justify letting these drivers into the United States without holding them to the same standard that United States drivers will be held to?

Answer. Drivers must meet the DOT FMCSA standards. All aliens admitted to the United States must establish admissibility under the Immigration and Nationality Act (INA), and Mexican and Canadian drivers who are inadmissible under the grounds of inadmissibility contained in section 212(a) of the INA are not eligible to enter the United States, unless they have obtained a waiver of inadmissibility. However, there is no specific ground of inadmissibility under the INA prohibiting the entry of drivers who have not complied with FMCSA standards. A Mexican driver must also apply to the Department of State and be approved for a B–1 (visitor for business) visa to enter the United States.

Question. What confidence do we have in the ability of the Canadian or Mexican governments to perform background checks on their drivers who haul hazardous materials on our roads? Will these background checks be performed to the same standards as the checks conducted on United States drivers?

Answer. The Canadian government has a comprehensive criminal database. We are not aware of what information is available to the Mexican government.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

METHAMPHETAMINE

Question. Background: The State of Hawaii, and in particular, the county of Hawaii, has a large and substantial problem with crystal methamphetamines (ice, meth, or crystal meth). As this drug spread across Asia, it first found a foothold in Hawaii, and then crossed the rest of the way, where it has quickly spread across the rest of the nation.

The crystal meth problem in Hawaii has reached crisis proportions not only because of the inordinately high incidence of meth abuse, but because of the many negative "side effects" that arise from the widespread production and use of the drug. The manufacture of ice in both urban and rural meth labs, of course, churns out the drug itself, but also pollutes the environment with toxic chemical byproducts. The drug itself creates dangerous behaviors during and immediately after use, as addicts plummet from their high into depression and desperate craving for more of the drug. The long-term health consequences of meth addiction are only just beginning to be understood.

Additionally, meth is extremely addictive, and has permeated all levels of society to the extent that cultures of family-based drug use have begun to manifest. Treatment of addiction, therefore, becomes even more problematic as traditional support networks, such as family and friends, are eroded as the high prevalence threat to the State of Hawaii spreads.

With this background in mind, I would like to ask you several specific questions about Department of Justice (DOJ) resources available to combat this pernicious threat to the State of Hawaii.

What DOJ resources are available to help in the detection and eradication of meth labs—particularly meth labs in remote and inaccessible rural areas such as those that abound in the county of Hawaii?

Answer. The Drug Enforcement Administration's (DEA) methamphetamine strategy addresses the diversion of precursor chemicals from legitimate commerce into this criminal activity. DEA has vigorously pursued those individuals and firms, both domestic and international, which have supplied clandestine methamphetamine laboratories. DEA has seized tons of pseudoephedrine destined for methamphetamine laboratories and will continue to do so as part of an overall strategy.

In 2002, approximately $70,473,000 was appropriated within the Office of Community Oriented Policing Services (COPS) account for state and local law enforcement programs to combat methamphetamine production, to target drug hot spots, and to remove and dispose of hazardous materials at clandestine methamphetamine labs. COPS administers these funds. Within the amount provided, the conferees included $20,000,000 to be reimbursed to DEA for assistance to state and local law enforcement for proper removal and disposal of hazardous materials at clandestine methamphetamine laboratories. The President has included $20 million to continue these efforts in fiscal year 2003.

The Office of Justice Programs Bureau of Justice Assistance (BJA) also provides funding to the State of Hawaii under its Byrne Formula Grant Program and to the state and its counties under its Local Law Enforcement Block Grant (LLEBG) program. Byrne Formula awards are made to the State Administering Agency, the Hawaii Department of the Attorney General, for distribution to the 4 counties (Hawaii, Maui, Kauai, and Honolulu city/county). The Attorney General's Office advertises the availability of the funds and receives proposals from the police department and the four prosecutor offices. Since fiscal year 1999, the State Attorney General has made subgrants of:

—$555,611 to the Kauai Police Department, the Maui Police Department, the Hawaii County Police Department, the Department of Land and Natural Resources, and the Honolulu Police Department for the statewide narcotics task force. This funding has been applied to multi-jurisdictional task force programs that integrate federal, state, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, exchanging intelligence, and facilitating multi-jurisdictional investigations.

—$599,738 to the Kauai Police Department, the Maui Police Department, the Hawaii County Police Department, and the Honolulu Police Department for programs to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivation.

Under the Local Law Enforcement Block Grant Program:

—$963,172 has been awarded to Honolulu, Hawaii to support community prosecution and a drug court initiative, and $32,000 has been awarded for the detection of clandestine labs.

—Approximately $5,000 was provided to Maui County for a drug-court initiative.

While the Byrne Formula and LLEBG programs are not requested in the 2003 President's budget, purposes funded therein remain eligible for funding under the new $800 million Justice Assistance Grant program, which provides grantees with a single-source funding mechanism. Byrne Discretionary funds are also authorized to be used for this purpose.

Question. What DOJ resources are available for the environmental clean up of meth lab sites?

Answer. Funding for the environmental clean up of meth lab sites is primarily available through funds made available to DEA by Congress through the COPS methamphetamine initiative although several jurisdictions are using part of their congressional earmark funds to accomplish this. In 2002, Congress has provided $20 million to DEA for such purposes. While funds may be used for these purposes under the Byrne Formula and LLEBG programs, this is a decision made by each state or local jurisdiction.

With regard to resources for the environmental cleanup of clandestine drug laboratories, DEA does not currently have a contractor in Hawaii to perform these services. No qualified contractor(s) submitted a proposal when DEA requested proposals in 1997. However, DEA did fund one cleanup each in fiscal years 1998 and 2000. As long as funding is available, DEA will fund cleanups (i.e., the removal of chemicals and contaminated apparatus) for both DEA and state/local seizures of clandestine drug laboratories in Hawaii through purchase orders.

Question. What DOJ resources are available for enhancing efforts to stop the sale of crystal meth?

Answer. In addition to the regular staffing levels and their cooperation with other federal and state and local agencies, DEA has made four successful deployments of one of its Mobile Enforcement Teams (MET) to Hawaii since September 2000. As their name implies, MET teams are deployed to provide help in those investigations where their assistance will be most effective.

Question. What DOJ resources are available for treating addiction to crystal meth?

Answer. Most DOJ drug resources are focused on investigation and prosecution of drug violations. Federal Government resources for drug abuse treatment are administered by the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration. Within the Department of Justice, DEA has no resources for drug treatment, though DEA's Demand Reduction Coordinators (DRC) and headquarters staff inform communities about effective treatment when conducting demand reduction training. In upcoming community mobilization training, a treatment component is included as part of the training.

Within the Office of Justice Programs, Byrne Formula Grant Program funds may be used to develop programs to identify and meet the treatment needs of adult and juvenile drug and alcohol dependent offenders and to develop programs to demonstrate innovative approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes. Funding may also be available through OJP's Residential Substance Abuse Treatment (RSAT) program for state and local jails, the Drug Courts program, and the Indian Alcohol and Substance Abuse Program, all of which provide treatment services. These programs primarily target populations that have been incarcerated, are on probation or parole, or are facing adjudication.

Question. What DOJ resources are available to develop and implement innovative responses, such as the drug court program, to the crystal meth problem that break away from the traditional model of arrest, incarceration and treatment, parole, and release?

Answer. OJP's Drug Courts Program Office is available for this purpose. The State of Hawaii currently has two adult drug courts in operation, one on the island of Oahu and the other on the island of Maui. The Hawaii Drug Court Program also has a Family Court component that works with Child Protective Services parents. The Oahu drug court received its first clients in January of 1996. Since that time, the program has admitted approximately 500 individuals, graduating nearly 50 percent.

Despite the fact that 90 percent of clients in the Hawaii Drug Court program are methamphetamine dependent, grant applications from Hawaii's Drug Court Program do not specifically target methamphetamine treatment as there is currently no single proven methodology with methamphetamine abusers. The Hawaii Drug Court Program uses principles applicable to any dependency and applies techniques and components, such as careful assessments, which have been demonstrated as effective with meth users to provide the best individualized care within the restrictions of its resources. The program use a comprehensive approach in treating drug court clients as opposed to a more targeted approach.

DEA's demand reduction program recognizes the value of drug courts in helping communities deal with their drug abuse problem. DEA's new Integrated Drug Enforcement Assistance initiative, unveiled by DEA Administrator Asa Hutchinson in December 2001, will promote the implementation of drug courts in communities as an effective tool in dealing with the drug abuse issue.

Funding under the Byrne Formula Grant Program and the Local Law Enforcement Grant Program is available to state and local agencies for innovative program

responses. Between fiscal year 1999 and fiscal year 2002, BJA provided approximately $12.34 million to the state of Hawaii under the Byrne Formula program. The state has elected to use $859,204 for programs to improve operational effectiveness of courts by expanding prosecutorial, defender, and judicial resources, and implementing court delay-reduction programs.

The RSAT Formula Grant Program assists states and units of local government in developing and implementing residential substance abuse treatment programs within state and local correctional and detention facilities in which prisoners are incarcerated for a period of time sufficient to permit substance abuse treatment. This program addresses the issue of substance abuse dependence and the direct link to public safety, crime, and victimization by providing treatment and services both within the institution and in the community after release. In 2003, $77 million is requested under the President's budget, a $7 million increase over the previous level. Since 1999, over $1.1 million has been provided to the State of Hawaii under this program.

The Indian Alcohol and Substance Abuse Program targets the link between alcohol and substance abuse and crime in Indian Country by funding tribal detention and probation-based demonstration projects that provide services such as placing arrestees and offenders in detoxification centers, halfway houses, in-patient treatment facilities, and home detention. In 2003, $4.989 million is requested under the President's budget.

Question. What DOJ resources are available for education and outreach programs to prevent the recruitment of new users?

Answer. DEA's demand reduction program uses full-time DEA special agents as Demand Reduction Coordinators (DRCs) that work with communities to implement and promote drug prevention programs in a variety of venues. These DRCs work with community coalitions and others to educate community leaders, adults, youth, and businesses about the dangers of drug abuse. DRCs are available to communities throughout the United States, including Hawaii, to put on drug education programs.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) administers the Drug-Free Communities Support Program through an interagency agreement with the Office of National Drug Control Policy (ONDCP). The Drug-Free Communities Support Program is designed to strengthen community anti-drug coalitions and reduce substance abuse among youth. The program seeks to enhance collaboration, cooperation, and coordination among all sectors and organizations within communities that demonstrate a long-term commitment to reducing substance abuse among youth. Community coalitions that receive funding through the Drug-Free Communities Support Program focus on a combination of drugs and use a multisector, multi-strategy approach to reducing substance abuse among youth. Among the strategies employed to reduce substance abuse among youth are information dissemination, media campaigns, community events, community education through a sports certification program, and training for youth. Currently, 463 community antidrug coalitions receive Drug-Free Communities Support Program funding. Grantee coalitions are located in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Under a BJA grant to the National Crime Prevention Council (NCPC), funding has been applied to education and outreach related to meth abuse. Through the NCPC's rapid response training and technical assistance unit and with DEA collaboration, BJA offers a comprehensive planning, training and technical assistance program covering enforcement, treatment, prevention, and continuing care. The states and local jurisdictions may also elect to use their Byrne Formula funds and LLEBG funds for this purpose.

Question. What DOJ resources are available for the pre-arrest intervention and treatment of meth addicts?

Answer. DEA has no resources for these activities but recognizes their value in dealing with the drug abuse problem. However, as stated previously, DEA's DRC and headquarters staff inform communities about effective treatment.

Under a BJA grant to the NCPC, funding has been applied to education and outreach related to meth abuse. Through the NCPC's rapid response training and technical assistance unit and with DEA collaboration, BJA offers a comprehensive planning, training and technical assistance program covering enforcement, treatment, prevention, and continuing care. The states and local jurisdictions may also elect to use their Byrne Formula funds and LLEBG funds for this purpose.

Question. What DOJ resources are available for addressing the crystal meth problem among juveniles and adolescents?

Answer. As stated earlier, the vast majority of federal drug prevention funding is administered by HHS; the Safe Schools initiative within the Department of Education; and the ONDCP's national anti-drug media campaign.

Within DOJ, the demand reduction program enlists full-time DRCs and other DEA special agents to present anti-drug abuse programs to a variety of audiences including youth. These might take place at schools or other locations such as Boys and Girls Clubs. DRCs also work closely with education professionals to provide training to teachers, School Resource Officers, etc. on drug abuse among the youth of their community. Presently, Hawaii is serviced by the DRC in the DEA Los Angeles Field Division. DEA Administrator Hutchinson's goal is to double the number of field special agents in the Demand Reduction Program and to ultimately place a DRC in every state by the end of fiscal year 2003.

Funding is available for addressing the crystal meth problem among juveniles and adolescents through the Byrne Formula and Discretionary Grant Programs and through congressional earmarks for methamphetamine funding initiatives. State and local jurisdictions may also use LLEBG funding to address drug problems among the target populations listed. However, the bulk of OJP's available funding for addressing crystal meth problems among juveniles and adolescents is housed within the OJJDP in OJP.

OJJDP administers the Drug-Free Communities Support Program through an interagency agreement with ONDCP. The Drug-Free Communities Act of 1997 (Public Law 105–20) created the Drug-Free Communities Support Program. On December 14, 2001, Public Law 107–82 reauthorized the program through fiscal year 2007. The Drug-Free Communities Support Program is designed to strengthen community anti-drug coalitions and reduce substance abuse among youth. The program seeks to enhance collaboration, cooperation, and coordination among all sectors and organizations within communities that demonstrate a long-term commitment to reducing substance abuse among youth. Community coalitions that receive funding through the Drug-Free Communities Support Program focus on a combination of drugs and use a multi-sector, multi-strategy approach to reducing substance abuse among youth. Currently, 463 community anti-drug coalitions receive Drug-Free Communities Support Program funding. Grantee coalitions are located in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Two grantee coalitions are located in Hawaii. The Kawaihau Community Leadership Coalition, with the County of Kauai as its fiscal agent, has received funding through the Drug-Free Communities Support Program since October 1, 1998. Coalition goals are to reduce substance abuse in the Kawaihau District and to build a community coalition through the objectives of increasing community information, developing awareness of the effects that drugs have on the community, and providing education to strengthen family resiliency skills. The coalition uses multiple approaches to reduce substance abuse among youth, including information dissemination, a media campaign, community events, community education through a sports certification program, and training for youth. The Ewa Beach Coalition, with the Coalition for a Drug-Free Hawaii as its fiscal agent, was awarded a Drug-Free Community Support Program grant beginning October 1, 2001. The coalition is focusing on decreasing risk factors (e.g., poor academic performance, family conflict, early initiation of problem behaviors) and increasing protective factors (e.g., family attachment) to reduce substance abuse among youth. Coalition initiatives include school-based programming, family strengthening and parent involvement initiatives, substance abuse intervention and outreach, community events, and media initiatives.

OJJDP also administers the Drug Prevention Demonstration Program, which is funded under Title V of the Juvenile Justice and Delinquency Prevention Act of 1974, and which was appropriated $10.976 million in fiscal year 2002. This program awards discretionary grant funds to grantees to develop, demonstrate, and test programs to increase perceptions among children and youth about the unappealing aspects and danger of drug use. OJJDP uses these funds to demonstrate, test, and evaluate promising programs that address the reduction of risk factors and the enhancement of protective factors that affect the use of drugs among children and youth. Building on its work replicating the Life Skills Training (LST) Initiative, the program will continue to fund LST projects but also will be expanded to support other drug prevention programs that are promising for students at all grade levels. OJJDP also uses these funds to provide training and technical assistance to jurisdictions to support replication efforts. Technical assistance activities include conducting project readiness and needs assessments, developing training materials, and monitoring program implementation and evaluation efforts. Funding provided under OJJDP's Drug Prevention Demonstration Program is available for programs that address the crystal meth problem among juveniles and adolescents.

OJJDP also administers the Juvenile Accountability Block Grant (JAIBG) Program. This program encourages accountability-based reforms of juvenile justice systems in states and local jurisdictions. JAIBG funds can be used for 12 purpose

areas, including building juvenile detention facilities, hiring prosecutors, establishing gun and drug courts, improving juvenile probation programs and testing youth in the juvenile justice system for controlled substances such as crystal meth.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

SEPTEMBER 11TH VICTIM COMPENSATION FUND

Question. In the Justice Department's fiscal year 2003 Budget Request Highlights, the cost for the Special Master to administer the September 11th Victim Compensation Fund is listed as $10 million. In your opening statement in the Commerce, Justice, State subcommittee hearing on the Justice Department's fiscal year 2003 budget requests, however, you stated that the Department's budget includes a total of $41 million for the administrative costs of the Fund's Special Master. Please account for the discrepancies in these numbers.

On January 17, 2002, I was joined by Senators Kennedy, Schumer and Clinton in writing to Special Master Kenneth Feinberg on the Interim Final Regulations governing the Fund. Please tell me when you expect these regulations to be finalized and released to the public.

Answer. As you know, Special Master Kenneth R. Feinberg announced the Final Rule for the September 11 Victim Compensation Fund on March 7, after numerous meetings with family members and other interested groups, along with the review of thousands of public comments over the past few months. A copy of the Final Rule is available at the Department of Justice website at "http://www.usdoj.gov/victimcompensation." MACROBUTTON HtmlResAnchor http://www.usdoj.gov/victimcompensation.

As for the apparent discrepancy in budget requests, $41 million is indeed the request for administrative costs the $10 million referred to in the Budget Request Highlights is the increase over the $31 million current services level. The $41 million will fund: additional claims examiners, additional Justice Department attorneys and support, the walk-in facilities, the hotline, hearing officers, and hearing process support including paralegals and space to hold hearings in locations where victims live.

The claims, although smaller in number than previously anticipated, will be incredibly complex and require a much higher level of individual scrutiny. We therefore project that an increase of $10 million beyond the annualization of $31 million will be necessary to meet the surge of labor-intensive claims.

NORTHERN BORDER INSPECTOR EARMARK

Question. I included language in the USA PATRIOT Act authorizing tripling the number of Border Patrol agents, the Immigration and Naturalization Service (INS) inspectors and Customs Service officers. The President's budget builds on what we did through the appropriations process last year, and I believe we are on the right path.

The budget request calls for half of the new Border Patrol positions to be on the northern border, but is silent about the percentage of new INS Inspector positions to be assigned to the northern border. Why not include a similar northern border earmark for inspectors?

Answer. The northern border has been the focus in the deployment of new 2002 positions. In fact, 625 (74 percent) of the 848 new 2002 land border inspectors have been approved for deployment to the northern border. In 2003, INS will deploy additional positions to the northern border as appropriate. The focus, however, in fiscal year 2003 will be to ensure that the security and integrity of the small southern border ports are met as well as addressing traffic management challenges. Additional resources will also be dedicated to address the needs for Dedicated Commuter Lane processing and Enrollment Centers. INS has, therefore, not earmarked positions for one border over another until deployment is imminent so that all of the operational field requirements can be weighed and prioritized.

TECHNOLOGY FUNDING REQUEST UNDER THE USA PATRIOT ACT

Question. The USA PATRIOT Act authorized $50 million for the INS to improve technology for monitoring the northern border and purchase additional equipment for use at the border. Have you requested any funding in your budget under that authorization? If so, what funding requests fall under that authorization? If not, why not?

Answer. The INS has requested the following technology/equipment under this authorization for the northern border and received the funds appropriated as part

of the fiscal year 2002 Counterterrorism supplemental budget for the northern border.

[In millions of dollars]

Technology/Equipment Requested for Northern Border Sectors	Requested	Appropriated
Integrated surveillance Intelligence system (ISIS):		
Installation of 57 sites at northern border sectors	23.6	23.6
Sensors	8.0	8.0
Remote video surveillance operations	6.0	6.0
ISIS Subtotal	37.6	37.6
Infrared night-vision scopes	1.0	1.0
Single-engine helicopters	6.0	6.0
Total Northern Border Technology/Equipment Requested	44.6	44.6

In addition, the President's fiscal year 2003 budget includes our further requests for technology and related equipment for the northern border.

—$10 million for two twin-engine helicopters to improve border access along the northern border and other critical areas where high mountains, extreme weather conditions and over-water operations are regularly encountered.

—$28 million, of which approximately $5 million would be for the northern border for 10-print fingerprint machines for the Border Patrol and Joint Terrorism Task Force (JTTF) sites to provide electronic access via livescan devices to the Federal Bureau of Investigation's (FBI) IAFIS and other automated databases; to integrate the 10-print livescan machines with ENFORCE; to complete deployment of the ENFORCE intelligence module; to increase ENFORCE external interfaces; and to provide associated system training and maintenance. The northern border portion of this request is not a standalone request, and could not be accomplished separately from approval of the entire request.

NORTHERN BORDER RECRUITING AND RETENTION

Question. What steps is the Justice Department taking to fill quickly the additional Border Patrol and INS inspector positions for which Congress has already appropriated funds? Do you need additional funding for recruiting and retention? Have you found increased attrition among northern border personnel, who are often receiving only one day off a month since the terrorist attacks?

Answer. The INS is taking a number of aggressive actions to quickly fill the additional Border Patrol and inspector positions appropriated in fiscal year 2002. These actions are coupled with actions to decrease the losses in the Border Patrol agent and immigration inspector occupations. Decreasing our losses is key to achieving our fiscal year 2002 hiring goals.

We are currently taking the following actions to fill the Border Patrol and immigration inspector positions quickly:

—We have about 300 Border Patrol agents dedicated to the recruiting mission.

—Recruitment efforts are ongoing at colleges and universities.

—INS has placed advertising in more than 300 newspapers, magazines and Internet sites. In addition, INS is working on a number of initiatives in support of marketing and "branding" (enhancing the image of INS as an employer and promoting INS career opportunities), as well as developing new recruitment pamphlets, recruitment displays, and a television commercial and movie trailers. INS is sponsoring radio traffic reports in five markets, including Washington, D.C.

—The recruitment announcements for both Border Patrol agents and inspectors have been extended several times.

—The INS hired 551 new Border Patrol agents by the end of February 2002. To hire the remaining 1,956 agents, we currently have 43,000 applicants (who have taken or are scheduled to take the written examination) and expect to receive a total of 70,000 applications by the end of fiscal year 2002. We currently have 8,000 selectees in our hiring queue. These selectees are undergoing background investigations, medical examinations and drug tests.

—The INS hired 285 new immigration inspectors by the end of February 2002. To hire the remaining 1,690 inspectors, we have centralized the selection process at the National Hiring Center in order to streamline the process as much as possible. As a result, we currently have 49,600 applicants (who have taken

or are scheduled to take the written examination) and 4,700 selectees (who are currently undergoing background investigations, medical examinations and drug tests) in the hiring queue. About half of these selectees are from the centralized selection process begun February 1.

POSTCONVICTION DNA REVIEW

Question. The Department sent a response on February 25, 2002, to a letter that I sent over 6 weeks ago concerning the Department's decision to set aside its plans to offer $750,000 in grant money for post-conviction DNA review programs. In response to the simple question: "Does the Department intend to use alternate funds for post-conviction testing grants?", the Department response said that the National Institute of Justice has been asked to look into DNA initiatives.

Does this mean "no?" How is it that the Department cannot find $750,000 in a $30.2 billion budget to use for this important program?

Answer. The Department is working to assist states in improving their overall forensic capabilities, as well as the general state of information and technology available to the field. In fiscal year 2002, the Department's National Institute of Justice (NIJ) will target $66 million for research to make DNA identification technology more portable and inexpensive, enabling law enforcement in the field to access it more quickly and easily. Additionally, easier and quicker access will enable states to work more effectively in reducing the immense DNA sample backlog still existing across the nation. Finally, the availability of this new technology will make it possible for states to afford to conduct any post-conviction DNA testing they deem likely to be of significance in reviewing a conviction. However, the Department does not plan to undertake a national effort to promote and fund post-conviction DNA.

SHIFT IN FBI RESPONSIBILITIES

Question. Director Mueller announced the first phase of his FBI reorganization in December, and I praised his action to strengthen FBI intelligence, security, and information management. He and Deputy Attorney General Thompson are now taking a wider look at ways to streamline the FBI responsibilities. This may require a shift in some responsibilities from the FBI to other federal and local law enforcement agencies in order to focus the FBI on detection, prevention and investigation of terrorists. In what areas do you foresee a shift in FBI responsibilities?

Answer. The Director and his management team are now developing a comprehensive strategy to permanently shift resources to prevent and fight against terrorism. The FBI plans to present this strategy to the Department, Administration, and the Congress soon, but is still working to identify areas where it can redirect resources without compromising investigative priorities or partnerships with law enforcement and other government agencies. Given the elevated condition of the current terrorist threat to the United States, the FBI must make hard decisions to focus its energy and available resources on preventing additional terrorist acts and protecting our nation's security. At the same time, the FBI will continue to pursue and combat international and national organized crime groups and enterprises, civil rights violations, major white-collar crime, and serious violent crime; but at a level of effort consistent with resources available to support the capabilities of our federal, state, and local partners.

TRILOGY

Question. One of the most important FBI initiatives is the Trilogy program for upgrading the Bureau's information technology. The Counterterrorism Supplemental for fiscal year 2002 included $237 million for advanced computer equipment and software under the Trilogy program, and the FBI requests another $109.4 million in fiscal year 2003 for information technology projects including Trilogy. These are important investments. From an oversight perspective, however, I am disappointed that the Justice Department and the FBI have failed to submit quarterly status reports on Trilogy as required in the Appropriations Act for fiscal year 2001. Such reports are especially important to monitor the effectiveness of planning and testing for new software. Will you provide a current status report on Trilogy to the Congress as soon as possible?

Answer. The Department of Justice (DOJ) appreciates the support that Congress has given its Trilogy information technology upgrade project, and understands the oversight role that Congress plays in ensuring that the large amount of funding that it has provided is used appropriately. Indeed, Trilogy is one of the FBI's top priorities and it must be managed and executed properly.

The fiscal year 2001 Appropriations Act directed the FBI to submit quarterly status reports on the implementation of the Trilogy plan to the Appropriations Com-

mittees. The DOJ and FBI take this reporting requirement seriously and have worked diligently with each other and with the Office of Management and Budget over the last year to comply with this requirement fully and expedite the review process so that timely reports can be transmitted to Congress.

The first quarterly report was transmitted to Congress on June 29, 2001. The second and third quarterly reports were jointly transmitted to Congress on February 26, 2002.

The fourth report was prepared by the FBI but it did not include the most recent information on accelerated Trilogy implementation. Therefore, the FBI decided to submit it with the fifth report to provide a more updated and accurate description of the Trilogy program as it currently stands. The fifth report reflects recent developments regarding Trilogy acceleration and fully explains how the program has been accelerated and improved to reflect the FBI's response to the terrorist attacks. The fourth and fifth quarterly reports were jointly transmitted to Congress on March 19, 2002.

In summary, DOJ and FBI take reporting requirement responsibilities very seriously and remain committed to keeping Congress informed on the progress of the Trilogy program. At this time, DOJ has transmitted the first five quarterly status reports to Congress. The FBI is currently working on the sixth report.

JOINT TERRORISM TASK FORCES AND ANTI-TERRORISM TASK FORCES

Question. On February 26, 2002, the Department responded to my December 20, 2001, letter with questions about the FBI and Justice Department Terrorism Task Force structures. Over the past 7 years, the FBI's Joint Terrorism Task Forces have strengthened counterterrorism efforts with full-time participation by other federal agencies and state and local police personnel. Director Mueller plans an increase in these task forces to all 56 offices, and I support this plan. After the September 11th attacks, the Attorney General formed separate Anti-Terrorism Task Forces in each U.S. Attorney's Office. Former FBI executives have publicly raised concerns that the new Task Forces would "undermine the capabilities of the nation's primary agency responsible for the prevention and investigation of terrorist activity." Why does the Department need duplicative Task Forces in the U.S. Attorneys' Offices?

Answer. The Joint Terrorism Task Force (JTTF) Program and the Anti-Terrorism Task Force (ATTF) Program are the mechanisms through which the Department of Justice coordinates its anti-terrorism activities. JTTFs are focused on investigating terrorism, while the ATTFs are responsible for ensuring communication and coordination at more and higher levels of government. The missions of these two entities are not duplicative.

JTTFs are established through FBI field offices, and are designed for coordinated, operational investigation of terrorist activities. The JTTFs are composed of FBI agents and other investigators in federal, state, and local law enforcement agencies. All JTTF members must have top secret clearances, which grant them access to information that is developed throughout the course of an investigation.

In response to the events of September 11, 2001, the Attorney General directed each United States Attorneys Office to establish an ATTF for broader coordination of our anti-terrorism efforts across the country. The ATTF's three main purposes include: (1) facilitation of information sharing between federal and state authorities in order to detect and prevent terrorist attacks; (2) coordination of local anti-terrorism efforts within each district; and (3) serving as a standing organizational structure for a coordinated response to any terrorist incidents that might occur in the district. The membership of the ATTFs include federal, state, and local agencies that can contribute to local anti-terrorism efforts, even if they are not directly involved in criminal law enforcement. At present, ATTF participants need not have security clearances.

Because the state and local membership of the ATTFs exceed the state and local departments represented on JTTFs, the ATTFs also provide a force-multiplier when we engage in manpower intensive operations. For example, we enlisted the ATTF members to search for and locate several thousand non-immigrant aliens in just over 30 days without diverting resources necessary for ongoing JTTF investigations.

The ATTFs include the JTTFs in the federal districts where JTTFs exist. In those districts where a JTTF exists, the FBI retains and exercises primary operational authority, in coordination and consultation with the ATTF and the United States Attorneys Anti-Terrorism Coordinator, over all JTTF investigative activities that are not related to an ongoing prosecution.

FOREIGN TERRORIST TRACKING TASK FORCE

Question. The interagency Foreign Terrorist Tracking Task Force (FTTTF) was created in October 2001 to enhance U.S. efforts to prevent terrorist activity by ensuring that federal agencies coordinate their efforts to bar terrorists and their supporters from entering the United States. Please provide the charter for the Task Force and describe its specific functions and responsibilities. What is the level of Resources and funding provided by the Department to this Task Force in fiscal year 2002 and requested for fiscal year 2003?

Answer. The FTTTF was created by the Attorney General pursuant to Homeland Security Presidential Directive-2 (HSPD–2), issued on October 29, 2001. A copy of this document is attached (Attachment 1). HSPD–2 directed that the FTTTF ensure that, "to the maximum extent permitted by law, federal agencies coordinate programs to accomplish the following: (1) deny entry into the United States of aliens associated with, suspected of being engaged in, or supporting terrorist activity; and (2) locate, detain, prosecute, or deport any such aliens already present in the United States."

Since November 1, 2001, government agencies have begun designating personnel resources to the FTTTF. Currently, personnel are committed to the FTTTF from: DOJ, including FBI, INS, and the Drug Enforcement Administration (DEA); the Treasury Department, including the U.S. Customs Services; the Department of Health and Human Services, including the Social Security Administration; and components of the Department of Defense (DOD) and other members of the Intelligence Community. Plans are underway for additional agencies to detail personnel.

The FTTTF has identified a number of specific projects which it can coordinate or run to fill gaps in existing government efforts relating to prevention of terrorist activities. For example, the FTTTF is pursuing projects to: (1) create a unified, cohesive lookout list; (2) identify foreign terrorists and their supporters who have entered or seek to enter the United States or its territories; and (3) detect such factors as violations of criminal or immigration law which would permit exclusion, detention or deportation of such individuals.

In addition, the FTTTF is in the process of identifying other intelligence-related projects that it can support through its collaborative capability to co-locate data from multiple agency sources. In this respect, the FTTTF will not duplicate any existing governmental activity, but shall supplement and support existing functions to promote the interests of national security through improved information sharing.

The Department of Justice has identified for fiscal year 2002 a requirement of approximately $20 million in partial year costs to support the FTTTF. It is anticipated that in fiscal year 2003, the FTTTF will require full year funding to continue operations, as well as some additional costs currently being supported by the DOD.

ANTI-TERRORISM TASK FORCES

Question. If the U.S. Attorneys' Anti-Terrorism Task Forces request state or local law enforcement agencies to conduct investigative activities for the Justice Department, will those state or local investigative activities be coordinated by the FBI and subject to the Attorney General's guidelines for FBI investigations?

Answer. In those districts where an FBI Joint Terrorism Task Force (JTTF) exists, the FBI will retain and exercise primary operational authority over all JTTF investigative activities. As a result, these investigative activities will be coordinated by the FBI and subject to the Attorney General's Guidelines. JTTFs are currently authorized in 47 of the FBI's 56 field offices, and the FBI is seeking to expand the program to the remaining 9 field offices.

In those instances in which there is no JTTF in a district and the Anti-Terrorism Task Force (ATTF) requests state or local law enforcement agencies to conduct investigative activities, there will be some coordination with the FBI in all instances, because the FBI is an important participant in each ATTF. The extent and nature of coordination with the FBI may vary with the request. For example, in the effort to interview non-immigrant aliens, the United States Attorneys were specifically directed to coordinate the assignment of interviews and the conducting of interviews with the FBI Special Agents in Charge in each district. Likewise, the extent to which state and local investigative activities are subject to the Attorney's General Guidelines may vary. If state and local agencies undertake investigative activities with no involvement from the FBI, the Guidelines will ordinarily not apply. There may be instances in which state and local law enforcement agencies have entered into memorandums of understanding with the FBI requiring that the agencies adhere to the Guidelines in the course of joint investigations. In such instances, the agencies' activities will be subject to the Guidelines.

PROFESSIONAL SECURITY OFFICER CAREER PROGRAM

Question. The FBI budget includes additional funding of $48.2 million for Information Assurance and $29.9 million for other security programs. How much of these funds will be allocated to the development of a career security officer program? What additional funds, if any, would be needed to implement a robust security career program including security career program boards, identification of career development paths, ensuring opportunities for non-special agent personnel, providing appropriate security performance appraisals, establishing training and experience requirements for security management positions, and implementing an education and training program for FBI security personnel?

Answer. The FBI's fiscal year 2003 budget request does not include any resources for the development of a professional security officer career track. The request does, however, include $2,425,000 to educate employees, including security officers, about security policies, procedures and methods. Moreover, the FBI anticipates that a workforce study being conducted by Resource Consultants Incorporated will assist in identifying the knowledge, skills, and abilities required by professional Security Officers and will assist in the development of a program outline the FBI plans to complete by the end of calendar year 2002.

The FBI's recently created Security Division will work with human resources personnel during fiscal year 2003 to expand the program outline into a career security program, including establishment of career security program review boards; identification of career development paths; development of critical elements for security performance appraisals; establishment of training and experience requirements for security management positions; and implementation of a comprehensive education and training program for all FBI security personnel. The FBI will be in a better position to determine what additional resources, if any, will be needed upon completion of program development.

INTERNET-BASED REGIONAL INFORMATION SHARING SYSTEM AND INTERNET-BASED LAW ENFORCEMENT ONLINE PROGRAM

Question. The Attorney General's prepared statement says that a "critical element in our battle plan against the terrorist threat is working to develop and enhance interoperable databases and telecommunications systems for the Department's law enforcement activities." The USA PATRIOT Act authorized the expansion of the Internet-based Regional Information Sharing System (RISS) funded by the Bureau of Justice Assistance to enhance the investigation and prosecution abilities of participating enforcement agencies in addressing multi-jurisdictional terrorist conspiracies and activities. The FBI has a complementary Internet-based Law Enforcement Online (LEO) program that provides public and private controlled multi-level access areas for specialized public safety organizations and disciplines. Both programs enable state and local governments to collaborate with federal agencies and with each other on counterterrorism, homeland security, infrastructure protection, and other law enforcement matters. Such Internet-based collaboration could include organizations with significant roles in homeland security and infrastructure protection. Please provide a plan with associated funding requirements for a unified Internet-based information architecture including RISS and LEO that meets the Department's needs to serve all organizations tasks that are necessary for coherent homeland security, infrastructure protection, and law enforcement efforts.

Answer. As reflected in the Attorney General's statement on the subject, DOJ regards the interoperability of databases and telecommunications systems as a crucial aspect in thwarting terrorism. The Department believes that a system combining the strengths of both the BJA's Regional Information Sharing System (RISS) and the FBI's Law Enforcement Online (LEO) may provide the most effective means of achieving this interoperability. Such a system could provide federal and non-federal law enforcement agencies varying levels of access to information they need to perform their missions more effectively. DOJ is continuing study to determine the most feasible manner of combining the two systems. The Department is near closure on the issue and will be able to provide a plan soon.

Question. The Attorney General's prepared statement says that he aims to establish a National Security Coordination Council (NSCC) of the Department of Justice. Please provide the charter for the NSCC. What are the specific functions of the NSCC, including its detailed responsibilities for policy coordination, resource allocation, operations, long-term planning and information sharing? What will be its role in foreign counterintelligence and espionage matters, in foreign intelligence matters beyond counterterrorism, and in matters handled by the Office of Intelligence Policy and Review and the Joint Foreign Terrorism Tracking Task Force.

Answer. The Attorney General's memorandum dated, March 5, 2002, entitled, "Establishment of the National Security Coordination Council" responds to this question.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, March 5, 2002.

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS
FROM: THE ATTORNEY GENERAL
SUBJECT: Establishment of the National Security Coordination Council

Nearly five months after the devastating terrorist attacks of September 11, 2001, the Department of Justice stands at the forefront of President Bush's efforts to secure the American homeland. Throughout the Department, we have made great strides toward fully deploying the arsenal of justice to combat terrorism, and we have done so without compromising our commitment to the rule of law. But there is much work to be done.

The assaults on America that occurred on September 11, and the supreme imperative to prevent further terrorist attacks, mandate a more coordinated effort to combat terrorism and address other national security challenges, both within the Department of Justice, and in the Department's interaction with other law enforcement and intelligence agencies.

Therefore, effective immediately, I hereby establish the National Security Coordination Council (NSCC) of the Department of Justice, which shall be chaired by the Deputy Attorney General. It shall be the principal mission of the NSCC to ensure a more seamless coordination of all functions of the Department relating to national security, particularly the Department's efforts to combat terrorism directed against the United States.

Under the Deputy Attorney General's leadership, the Council will:

—(1) Centralize and coordinate policy, resource allocation, operations, and long-term planning of DOJ components regarding counter-terrorism, counter-espionage, and other major national security issues;

—(2) Monitor the implementation of Department policy to ensure that components are taking all necessary and appropriate actions to prevent and disrupt the occurrence of terrorist attacks in the United States;

—(3) Provide an institutionalized Department forum for crisis management;

—(4) Promote coordination and information-sharing within the Department, between DOJ and other federal agencies and interagency bodies, and between DOJ and state and local law enforcement authorities, to prevent, prepare for, and respond to terrorist attacks within the United States;

—(5) Frame national security issues for resolution by the Deputy Attorney General or the Attorney General; and

—(6) Ensure that positions advanced by the Deputy Attorney General on behalf of DOJ at interagency meetings of the National Security Council, the Homeland Security Council, and other interagency forums reflect input from DOJ national security components.

In addition to the Deputy Attorney General, the NSCC's members will include the following Department officials with responsibility for national security matters: Chief of Staff to the Attorney General; FBI Director (with appropriate participation by the Executive Assistant Director for Counter-Terrorism/Counter-Intelligence); Assistant Attorney General, Criminal Division (with appropriate participation by the Terrorism and Violent Crime Section, the Office of International Affairs, and other Division components); Commissioner of the Immigration and Naturalization Service; Assistant Attorney General, Office of Justice Programs; and Counsel, Office of Intelligence Policy and Review.

The NSCC will meet on a bi-weekly basis or more frequently as needed. In addition to the Deputy Attorney General and the permanent members listed above, other senior Department officials as well as senior officials from the Central Intelligence Agency and other government agencies—will be invited to attend NSCC meetings when appropriate. The NSCC will receive staff support from attorneys in the Office of the Deputy Attorney General with expertise in national security matters, and from ODAG administrative personnel. The functions and personnel of the Executive Office of National Security will henceforth be incorporated into the NSCC's operations.

The establishment of the NSCC marks a new chapter in the Department of Justice's commitment to protecting the safety and well-being of the American people. I call upon all Department officials and employees to dedicate themselves to the success of this vital effort.

TOBACCO LITIGATION RESOURCES

Question. The President's budget seeks $25.2 million for litigation support in continuing the Justice Department's lawsuit against the tobacco industry. Department officials, however, claim that they will need up to $45 million in order to comply with fact and expert discovery requirements established by the court, and for the litigation team to prepare for trial, scheduled to begin in July 2003.

What is the total funding needed to continue the tobacco litigation?

If the $25 million requested in the President's budget is not sufficient to cover all those expenses, where are you getting the rest of the money? In other words, what other departments or sources will contribute to the costs of the tobacco litigation?

Answer. During fiscal year 2002, current funding of $38,200,000 is sufficient to meet anticipated costs through September 30, 2002. Although most of these funds come from the Health Care Fraud and Abuse Control account (HCFAC), the Department will cover the $3,000,000 for costs of experts that are likely to testify, as well as $1,800,000 for a portion of the tobacco team's salaries and benefits.

With respect to fiscal year 2003, the team will need an estimated $44,400,000. The funds will be needed to prepare for and undertake a July trial. We anticipate that fiscal year 2003 funding will likely come from a combination of sources, as in the past: (1) we have asked Congress to approve the $25,200,000 program increase sought in the President's budget for litigation support services that the team will need to build the factual support for the government; (2) we will continue to cover a portion of the salaries and benefits out of our base funds of $1,800,000, and we will continue to cover the $3,000,000 for our testifying experts; and (3) the Department will likely seek to use its own HCFAC funding to meet the balance of the estimated tobacco litigation expenditures.

Fiscal year 2003 will continue to be a costly year for the litigation. However, some costs are likely to be incurred in fiscal year 2004, and perhaps beyond, depending on the outcome of the trial and subsequent appeal decisions. Accordingly, we do not have cost estimates beyond fiscal year 2003.

IMPROVING STATE AND LOCAL LAW ENFORCEMENT

Question. The Administration aims to repackage a number of Justice Department grant programs and cut their funding. Grant programs targeted for elimination include the State and Local Law Enforcement Block Grants, which received $400 million this year; and Byrne law enforcement block grants for efforts to improve state and local courts, which received $500 million this year. The plan would cut more than $1.6 billion from the $2.5 billion appropriated this year for state and local law enforcement grants, and would combine what is left into a new $800 million Justice Assistance Program. Please explain how the new Justice Assistance Program would work, and why state and local law enforcement agencies would lose $1.6 billion in the repackaging process.

Answer. The first and overriding priority for the Department is counterterrorism. This is reflected throughout our budget, which refocuses our resources in support of our top priority. As part of this refocusing, the Administration proposes reducing or eliminating several grant programs. This redirection within the Justice budget enables our law enforcement efforts to increase by 13 percent to address the threat posed by terrorism.

The Justice Assistance Grants (JAG) Program is a formula grant program that will provide assistance to states and local governments to support a broad range of activities to prevent and control crime and improve the criminal justice system. It would replace the Edward Byrne Memorial Formula Grant Program and the Local Law Enforcement Block Grant (LLEBG) Program with a single funding mechanism that will allow easier administration by both grantees and the Bureau of Justice Assistance (BJA). The President's budget for fiscal year 2003 proposes this new program, funded under the Community Oriented Policing Service (COPS) appropriation account, at the $800 million level. This represents a reduction of only $195 million from the combined Byrne and LLEBG funding enacted in last year's CJS appropriations bill. This does not include the one-time, supplemental appropriation to the Byrne program for counterterrorism grants.

Activities funded under the current Byrne Formula Program or LLEBG program would continue to be eligible for funding. Funds provided to states may be used for statewide initiatives, technical assistance and training, and support for local jurisdictions. Local jurisdictions can work together with other local jurisdictions to develop regional projects supported by their JAG funds.

There are several advantages to the new program:

—*Simplifies and Streamlines Policies, Practices, and Procedures*.—Along with combining funding streams for programs of similar purposes, the JAG streamlines reporting requirements and reduces general administrative tasks at federal, state and local levels.

—*Enhances State and Local Control*.—Grantees will have greater flexibility to use funds, enhancing their ability to address community problems with a wider variety of solutions.

—*Supports Collaboration and Communication*.—The consolidation encourages greater sharing of information and coordination between state and local governments.

—*Promotes Best Practices*.—The consolidation will enhance the ability of federal, state, and local governments to exchange new and successful practices.

As reflected throughout the fiscal year 2003 President's budget, the primary and overarching priority for the Department is to bolster resources to respond more effectively to the threat of terrorism. As a result, the Department had to redirect existing resources from other program areas. Overall, the Office of Justice Programs is requesting a decrease of $1.651 billion from the 2002 enacted level for the State and Local Law Enforcement Assistance appropriation account. This decrease includes the proposed elimination of the Byrne formula and the LLEBG programs ($900 million), largely offset by the $800 million requested under the COPS appropriation account for the JAG.

Other decreases requested include the proposed reduction to the Juvenile Accountability Incentives Block Grant program of $34.45 million and the proposed elimination of the State Criminal Assistance Alien Assistance ($565 million), Tribal Prison Construction ($35.191 million), Missing Alzheimers ($.898 million), Edward Byrne Discretionary Grants ($94.489 million), Cooperative Agreement ($20 million), Victims of Trafficking ($10 million), and Motor Vehicle Theft Prevention programs ($1.298 million). Increases are proposed for RSAT (+$7 million), Drug courts (+$2 million), and technical assistance on hate crimes prevention (+$1.3 million). While assistance to state and local jurisdictions is reduced in the Department's budget, significant new resources are requested for state and local jurisdictions in the Federal Emergency Management Agency's budget of $3.5 billion.

CIVIL RIGHTS AND HATE CRIMES

Question. In connection with the Judiciary Committee's December 6, 2001 oversight hearing and again at the February 26, 2002 Commerce, Justice, State Appropriations Subcommittee hearing, you were asked for the Department of Justice's position on S. 625, hate crimes legislation that was reported by the Judiciary Committee to the full Senate on July 26, 2001. Your written response to the Judiciary Committee's prior questions indicated support for more limited legislation previously sponsored by Senator Hatch and not even introduced in this Congress, without expressing any views on S. 625, the pending legislation and the focus of the question. Again, at you more recent appearance on February 26, 2002, you did not give a firm position on S. 625. Given your willingness to express a specific view on other legislation from prior Congresses, and the fact that S. 625 is the bill that has actually been reported to the full Senate, we again ask that you please provide the Department's views on S. 625.

Answer. The Department's position on the pending hate crimes legislation is informed by our recent experience in responding to bias-motivated crimes which have unfortunately arisen in the wake of the tragic events of September 11. Since that date, the Civil Rights Division, which prosecutes bias-motivated crimes under several existing federal statutes, has investigated 350 cases of alleged discriminatory backlash against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans. These cases are more specifically described in the next answer.

Additionally, the Department recently indicted Darrell David Rice for the 1996 murder of Julianne Marie Williams and Laura "Lollie" S. Winans in the Shenandoah National Park. The four-count murder indictment specifically invokes a federal sentencing enhancement that was enacted to insure justice for victims of hate crimes. In this case, the federal sentencing enhancement provides for increased punishment if the fact finder at trial or, in the case of a plea of guilty or nolo contendere, the court at sentencing determines beyond a reasonable doubt that Rice intentionally selected either victim as the object of the offence because of the victim's actual or perceived gender or sexual orientation. If convicted of any of the charges in the indictment, Rice could face the death penalty.

The Department of Justice appreciates the leadership Senators Kennedy and Hatch, as well as other members of Congress, have shown on the vital issue of hate

crimes. Your leadership is reflected in the fact that the Senate Judiciary Committee has now voted to send S. 625 to the full Senate. As your question notes, in my previous responses to the Committee I observed that then-Governor Bush indicated during the Presidential campaign that he supported Senator Hatch's proposed hate crimes legislation, which was introduced during the 106th Congress and which shares several features with S. 625. As I explained in my earlier response, these common features include provision by the Attorney General of assistance in the investigation or prosecution of any violent crime that constitutes a felony and is motivated by animus against the victim by reason of the membership of the victim in a particular class or group; grants by the Attorney General to state and local entities to assist in the investigation and prosecution of such crimes; and the appropriation of $5,000,000 for the next 2 fiscal years to carry out the grant program.

As you know, S. 625 is an important proposal which would amend the federal criminal code in numerous significant respects. The Department of Justice continues to review and evaluate the constitutional and policy issues raised by the proposed amendments to the federal criminal code in S. 625. At the same time, we are continuing to fulfill our important mission of enforcing the existing laws relating to bias-motivated crimes that fall within federal jurisdiction under existing law.

Question. S. 625 is particularly critical now since that legislation would both broaden federal hate crimes jurisdiction and provide support for state prosecutions. You noted in your written responses based on your December 6, 2002 testimony and it was brought up again at the February 25 hearing that the FBI has commenced approximately 300 federal criminal investigations involving post-September 11 attacks on Arab or Muslim Americans, or others, based upon their actual or perceived ethnicity. You indicate, however, that to date there have only been 8 federal cases resulting from these approximately 300 investigations. In short, there has been no federal prosecution in over 97 percent of these investigations. Please advise how many of these investigations: (a) have been closed, (b) have been referred to state authorities, or (c) are still being actively investigated by federal authorities? What criteria or factors are used to determine whether a case will be referred to a state or local law enforcement agency to handle and what, if any, is the federal role after such a referral?

Answer. Since September 11, the Civil Rights Division (CRT), FBI, and United States Attorneys' offices have investigated over 300 alleged incidents involving violence or threats against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans.

Of the over 300 federal investigations that have been initiated since September 11, 75 of the investigations have been closed and 274 investigations remain open. Sixty-five of the federal investigations have been or are being prosecuted by state and local prosecutors following coordination and cooperation with federal investigators and federal prosecutors. Although the Department of Justice does not have knowledge of every state and local case prosecuted since September 11, we have information indicating that state and local authorities are actively pursuing additional cases. The CRT and the United States Attorney's offices continue to coordinate with local prosecutors in instances where cases are being prosecuted locally and where there are also potential federal crimes that have not been charged to consider whether plea bargains can resolve both local and federal criminal liability.

To date, federal charges have been brought in 10 cases, and the CRT and United States Attorneys' offices are working together to prosecute those cases. In those cases, the Department of Justice believed that there was an overriding federal interest in prosecuting an alleged backlash crime that could otherwise be prosecuted locally. The factors the Justice Department takes into account in making this determination are: (1) the resources of the local law enforcement agency, both legal and financial; (2) whether the local prosecution, if completed, achieved a fair and just result; (3) the potential national deterrent value of a federal prosecution in a given instance; and (4) whether other federal interests are implicated, such as the protection of federal government officials. After the Department has determined in a case of dual jurisdiction to allow state and local authorities to prosecute in the first instance, the Department closely monitors the course of the local prosecution.

CRIMES AGAINST ARAB AMERICANS

Question. Immediately after the September 11 terrorist attacks, we were reminded of the importance of federal civil rights enforcement by the rash of crimes against Arab and Muslim Americans after the September 11 attacks. These acts, and indeed all acts of discrimination, cut at the very heart of what the terrorists hope to destroy in the United States our tolerance and our diversity. The budget

request does not appear to match the rhetoric with the resources needed to maintain the Department's longstanding leadership role in national civil rights enforcement during these difficult times.

In recent answers to questions which you provided based upon your December 6, 2001 appearance at the Senate Judiciary Committee, you note that the FBI has commenced approximately 300 federal criminal investigations involving post-September 11 attacks on Arab or Muslim Americans, or others, based upon their actual or perceived ethnicity. You indicate, however, that to date there have only been eight federal cases resulting from these approximately 300 investigations. In short, there has been no federal prosecution in over 97 percent of these investigations. Why is it that the Department is prosecuting so few of these violent crimes?

Answer. The Department of Justice is committed to prosecuting vigorously the laws of the United States. Since September 11, CRT, FBI, and United States Attorneys' offices have investigated over 300 alleged incidents involving violence or threats against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans.

Of the over 300 federal investigations that have been initiated since September 11, 75 of the investigations have been closed and 274 investigations remain open. Sixty-five of the federal investigations have been or are being prosecuted by state and local prosecutors following coordination and cooperation with federal investigators and federal prosecutors. Although the Department of Justice does not have knowledge of every state and local case prosecuted since September 11, we have information indicating that state and local authorities are actively pursuing additional cases. The CRT and the United States Attorney's offices continue to coordinate with local prosecutors in instances where cases are being prosecuted locally and where there are also potential federal crimes that have not been charged to consider whether plea bargains can resolve both local and federal criminal liability.

To date, federal charges have been brought in 10 cases, and the CRT and United States Attorneys' offices are working together to prosecute those cases. In those cases, the Department of Justice believed that there was an overriding federal interest in prosecuting an alleged hate crime that could otherwise be prosecuted locally. The factors the Justice Department takes into account in making this determination are: (1) the resources of the local law enforcement agency, both legal and financial; (2) whether the local prosecution, if completed, achieved a fair and just result; (3) the potential national deterrent value of a federal prosecution in a given instance; and (4) whether other federal interests are implicated, such as the protection of federal government officials. After the Department has determined in a case of dual jurisdiction to allow state and local authorities to prosecute in the first instance, the Department closely monitors the course of the local prosecution.

We are pleased to note that cooperation between federal agents and local law enforcement officers and between Justice Department prosecutors and local prosecutors has been outstanding. This is a testament to local law enforcement nationwide, which has shown the willingness to, and which has largely been given the legal and financial resources to, investigate and prosecute vigorously alleged bias-motivated crimes against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans. The Department is aware that, in rare instances, local authorities may not have the tools or the will to prosecute a particular bias-motivated crime fully. In those rare instances, the Department will be prepared to initiate federal proceedings, if appropriate.

America is well-served by our partners in state and local law enforcement. If the post-September 11 alleged incidents of violence were a test of local efforts to prosecute bias-motivated crimes, local law enforcement passed with flying colors.

Question. Even counting all state prosecutions, no matter how minor, you stated that there are less than 60 total cases out of 300 investigations. Why is it that in 80 percent of these violent cases no one at all has been prosecuted in any way? How is the decision made whether a case will be federally prosecuted or referred to the state and what is the federal role after such a referral?

Answer. The Department of Justice is committed to prosecuting vigorously the laws of the United States. Since September 11, CRT, FBI, and United States Attorneys' offices have investigated over 300 alleged incidents involving violence or threats against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans.

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Many of the alleged incidents that have been investigated by the Department of Justice have been closed, the alleged incidents are still being actively investigated, the Department is coordinating with local prosecutors to consider whether plea bargains can resolve both local and federal criminal liability, or the Department has determined in cases of dual jurisdiction to allow state and local authorities to prosecute in the first instance. The Department of Justice closes investigations when the facts indicate that there is no prosecutable federal crime or when a companion state or local prosecution has achieved a fair and just result that requires no subsequent federal prosecution.

Question. You also noted in your prior written responses to questions that there have been approximately 50 state or local cases involving hate crimes after the September 11 attacks. Are these 50 cases included in the same 300 investigations you set forth above? Please provide the following information regarding each of the state cases to which you refer: (a) identify the state or jurisdiction in which each case is pending, (b) indicate whether each state charge was a felony or misdemeanor, and (c) provide any available information regarding the dispositions and the punishments received, if any.

Answer. Of the over 300 federal investigations that have been initiated since September 11, 75 of the investigations have been closed and 274 investigations remain open. Sixty-five of the federal investigations have been or are being prosecuted by state and local prosecutors following coordination and cooperation with federal investigators and federal prosecutors.

Please see Attachment 2 for the information about state and local prosecutions of which the Department of Justice is aware. Where the Department is not aware of certain requested facts pertaining to these state and local prosecutions, the entry is left blank.

Question. What criteria are being employed to determine whether a hate crime case will be prosecuted in federal or state court? In how many of these state prosecutions was federal prosecution legally possible, but forgone in lieu of a state case?

Answer. Since September 11, CRT, FBI, and United States Attorneys' offices have investigated over 300 alleged incidents involving violence or threats against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans.

Of the over 300 federal investigations that have been initiated since September 11, 75 of the investigations have been closed and 274 investigations remain open. Sixty-five of the federal investigations have been or are being prosecuted by state and local prosecutors following coordination and cooperation with federal investigators and federal prosecutors. Although the Department of Justice does not have knowledge of every state and local case prosecuted since September 11, we have information indicating that state and local authorities are actively pursuing additional cases. The CRT and the United States Attorney's offices continue to coordinate with local prosecutors in instances where cases are being prosecuted locally and where there are also potential federal crimes that have not been charged to consider whether plea bargains can resolve both local and federal criminal liability.

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Question. The Judiciary Committee has asked the Attorney General in written questions for information about the process used for reviewing potential hate crimes cases within the Department of Justice, including which officials were involved and to what extent the process differs from the review to which other cases are subjected. Your reply simply provided the name of the top official with final certification authority in hate crimes prosecutions. In order for Congress, in both its oversight and legislative roles, to evaluate whether the extremely low federal hate crime prosecution rate is due to the narrow scope of the current law, policy based decisions of the Department of Justice to forgo federal prosecution in these cases, inadequate resources devoted to this problem or some other reason, a more thorough response describing how the review process in these cases differs from other criminal cases would be helpful. For this reason, please provide a more complete response to this question. Specifically, please advise what guidelines or policies, if any, are in place to ensure that these cases are handled appropriately? Please explain why fewer than 3 percent of these allegations have resulted in federal prosecution at a time when the President is publicly condemning such violent acts?

Answer. The process of determining whether to initiate a prosecution pursuant to 18 § 245 begins after FBI has investigated the alleged crime in coordination with CRT and United States Attorneys' offices. After the investigation is completed, attorneys in the Criminal Section of CRT deliberate with Assistant Attorney General Ralph F. Boyd, Jr. and other attorneys within the Office of the Assistant Attorney General. Per section 245(a)(1), no prosecution can be undertaken except upon the certification of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General. The Attorney General has specially designated Assistant Attorney General Boyd as the person who must certify that a prosecution under section 245 may go forward.

With respect to the absolute number of federal prosecutions, the Department credits the outstanding cooperation between federal agents and local law enforcement officers and between Justice Department prosecutors and local prosecutors. This is a testament to local law enforcement nationwide, which has shown the willingness to, and which has largely been given the legal and financial resources to, vigorously investigate and prosecute alleged bias-motivated crimes against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans. The Department is aware that, in rare instances, local authorities may not have the tools or the will to prosecute a given bias-motivated crime fully. In those rare instances, the Department will be prepared to initiate federal proceedings, if appropriate.

MISSISSIPPI REDISTRICTING PLAN

Question. The President's budget request did not call for any additional resources for the Department's Voting Rights Section, even though the recent press reports about the Department's role in blocking a redistricting plan for congressional seats in Mississippi are disturbing. During your confirmation hearing, you recognized that "[v]oting is a fundamental civil right" and pledged if confirmed that you would "work aggressively and vigilantly to enforce federal voting rights laws." You assured this Committee that "[i]t will be a top priority of a Bush Department of Justice, part of what I hope would be its legacy." In addition, in your testimony today, you reemphasized the importance of the right to vote in the context of implementing election reform.

Nevertheless, according to recent reports, the Department's belated request for additional information regarding the Mississippi redistricting plan proposed by

elected Mississippi state legislators and approved by a state judge put that plan at risk of being supplanted by an alternative plan that is "favorable to Republican candidates," and was ordered by what is described as "a panel of white Republican-appointed federal judges." The alternative plan may be imposed based not upon that plan's merits but rather based upon scheduling concerns stemming from the Department's foot-dragging in the matter. These allegations are serious and necessitate prompt responses explaining the Department's actions.

Answer. The Department's request for additional information was sent to the Mississippi Attorney General on February 14, 2002, well within the statutorily-imposed 60-day deadline for making determinations under section 5 of the Voting Rights Act of 1965. Subsequently, in light of the ruling of the three-judge federal court that the state's plan is unconstitutional, the Department sent a routine "no determination" letter to the Mississippi Attorney General informing him that the Department would take no further action at this time. The Department of Justice has never failed to meet its obligations under section 5 of the Voting Rights Act of 1965 within the prescribed statutory time frames. In the past year, the Department has received over 5,000 section 5 submissions encompassing more than 15,000 voting changes, and has never missed a deadline.

Question. When did the Department first receive the redistricting plan?

Answer. On December 26, 2001, the Mississippi Attorney General submitted three voting changes, including the congressional redistricting plan adopted by the Chancery Court for the First Judicial District of Hinds County, Mississippi, to the Department. The other two voting changes submitted for approval involved the creation of a state legislative committee to address redistricting and a state supreme court decision, on writ of mandamus, allowing a chancery court to draw a congressional redistricting plan.

Question. Who within the Department was assigned the task of reviewing the plan, and how long did that review take?

Answer. The Voting Section of the Civil Rights Division reviewed the voting changes submitted by the Mississippi Attorney General in accordance with its usual procedures for reviewing submissions to the Department pursuant to section 5 of the Voting Rights Act of 1965. On February 14, 2002, the Department asked the Mississippi Attorney General for more information concerning certain changes and advised him of legal concerns regarding whether the submission was final. Also on February 14, 2002, in an attempt to expedite the Department's decision-making process, Assistant Attorney General Ralph F. Boyd, Jr. sent a letter to the Supreme Court of Mississippi, respectfully requesting the expedited consideration of the state court appeal. On February 19–20, 2002, the Department received additional information from the Mississippi Attorney General, but the Department never received a response from the Supreme Court of Mississippi.

Question. Were any memoranda or recommendations prepared by the Voting Rights Section in connection with the initial review of the redistricting plan and, if so, please provide for each memoranda: the date, the author, the recipients and a description of the document?

Answer. Attorneys in the Voting Section prepared memoranda regarding the redistricting plan, in accordance with their usual procedures regarding pre-clearance matters submitted to the Department pursuant to section 5 of the Voting Rights Act of 1965. The Department has substantial confidentiality interests in such memoranda because of concerns that their disclosure would chill the candid internal exchange of information about particular law enforcement decisions. We believe that this confidentiality is important to ensuring the robust deliberations within the Department and the integrity of our decision-making process.

Question. On what date did career trial attorneys in the Voting Rights Section make any recommendations about the redistricting plan, and to whom did they make those recommendations?

Answer. We appreciate your interest in the Mississippi redistricting plan and hope that you will appreciate the Department's substantial confidentiality interests in the internal deliberations within CRT relative to this law enforcement matter. Department decision-makers have long been concerned that disclosure of information about internal deliberations regarding particular matters would make it more difficult for them to obtain the candid advice and recommendations of their subordinates. We would like to explore other alternatives for accommodating your oversight interests such as through a briefing by Assistant Attorney General Boyd about the decisions that he made in this matter, as suggested in his letter of March 19, 2002.

Question. Who reviewed the recommendations of the Voting Rights Section about the Mississippi redistricting plan?

Answer. The Mississippi redistricting plan was reviewed in accordance with CRT's usual procedures regarding section 5 submissions and Assistant Attorney General

Ralph F. Boyd, Jr. decided to send the letters, dated February 14, 2002, which requested additional information from the Mississippi Attorney General and sought expedited consideration from the Mississippi Supreme Court.

Question. How much time passed after the career employees in the Voting Rights Section made initial recommendations on the Mississippi plan to the office of the Assistant Attorney General, Civil Rights Division, and the Department's questions to the State of Mississippi?

Were any changes made in the recommendations of the Voting Rights Section referred to above and, if so, what were those changes?

Did the Department take the actions initially recommended by the career trial attorneys in the Voting Rights Section and, if not, please explain how any actions taken by the Department differed from those initial recommendations?

Answer. With regard to these questions, as indicated above, the Department has substantial confidentiality interests in its internal deliberations regarding law enforcement matters, because we want to protect the candid exchange of views, including advice and recommendations, that we believe is essential to the integrity of our decision-making processes. We would like to accommodate your oversight interests in the Department's decisions regarding the Mississippi redistricting plan in a manner that avoids these concerns. As indicated in his letter, March 19, 2002. Assistant Attorney General Boyd would be pleased to brief you at your earliest convenience about his decisions in this matter.

Question. When does the Department expect make a final preclearance decision on the Mississippi redistricting plan now that the state's Attorney General has submitted answers to the Department's belated questions?

Answer. On February 26, 2002, a three-judge panel sitting in the United States District Court for the Southern District of Mississippi held that the adoption of the chancery court's plan violated Article I, Section 4 of the United States Constitution and was, therefore, unconstitutional and a nullity. Requests for a stay of the District Court's order were denied by the United States Supreme Court. The Supreme Court is not expected to determine fully whether the plan is constitutional until its next term. In light of the District Court's action, the Department has not taken further action, and on April 1, 2002 the Department sent a "no determination" letter to Mississippi notifying it of the Department's position. We will closely monitor the appeal in this case.

Question. Do you believe that the Voting Rights Section is able to perform its statutory duties, including completion of preclearance reviews in a timely fashion? If so, please explain why?

Answer. The Voting Section has sufficient resources to fulfill its obligations. The Section has successfully shifted some resources internally to accommodate the numerous voting changes enacted as a result of the 2000 Census. The Department of Justice has never failed to meet its obligations under section 5 of the Voting Rights Act of 1965 within the prescribed statutory time frames. In the past year, the Department has received over 5,000 section 5 submissions, encompassing more than 15,000 voting changes, and has never missed a deadline.

CIVIL RIGHTS DIVISION

Question. The President's budget for the rest of the Civil Rights Division did not propose any of the increases recommended for the Department's other components. Your assurances about the Department's continued commitment to strong civil rights enforcement and, in particular, your responses to the following questions would be appreciated.

Have the Department's internal priorities in civil rights enforcement changed in the last year?

Answer. The Department's current civil-rights priorities include (in no particular order): (1) the enforcement of the Americans with Disabilities Act of 1990 and the implementation of the *Olmstead* v. *L.C.* decision; (2) the enforcement of statutes prohibiting migrant smuggling and human trafficking, including the Trafficking Victims Protection Act of 2000; (3) the investigation and prosecution of alleged incidents involving violence or threats against individuals perceived to be of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans, and the coordination of outreach efforts to individuals and organizations from those communities to provide information about government services; and (4) the enforcement of voting rights and the provision of resources to state and local governments on voting reform.

Question. Please provide the Committee with any documents reflecting enforcement policies, priorities or directions to the U.S. Attorneys' Offices or to the Civil Rights Division.

Answer. Please see documents in Attachment 3.

Question. Please provide the Committee with any documents reflecting an evaluation over the last year of the propriety or correctness of any legal arguments which the Department of Justice has made in previous civil rights enforcement actions.

Answer. The Department constantly evaluates the propriety and correctness of its legal arguments in light of evolving judicial precedence and the evidentiary records in particular matters. Its briefs and other statements of legal positions filed in law enforcement related litigation reflect these continuing developments. As indicated above, the Department has substantial confidentiality interests in internal documents reflecting its deliberations regarding legal positions in individual matters.

TAX DIVISION AND ENVIRONMENTAL AND NATURAL RESOURCES DIVISION

Question. The President's budget also calls for cuts in the Environmental and Natural Resources Division and the Tax Division. These are the Department's components responsible for enforcing the environmental laws and bringing cases against tax evaders. Given the recent tax cuts and changes over the last year in the nation's environmental regulatory scheme, aggressive enforcement of the remaining tax and environmental laws should be a priority. Please explain in detail how the Department plans to implement these cuts in the Tax Division and the ENRD?

Answer. The request for the Tax Division includes a decrease of $1.1 million in salaries and expenses below the current services level, which equates to a reduction in 10 positions.

The Tax Division is fully committed to the fair, vigorous, and uniform enforcement of the tax laws, and will continue to prosecute tax crimes and defend and pursue civil claims. We expect to absorb the requested budget decrease in part by streamlining processes, increasing productivity, resolving cases in a more cost-effective manner, and devoting more resources earlier to precedent-setting cases.

Additionally, the President's budget includes a proposal to move certain tax collection due process proceedings from the United States District Courts to the United States Tax Court, which will relieve the Tax Division of the burden of handling those cases.

Tax Division's budget for fiscal year 2000 through 2003:

	Million
Fiscal year 2000 appropriation	$67.2
Fiscal year 2001 appropriation	70.8
Fiscal year 2002 enacted	73.8
Fiscal year 2003 President's budget	75.5

The Environment and Natural Resources Division will be able to absorb the fiscal year 2003 cut of $1,085,000 and 8 positions in the Environmental Enforcement Section through attrition. In the past 5 years, the Environmental Enforcement Section has had annual turnover of 25–35 people each year. We plan to absorb this cut reduce staff by replacing 8 fewer staff.

The Environment and Natural Resources Division will continue to bring cases to address pollution problems in the United States. The proposed reduction in the number of staff who handle civil enforcement cases is necessary so that resources can be focused on counterterrorism efforts.

ATTACHMENT 1.—HOMELAND SECURITY PRESIDENTIAL DIRECTIVE-2—OCTOBER 29, 2001

OFFICE OF THE PRESS SECRETARY,
OCTOBER 30, 2001.

SUBJECT: Combating Terrorism Through Immigration Policies

A. National Policy

The United States has a long and valued tradition of welcoming immigrants and visitors. But the attacks of September 11, 2001, showed that some come to the United States to commit terrorist acts, to raise funds for illegal terrorist activities, or to provide other support for terrorist operations, here and abroad. It is the policy of the United States to work aggressively to prevent aliens who engage in or support terrorist activity from entering the United States and to detain, prosecute, or deport any such aliens who are within the United States.

1. Foreign Terrorist Tracking Task Force

By November 1, 2001, the Attorney General shall create the Foreign Terrorist Tracking Task Force (Task Force), with assistance from the Secretary of State, the Director of Central Intelligence and other officers of the government, as appropriate.

The Task Force shall ensure that, to the maximum extent permitted by law, Federal agencies coordinate programs to accomplish the following: (1) deny entry into the United States of aliens associated with, suspected of being engaged in, or supporting terrorist activity; and (2) locate, detain, prosecute, or deport any such aliens already present in the United States.

The Attorney General shall appoint a senior official as the full-time Director of the Task Force. The Director shall report to the Deputy Attorney General, serve as a Senior Advisor to the Assistant to the President for Homeland Security, and maintain direct liaison with the Commissioner of the Immigration and Naturalization Service (INS) on issues related to immigration and the foreign terrorist presence in the United States. The Director shall also consult with the Assistant Secretary of State for Consular Affairs on issues related to visa matters.

The Task Force shall be staffed by expert personnel from the Department of State, the INS, the Federal Bureau of Investigation, the Secret Service, the Customs Service, the Intelligence Community, military support components, and other federal agencies as appropriate to accomplish the Task Force's mission.

The Attorney General and the Director of Central Intelligence shall ensure, to the maximum extent permitted by law, that the Task Force has access to all available information necessary to perform its mission, and they shall request information from State and local governments, where appropriate.

With the concurrence of the Attorney General and the Director of Central Intelligence, foreign liaison officers from cooperating countries shall be invited to serve as liaisons to the Task Force, where appropriate, to expedite investigation and data sharing.

Other federal entities, such as the Migrant Smuggling and Trafficking in Persons Coordination Center and the Foreign Leads Development Activity, shall provide the Task Force with any relevant information they possess concerning aliens suspected of engaging in or supporting terrorist activity.

2. Enhanced INS and Customs Enforcement Capability

The Attorney General and the Secretary of the Treasury, assisted by the Director of Central Intelligence, shall immediately develop and implement multi-year plans to enhance the investigative and intelligence analysis capabilities of the INS and the Customs Service. The goal of this enhancement is to increase significantly efforts to identify, locate, detain, prosecute or deport aliens associated with, suspected of being engaged in, or supporting terrorist activity within the United States.

The new multi-year plans should significantly increase the number of Customs and INS special agents assigned to Joint Terrorism Task Forces, as deemed appropriate by the Attorney General and the Secretary of the Treasury. These officers shall constitute new positions over and above the existing on-duty special agent forces of the two agencies.

3. Abuse of International Student Status

The United States benefits greatly from international students who study in our country. The United States government shall continue to foster and support international students.

The government shall implement measures to end the abuse of student visas and prohibit certain international students from receiving education and training in sensitive areas, including areas of study with direct application to the development and use of weapons of mass destruction. The government shall also prohibit the education and training of foreign nationals who would use such training to harm the United States or its allies.

The Secretary of State and the Attorney General, working in conjunction with the Secretary of Education, the Director of the Office of Science and Technology Policy, the Secretary of Defense, the Secretary of Energy, and any other departments or entities they deem necessary, shall develop a program to accomplish this goal. The program shall identify sensitive courses of study, and shall include measures whereby the Department of State, the Department of Justice, and United States academic institutions, working together, can identify problematic applicants for student visas and deny their applications. The program shall provide for tracking the status of a foreign student who receives a visa (to include the proposed major course of study, the status of the individual as a full-time student, the classes in which the student enrolls, and the source of the funds supporting the student's education). The program shall develop guidelines that may include control mechanisms, such as limited duration student immigration status, and may implement strict criteria for renewing such student immigration status. The program shall include guidelines for exempting students from countries or groups of countries from this set of requirements.

In developing this new program of control, the Secretary of State, the Attorney General, and the Secretary of Education shall consult with the academic community and other interested parties. This new program shall be presented through the Homeland Security Council to the President within 60 days.

The INS, in consultation with the Department of Education, shall conduct periodic reviews of all institutions certified to receive nonimmigrant students and exchange visitor program students. These reviews shall include checks for compliance with record keeping and reporting requirements. Failure of institutions to comply may result in the termination of the institution's approval to receive such students.

4. North American Complementary Immigration Policies

The Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, shall promptly initiate negotiations with Canada and Mexico to assure maximum possible compatibility of immigration, customs, and visa policies. The goal of the negotiations shall be to provide all involved countries the highest possible level of assurance that only individuals seeking entry for legitimate purposes enter any of the countries, while at the same time minimizing border restrictions that hinder legitimate trans-border commerce.

As part of this effort, the Secretaries of State and the Treasury and the Attorney General shall seek to substantially increase sharing of immigration and customs information. They shall also seek to establish a shared immigration and customs control data-base with both countries. The Secretary of State, the Secretary of the Treasury, and the Attorney General shall explore existing mechanisms to accomplish this goal and, to the maximum extent possible, develop new methods to achieve optimal effectiveness and relative transparency. To the extent statutory provisions prevent such information sharing, the Attorney General and the Secretaries of State and the Treasury shall submit to the Director of the Office of Management and Budget proposed remedial legislation.

5. Use of Advanced Technologies for Data Sharing and Enforcement Efforts

The Director of the OSTP, in conjunction with the Attorney General and the Director of Central Intelligence, shall make recommendations about the use of advanced technology to help enforce United States immigration laws, to implement United States immigration programs, to facilitate the rapid identification of aliens who are suspected of engaging in or supporting terrorist activity, to deny them access to the United States, and to recommend ways in which existing government databases can be best utilized to maximize the ability of the government to detect, identify, locate, and apprehend potential terrorists in the United States. Databases from all appropriate Federal agencies, state and local governments, and commercial databases should be included in this review. The utility of advanced data mining software should also be addressed. To the extent that there may be legal barriers to such data sharing, the Director of the OSTP shall submit to the Director of the Office of Management and Budget proposed legislative remedies. The study also should make recommendations, propose timelines, and project budgetary requirements.

The Director of the OSTP shall make these recommendations to the President through the Homeland Security Council within 60 days.

6. Budgetary Support

The Office of Management and Budget shall work closely with the Attorney General, the Secretaries of State and of the Treasury, the Assistant to the President for Homeland Security, and all other appropriate agencies to review the budgetary support and identify changes in legislation necessary for the implementation of this directive and recommend appropriate support for a multi-year program to provide the United States a robust capability to prevent aliens who engage in or support terrorist activity from entering or remaining in the United States or the smuggling of implements of terrorism into the United States. The Director of the Office of Management and Budget shall make an interim report through the Homeland Security Council to the President on the recommended program within 30 days, and shall make a final report through the Homeland Security Council to the President on the recommended program within 60 days.

GEORGE W. BUSH.

ATTACHMENT 2.—STATE AND LOCAL BACKLASH PROSECUTIONS OF WHICH THE DEPARTMENT OF JUSTICE IS AWARE

Location: DeQueen, Arkansas
Charge: Criminal mischief

Felony/Misdemeanor: Juvenile charge
Disposition/Sentence: Conviction. Sentencing pending.

Location: Mesa, Arizona
Charge: Capital Murder
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: San Diego, California
Charge: Assault
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Conviction. Sentenced to 3 years probation, $1,000 restitution.

Location: San Diego, California
Charge: Threats and arson
Felony/Misdemeanor:
Disposition/Sentence: Dismissed

Location: Lancaster, California
Charge: Assault
Felony/Misdemeanor: Felony
Disposition/Sentence: Conviction. Sentenced to 4 years incarceration.

Location: Los Angeles, California
Charge: Threats
Felony/Misdemeanor:
Disposition/Sentence: Dismissed

Location: Moreno Valley, California
Charge: Threats
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 120 days incarceration.

Location: Bellflower, California
Charge: Threat
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Conviction

Location: Los Angeles, California
Charge: Threats, civil rights, and weapons charges
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Lawndale, California
Charge: Threats
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Conviction. Sentenced to 21 days incarceration and 3 years probation.

Location: Sacramento, California
Charge: Trespass
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 3 years incarceration

Location: Frostproof, Florida
Charge: Criminal mischief, throwing deadly missile into bldg.
Felony/Misdemeanor:
Disposition/Sentence: Prosecution terminated

Location: Kissimmee, Florida
Charge: Attempted arson and threats
Felony/Misdemeanor:
Disposition/Sentence: Dismissed

Location: Chicago, Illinois
Charge: Hate crime
Felony/Misdemeanor: Felony
Disposition/Sentence: Conviction. Sentenced to 2 years mental health probation, 200 hours community service.

Location: Palos Heights, Illinois
Charge: Aggravated battery, use of unlawful weapon.
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Evansville, Indiana
Charge: Criminal mischief, DUI
Felony/Misdemeanor: Felony
Disposition/Sentence: Conviction

Location: Indianapolis, Indiana
Charge: Battery
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 65 days, 61 suspended, 40 hours community service, $500 fine and $976 restitution.

Location: Laurel, Maryland
Charge: Malicious vandalism
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Conviction

Location: Boston, Massachusetts
Charge: Assault and battery with dangerous weapon
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Fairhaven, Massachusetts
Charge: Assault and battery
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Sommerset, Massachusetts
Charge: Assault and explosive device
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending against 2 defendants, conviction of one defendant, sentenced to 1 year probation with a suspended sentence

Location: Lincoln Park, Michigan
Charge: First degree murder
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Minneapolis, Minnesota
Charge: Assault and disorderly conduct
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 12 to 20 days incarceration, $1000 fine

Location: St. Louis, Missouri
Charge: Assault
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 2 years probation, 40 hours community service.

Location: St. Louis, Missouri
Charge: Assault and ethnic intimidation
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Manchester, New Hampshire
Charge: Assault motivated by hate
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Clifton, New Jersey
Charge: Bias crime
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Hammonton, New Jersey
Charge: Harassment
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 30 days incarceration, suspended sentence, $100 fine

Location: Lower Township, New Jersey
Charge: Criminal mischief and harassment
Felony/Misdemeanor:
Disposition/Sentence: Conviction

Location: Mantau Township, New Jersey
Charge: Ethnic intimidation
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: West Deptford Township, New Jersey
Charge: Assault
Felony/Misdemeanor:
Disposition/Sentence: Dismissed

Location: Atlantic City, New Jersey
Charge: Terrorist threats and harassment
Felony/Misdemeanor
Disposition/Sentence Pending

Location: Huntington, New York
Charge: Reckless endangerment and DWI
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 3 years probation

Location: Ronkonkoma, New York
Charge: Second degree menacing
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 30 days incarceration, 3 years probation

Location: Queens, New York
Charge: Assault and criminal mischief
Felony/Misdemeanor:
Disposition/Sentence: Pending against one defendant and one juvenile. Conviction of one defendant of harassment, sentenced to 100 hours community service

Location: Palermo, New York
Charge: Arson and vandalism
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Bellerose, New York
Charge: Trespass
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Grand Forks, North Dakota
Charge: Aggravated assault
Felony/Misdemeanor: Felony
Disposition/Sentence: Conviction. 90 days incarceration.

Location: Parma, Ohio
Charge: Burglary, ethnic intimidation, DUI, and vandalism
Felony/Misdemeanor: Felony
Disposition/Sentence: Conviction. Sentenced to 5 years incarceration.

Location: Cleveland, Ohio
Charge: Discharging firearm
Felony/Misdemeanor:
Disposition/Sentence: Dismissed in connection w/plea to federal drug charges

Location: Tulsa, Oklahoma
Charge: Aggravated assault and malicious intimidation
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Norman, Oklahoma
Charge: Assault
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Eugene, Oregon
Charge: Harassment and intimidation
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 30 days incarceration, 60 months probation.

Location: Meadville Pennsylvania
Charge: Aggravated assault with dangerous weapon, ethnic intimidation

Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Lower Marion, Pennsylvania
Charge: Simple assault
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Philadelphia, Pennsylvania
Charge: Attempted arson and risking catastrophe
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Pittsburgh, Pennsylvania
Charge: Simple assault and ethnic intimidation
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Mesquite, Texas
Charge: Capital murder
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Dallas, Texas
Charge: Murder
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Dallas, Texas
Charge: Robbery and assault with dangerous weapon
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: North Richland Hills, Texas
Charge: Terrorist threats
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Fannett, Texas
Charge: Felony criminal mischief
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Alexandria, Virginia
Charge: Assault and battery
Felony/Misdemeanor:
Disposition/Sentence: Conviction. Sentenced to 60 days incarceration.

Location: Alexandria, Virginia
Charge: Unlawful wounding
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Dumfries, Virginia
Charge: Assault
Felony/Misdemeanor:
Disposition/Sentence: Conviction. 1 defendant sentenced to 60 days incarceration; 1 defendant sentenced to 1 year incarceration (both sentences suspended).

Location: Hampton, Virginia
Charge: Terrorist threats
Felony/Misdemeanor:
Disposition/Sentence: Diversion. To be dismissed after 100 hours community service.

Location: Fairfax, Virginia
Charge: Assault and battery
Felony/Misdemeanor: Felony
Disposition/Sentence: Pending

Location: Sterling, Virginia
Charge: Threats
Felony/Misdemeanor:
Disposition/Sentence: Not guilty verdict

Location: Mountainlake Terrace, Washington
Charge: Malicious harassment
Felony/Misdemeanor: Felony
Disposition/Sentence: Conviction. 1 defendant sentenced to 9 months incarceration; 2 juveniles detained.

Location: Everett, Washington
Charge: Harassment
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Conviction. Sentenced to 18 days incarceration

Location: Seattle, Washington
Charge: Malicious harassment
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Seattle, Washington
Charge: Malicious harassment
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Conviction. Sentenced to 2 years probation

Location: Seatack, Washington
Charge: Assault
Felony/Misdemeanor:
Disposition/Sentence: Pending

Location: Milwaukee, Wisconsin
Charge: Disorderly conduct
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Dismissed

Location: Milwaukee, Wisconsin
Charge: Disorderly conduct
Felony/Misdemeanor: Misdemeanor
Disposition/Sentence: Conviction. Sentenced to 10 days incarceration, 18 months probation, $1,000 fine.

ATTACHMENT 3.—NEW FREEDOM INITIATIVE—FEBRUARY 2001

FOREWORD BY PRESIDENT GEORGE W. BUSH

My Administration is committed to tearing down the barriers to equality that face many of the 54 million Americans with disabilities.

Eleven years ago the Americans with Disabilities Act (ADA) made it a violation of federal law to discriminate against a person with a disability.

But there is much more to do. Though progress has been made in the last decade, too many Americans with disabilities remain trapped in bureaucracies of dependence, denied the tools they need to fully access their communities.

The unemployment rate for Americans with disabilities hovers at 70 percent. Home ownership rates are in the single digits. And Internet access for Americans with disabilities is half that of people without disabilities.

I am committed to tearing down the remaining barriers to equality that face Americans with disabilities today. My New Freedom Initiative will help Americans with disabilities by increasing access to assistive technologies, expanding educational opportunities, increasing the ability of Americans with disabilities to integrate into the workforce, and promoting increased access into daily community life.

I look forward to working with Congress to see these proposals become law.

EXECUTIVE SUMMARY

FULFILLING AMERICA'S PROMISE TO AMERICANS WITH DISABILITIES

Disability is not the experience of a minority of Americans. Rather, it is an experience that will touch most Americans at some point during their lives.

Today, there are over 54 million Americans with disabilities, a full 20 percent of the U.S. population. Almost half of these individuals have a severe disability, affecting their ability to see, hear, walk, or perform other basic functions of life. In addition, there are over 25 million family caregivers and millions more who provide aid and assistance to people with disabilities.

Eleven years ago, Congress passed and President George Bush signed one of the most significant civil rights laws since the Civil Rights Act of 1964—the Americans with Disabilities Act (ADA). In doing so, America opened its door to a new age for

people with disabilities. Two and a half years ago, amendments to Section 508 of the Rehabilitation Act of 1973 were enacted ensuring that the Federal Government would purchase electronic and information technology which is open and accessible for people with disabilities.

Although progress has been made over the years to improve access to employment, public accommodations, commercial facilities, information technology, telecommunications services, housing, schools, and polling places, significant challenges remain for Americans with disabilities in realizing the dream of equal access to full participation in American society. Indeed, the Harris surveys by the National Organization on Disability and numerous other studies have highlighted these persistent obstacles.

Americans with disabilities have a lower level of educational attainment than those without disabilities:

—One out of five adults with disabilities has not graduated from high school, compared to less than one of ten adults without disabilities.

—National graduation rates for students who receive special education and related services have stagnated at 27 percent for the past three years, while rates are 75 percent for students who do not rely on special education.

Americans with disabilities are poorer and more likely to be unemployed than those without disabilities:

—In 1997, over 33 percent of adults with disabilities lived in a household with an annual income of less than $15,000, compared to only 12 percent of those without disabilities.

—Unemployment rates for working-age adults with disabilities have hovered at the 70 percent level for at least the past 12 years, while rates are significantly lower for working-age adults without disabilities.

Too many Americans with disabilities remain outside the economic and social mainstream of American life:

—71 percent of people without disabilities own homes, but fewer than 10 percent of those with disabilities do.

—Computer usage and Internet access for people with disabilities is half that of people without disabilities.

—People with disabilities vote at a rate that is 20 percent below voters without disabilities. In local areas, disability issues seldom surface in election campaigns, and inaccessible polling places often discourage citizens with disabilities from voting.

People with disabilities want to be employed, educated, and participating, citizens living in the community. In today's global new economy, America must be able to draw on the talents and creativity of all its citizens.

The Administration will work to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, choose where to live and participate in community life. The President's "New Freedom Initiative" represents an important step in achieving these goals. It will expand research in and access to assistive and universally designed technologies, further integrate Americans with disabilities into the workforce and help remove barriers to participation in community life.

THE POLICY

The "New Freedom Initiative" is composed of the following key components:

Increasing Access to Assistive and Universally Designed Technologies:

Federal Investment in Assistive Technology Research and Development.—The Administration will provide a major increase in the Rehabilitative Engineering Research Centers' budget for assistive technologies, create a new fund to help bring assistive technologies to market, and better coordinate the Federal effort in prioritizing immediate assistive and universally designed technology needs in the disability community.

Access to Assistive Technology.—Assistive technology is often prohibitively expensive. In order to increase access, funding for low-interest loan programs to purchase assistive technologies will increase significantly.

Expanding Educational Opportunities for Americans with Disabilities:

Increase Funding for the Individuals with Disabilities Education Act (IDEA).—In return for participating in a new system of flexibility and accountability in the use of Federal education funds, states will receive an increase in IDEA funds for education at the local level and help in meeting the special needs of students with disabilities.

Focus on Reading in Early Grades.—States that establish a comprehensive reading program for students, including those with disabilities, from preschool through second grade will be eligible for grants under President Bush's Reading First and Early Reading First Initiatives.

Integrating Americans with Disabilities into the Workforce:

Expanding Telecommuting.—The Administration will provide Federal matching funds to states to guarantee low-interest loans for individuals with disabilities to purchase computers and other equipment necessary to telework from home. In addition, legislation will be proposed to make a company's contribution of computer and Internet access for home use by employees with disabilities a tax-free benefit.

Swift Implementation of "Ticket to Work".—President Bush has committed to sign an order that directs the federal agency to swiftly implement the law giving Americans with disabilities the ability to choose their own support services and maintain their health benefits when they return to work.

Full Enforcement of the Americans with Disabilities Act (ADA).—Technical assistance will be provided to promote ADA compliance and to help small businesses hire more people with disabilities. The Administration will also promote the Disabled Access Credit, an incentive program created in 1990 to assist small businesses comply with the Act.

Innovative Transportation Solutions.—Accessible transportation can be a particularly difficult barrier for Americans with disabilities entering the workforce. Funding will be provided for 10 pilot programs that use innovative approaches to developing transportation plans that serve people with disabilities. The Administration will also establish a competitive matching grant program to promote access to alternative methods of transportation through community-based and other providers.

Promoting Full Access to Community Life:

Promote Homeownership for People with Disabilities.—Congress recently passed the "American Homeownership and Economic Opportunity Act of 2000," which will permit recipients with disabilities to use up to a year's worth of vouchers to finance the down payment on a home. The Administration will work to swiftly implement the recently enacted law.

Swift Implementation of the Olmstead Decision.—President Bush has committed to sign an order supporting the most integrated community-based settings for individuals with disabilities, in accordance with the Olmstead decision.

National Commission on Mental Health.—President Bush has committed to create a National Commission on Mental Health, which will study and make recommendations for improving America's mental health service delivery system, including making recommendations on the availability and delivery of new treatments and technologies for individuals with severe mental illness.

Improving Access.—Federal matching funds will be provided annually to increase the accessibility of organizations that are currently exempt from Title III of the ADA, such as churches, mosques, synagogues, and civic organizations. The Administration also supports improving access to polling places and ballot secrecy for people with disabilities.

INCREASING ACCESS TO ASSISTIVE AND UNIVERSALLY DESIGNED TECHNOLOGIES—(TITLE I)

OVERVIEW

The Administration's commitment to increase access to assistive and universally designed technologies is based upon the principle that every American must have the opportunity to participate fully in society. In the global new economy, America must draw on the talents and creativity of all its citizens.

Assistive and universally designed technologies can be a powerful tool for millions of Americans with disabilities, dramatically improving one's quality of life and ability to engage in productive work. New technologies are opening opportunities for even those with the most severe disabilities. For example, some individuals with quadriplegia can now operate computers by the glance of an eye. As the National Council on Disability (NCD) has stated, "for Americans without disabilities, technology makes things easier. For Americans with disabilities, technology makes things possible."

Unfortunately, assistive and universally designed technologies are often prohibitively expensive. In addition, innovation is being hampered by insufficient Federal funding for and coordination of assistive technology research and development programs.

The New Freedom Initiative will help ensure that Americans with disabilities can access the best technologies of today and that even better technologies will be available in the future. At the core of this effort are proposals that reinvigorate the Federal investment in assistive technologies; improve Federal collaboration and promote private-public partnerships; and increase access to this technology for people with disabilities.

SUMMARY OF PROPOSALS

Increases Federal Investment in Assistive Technology Research and Development:

Rehabilitative Engineering Research Centers (RERCs) are recognized as conducting some of the most innovative and high impact assistive technology research in the Federal Government. The 15 RERCs are housed in universities and other non-profit institutions around the country and focus on a specific area of research—for example, information technology access, prosthetics and orthotics, and technology for children with orthopedic disabilities. To advance research specifically targeted to the disabilities community, the Administration will significantly increase funding for the RERCs.

Improves Coordination of the Federal Assistive Technology Research and Development Program:

There is no effective coordinating body for assistive technology research and development within the Federal Government. While the Interagency Committee on Disabilities Research (ICDR) was designed to coordinate the Federal effort, it has no real authority and has no budget. The Administration will provide new funding to the ICDR so that it can prioritize the immediate assistive and universally designed technology needs in the disability community, as well as foster collaborative projects between the Federal laboratories and the private sector.

Promotes Private-Public Partnerships:

There are nearly 2,500 companies working to bring new assistive technologies to market. Many small businesses, however, cannot make the necessary capital investments until they have information concerning the market for a particular assistive technology. To help these businesses bring assistive technologies to market, the Administration will establish an "Assistive Technology Development Fund." Housed under the ICDR, the fund will help underwrite technology demonstration, testing, validation and market assessment to meet specific needs of small businesses so that they can better serve the needs of people with disabilities.

Increases Access to Assistive Technology:

Assistive technology is often prohibitively expensive. For example, personal computers configured with assistive technology can cost anywhere from $2,000 to $20,000. The Administration will significantly increase Federal funding for low-interest loans to purchase assistive technology. These grants will go to a state agency in collaboration with banks or non-profit groups to guarantee loans and lower interest rates.

EXPANDING EDUCATIONAL OPPORTUNITIES FOR AMERICANS WITH DISABILITIES—(TITLE II)

OVERVIEW

Education is the key to independent living and a high quality of life. Unfortunately, one in five adults with disabilities has not graduated from high school, compared to less than one of ten adults without disabilities. The Administration will expand access to quality education for Americans with disabilities.

Originally passed by Congress in 1975, the Individuals with Disabilities Act, or IDEA, ensures that children with disabilities would have a free public education that would meet their unique needs.

The Administration will increase educational opportunity for children with disabilities by working with Congress to give states increased IDEA funds. This will help meet the needs of students with disabilities and free up additional resources for education at the local level.

SUMMARY OF PROPOSALS

Increases Funding for Special Education.—In return for participating in a new system of flexibility and accountability in the use of Federal education funds, states will receive an increase in IDEA funds for education at the local level and help in meeting the special needs of students with disabilities.

Establishes the "Reading First" Program.—President Bush will increase Federal funding to students, including those with disabilities, by creating an incentive fund for states to teach every child to read by third grade. States that choose to draw from this fund will be required to initiate, among other requirements: a reading diagnostic test for students in K–2 to determine where students need help; a research-based reading curriculum; training for K–2 teachers in reading preparation; and intervention for students who are not reading at grade level in K–2.

Supplements Reading First with an Early Childhood Reading Initiative.—States participating in the Reading First program will have the option to receive "Early Reading First" funding to implement research-based reading programs in existing pre-school programs and Head Start programs that feed into participating elementary schools. The purpose of this program is to illustrate on a larger scale recent research findings that children taught pre-reading and math skills in pre-school enter school ready to learn reading and mathematics.

PROMOTING HOMEOWNERSHIP FOR AMERICANS WITH DISABILITIES—(TITLE III)

OVERVIEW

Homeownership has always been at the heart of the "American dream." This past year, Congress passed the "American Homeownership and Economic Opportunity Act of 2000," which reforms Federal rental assistance to give individuals who qualify the opportunity to purchase a home.

Rental assistance for low-income Americans, including those with disabilities, is provided by a program known as Section 8 of the Housing Act of 1937, administered by the U.S. Department of Housing and Urban Development (HUD). Residents are provided Section 8 vouchers so that they can afford rental payments for public housing. And many of those Section 8 vouchers go to individuals with disabilities.

In addition to increasing independence, homeownership also promotes savings. Mortgage payments, unlike rental payments, help build net worth because a portion of the payment goes toward building equity. In turn, as one's home equity increases, it becomes easier to finance other purchases such as a computer or further education.

SUMMARY OF ACTION

Implementation of the Section 8 Program to Allow Recipients to Apply Their Rental Vouchers to Homeownership:

The Administration will implement Public Law 106–569, which allows local Public Housing Authorities to provide recipients of Section 8 vouchers who have disabilities with up to a year's worth of vouchers in a lump-sum payment to finance the down payment on a home.

INTEGRATING AMERICANS WITH DISABILITIES INTO THE WORKFORCE—TITLE IV (PART A: PROMOTING TELEWORK)

OVERVIEW

Americans with disabilities should have every freedom to pursue careers, integrate into the workforce, and participate as full members in the economic marketplace.

The New Freedom Initiative will help tear down barriers to the workplace, and help promote full access and integration.

Computer technology and the Internet have tremendous potential to broaden the lives and increase the independence of people with disabilities. Nearly half of people with disabilities say the Internet has significantly improved their quality of life, compared to 27 percent of people without disabilities.

The computer and Internet revolution has not reached as many people with disabilities as the population without disabilities. Only 25 percent of people with disabilities own a computer, compared with 66 percent of U.S. adults. And only 20 percent of people with disabilities have access to the Internet, compared to over 40 percent of U.S. adults.

The primary barrier to wider access is cost. Computers with adaptive technology can cost as much as $20,000, which is prohibitively expensive for many individuals. And the median income of Americans with disabilities is far below the national average.

The New Freedom Initiative will expand the avenue of teleworking, so that individuals with mobility impairments can work from their homes if they choose.

SUMMARY OF PROPOSALS

Creates the "Access to Telework" Fund.—Federal matching funds will be provided annually to states to guarantee low-income loans for people with disabilities to purchase equipment to telecommute from home.

Makes a Company's Contribution of Computer and Internet Access for Home Use by Employees with Disabilities a Tax-Free Benefit.—The Administration will encourage businesses to give computers and Internet access to employees with disabilities by making it explicit that this provision is a tax-free benefit. By making this benefit tax free to employees, the proposal will encourage more employers to provide computer equipment and Internet access, and employees will have greater options to take advantage of this flexibility for teleworking. For individuals with disabilities, this flexibility will expand the universe of potential and accessible employment.

Prohibits OSHA from Regulating "Home Office" Standards.—In November 1999, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) issued an 8-page response to an employer inquiry asserting that it had the power to regulate home office standards and hold employers responsible if those standards were not met. This proposal would have had a chilling effect on teleworking, as employers would seek to avoid potential liabilities. Although OSHA has since withdrawn the response, it has not yet foreclosed future action. The proposal will amend the Occupational Safety and Health Act of 1970 to prohibit OSHA from being applied to the home worksites of employees who work at home through the use of "telephone, computer or electronic device."

INTEGRATING AMERICANS WITH DISABILITIES INTO THE WORKFORCE—(PART B: TICKET-TO-WORK)

OVERVIEW

In 1999, Congress passed the "Ticket-to-Work and Work Incentives Improvement Act," which will give Americans with disabilities both the incentive and the means to seek employment.

As part of the New Freedom Initiative, the Administration will ensure the Act's swift implementation.

Today, there are more than 7.5 million Americans with disabilities receiving benefits under Federal disability programs. According to a recent Harris Survey, conducted by the National Organization of Disability, 72 percent of the Americans with disabilities want to work. However, in part because of disincentives in Federal law, less than 1 percent of those receiving disability benefits fully enter the workforce.

Prior to the "Ticket to Work" law, in order to continue to receive disability payments and health coverage, recipients could not engage in any substantial work. The Ticket to Work law, however, provides incentives for people with disabilities to return to work by:

—Providing Americans with disabilities with a voucher-like "ticket" that allows them to choose their own support services, including vocational education programs and rehabilitation services.

—Extending Medicare coverage for SSDI beneficiaries so they can return to work without the fear of losing health benefits.

—Expanding Medicaid eligibility categories for certain working people with severe disabilities so that they can continue to receive benefits after their income or condition improves.

SUMMARY OF ACTION

President Bush Has Committed to Sign an Order to Support Effective and Swift Implementation of "Ticket to Work".—The order will direct the federal agency to continue to swiftly implement the law giving Americans with disabilities the ability to choose their own support services and to maintain their health benefits when they return to work.

INTEGRATING AMERICANS WITH DISABILITIES INTO THE WORKFORCE—(PART C: COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT)

OVERVIEW

When the Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, it was the most far reaching law advancing access of individuals with disabilities, workforce integration, and independence. The law, signed by President George Bush, gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion.

In the eleven years since it was signed, the ADA has worked to guarantee equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The law has been especially helpful in providing access to jobs, especially in the small business sector, which has created two-thirds of all net new jobs since the early 1970s.

To encourage small businesses to comply with the ADA, legislation was signed into law in 1990 to provide a credit for 50 percent of eligible expenses up to $5,000 a year. Such eligible expenses include assistive technologies. Unfortunately, many small businesses are not aware of this credit.

President George W. Bush believes that the Americans with Disabilities Act has been an integral component of the movement toward full integration of individuals with disabilities but recognizes that there is still much more to be done. He also recognizes that to further integrate individuals with disabilities into the workforce, more needs to be done to promote ADA compliance.

SUMMARY OF PROPOSALS

Supports the ADA and Provides Technical Assistance to Small Businesses.—The President and the Attorney General will ensure full enforcement of the Americans with Disabilities Act by the Civil Rights Division of the Department of Justice. In addition, the New Freedom Initiative will provide resources annually for technical assistance to help small businesses comply with the Act, serve customers, and hire more people with disabilities.

Promotes the Awareness and Utilization of Disabled Access Credit (DAC).—The DAC, created in 1990, is an incentive program to assist small businesses in complying with the ADA. DAC provides a credit for 50 percent of eligible expenses up to $5,000 a year, including expenses associated with making their facilities accessible and with purchasing assistive technologies. Utilization of the credit has been limited because small businesses are often not aware of it.

EXPANDING TRANSPORTATION OPTIONS—(TITLE V)

OVERVIEW

Every American should have the opportunity to participate fully in society and engage in productive work. Unfortunately, millions of Americans with disabilities are locked out of the workplace because they are denied the tools and access necessary for success.

Transportation can be a particularly difficult barrier to work for Americans with disabilities. In 1997, the Director of Project Action stated that "access to transportation is often the critical factor in obtaining employment for the nation's 25 million transit dependent people with disabilities." Today, the lack of adequate transportation remains a primary barrier to work for people with disabilities: one-third of people with disabilities report that inadequate transportation is a significant problem.

Through formula grant programs and the enforcement of the ADA, the Federal Government has helped make our mass transit systems more accessible. More must be done, however, to test new transportation ideas and to increase access to alternate means of transportation, such as vans with specialty lifts, modified automobiles, and ride-share programs for those who cannot get to buses or other forms of mass transit.

On a daily basis, many non-profit groups and businesses are working hard to help people with disabilities live and work independently. These organizations often lack the funds to get people with disabilities to job interviews, to job training, and to work.

The Federal Government should support the development of innovative transportation initiatives and partner with local organizations to promote access to alternate methods of transportation.

SUMMARY OF PROPOSALS

Promotes innovative transportation solutions for people with disabilities by funding pilot programs.—The proposal provides funding for 10 pilot programs run by state or local governments in regional, urban, and rural areas. Pilot programs will be selected on the basis of the use of innovative approaches to developing transportation plans that serve people with disabilities. The Administration will work with Congress to evaluate the effectiveness of these pilot programs and encourage the expansion of successful initiatives.

Helps create a network of alternate transportation through community-based and other providers.—The proposal will establish a competitive matching grant program to promote access to alternative methods of transportation. This dollar-for-dollar matching program will be open to community-based organizations that seek to integrate Americans with disabilities into the workforce. The funds will go toward the purchase and operation of specialty vans, assisting people with down payments or costs associated with accessible vehicles, and extending the use of existing transportation resources.

PROMOTING FULL ACCESS TO COMMUNITY LIFE—TITLE VI (PART A: COMMITMENT TO COMMUNITY-BASED CARE)

OVERVIEW

On June 22, 1999, the Supreme Court decided *Olmstead* v. *L.C.*, ruling that, in appropriate circumstances, the ADA requires the placement of persons with disabilities in a community-integrated setting whenever possible. The Court concluded that "unjustified isolation," e.g., institutionalization when a doctor deems community treatment equally beneficial, "is properly regarded as discrimination based on disability."

Olmstead has yet to be fully implemented. President Bush believes that community-based care is critically important to promoting maximum independence and to integrating individuals with disabilities into community life.

SUMMARY OF PROPOSALS

President Bush has Committed to Sign an Order Supporting Swift Implementation of the Olmstead Decision.—The order will support the most integrated community-based settings for individuals with disabilities, in accordance with the *Olmstead* decision. The Administration will pursue swift implementation in a manner that respects the proper roles of the Federal Government and the several states.

PROMOTING FULL ACCESS TO COMMUNITY LIFE—(PART B: BETTER COORDINATION OF FEDERAL RESOURCES TO ADDRESS MENTAL HEALTH PROBLEMS)

OVERVIEW

Currently, there are numerous Federal agencies that oversee mental health policies, funding, laws and programs including: the Substance Abuse and Mental Health Services Administration, the National Institutes of Health, the Health Care Financing Administration, the Office of Personnel Management, the Social Security Administration, the Health Resources and Services Administration, the Department of Housing and Urban Development, the Department of Education, the Department of Justice, and the Department of Labor.

These Federal agencies are doing valuable work, but they would be much more effective, efficient, and less duplicative if they were better coordinated.

With coordination, the competitive advantage of each agency could be leveraged to provide the most needed and suitable service in the framework of federal efforts to address mental health.

SUMMARY OF PROPOSALS

President Bush Has Committed to Create a National Commission on Mental Health.—The National Commission will study and make recommendations for improving America's mental health service delivery system, including making recommendations on the availability and delivery of new treatments and technologies for individuals with severe mental illness.

PROMOTING FULL ACCESS TO COMMUNITY LIFE—(PART C: ACCESS TO THE POLITICAL PROCESS)

OVERVIEW

There are over 35 million voting-age persons with disabilities, but currently people with disabilities register to vote at a rate that is 16 percentage points less than the rest of the population and vote at a rate that is 20 percent voters who have no disabilities.

According to the National Organization on Disability, low voter turnout among people who are disabled is due to both accessibility problems at voting locations and the lack of secrecy and independence when voting. The most recent Federal Election Commission (FEC) report states that at least 20,000 of the Nation's more than 120,000 polling places are inaccessible to people with disabilities.

President Bush recognizes that full integration into society must include access to and participation in the political process.

SUMMARY OF PROPOSALS

Supports Improving Accessibility to Voting for Americans with Disabilities.—President Bush will support improved access to polling places and ballot secrecy. He will work with Congress to address the barriers to voting for Americans with disabilities and to expanding suffrage for all Americans.

PROMOTING FULL ACCESS TO COMMUNITY LIFE—(PART D: ACCESS TO ADA-EXEMPT ORGANIZATIONS)

OVERVIEW

Title III of the Americans with Disabilities Act of 1990 opened countless businesses and public accommodations to people with disabilities by mandating that they be made accessible. For constitutional and other concerns, however, Title III exempts many civic organizations (such as Rotary and Lions Clubs) and religious organizations from its requirements of full access.

Americans with disabilities should be fully integrated into their communities, and civic and religious organizations are vital parts of those communities. Too many private clubs, churches, synagogues, and mosques are inaccessible or unwelcoming to people with disabilities. As a result, people with disabilities are often unable to participate as fully in community or religious events.

The National Organization on Disability has led a national effort to make places of worship accessible and welcoming to all Americans. Many organizations and congregations want to be open to all but have limited resources to ensure accessibility.

Every effort should be made to ensure that Americans with disabilities have the opportunity to be integrated into their communities and welcomed into communities of faith.

SUMMARY OF PROPOSALS

Establishes a National Fund to Provide Matching Grants for Accessibility Renovations for ADA-Exempt Organizations.—To assist private clubs and religious organizations in making sure that their facilities are fully accessible and to expand access for all, the proposal provides annual Federal matching grants to ADA-exempt organizations making renovations or accommodations to improve accessibility. Because all ADA-exempt organizations will be eligible for the grants, irrespective of whether they are religious or secular, they would comport with the Supreme Court's test for constitutional neutrality.

[From the Federal Register, June 21, 2001 (Volume 66, Number 120)]

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 13217 OF JUNE 18, 2001

COMMUNITY-BASED ALTERNATIVES FOR INDIVIDUALS WITH DISABILITIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to place qualified individuals with disabilities in community settings whenever appropriate, it is hereby ordered as follows:

Section 1. *Policy.* This order is issued consistent with the following findings and principles:

(a) The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of Americans.

(b) The United States seeks to ensure that America's community-based programs effectively foster independence and participation in the community for Americans with disabilities.

(c) Unjustified isolation or segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et. seq. States must avoid disability-based discrimination unless doing so would fundamentally alter the nature of the service, program, or activity provided by the State.

(d) In *Olmstead* v. *L.C.*, 527 U.S. 581 (1999) (the "*Olmstead* decision"), the Supreme Court construed Title II of the ADA to require States to place qualified indi-

viduals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities.

(e) The Federal Government must assist States and localities to implement swiftly the *Olmstead* decision, so as to help ensure that all Americans have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life.

Sec. 2. *Swift Implementation of the Olmstead Decision: Agency Responsibilities.* (a) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall work cooperatively to ensure that the *Olmstead* decision is implemented in a timely manner. Specifically, the designated agencies should work with States to help them assess their compliance with the *Olmstead* decision and the ADA in providing services to qualified individuals with disabilities in community-based settings, as long as such services are appropriate to the needs of those individuals. These agencies should provide technical guidance and work cooperatively with States to achieve the goals of Title II of the ADA, particularly where States have chosen to develop comprehensive, effectively working plans to provide services to qualified individuals with disabilities in the most integrated settings. These agencies should also ensure that existing Federal resources are used in the most effective manner to support the goals of the ADA. The Secretary of Health and Human Services shall take the lead in coordinating these efforts.

(b) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall evaluate the policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review should ensure the involvement of consumers, advocacy organizations, providers, and relevant agency representatives. Each agency head should report to the President, through the Secretary of Health and Human Services, with the results of their evaluation within 120 days.

(c) The Attorney General and the Secretary of Health and Human Services shall fully enforce Title II of the ADA, including investigating and resolving complaints filed on behalf of individuals who allege that they have been the victims of unjustified institutionalization. Whenever possible, the Department of Justice and the Department of Health and Human Services should work cooperatively with States to resolve these complaints, and should use alternative dispute resolution to bring these complaints to a quick and constructive resolution.

(d) The agency actions directed by this order shall be done consistent with this Administration's budget.

Sec. 3. *Judicial Review.* Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE BUSH.

THE WHITE HOUSE,
June 18, 2001.

MEMORANDUM

U.S. DEPARTMENT OF JUSTICE,
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS,
Washington, D.C., March 28, 2001.

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
FROM: Mark T. Calloway, Director
SUBJECT: Guidance on New Law Concerning Trafficking in Persons

ACTION REQUIRED: Please distribute the attached prosecution guidance memorandum as appropriate to your attorney staff, including your Worker Exploitation Task Force Point of Contact.
DUE DATE: None. For information and distribution.
RESPOND TO: Albert N. Moskowitz
Criminal Section Chief
Civil Rights Division
Telephone: (202) 514–3204

Lou de Baca
Involuntary Servitude and Slavery Case Coordinator
Civil Rights Division
Telephone: (202) 514–3204

Thomas Burrows
Child Exploitation and Obscenity Section Chief
Criminal Division
Telephone: (202) 514–5780

Richard C. Smith
Counsel to the Director
Executive Office for United States Attorneys
Telephone: (202) 514–1023
CONTACT PERSONS: Same as above.

Yesterday, the Attorney General announced that the United States Department of Justice (the Department) will focus its efforts on three major areas to implement the newly-enacted Trafficking Victims Protection Act of 2000, Public Law 106–386. Those three areas are outreach, cooperation, and prosecution. For your review and reference, I am forwarding to you under cover of this memorandum a transcript of the Attorney General's press conference of March 27, 2001, at which he announced his plans to implement the new law.

To ensure that all federal prosecutors are aware of the various aspects of the Trafficking Victims Protection Act of 2000, the Attorney General has directed that the attached memorandum, authored by the Civil Rights Division and the Criminal Division of the Department, be distributed to all United States Attorneys' Offices. The memorandum provides important information and guidance on the investigation and prosecution of criminal cases under the new law.

I ask that you distribute copies of this memorandum to those Assistant United States Attorneys in your offices to whom you have given prosecution responsibility for these kinds of criminal cases, including your previously-designated Worker Exploitation Task Force Point of Contact. In addition, I encourage you to contact the Civil Rights Division, the Criminal Division, or the Executive Office for United States Attorneys, through the persons identified above, if you have any questions or comments about this important prosecution work.

Attachments as noted
cc: All United States Attorneys' Secretaries

ATTORNEY GENERAL NEWS CONFERENCE

WORKER EXPLOITATION—MARCH 27, 2001

ATTY GEN. ASHCROFT: Good afternoon. Thank you very much for coming. Nice to see you.

This past Friday Mr. Kil-Soo Lee was arrested in American Samoa on a two-count federal complaint charging violations of the Trafficking Victims Protection Act of the year 2000. These charges are based on allegations that Mr. Lee held mostly female workers recruited from Vietnam in involuntary servitude in his garment factory by using or threatening force to obtain the labor or services of his victims over a period of nearly two years. That period of time extended from February 1999 until December of the year 2000.

One of my last acts as a United States Senator was to vote for a law which would curtail this kind of activity. That law was signed on October the 28th of the year 2000. This law increases the terms of incarceration for those involved in human trafficking crimes and broadens the definition of "trafficking offenses" to reach the subtle means of coercion, the techniques of holding workers in against the will. It's hard to believe that these crimes exist in the United States of America, but they do. And let me just give you some additional examples.

On March the 7th a large landlord in Berkeley, California pled guilty to trafficking women and girls into the United States to place them in sexual servitude.

On February 15th a defendant pled guilty to using cocaine, threats and beatings to force homeless African American men to work his agricultural fields in Florida. Sentencing is still pending.

On February the 2nd a defendant was incarcerated for nine years for kidnapping a young woman from her family, smuggling her to the United States of America, and holding her and causing her to engage in sex acts.

In spring of the year 2000 a defendant was incarcerated eight years for forcing several Thai women to work as domestic servants in Los Angeles.

In spring of 1999 six defendants were incarcerated for using beatings, rapes and threats to force dozens of Mexican women and girls, some as young as 14 years old, to work in brothels in Florida and in the Carolinas.

According to the congressional findings, thousands of persons, primarily women and children, are trafficked into the United States each year. Many of these women and girls are trafficked into the sex trade in this country. But these crimes are not limited to the sex industry. Victims are often forced into labor conditions in illegal sweatshops, in the agricultural industry and in domestic servitude.

Our greatest challenges in identifying victims of worker exploitation are victims of trafficking are typically held in fear. We need to somehow communicate to these individuals that they can avoid this sense of fear, and they have an opportunity for redress. They rarely know how to report their crimes. And that's why I'm making the following announcements today, and frankly using the bully pulpit today to raise awareness and to let victims know how to report these crimes.

There are three major areas where the department will focus its efforts to implement enforcement of this law.

First, outreach. We must make the public aware of this problem and how to report it. A hotline was created last year by the National Worker Exploitation Task Force, and it was given temporary funding. I will permanently fund the hotline so that persons can report these crimes. The number of the hotline is 1–888–428–7581. The hotline will be staffed by an operator who has access to language-translation services, so individuals will be able to access the assistance of the hotline even if they are not skilled in the English language.

In 1999, there were 27 criminal matters opened. But after the hotline was started in the year 2000, there were 75 criminal investigations opened. We will advertise the hotline using public service announcements, and we will distribute information on worker exploitation to immigrant and other communities by our involvement in those communities to signal to them the availability of this redress.

I'm also initiating a community outreach program to work with local community groups; victims' rights organizations; immigrants' rights organizations; shelters and other groups. We want to inform victims of the protections and services that are available to them, and to encourage victims and others to report suspected trafficking crimes.

In addition to this outreach effort, we need to indicate that there is a reason for us to have a strong effort in prosecution. The second step, then, of our program is educating prosecutors and other law enforcement officials. Today the Civil Rights Division, along with the Criminal Division and the Executive Office of the United States Attorneys, will issue the first guidance to all federal prosecutors on this issue. This guidance will detail the law enforcement tools available under the Trafficking Victims Protection Act.

Today I am also announcing two new attorney positions in the Civil Rights Division, to pursue infractions of this law and these assaults upon the rights and dignity of these individuals. These attorneys will work on the outreach efforts that I have already mentioned. They will also help train local prosecutors and will act as a resource to make sure that prosecution efforts undertaken are undertaken with an awareness of all the resources available from the federal government.

Number three, the third step in our strategy is the step of cooperation. We need cooperation among law enforcement officials at every effort and every level.

The Federal Bureau of Investigation plays a critical leadership role in proactively identifying victims and investigating these crimes, and the Immigration and Naturalization Service plays a critical role on the front line. I am directing both the Federal Bureau of Investigation and the Immigration and Naturalization Service, INS, to work with the Civil Rights Division to explore ways to identify victims of trafficking and to refer these cases to the division for prosecution.

This is a matter of serious concern. It is a matter that has been of concern to the elected representatives of the people in the Congress. They expressed themselves in terms of the need for enforcement in this respect in the law enacted late last year, and our response to that additional capability and responsibility is to implement this program of outreach, of prosecution, and of cooperation between the agencies

that are required in order for this law and its prosecution to affect materially the rights of individuals in this area.

I want to thank you for coming today. I look forward to your questions.

Yes, ma'am?

Question. Is this a new problem, a growing problem, or is it something that we're only just now realizing the magnitude of?

ATTY GEN. ASHCROFT: This is a substantial problem. The litany of circumstances which I read to you today reflects that it is a serious problem and it has substantial prevalence. I can't—I don't have data to try and say whether or not this is a problem that is bigger now than it's ever been before. I just know that it's a serious problem and that there are the rights of—important rights of individuals that are seriously affected here. And we're going to take action to move against the infringement of those rights.

Yes, Ma'am.

Question. Could you go into a little more detail about what prosecutors need to be educated on with this law?

ATTY GEN. ASHCROFT: Well, the law does two things, basically—the most recent enactment of the Congress, I should say. And I try not to be too professorial here, probably because I'm not an expert here, but the law expanded the definition of force so that a person could be coerced under the definitions provided for in last year's enactment in ways that aren't merely physical. Secondly, the penalties under the law were enhanced as a result of this most recent enactment. And they provide for penalties of up to 20 years in most cases, but in case of a death of one of the individuals whose rights were infringed, that could be as long as life in prison.

In providing additional information to prosecutors—and obviously we're at a time when there will be some changes made in the prosecution leadership in the various U.S. Attorney's offices around the country—we want them to be keenly aware of the fact of these expanded definitions because they will change the nature of prosecutions, and of course of the expanded penalties.

Yes.

Question. Can you maybe just tell about what rights people in a situation have when they have been brought here by force? Do they have the right to stay here?

ATTY GEN. ASHCROFT: The Victims of Trafficking Act of the year 2000 provided a special standing for those who report these violations, and people who called the hotline would be eligible for this standing. And I think it's called a T visa, which is a certain kind of temporary visa that provides for their ability to remain, pending the resolution of this matter and the potential that they be placed in a stream of eligible individuals for naturalization, or for normal processing in the course of the INS's normal work.

It is thought to be very important.

One of the things that's used to intimidate individuals is the suggestion that if you report, you'll automatically be deported. Other coercive tactics taken by those who have abused others have been to threaten either their families or those remain in other countries. And we wanted, by virtue of expanding this definition of the nature of coercion, together with the options of helping individuals with the T status visas, to make it easier for these violations to be reported and to give us the opportunity then with the reporting to have the chance to curtail this kind of activity.

And this effort at enforcement picks up on what the Congress and the President did in October of last year to say that we want to move forward. We're welcoming additional information on the hotline. We're going to try and make sure people know about that with the outreach program. We've assigned additional resources for prosecution. And we'll, in addition to the additional resources for prosecution, issue the guidance protocols which make clear to individuals about this new option and opportunity. And, of course last but not least, we want to make sure that the coordination that's necessary to effective prosecution in this area between the investigative authorities, the immigration authorities and the prosecutional authorities is all there.

Yes, sir?

Question. I note that on your chart there, you have a Labor Department logo. And I also noted in the legislation that the State Department seemed to be the leading agency for this. Can you talk about how the various government agencies are working together? I guess you have a national task force on this now?

ATTY GEN. ASHCROFT: Well, that would sure be apparent from the various—our piece of this, and that's the only thing I'm really qualified to talk about, is that we want to send a very clear signal that this is intolerable; that involuntary servitude and slavery, the illegal sweat shop, is not a part of the United States stands for. It demeans the work of those who are involved in it and undercuts the working capacity of those who are not involved.

And it is important, obviously, to the labor community in the United Sates of America not to have substandard, illegal sweatshop conditions operated here. And the ability to hold people in those settings, not to report violations under threat or coercion, and this potential threat of exposure as illegal aliens, not having the right documentation, has been one of the means whereby there has been a restraint on the report of these abuses.

Yes, Kevin?

Question. What about the abuses overseas that's of concern to senators, that don't involve U.S. citizens, what can you do about that?

ATTY GEN. ASHCROFT: Well, this is designed to focus on areas where we have jurisdiction to act. And I can't answer your question. I wish I could tell you that I had a way to make sure that there weren't any abuses. When people are solicited to come to the United States—I think what you're making reference to is they're told that there are opportunities here. I mean, one of the cases I believe relating to Alaska was that there was a recruitment of women in Russia to be part of what they were told would be a folk dance operation. It turned out not to be a folk dancing operation at all; it was something far less acceptable. So fraud in those kind of inducement situations I think can become a part of the proof of what the situation is here. But we really are focused on criminal activity that is involved in coercion and the repression of the rights of individuals in illegal settings here.

Yes, sir?

Question. How much new money is the Justice Department committing to the three steps that you mentioned?

ATTY GEN. ASHCROFT: We won't be releasing details on our budget until April. But I've allocated the two additional attorneys. The advertising program, which has been contemplated here, is not a funded program on the part of government, it's a public service announcement program.

Yes, sir?

Question. On another subject, many privacy and civil liberties groups have questioned the Justice Department's use of the e-mail surveillance system, formerly known as Carnivore, now dubbed DSS–1000. Last year the department retained the Institute of Technology at Illinois to produce a report on the technological capabilities of this system, but there still are questions about its legality.

I'm wondering what the administration's position on the use of Carnivore is, and will you continue to make use of it while this report of the Justice Department is still pending?

ATTY GEN. ASHCROFT: I have not personally—the report, I believe, is working its way through the Justice Department at this time. I've not personally seen it. I have not altered in any way the ability of the administration to pursue its legal objectives in any kind of its surveillance activities.

Yes, Mr. Sawyer?

Question. General, on affirmative action, the Supreme Court yesterday agreed to revisit the *Adarand* case. And today there's a District Court decision out in Michigan on the—ruling unconstitutional the Michigan Law School affirmative action program, and there's a companion case that ruled constitutional the undergraduate case. Can you give us any insight and your thinking on that or where the department is likely to be as these cases make their way through?

ATTY GEN. ASHCROFT: Well, this is a matter of very serious concern. You may remember that this came up at my confirmation hearing, and as I noted then, when I was a United States Senator I had a responsibility to consider legislation and to give my best judgment as to whether the legislation was constitutional and prudent.

I voted against the reauthorization of set-asides that were at issue in the *Adarand* case because the specific language actually came back before the Senate, and I sided with what I believe to have been the Supreme Court's judgment there.

However, I emphasized in my hearings that my responsibility as Attorney General, on a routine basis, might be different than commenting on what I thought the constitutionality of the law would be. My responsibility no longer allows me to oppose laws merely because I have a personal view that they may be imprudent or even that, in my own best judgment, I think they might be unconstitutional. Rather, my routine responsibility as Attorney General is to defend acts of Congress and federal regulations as long as they are in good faith and a good-faith defense is possible. That would be the routine responsibility.

Now, the Supreme Court yesterday granted cert again in the *Adarand* case. Briefs in that case will be due for filing on the 11th day of June from the United States government and, as we prepare our positions in that case, I will consult with the Department of Transportation and the administration prior to fulfilling our legal responsibility in this particular matter. The Department of Transportation certainly retains the authority to reconsider its regulations, and if the Department of Trans-

portation were to reformulate its regulations, that could alter the legal landscape significantly.

Now, the Supreme Court's consideration of this case would provide important guidance to the federal government. The case provides the court with an opportunity to clarify how the strict scrutiny test applies to race-conscious federal programs. If the court strikes down the Transportation Department's regulations, it likely would require the federal government to reconsider and review or reformulate the numerous federal race-conscious programs. But prior to participating further by way of filing briefs on the 11th of June, I'll be conferring with the Transportation Department and the administration in this matter.

Question. So that when you said earlier this month that you would obviously defend the Department of Transportation regulations, you didn't mean to imply that there wouldn't be this further discussion about—(inaudible)—

ATTY GEN. ASHCROFT: I can't say that the——

Question. Regulations?

ATTY GEN. ASHCROFT: I can't say that the department won't make a decision about its regulations in the light of this grant of cert.

Yes, ma'am.

Question. Sir, when will the department make a decision concerning whether or not to allow closed circuit television for victims of—families of the Oklahoma City bombing to watch the execution?

ATTY GEN. ASHCROFT: The tragedy of Oklahoma City is one which continues, and obviously I respect the grief that the families that were the subject of that tragedy have endured. I have asked the Federal Bureau of Prisons to provide me with a plan for accommodating the needs and feelings of those families that would reflect also the interests of justice in regard to this execution. Prior to making a final decision, I expect to confer with members of that family group and their representatives as well as to receive the recommendation of the Federal Bureau of Prisons, and will announce our plan for accommodating and appropriately respecting the sensitivities of these families and the needs of justice.

Question. Has that meeting been set up yet?

ATTY GEN. ASHCROFT: I don't believe it's scheduled.

Question. Mr. Ashcroft?

STAFF: We have time for one or two more questions.

Question. There was a report this week that the Justice Department wants to seek the death penalty against Robert Hanssen; also that the U.S. attorney might be opposed to that matter. Has the department made a determination about where it intends to go with this prosecution?

ATTY GEN. ASHCROFT: I really don't want to discuss specific cases. I think my predecessor was wise in telling me when she came to visit me, don't start discussing specific cases. Let me just say to you that as it relates to the death penalty, particularly in cases like national security cases that involve the compromise of either systems or information relating to the national security of the United States, that I believe we have to have an assessment of the national interest that relates to whether or not the penalty should be the ultimate penalty or not. And let me just clarify that a little bit if you will.

By the national interest, I mean that there is a national interest in making sure that we send a signal, that we take very seriously any compromises of the national interest and the national security by individuals who would inappropriately leak information or sell information. But we would also take very seriously the need or opportunity to ascertain things important for us to know about the nature of what had happened that might be available to us in the context of a plea bargain.

And ultimately, when we make a decision in matters like this, the decision will be made reflecting the national interests of the United States, both the national security interests reflected in terms of the information that's been compromised and that which hasn't been compromised, and the national interests reflected in sending a very clear signal that the United States of America does not take lightly, does not view without seriousness, compromises in our national security and the sale of national secrets.

Yes, ma'am.

Question. Sir, in the wake of the *Hanssen* case, the FBI tomorrow will begin an extended polygraph program. There are—some have mentioned or there's been a suggestion that FBI agents should also undergo psychological evaluations on a regular basis. Is that something—is that something that the Justice Department could support?

ATTY GEN. ASHCROFT: You know, I believe that there is going to be a lot of healthy discussion—and I think it will come from a number of quarters—about how we can better secure our intelligence effort. And I look forward to the inspector gen-

eral's report from within this department. Inspector General Fine is an individual of great talent, and I've asked him to look carefully here. I look forward to the contribution made by Judge Webster, who has extensive security, international and national security interests experience. And I look forward to the work of the United States Congress. In particular, I've dealt with Senator—the Senators on the Intelligence Committee, and I believe that it's—they will be a part of helping develop a strategy. I'm grateful for the first steps that are taken in the department, and particularly in the Federal Bureau of Investigation, to promote security. We have on a(n) interim basis begun to implement audit standards so that we can ascertain whether individuals have access to information for which they have no real use and whether their accessing of that information is justified and appropriate. The implementation of some lie detector tests that had not previously been implemented will be a valuable tool.

In no way do I believe that these interim measures should in any way curtail the level of the inquiries that are underway in the Congress, by Judge Webster, or by the inspector general.

While we should—if you could allow the analogy—take whatever sort of roadside measures are necessary in triage to stop whatever problems we might think might exist, we need the full set of x-rays, we need the full diagnosis, and to have a commitment to implementing, on a continuing basis, anything that will upgrade our capacity. So, we look forward to the work of these three agencies: the Congress, the inspector general, and Judge Webster.

And the last thing I would do would maybe quote—oh shoot, I can't remember who the philosopher was, but someone said that, "Eternal vigilance is the price of liberty." I don't think we should ever conclude our evaluation of whether or not there are ways for us to secure better what we do. This should be a constant review, especially in the area of national security. And so I hope we will always remain open to increasing our capacity to reduce and minimize the risk of breaches that would threaten the security of this nation.

I thank you very much. Nice to be with you.

GUIDANCE ON NEW LAW CONCERNING TRAFFICKING IN PERSONS

This memorandum provides guidance to U.S. Attorneys considering investigation and prosecution under the newly enacted Trafficking Victims Protection Act of 2000. See Public Law 106–386. This law creates several new crimes and sets forth new benefits, services, and protections for victims of severe forms of trafficking in persons. The Act defines "severe forms of trafficking in persons" as the recruitment, harboring, transportation, provision, or obtaining of a person: (1) for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, or (2) for the purpose of a commercial sex act in which such act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

Under the Act, those convicted of trafficking offenses may be imprisoned for up to 20 years and, in some instances, for life. This represents a significant increase over preexisting involuntary servitude and slavery statutes, which carried a maximum sentence of 10 years' imprisonment.

The interagency Worker Exploitation Task Force (WETF), which is co-chaired by the Assistant Attorney General for Civil Rights and the Solicitor of the U.S. Department of Labor, is helping to coordinate enforcement efforts against trafficking and slavery.[1] Criminal cases generally are staffed jointly by the local U.S. Attorney's office and the Criminal Section of the Civil Rights Division. The EOUSA point of contact for the WETF is Richard Smith, (202) 514–1023. The Civil Rights Division points of contact for the WETF are Albert N. Moskowitz, Chief of the Criminal Section, and Lou de Baca, the Involuntary Servitude and Slavery Case Coordinator, (202) 514–3204. The Criminal Division's WETF point of contact is Tom Burrows, Deputy Chief of the Child Exploitation and Obscenity Section, (202) 514–5780.

To help the Department more effectively coordinate enforcement efforts and data collection, U.S. Attorneys' offices should notify the Civil Rights Division WETF points of contact about investigations and prosecutions involving severe forms of trafficking in persons. In addition, we recommend distribution of this memorandum to AUSAs handling criminal civil rights, immigration, Mann Act, and OCDTEF/Asian Organized Crime matters. We likewise recommend distribution to victim/witness and Law Enforcement Coordinating Committee (LECC) coordinators.

[1] To learn more about the WETF (including fact sheets and an outreach poster) and to access a link to the text of the new trafficking law, please see: www.usdoj.gov/crt/crim/wetf.htm.

A. New Criminal Statutes

The new criminal statutes created by the Act are codified in Chapter 77 of Title 18, the peonage and slavery chapter. The text of the new statutes is attached hereto as Appendix A. The primary legislative history for the new law is the Conference Report on H.R. 3244, Victims of Trafficking and Violence Protection Act of 2000 (H.R. Conf. Rep. No. 106–939, 106th Cong., 146 Cong. Rec. H8855 (2000)).

These new statutes are designed to reach the subtle means of coercion that traffickers often use to bind their victims in service. Such means include psychological coercion, trickery, and the seizure of documents. Preexisting slavery and peonage statutes and case law made it very difficult to prosecute such conduct, but the new statutes permit federal prosecutors to address this wider range of activities.

There are four new criminal statutes, Sections 1589–1592. Section 1589 creates a new crime of "forced labor," which allows prosecutors to reach severe forms of worker exploitation that do not rise to the level of involuntary servitude. Section 1590 allows the prosecution of traffickers as principals rather than as aiders or abettors. Section 1591 creates a new tool to combat sex trafficking of minors and sex trafficking by force, fraud, or coercion. Finally, Section 1592 criminalizes the use or destruction of immigration or identification documents in furtherance of a trafficking scheme.

In addition, newly-enacted Sections 1593 and 1594, which modify all of the Chapter 77 offenses, provide for prosecution of attempts and set forth forfeiture provisions and mandatory restitution measures that strip traffickers of any profits gained from their victims' forced service.

1. Forced Labor (Section 1589)

Section 1589 criminalizes labor or services obtained or maintained through forms of coercion not actionable under the standard set forth in *United States* v. *Kozminski*, 487 U.S. 931 (1988). *Kozminski* limited the reach of peonage and slavery statutes, 18 U.S.C. §§ 1581–88, to cases in which the labor of the victim was obtained or maintained through force, threats of force, or threats of legal coercion.

Section 1589(1) prohibits threats of serious harm to, or physical restraint against, the worker or another person. Importantly, Section 1589(1) does not limit these threats to physical harm. It also reaches instances "where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." 146 Cong. Rec. at H8881. The relevant individual circumstances of a victim should be considered when determining whether a particular type or degree of harm or coercion is sufficient to obtain the victim's labor or services.

Section 1589(2) prohibits the use of a scheme, plan, or pattern intended to cause the victim to believe that he, she or another will suffer serious harm or physical restraint unless he or she complies. Such schemes might include the use of psychological threats, ostracism, isolation, banishment, starvation, or threats against family members or property. For example, a trafficker might tell his victim, unfamiliar with the English language or U.S. culture, that she will be injured or killed if she leaves the trafficker's "protection." For other specific examples, see 146 Cong. Rec. at H8881.

Section 1589(3) prohibits the abuse or threatened abuse of the law or the legal process. Under this standard, threats to report a victim to the INS may be actionable. This subsection may also provide an alternative means of prosecuting loansharking threats that maintain forced labor through threats of legal action in a victim's home country.

2. Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor (Section 1590)

Newly-enacted Section 1590 allows the prosecution as principals rather than aiders or abettors of those who recruit, harbor, transport, provide, or obtain persons for labor or services under conditions that violate any of the Chapter 77 offenses.

3. Sex Trafficking of Children or by Force, Fraud, or Coercion (Section 1591)

Section 1591 combats trafficking for sexual exploitation by combining features of the Mann Act and involuntary servitude statutes. Section 1591 makes it illegal to recruit, move, or harbor a person (or to benefit from such activities) knowing that the person will be caused to engage in commercial sex acts, where the victim is either under 18 years of age or is subjected to the commercial sex act by force, fraud, or coercion. A "commercial sex act" is any sex act for which something of value is given or received.

In light of this new statute, the Mann Act should no longer be the primary vehicle for sex trafficking cases. Prosecutors should continue to use the Mann Act for crimi-

nal sexual activity not involving prostitution. Because Section 1591 has not yet been tested, we encourage you to contact Tom Burrows in the Child Exploitation and Obscenity Section of the Criminal Division, (202) 514–5780, before charging under this statute.

a. Interstate commerce nexus

The jurisdictional element requires recruitment, harboring, or transporting in or affecting interstate commerce. This requirement could be met with proof such as transporting a person across a state line for prostitution, as in Mann Act cases. The interstate commerce requirement of Section 1591 may be satisfied in other ways as well, such as by proving that the victim was harbored in a brothel that bought supplies or solicited customers from other states.[2] Note, however, that Section 1591 does not apply if foreign but not interstate commerce is involved.

b. Coercion and fraud for purposes of Section 1591

Coercion can be proven by evidence of (1) actual threats of harm, (2) a scheme, plan or pattern intended to cause the victim to believe that harm would result if the commercial sexual acts were not performed, or (3) threats of legal repercussions against the victim (e.g. deportation).

Adult victims can only support a charge under Section 1591 if they engaged in the commercial sexual activity through force, fraud, or coercion. By including fraud in this section, Congress criminalized a broad range of activity. For example, prosecutors may present cases under this statute in which a victim is fraudulently tricked into sexual activity, such as through a false modeling agency.

c. Comparisons with the Mann Act

The trafficking conduct prohibited under the new statute is in many ways similar to that prohibited under the Mann Act. Charging both Mann Act and Section 1591 for the same activity thus may raise a multiplicity issue. This problem might be avoided by pairing a Mann Act charge under Sections 2421 or 2423(a) (which do not require a showing of coercion) and a Section 1591 charge alleging fraud, force, or coercion. Each fact pattern and charging decision should be reviewed individually to avoid potential legal defects in the indictment.

As to jurisdiction, Section 1591, in contrast to the Mann Act, only includes interstate commerce. Section 1591, therefore, should not be used for international trafficking unless, after the victim was brought to the United States, there was further movement across states in furtherance of the trafficking scheme. The jurisdictional element of Section 1591 may also be met without the border-crossing travel required by the Mann Act if other effects on interstate commerce can be proven.

Attempts are punishable under either statute. The Mann Act explicitly covers attempts, while Section 1591 covers attempts by virtue of Section 1594(a).

Finally, if the evidence is sufficient for using either the Mann Act or Section 1591, then the prosecutor may consider whether the higher maximum sentence under Section 1591 warrants its use.

4. Document Servitude (Section 1592)

An increasing number of victims are held in service not by force or threats but by the confiscation of (and denial of access to) actual or purported identification or immigration documents. Section 1592 criminalizes the destruction or withholding of a victim's documents for the purpose of unlawfully maintaining the victim's labor or services. Because this section carries a five-year statutory maximum, it may be useful in plea negotiations.

a. Direct link to trafficking statutes

Section 1592(a)(1) prohibits the confiscation of documents in the course of a violation of the other trafficking laws. This subsection thus does not act as a stand-alone crime, but instead increases the overall statutory maximum sentence available to prosecutors.[3]

Section 1592(a)(2) prohibits the confiscation of documents with the intent to violate other trafficking offenses. This subsection will likely be helpful in negotiating plea dispositions, especially with cooperating co-defendants. To establish "intent to violate," the investigation should explore whether the defendants intended the vic-

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[2] Case law under the federal arson statute, 18 U.S.C. § 844(i), may be helpful here to establish the jurisdictional element.

[3] Under the sentencing guidelines, the requirement that the document seizure be in the course of a violation of the more serious offenses may subsume the penalty for the Section 1592 violation into the more serious crimes.

tims to believe that the confiscation of the documents rendered them incapable of leaving service. This activity may also support charges under Section 1589(2).

b. Indirect link to trafficking statutes

Section 1592(a)(3), which does not incorporate a direct link to the other trafficking statutes, prohibits confiscation of a document with the intent to prevent or restrict a victim's liberty to move or travel, in order to keep the victim in service. Section 1592(a)(3) applies only if the person was a victim of a severe form of trafficking.

5. Miscellaneous Provisions

a. Sentencing guidelines

The Act directs the U.S. Sentencing Commission to consider amending the sentencing guidelines for offenses involving trafficking of persons. The Commission has already promulgated guideline amendments.

b. Mandatory restitution

Section 1593 provides for special restitution calculations in Chapter 77 offenses. Restitution is mandatory in these cases.

Restitution should be estimated as the greater of either: (1) the gross income or value to the defendant of the victim's service or labor, or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act. In trafficking cases, restitution should also include costs incurred by the victim for: medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys' fees, as well as other costs incurred; and any other losses suffered by the victim as a proximate result of the offense.

B. Victim Protections

The new statute imposes new responsibilities on investigators and prosecutors who deal with victims of severe forms of trafficking. Detailed regulations and guidelines are forthcoming. In the interim, investigators and prosecutors may wish to consult the following individuals for assistance with short-term compliance: Camille Bennett, EOUSA, (202) 305–2161, or Lorna Grenadier, Victim/Witness Specialist in the Criminal Section of the Civil Rights Division, (202) 514–3204.

1. Access to Benefits and Services

The Act declares alien victims of severe trafficking eligible for many federally-funded victim and witness assistance programs to the same extent as aliens admitted to the United States as a refugee under § 207 of the Immigration and Nationality Act. As a result, the Emergency Witness Assistance Program (EWAP) should not be viewed as the central method of securing immediate assistance for trafficking witnesses.

The Department of Justice and the Department of Health and Human Services (HHS) are developing a certification process, as required by the Act, so that adult victims of severe trafficking can receive public assistance, medical care, housing, and other publicly available benefits and services, without regard to their immigration status. Pending further guidance, prosecutors and victim/witness coordinators should contact Camille Bennett, EOUSA, (202) 305–2161, or Lorna Grenadier, Victim/Witness Specialist in the Criminal Section of the Civil Rights Division, (202) 514–3204, for assistance with the interim certification process.

2. Victim Protection Regulations

The Act requires by April 26, 2001, the promulgation of regulations guaranteeing victims protection while in federal custody and access to information about their rights, authorizing victims' continued presence in United States, and providing mechanisms for training law enforcement personnel on the needs of trafficking victims. See Section 107(c), attached as Appendix B. In the interim, prosecutors may contact the District INS victim/witness coordinator to arrange for a victim's continued presence or for information about victim access to information about their rights under the new law.

3. Visa Issues

The new law enhances the protection offered to trafficking victims. It creates two new nonimmigrant classifications: a "T" visa for victims of severe forms of trafficking and (within the Violence Against Women Act of 2000) a "U" visa for an array of crimes including trafficking. The T visa is available to individuals who: (1) are a victim of a severe form of trafficking, (2) are physically present in the United States or a U.S. territory, (3) would suffer extreme hardship involving unusual and

severe harm upon removal, and (4) either are under 15 years of age or have complied with any reasonable request to assist a trafficking investigation or prosecution. The parents, children, and spouses of victims are also eligible in certain instances for T visas.

The U visa is available to a broader group of crime victims, including those who: (1) have suffered substantial physical or mental abuse due to having been a victim of trafficking; (2) possess information concerning the trafficking; (3) have been helpful, are being helpful, or are likely to be helpful to law enforcement; and (4) have been the victim of criminal activity.

The INS is currently developing regulations for the new visas.

4. Trafficking Versus Alien Smuggling Considerations

Trafficking cases differ from most alien smuggling cases. In smuggling cases, the strongest witnesses are designated as material witnesses and the remainder of the smuggled aliens generally are deported. In trafficking cases, by contrast, all victims typically remain in the United States as potential witnesses. Indeed, some federal district courts have ordered that all trafficking victims be kept in this country, under the theory that those witnesses who are not likely to testify for the prosecution may be induced to become defense witnesses under *Brady*. The Civil Rights Division has developed model victim interview questions that help to distinguish trafficking/servitude situations from alien smuggling cases.

Unlike most alien smuggling cases, trafficked persons are victims of crime. This is a critical distinction. These victims must be treated in a manner consistent with the Attorney General Guidelines for Victim and Witness Assistance. Trafficking victims often need medical and other services to deal with the trauma associated with having been trafficked. The new Act provides immediate protection and lawful status as well as potential permanent immigration status to these victims so that they may pursue legal remedies against their traffickers while receiving needed services. For these reasons, the common practice in smuggling cases of designation and deportation is inappropriate in trafficking prosecutions.

APPENDIX A—STATUTORY LANGUAGE

Title 18, United States Code, Section 1589 (Forced labor)

Whoever knowingly provides or obtains the labor or services of a person—

(1) by threats of serious harm to, or physical restraint against, that person or another person;

(2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) by means of the abuse or threatened abuse of law or the legal process,

shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

Title 18, United States Code, Section 1590 (Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor)

Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

Title 18, United States Code, Section 1591 (Sex trafficking of children or by force, fraud or coercion)

(a) Whoever knowingly—

(1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by force, fraud, or coercion or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or

(2) if the offense was not so effected, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 20 years, or both.

(c) In this section:

(1) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(2) The term "coercion" means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "venture" means any group of 2 or more individuals associated in fact, whether or not a legal entity.

Title 18, United States Code, Section 1592 (Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor)

(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person—

(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);

(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or

(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000;

shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

Section 103 of Public Law 106–386 defines "severe forms of trafficking in persons" as follows:

(8) SEVERE FORMS OF TRAFFICKING IN PERSONS.—The term "severe forms of trafficking in persons" means—

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage,[4] or slavery.

Title 18, United States Code, Section 1593 (Mandatory restitution)

(a) Notwithstanding sections 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

(b)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provided in section 2259(b)(3) and shall in addition include

[4] Section 103 of Public Law 106–386 states (4) DEBT BONDAGE.—The term "debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201, et seq.).

(c) As used in this section, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

Title 18, United States Code, Section 1594 (General provisions)

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(c)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(d) WITNESS PROTECTION.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

APPENDIX B—VICTIM PROTECTIONS

Section 107(c), Public Law 106–386, Trafficking Victims Protection Act of 2000

TRAFFICKING VICTIM REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) PROTECTIONS WHILE IN CUSTODY.—Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall—

(A) not be detained in facilities inappropriate to their status as crime victims;

(B) receive necessary medical care and other assistance; and

(C) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including—

(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and

(ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

(2) ACCESS TO INFORMATION.—Victims of severe forms of trafficking shall have access to information about their rights and translation services.

(3) AUTHORITY TO PERMIT CONTINUED PRESENCE IN THE UNITED STATES.—Federal law enforcement officials may permit an alien individual's continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible, and such officials in investigating and prosecuting traffickers shall protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

(4) TRAINING OF GOVERNMENT PERSONNEL.—Appropriate personnel of the Department of State and the Department of Justice shall be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims.

MEMORANDUM

U.S. DEPARTMENT OF JUSTICE,
CIVIL RIGHTS DIVISION,
Washington, DC, January 11, 2002.

MEMORANDUM FOR HEADS OF FEDERAL GRANT AGENCIES GENERAL COUNSELS AND CIVIL RIGHTS DIRECTORS

FROM: Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division
SUBJECT: Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

I am writing to encourage agencies to expedite their work on limited English proficiency (LEP) guidance documents in order to be in a position to meet the 120-day deadline set forth in my memorandum dated October 26, 2001. A copy of that memorandum is attached.

Background

On October 26, 2001, I issued a memorandum to clarify policy guidance issued by the Department of Justice (DOJ) entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency." 65 F.R. 50123 (August 16, 2000) (DOJ LEP Guidance). That policy guidance had been issued to set forth general principles for agencies to apply in developing guidance on how their recipients can provide meaningful access to LEP persons and, therefore, comply with the Title VI disparate impact regulations, as required by Executive Order 13166.

The memorandum instructed agencies that had issued LEP guidance for their recipients pursuant to Executive Order 13166 and Title VI of the Civil Rights Act to notify the Department of Justice, publish a notice asking for public comment on the guidance documents they have issued, and, if necessary, clarify or modify its existing guidance. Agencies that had not yet published guidance documents were to submit agency-specific guidance to the Department of Justice. Following review by the Department of Justice and before finalizing their guidance, the agencies were to obtain public comment on their proposed guidance documents.

Further agency action

The Department of Justice has learned that some agencies that had previously published LEP guidance had obtained significant public comment on those materials following the original publication of that guidance. The Department therefore believes that it is appropriate for these agencies to expedite their review of their existing guidance in light of the comment they have already received and the Department's October 26 memorandum. These agencies should notify the Department of Justice of any need to clarify or modify existing guidance by January 25, 2002.

Other agencies, however, have not yet obtained significant public comment on their previously published guidance. These agencies should immediately publish a request for comment on their existing guidance documents. In addition, they should expedite their review of their existing guidance in light of the comment they will obtain and notify the Department of Justice of any need to clarify or modify existing guidance as soon as possible.

If it is determined that an agency's existing guidance should be clarified or modified, that agency should seek public comment on any proposed revisions before making them final.

Finally, for those agencies that have not previously published LEP guidance documents, I request them to expedite their drafting of LEP guidance documents and to submit them to the Department of Justice as soon as possible. Following review by the Department and before finalizing its guidance, each of these agencies must then publish its agency-specific LEP guidance documents for public comment.

My October 26 memorandum requested that all new LEP guidance documents be published in final form by February 25th, 2002. Because many agencies have not yet submitted their guidance documents to the Department of Justice for review or taken steps to obtain public comment, I am concerned that they may have difficulty meeting this deadline. I thus request that all such agencies expedite their consideration of this matter and notify the Department regarding the status of their progress regarding the development of LEP guidance by January 22, 2002.

The DOTs Civil Rights Division, Coordination and Review Section ((202) 307–2222), stands ready to assist agencies in this matter.

MEMORANDUM

U.S. DEPARTMENT OF JUSTICE,
CIVIL RIGHTS DIVISION,
Washington, DC, October 26, 2001.

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES GENERAL COUNSELS AND CIVIL RIGHTS DIRECTORS

FROM: Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division
SUBJECT: Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

Federal agencies have recently raised several questions regarding the requirements of Executive Order 13166. This Memorandum responds to those questions. As discussed below, in view of the clarifications provided in this Memorandum, agencies that have issued Limited English Proficiency ("LEP") guidance for their recipients pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should, after notifying the Department of Justice ("DOJ"), publish a notice asking for public comment on the guidance documents they have issued. Based on the public comment it receives and this Memorandum, an agency may need to clarify or modify its existing guidance. Agencies that have not yet published guidance documents should submit agency-specific guidance to the Department of Justice. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on their proposed guidance documents. With regard to plans for federally conducted programs and activities, agencies should review their plans in light of the clarifications provided below.

Background of Executive Order 13166

The legal basis for Executive Order 13166 is explained in policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency." 65 F.R. 50123 (August 16, 2000). This "DOJ LEP Guidance" was referenced in and issued concurrently with the Executive Order.

As the DOJ LEP Guidance details, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Department of Justice regulations enacted to effectuate this prohibition bar recipients of federal financial assistance from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" because of their race, color, or national origin. These regulations thus prohibit unjustified disparate impact on the basis of national origin.

As applied, the regulations have been interpreted to require foreign language assistance in certain circumstances. For instance, where a San Francisco school district had a large number of non-English speaking students of Chinese origin, it was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs. *Lau* v. *Nichols*, 414 U.S. 563 (1974).[1]

The Supreme Court most recently addressed the scope of the Title VI disparate impact regulations in *Alexander* v. *Sandoval*, 121 S. Ct. 1511 (2001). There, the Court held that there is no private right of action to enforce these regulations. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates the Title VI regulations, a private party could not bring a case to enjoin Alabama's policy. Some have interpreted *Sandoval* as impliedly striking down Title VI's disparate impact regulations and thus that part of Executive Order 13166 that applies to federally assisted programs and activities.[2]

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[1] "It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the education program—all earmarks of the discrimination banned by the regulations." 414 U.S. at 568.

[2] See *Sandoval*, 121 S. Ct. at 1516 n.6 ("[W]e assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations; . . . We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' § 601 . . . when § 601 permits the very behavior that the regulations forbid.").

The Department of Justice disagrees. *Sandoval* holds principally that there is no private right of action to enforce the Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166. Because the legal basis for Executive Order 13166 is the Title VI disparate impact regulations and because *Sandoval* did not invalidate those regulations, it is the position of the Department of Justice that the Executive Order remains in force.

Requirements of Executive Order 13166

Federally Assisted Programs and Activities.—The DOJ LEP Guidance explains that, with respect to federally assisted programs and activities, Executive Order 13166 "does not create new obligations, but rather, clarifies existing Title VI responsibilities." Its purpose is to clarify for federal-funds recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin in violation of the Title VI disparate impact regulations. To this end, the Order requires each Federal Agency providing federal financial assistance to explain to recipients of federal funds their obligations under the Title VI disparate impact regulations.

In developing their own LEP guidance for recipients of federal funds, an agency should balance the factors set forth in the DOJ LEP Guidance. These factors include, but are not limited to (i) the number or proportion of LEP individuals, (ii) the frequency of contact with the program, (iii) the nature and importance of the program, and (iv) the resources available.

As the DOJ LEP Guidance explains, "a factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers." Similarly, the frequency of contact must be considered. Where the frequency and number of contacts is so small as to preclude any significant national origin based disparate impact, agencies may conclude that the Title VI disparate impact regulations impose no substantial LEP obligations on recipients.

The nature and importance of the program is another factor. Where the denial or delay of access may have life or death implications, LEP services are of much greater importance than where denial of access results in mere inconvenience.

Resources available and costs must likewise be weighed. A small recipient with limited resources may not have to take the same steps as a larger recipient. See DOJ LEP Guidance at 50125. Costs, too, must be factored into this balancing test. "Reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the DOJ LEP Guidance. The DOJ LEP Guidance explains that a small recipient may not have to take substantial steps "where contact is infrequent, where the total costs of providing language services is relatively high and where the program is not crucial to an individual's day-to-day existence." By contrast, where number and frequency of contact is high, where the total costs for LEP services are reasonable, and where the lack of access may have life and death implications, the availability of prompt LEP services may be critical. In these latter cases, claims based on lack of resources will need to be well substantiated.

Finally, consideration of resources available naturally implicates the "mix" of LEP services required. While on-the-premise translators may be needed in certain circumstances, written translation, access to centralized translation language lines or other means may be appropriate in the majority of cases. The correct balance should be based on what is both necessary to eliminate unjustified disparate impact prohibited by the Title VI regulations and reasonable in light of the factors outlined in the DOJ LEP Guidance.

Federally Conducted Programs and Activities.—Executive Order 13166 also applies to federally conducted programs and activities. With respect to these, the Order requires each Federal Agency to prepare a plan to improve access to federally conducted programs and activities by eligible LEP persons. These plans, too, must be consistent with the DOJ LEP Guidance. Federal agencies should apply the same standards to themselves as they apply to their recipients.

Procedural considerations

Administrative Procedure Act.—Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may be subject to the Administrative Procedure Act's ("APA") rulemaking requirements. 5 U.S.C. § 553. Although interpretive rules, general statements of policy, and rules of agency organization and procedure are not subject to section 553, courts have ruled that any final agency action that carries the force and effect of law must comply with section 553's notice and comment requirements. See *Paralyzed Veterans of America* v. *D.C. Arena*, 117 F.3d 579, 588 (D.C. Cir. 1997). Agencies, therefore, should consider whether the action they have

taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to the APA's requirements. If it is, they must comply with these statutory obligations. Agencies must bear in mind, however, that Executive Order 13166 "does not create new obligations, but rather, clarifies existing Title VI responsibilities." Accordingly, agency action taken pursuant to Executive Order 13166 must not impose new obligations on recipients of federal funds, but should instead help recipients to understand their existing obligations.

Executive Order 12866.—Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may also be subject to requirements set forth in Executive Order 12866 (Regulatory Review and Planning, Sept. 30, 1993). That Order directs agencies to submit to the Office of Management and Budget for review any "significant regulatory actions" the agency wishes to take. See § 6(a). Agencies, therefore, should consider whether the action they have taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to Executive Order 12866's requirements. If it is, they should ensure that the action or proposed action complies with Executive Order 12866's obligations. With regard to federally conducted programs and activities, agencies should review their plans for their federally conducted programs in light of the clarifications below and make any necessary modifications.

Further agency action

Existing LEP Guidance and Plans for Federally Conducted Programs and Activities.—Agencies that have already published LEP guidance pursuant to Executive Order 13166 or Title VI of the Civil Rights Act should obtain public comment on the guidance documents they have issued. Agencies should then review their existing guidance documents in view of public comment and for consistency with the clarifications provided in this Memorandum. The Justice Department's Civil Rights Division, Coordination and Review Section ((202) 307–2222), is available to assist agencies in making this determination. Should this review lead an agency to conclude that it is appropriate to clarify or modify aspects of its LEP guidance documents, it should notify the Department of Justice of that conclusion within 60 days from the date of this Memorandum. Any agency effort to clarify or modify existing LEP guidance should be completed within 120 days from the date of this Memorandum. Agencies likewise should review plans for federally conducted programs and activities in light of the above clarification.

New LEP Guidance and Plans for Federally Conducted Programs and Activities.—Agencies that have not yet published LEP guidance pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should submit to the Department of Justice, within 60 days from the date of this Memorandum, agency-specific recipient guidance that is consistent with Executive Order 13166 and the DOJ LEP Guidance, including the clarifications set forth in this Memorandum. In preparing their guidance, agencies should ensure that the action they propose to take is consistent with the requirements of the Administrative Procedure Act and Executive Order 12866. The Justice Department's Civil Rights Division, Coordination and Review Section, is available to assist agencies in preparing agency-specific guidance. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on its proposed guidance documents. Final agency-specific LEP guidance should be published within 120 days from the date of this memorandum. Agencies likewise should submit to the Department of Justice plans for federally conducted programs and activities. The Department of Justice is the central repository for these agency plans.

Federally assisted programs and activities may not be administered in a way that violates the Title VI regulations. Each Federal Agency is responsible for ensuring that its agency-specific guidance outlines recipients' obligations under the Title VI regulations and the steps recipients can take to avoid violating these obligations. While Executive Order 13166 requires only that Federal Agencies take steps to eliminate recipient discrimination based on national origin prohibited by Title VI, each Federal Agency is encouraged to explore whether, as a matter of policy, additional affirmative outreach to LEP individuals is appropriate. Federal Agencies likewise must eliminate national origin discrimination in their own federally conducted programs and activities. The Department of Justice is available to help agencies in reviewing and preparing agency-specific LEP guidance and federally conducted plans.

QUESTIONS SUBMITTED BY SENATOR HERB KOHL

DOJ'S AND FTC'S PLAN TO DIVIDE ANTITRUST RESPONSIBILITIES

Question. The Justice Department and Federal Trade Commission (FTC) recently proposed a new plan for dividing their responsibilities over antitrust matters. Under this plan, certain subjects currently split between the agencies would be assigned only to one—for example, all communications and media matters would be reviewed by the Justice Department while all health care matters will be reviewed by the FTC. In addition, the timetable for resolving contests between the agencies over who is to review a matter will be expedited.

Why have you proposed this new plan for dividing antitrust responsibilities between the Justice Department and the FTC? How will this improve on the current system? Please list the statutory differences in antitrust enforcement authority that exist between the Department of Justice (DOJ) and FTC and tell me why these will or will not make a difference.

Answer. The Clearance Agreement addresses a longstanding problem with the process for assigning cases to the agencies that in some significant cases had impeded and delayed antitrust investigation and enforcement. The clearance system needed to be overhauled to arrest the trend toward more frequent and time-consuming clearance disputes that delay the initiation of investigations, and to allow the agencies to concentrate expertise and resources to investigate more effectively.

DOJ's Antitrust Division (ATR) and the FTC each have jurisdiction to investigate many of the same types of conduct. The principal ground for clearance has always been to clear the matter to the agency with the most recent expertise in the particular product or products to be investigated. Over time, this clearance methodology has begun to break down and disagreements have arisen.

Clearance disputes can cause significant delays in antitrust enforcement, divert scarce agency resources, and strain working relationships between the agencies. Before either agency commences or proceeds with an investigation, it must request clearance from the other agency. In the Hart-Scott-Rodino merger review process, the initial investigative period is limited by statute to 30 days. Each day that a clearance matter is unresolved is a day lost to investigation and enforcement. Timely clearance decisions also are important for non-merger matters; speed is crucial to ensuring that if there is an antitrust violation, it is stopped promptly so consumer harm ceases.

An analysis of clearance delays released by the FTC on February 28, 2002, indicates that, since the beginning of fiscal year 2000, the 136 matters in which the agencies formally contested clearance took an average of three and a half weeks to resolve. In another 164 matters during this period, clearance took more than one week to resolve, although no formal clearance dispute occurred. On average, these 300 matters—24 percent of all matters for which clearance requests were filed during this period—imposed delays of 3 weeks. In some instances, clearance disputes have delayed investigations for several months. Whether in merger or non-merger cases, this is wasted time that could have been used on investigation and enforcement.

The Clearance Agreement addresses the problems caused by delay by setting forth new and improved procedures to assure that case assignments will be made promptly so that substantive investigations can begin sooner. The Agreement clearly allocates to one agency or the other primary responsibility for certain commodities, based on the predominant expertise of each agency. The FTC and ATR each has substantial industry-specific enforcement capabilities with respect to certain commodities, and thus has had primary responsibility for any matters arising within these industry sectors. The Agreement is an effort to formally acknowledge those areas in which the FTC and DOJ already have such expertise.

The Agreement also assigns dedicated permanent staff to carry out the clearance function, adopts standardized procedures and terms, and includes a public commitment to shorten the time period for clearing matters to the agencies—assuring resolution of even the most difficult case within 10 days. Under the terms of the Agreement, more than 80 percent of the 300 matters referenced above would have been resolved within 2 business days. Importantly, the Agreement does not place any limit on the length of an investigation or otherwise constrain agency enforcement once it begins. The Agreement also promotes accountability by placing clearer responsibility for one agency or the other to engage in "community policing" of their assigned industry areas. It provides clarity to the companies, public interest groups, and the bar, who are a key source of antitrust complaints and investigative leads for the agencies.

The Clearance Agreement does not purport to limit the jurisdiction of either agency. ATR and FTC have largely co-extensive authority to enforce the antitrust laws. The FTC has authority to enforce the following antitrust laws: the Clayton Act, 15 U.S.C. §§ 12–27, 44 (1994); 29 U.S.C. §§ 52–53; and the FTC Act, 15 U.S.C. § 45 (1994). In addition to its antitrust enforcement role, the FTC has the authority to enforce a variety of consumer protection laws.

ATR, in turn, has exclusive Federal Governmental authority to enforce the Sherman Act, 15 U.S.C. §§ 1–2 (1994), and shares with the FTC the federal authority to enforce the Clayton Act. ATR also engages in competition advocacy before other federal agencies and has certain statutory obligations to provide advice to federal agencies on competition agencies. Both agencies also review transactions that are subject to notification under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, et seq.

The FTC and ATR enforce the antitrust laws in a largely consistent manner. Although the FTC may not directly enforce the Sherman Act, 15 U.S.C. §§ 1–2 (1994), it may proceed under Section 5 of the FTC Act against non-criminal conduct that violates the Sherman Act. Moreover, occasional attempts to expand the scope of Section 5 beyond actions that would otherwise violate the Sherman or Clayton Acts have not met with success, and there is broad consensus that the FTC and the Sherman and Clayton Acts are functionally coterminous with respect to civil antitrust enforcement. There is, however, at least one substantive difference in the enforcement capabilities of the agencies—in enforcing the Sherman Act, ATR can proceed against antitrust violations by criminal indictment.

The Agreement does nothing to alter ATR's criminal enforcement responsibilities. Nothing in the Agreement changes the fact that ATR handles all criminal matters for all commodities. Likewise, the FTC will continue to handle all consumer protection matters for all commodities. In sum, given the high degree of similarity in the substantive standards applied by the agencies, and the fact that both are constrained by the jurisprudence of a single federal judiciary, the allocation of industry sectors is unlikely to have substantive effects on the outcome of enforcement actions.

TITLE V—JUVENILE JUSTICE LOCAL DELINQUENCY PREVENTION

Question. When we created the Title V program 10 years ago, we intended it to be a crime prevention program that gives localities significant flexibility to design ways to prevent juvenile crime. Studies show that every dollar spent on prevention funding yields direct savings of $1.40 to the law enforcement and juvenile justice system. Unfortunately, over the years, the amount of Title V funding that has been earmarked for purposes other than local crime prevention has grown to almost two-thirds of the appropriated amount.

To ensure that Title V continues to be used for prevention programs, we can either eliminate the earmarks that do not focus on local prevention programs or expand the pot of money available to crime prevention. Please tell me how you think we should address the problem specifically with regard to Title V.

Answer. Title V funds requested in fiscal year 2003 will be used primarily for prevention purposes. The 2003 President's budget requests $94.791 million for Title V funding, which represents a slight increase of $454,000 over the 2002 enacted level. These funds will be used to support three programs: the School Safety Initiative ($14.967 million), the Tribal Youth Program ($12.472 million), and the Title V Delinquency Prevention Program Incentive Grants ($62.319 million). These programs provide a variety of prevention services to youth and their families, including youth development, family strengthening, tutoring, mentoring, health and mental health, alcohol and substance abuse prevention.

STATE COURT FUNDING

Question. In the past, the Office of Justice Programs (OJP) has funded initiatives aimed at improving state court systems. One such recent project provided training for judges, court personnel, prosecutors, police agencies and attorneys. The state of Wisconsin court system would benefit immensely from a similar program that would train court interpreters. In light of the increasingly diverse population in Wisconsin, courts are experiencing a serious shortage for qualified interpreters to act as translators during court proceedings.

What are DOJ's plans to specifically address problems like this and to improve the quality of justice provided in our state courts?

Answer. Funding available under a number of OJP-administered programs may be used to address the need for interpreters and to otherwise improve the effectiveness of the state courts.

—Several grant programs awarded by the Violence Against Women Office (VAWO) allow funds to be used to hire sign language and foreign language in-

terpreters to assist the deaf and non-English speaking victims of domestic violence in court proceedings. These programs include the Violence on College Campuses Program, Legal Assistance Program and the Rural Domestic Violence Program. For example, a community project funded by a grant to the Morrow County District Attorney's Office in Oregon, under the Rural Domestic Violence program will include the hiring of certified court interpreters to assist Spanish-speaking victims through final case disposition. Also, services provided under a Violence on College Campuses program grant to Wake Forest University in North Carolina to assist sexual assault and stalking victims will include sign language and foreign language interpreters.

—The Drug Courts Program Office (DCPO) provides grants to support drug courts that are operational in the state courts. Drug court protocols aim to improve the quality of justice dispensed to drug abusing offenders by being respectful of culture and language in the court and treatment delivery, while holding the offender accountable. The DCPO has developed training in cultural competence for operation and planning of drug courts, which they will begin delivering this year.

—The Judicial Child Abuse Training program, administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), supports model technical assistance and training programs to improve the court system's handling of child abuse and neglect cases. OJJDP is funding 23 model courts in 20 states and the District of Columbia, where judges are taking leadership roles in permanency planning, by finding eligible adoptive families. Each model court is making unique, court-specific changes to reduce the length of time children spend in foster care and to improve the timeliness and quality of judicial decision making. The overall goals of the project are to disseminate information, offer court improvement training programs and provide technical assistance widely at the national and state levels on permanency planning and on model court achievements for purposes of increasing the number of dependency courts that improve administrative practice in child abuse and neglect cases. Culture-specific training for court personnel may be funded under this program.

—Resources available under the proposed $800 million Justice Assistance Grant Program, which will fund activities currently eligible under the Byrne Formula and the Local Law Enforcement Block Grant programs which it replaces, and under the $215 million Juvenile Justice Accountability Incentive Block Grant program, which provides funds to states to promote greater accountability in the juvenile justice system, may also be used for activities to improve the quality of state court services.

—The 2003 budget includes $63 million (a combination of $60 million from the Criminal Records Upgrade Program and $3 million from the National Stalker and Domestic Violence Reduction Program) to improve state criminal record-keeping.

OFFICE OF VICTIMS OF CRIME

Question. As you know, the Victims of Crime Act requires that the Department of Justice identify the victims of a federal crime and collect information on how to contact the victims or surviving family members. To be sure, a catastrophic terrorist incident stretches the Department's capabilities to satisfy this mandate. However, I was pleased that the Office of Victims of Crime (OVC) activated a toll-free number and call center by 4:00 p.m. on September 11 that provided victim information, crisis counseling, and referral assistance to those in need. And as I understand it, the information collected by this call center is being used to compile a comprehensive database that will assist DOJ in meeting its statutory obligations.

But beyond satisfying legal requirements, it is very important that we support the victims of these terrorist acts—and I suspect this will be ongoing task for quite some time to come. That is why I am concerned with reports that OVC has significantly curtailed the operations of the call center—a service that received more than 80,000 calls in just the first 2 weeks alone following September 11. Such crisis counseling is often the first sort of victim assistance someone seeks, and we must ensure that it remains available at a level that will continue our support of terrorist victims and their families.

Can you explain to me OVC's rationale for its decision to cut back the level of service offered by the call center? If not, I trust you will review the decision made by OVC and offer us an explanation.

Answer. The OVC has decided to modify the level of call center services because states are currently providing services that are reducing the need for the call center. However, the call center is still providing information and referrals when necessary.

The call volume was extremely high during the first 2 weeks following the September 11 terrorist attacks, and OVC continued to support the victims and their families from September 11 until November 5, 2001. At that time, in consultations with Family Enterprise, Inc. (FEI) Behavioral Health (contractor operating the call center), OVC made the decision to cut back on the number of counselors and hours of operation based on call volume. The call volume ranged from an average daily high of 4,166 calls the week of September 11; to 630 calls from September 16 to 22; to 345 calls from September 23 to 29; to 212 calls from September 29 to October 6; to an average of 61 calls per day in November; to 35 calls per day in December; and to 25 calls per day in January 2002.

Staffing at the call center has been cut back due to the decrease in the number of calls, however, the services have not changed. The call center staffing levels averaged 226 during the first week; 62 in the second week; 48 in the third week; and 45 in the fourth week. As the call volume began to lessen, adjustments in staffing were made. At the end of October, 2001, according to FEI, the call center was averaging 150 calls per day. They were using 8 counselors (4 per shift) to handle the calls, operating from 8:00 a.m. until midnight eastern time, Monday through Saturday. FEI indicated that there was little call volume after 9:00 p.m. and on weekends. Consequently, staff hours were modified accordingly. On weekends, FEI staff checked voice mail on an hourly basis and returned calls as necessary. The incoming calls were for financial assistance, housing, travel and referrals for crisis counseling.

From September 11 to 16, the cost of staffing alone at the call center was approximately $559,100. From September 11 to 23, the costs of rent, computer leasing, etc., was $482,059. Thus, in less than 2 weeks time, OVC expended more than $1,000,000 in support of victim families through the call center, operating in full activation/crisis mode. From September 23 to October 6, call center charges were $408,332 and from October 7 to November 9, costs totaled $420,465. Again, the call center continued in full operational status to ensure that all victims and their family members received the maximum assistance that could be provided through the call center.

The call center continues to provide telephone-based crisis support to victims and victim families and assessment/referral of multiple needs, including counseling; assessment and referral for housing/financial resources; travel related requests; other information/referral; and the Federal Bureau of Investigation (FBI) leads, which are passed to the FBI. The call center also often receives calls not related to September 11.

OVC is reimbursing states to provide services, such as individual counseling, which provide a more personal and frequent contact for victims and their families. OVC awarded grants from the Antiterrorism Emergency Reserve in September, 2001 to New York, Pennsylvania, and Virginia. Pennsylvania used a portion of its funds to create a toll-free number. Funds provided through the Department of Defense Appropriations Act for 2002 are supporting counseling programs in affected states. Pennsylvania is requesting use of these funds to continue its toll-free number. In addition:

—Virginia created a toll-free number on September 11 using its own funds.
—New York created a special number for this disaster and continued to use other numbers already being advertised through the media.
—New Jersey created a crisis line.
—California used the toll-free number it already had in place for the crime victim compensation program.
—Massachusetts advertised its Massachusetts Citizens Line as its toll-free number.
—Connecticut has a toll-free number for crime victims, which was used for this purpose.
—Victims of Crime Act formula grants funds are not being used for toll-free numbers. Most states used lines that were already in place and funded with state dollars.

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

LAW ENFORCEMENT IN INDIAN COUNTRY

Question. Attorney General Ashcroft, last summer Senator Feingold and I initiated a dear colleague letter inviting you to visit Indian Country to focus on law enforcement challenges facing Native Americans. Thank you for your response agreeing to visit, or to send a designee. I realize you recently visited a tribe in New Mex-

ico, but I hope you will still strongly consider visiting reservations in Washington State and Wisconsin.

I must commend you for holding the U.S. Border Patrol-Native American Border Security Conference in January. I know of at least two Washington State tribes in attendance, the Lummis and the Nooksacks. I agree we need to foster better coordination between tribes and the Federal Government to protect our borders effectively. As we improve homeland security and fight terrorism, tribes can make crucial contributions to these effort. I am glad the Department of Justice recognizes this.

But at the same time, I am concerned by some of the cuts to tribal law enforcement programs proposed in the fiscal year 2003 budget.

Given the disproportionately high incidence of violent crime in Indian Country, why do you propose to cut the tribal law enforcement program in the Community Oriented Policing Services (COPS) program by $5 million, from $35 million last year to $30 million next year?

Answer. Since September 11, 2001, the Department has reprioritized and shifted funding to address counter terrorism efforts. Because the Department understands the importance of continued funding for Indian Country initiatives, these programs were largely exempted from the proposed funding shifts. The $30 million request will fund an estimated 114 grants that will enable many tribal law enforcement agencies to hire additional officers or acquire critical law enforcement equipment.

Question. Why do you propose to cut funding for correctional facilities on Indian lands altogether, from $35.2 million last year to $0? The modest increase in the Bureau of Indian Affairs' (BIA) budget from correctional facilities, $3 million, hardly makes up for this large cut.

Answer. The Indian Country Tribal Prison Construction Program was intended to alleviate the problems associated with the lack of institutional bed space and overcrowding resulting from large increases in the prison population. However, it is increasingly difficult to justify funding the program in light of the fact that more bed space has come on line while at the same time the rate of increase in the total number of prisoners has remained constant. According to *Jails in Indian Country, 2000,* a report by the Bureau of Justice Statistics, the 69 Indian Country facilities are presently operating at an average 86 percent capacity. While some individual facilities still have problems, the same report indicates that 17 facilities operating in Indian Country are expecting to increase capacity by 1,108 beds by July 2003. Given that Indian country facilities held 1,775 inmates at midyear 2000, up from 1,621 at midyear 1999, there does not appear to be a short-term need for more beds at these facilities. In view of changing priorities and the emphasis on supporting counterterrorism activities, OJP is not requesting funds for this program in 2003.

Question. And how do you justify flat-lining many of the other law enforcement programs crucial to reducing crimes against Native Americans, such as the Tribal Courts Grant Program ($8 million), Tribal Youth Initiatives ($12 million) and the Indian Alcohol and Substance Abuse Diversion Program ($5 million)?

Answer. The war on terrorism has compelled the Department of Justice to re-examine priorities, and funding increases proposed are largely targeted to counterterrorism activities. As a result, many state and local assistance programs were either reduced or maintained at the fiscal year 2002 level. Because the Department understands the importance of continued funding for Indian Country initiatives, most of these programs were maintained at the fiscal year 2002 level.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

RADIATION EXPOSURE COMPENSATION PROGRAM

Question. The Department of Justice estimates that $111.2 million in Radiation Exposure Compensation Act (RECA) claims were paid in 2001 with regular appropriations ($10.8 million) and the "such sums as may be necessary" language in the fiscal year 2001 Supplemental Appropriations Act. An estimated 3,828 claims were filed; 1,571 were approved; 57 were denied; and 727 were pending at the beginning of fiscal year 2001.

Attorney General Ashcroft, I want to congratulate the Department of Justice for its hard work to ensure that claimants under RECA are receiving claims payments instead of IOUs as was the case a year ago. I commend the Department for aggressively implementing language I sponsored in the fiscal year 2001 Supplemental Appropriations Bill that provided "such sums as may be necessary" to pay RECA claims approved by September 30, 2001, to compensate those who sustained injury

as a result of the United States open-air nuclear testing and uranium mining activities in the 1950's through 1970's.

Will you please tell the Subcommittee how many claims were approved, and how many IOUs were paid, under the language included in the Supplemental Appropriations bill for 2001?

Answer. The fiscal year 2001 Supplemental Appropriations Bill provided a total of $100,650,000 to pay meritorious claims. Of that amount, $30,525,000 was approved to pay 436 pending IOUs and $70,125,000 was approved to pay 1,177 claims adjudicated between July 24, 2001 and September 30, 2001.

Question. Would you please provide for the record a breakdown of the number of claims paid by state and by category of beneficiary?

Answer. The following table lists the number of claims funded by the 2001 Supplemental, by state and by type of claim.

	Downwinder	Onsite Participant	Uranium Miner	Uranium Miller	Ore Transporter	Total Claims	Total Awards
Alabama	1	.....	2	.....	.....	3	$250,000
Alaska	2	.....	1	.....	.....	3	$200,000
Arizona	439	4	19	1	.....	463	$24,250,000
Arkansas	3	.....	2	.....	.....	5	$350,000
California	27	6	7	1	.....	41	$2,600,000
Colorado	15	.....	115	13	2	145	$13,750,000
Florida	2	4	2	.....	.....	8	$600,000
Hawaii	1	2	.....	.....	.....	3	$200,000
Idaho	12	1	4	.....	.....	17	$1,075,000
Illinois	1	1	2	.....	.....	4	$325,000
Indiana	.....	.....	2	.....	.....	2	$200,000
Kansas	3	2	2	.....	.....	7	$500,000
Louisiana	.....	2	.....	.....	.....	2	$150,000
Maryland	2	2	.....	.....	.....	4	$250,000
Michigan	.....	2	.....	.....	.....	2	$150,000
Minnesota	1	2	.....	1	.....	4	$300,000
Mississippi	.....	.....	1	.....	.....	1	$100,000
Missouri	2	1	1	1	.....	5	$375,000
Montana	2	.....	.....	.....	.....	2	$100,000
Nebraska	1	1	1	.....	.....	3	$225,000
Nevada	101	26	9	1	.....	137	$8,000,000
New Hampshire	.....	.....	1	.....	.....	1	$100,000
New Mexico	5	1	78	14	1	99	$9,625,000
New York	.....	4	.....	.....	.....	4	$300,000
North Carolina	.....	1	2	.....	.....	3	$275,000
Ohio	1	1	1	2	.....	5	$425,000
Oklahoma	3	.....	5	.....	.....	8	$650,000
Oregon	9	2	2	.....	.....	13	$800,000
Pennsylvania	1	2	.....	.....	.....	3	$200,000
South Carolina	.....	1	.....	.....	.....	1	$75,000
South Dakota	.....	1	.....	.....	.....	1	$75,000
Tennessee	1	.....	1	.....	.....	2	$150,000
Texas	10	1	2	.....	.....	13	$775,000
Utah	522	7	39	8	1	577	$31,425,000
Virginia	1	.....	.....	.....	.....	1	$50,000
Washington	2	2	4	.....	.....	8	$650,000
West Virginia	.....	.....	4	.....	.....	4	$400,000
Wisconsin	.....	.....	1	.....	.....	1	$100,000
Wyoming	3	1	2	1	.....	7	$525,000
Subtotal	1,173	80	312	43	4	1,612	$100,550,000
Canada	.....	.....	.....	1	.....	1	$100,000
TOTAL	1,173	80	312	44	4	1,613	$100,650,000

Question. Have all pending IOUs been paid?

Answer. There are currently five claims pending where individuals received IOU letters from the Radiation Program. Two of these claims are pending because the claimants are pursuing an award under the Energy Employees Occupational Illness Compensation Program (EEOICPA). As you know, acceptance of compensation under that program precludes recovery for onsite participants and downwinders

under the Radiation Exposure Compensation Act (RECA). A third claim remains pending while the claimant considers the loss of benefits from the Department of Veterans Affairs should the RECA award be accepted. Finally, the last two claims are pending because the Radiation Program is awaiting receipt of acceptance forms from attorneys representing the claimants. With the exception of those five claims, all IOUs have been paid.

Question. I also congratulate the President and the Department for proposing in the 2002 budget to make payments for claims under RECA an entitlement. Congress did enact as part of the Defense Authorization bill, my amendment to make the RECA program a mandatory program. The Department has $172 million to pay claims in 2002 and $143 million to pay claims in 2003, and additional amounts in future years.

Will you please give the Subcommittee a status report on the payment of RECA claims. How many claims has the Department approved and how much has been spent out of the Trust Fund to pay these claims since the inception of RECA?

Answer. Through March 15, 2002, a total of 5,981 claims have been approved, with a value of $413,597,489.

Question. What is the average amount of the claims approved, the number of claims denied, and the general reason for denial of these claims?

Answer. RECA award amounts are fixed by statute. Uranium workers (uranium miners, mill workers, ore transporters) are eligible for a $100,000 award; onsite participants are eligible for a $75,000 award; and downwinders are eligible for a $50,000 award. Due to the predominance of downwinder approvals, the overall average of awards is $69,512 over the life of the Program.

Through March 15, 2002, the RECA Program has denied 3,906 claims. Claims are denied if one or more of the eligibility criteria are not satisfied. For example, uranium worker claims are typically denied in cases where the documentation does not establish that the individual contracted an illness specified under the law. Similarly, downwinder and onsite participant claims are most frequently denied where the records fail to establish a covered disease or the individual was either not present in the affected "downwind" area or did not participate in atmospheric weapons testing.

Question. For the record, would you please provide the Subcommittee with a breakdown of the types of claims approved or disapproved (childhood leukemia, other downwinder, onsite participants, or uranium miners), the number of claims currently pending, and the amounts disbursed by type of claim paid?

Answer. The following table lists, by category, the total value of the awards approved by the Radiation Exposure Compensation Program, as well as the number of claims received, approved, denied and pending through March 15, 2002.

RADIATION EXPOSURE COMPENSATION PROGRAM—APRIL 1992-MARCH 15, 2002

	Value of Awards	Claims Received	Approved	Denied	Pending
Downwinder	$174,120,000	6,768	3,483	1,432	1,853
Onsite Participant	$23,685,989	1,469	334	838	297
Uranium Miner	$207,591,500	4,335	2,082	1,631	622
Uranium Miller	$7,100,000	229	71	4	154
Ore Transporter	$1,100,000	61	11	1	49
TOTAL	$413,597,489	12,862	5,981	3,906	2,975

Question. For my use, would you please provide this same information specifically for claims from New Mexico, including the total claims received, the total claims approved, the total claims denied and the total claims pending?

Answer. With respect to claims for which the primary claimant resides in New Mexico, the Department has approved 572 claims, with a total value of $55,977,799 through March 15, 2002. The following table lists, by category, the value of awards and the number of claims received, approved, denied, and pending.

RADIATION EXPOSURE COMPENSATION PROGRAM: NEW MEXICO—APRIL 1992-MARCH 15, 2002

	Value of Awards	Claims Received	Approved	Denied	Pending
Downwinder	$800,000	64	16	18	30
Onsite Participant	$843,299	49	12	26	11
Uranium Miner	$52,234,500	1,395	523	660	212
Uranium Miller	$1,900,000	62	19	1	42

RADIATION EXPOSURE COMPENSATION PROGRAM: NEW MEXICO—APRIL 1992-MARCH 15, 2002—Continued

	Value of Awards	Claims Received	Approved	Denied	Pending
Ore Transporter	$200,000	10	2	0	8
TOTAL	$55,977,799	1,580	572	705	303

Question. How many claims are projected to be filed and processed under current law in the upcoming year?

Answer. For fiscal year 2003, we presently estimate that 2,225 claims will be filed and 2,620 claims will be processed. It is impossible to precisely estimate the amount of receipts for this year because the data is skewed as a result of the mail suspension. The following chart displays the number of claims filed, by month, for fiscal year 2001 and the first several months of fiscal year 2002.

RECA CLAIMS RECEIVED BY MONTH—FISCAL YEARS 2001 AND 2002

	Fiscal year—	
	2001	2002
October	188	249
November	504	[1] 21
December	214	[1] 25
January	200	[1] 175
February	233	598
March	371	[2] 156
April	315	.....
May	438	.....
June	349	.....
July	358	.....
August	345	.....
September	307	.....
Total	3,822	1,224

[1] Reflects mail suspension during October 2001-January 2002.
[2] As of March 18.

Question. Does the Administration have any long-range estimates as to the number of claims that might still be filed under the Radiation Exposure Compensation Act under current law and regulations?

Answer. In May 2000, the Congressional Budget Office (CBO) roughly estimated that about 15,600 claims might be filed under Public Law 106–245, the Radiation Exposure Compensation Act Amendments of 2000. Since enactment in July 2000, nearly 5,500 claims have been filed. Using CBO's estimate, it is possible that an additional 10,100 claims might be filed over the lifetime of the current law. However, these long-range estimates only approximately quantify the future of the Radiation Exposure Compensation Program. As the Department continues to educate the affected communities of the availability of compensation under the amended Act, it is possible that a larger percentage of the eligible claimant population could apply for compensation, thereby exceeding the current estimate.

FIRST RESPONDER TRAINING

Question. Attorney General Ashcroft, I support President Bush and the Administration 100 percent in their efforts regarding the war on terrorism. There is nothing more important and no higher priority for this country at this time in history.

This is the first budget that incorporates homeland security into ongoing federal programs. As a part of that effort, the Administration proposes to shift the responsibility for first responder training from the Department of Justice to the Federal Emergency Management Agency (FEMA), and to significantly increase funding for these activities. I have some concerns about this proposal that I would like to raise with you today.

Will the entire activity of first responder training be transferred to FEMA, or will the Department of Justice retain some aspects of this critically important function?

Answer. The President's fiscal year 2003 budget proposes to transfer all of the training programs administered by the Office for Domestic Preparedness to FEMA.

These include the integrated Nunn-Lugar training program, the Center for Domestic Preparedness at Fort McLellan, the Domestic Preparedness Consortium, TOPOFF, and similar situational training exercises. It will not affect terrorism training for local law enforcement provided by the FBI.

Question. What programs and activities and associated funding and staff are proposed to be transferred from the Department of Justice to FEMA?

Answer. The fiscal year 2003 President's budget proposes to transfer all the Office for Domestic Preparedness (ODP) programs, activities, and associated funding and staff related to planning, equipment, training, technical assistance, and exercises. This proposed transfer includes 59 current positions. The National Institute of Justice's (NIJ) counterterrorism research and development program will remain part of the Office of Justice Programs, to be funded directly by the NIJ instead of through ODP.

Question. Will the shift of first responder training responsibilities require legislative authorization by the Congress? If not, what are the appropriate legal authorities the Administration cites as the basis for proposing and proceeding with this reorganization of national domestic preparedness and first responder training?

Answer. FEMA is authorized currently to assume the Office of Domestic Preparedness' (ODP) preparedness activities. To help states and localities prepare for disasters, natural or man made, FEMA may carry out exercises, provide grants, and offer training and technical assistance. FEMA derives its authority from its primary disaster relief and assistance statute, the Stafford Act, as well as the Federal Fire Prevention and Control Act.

However, to eliminate any ambiguity the Administration included language in the 2003 budget amendments and errata (submitted March 14) to clarify that FEMA will honor ODP's obligations to its contractors, local partners, grantees, and staff:

"*Provided further,* That, the functions authorized under section 819 of the *Antiterrorism and Effective Death Penalty Act of 1996 and section 1014 of Public Law 107–56, as well as such unexpended balances of appropriations, full-time equivalent personnel, property, and records as have been assigned to the Department of Justice, shall be transferred to the Federal Emergency Management Agency: Provided further, That such transfers are made pursuant to 31 U.S.C. 1531*"

Question. In light of the supposition that the Department of Justice has been responsible for the great majority of first responder training for so long, in your opinion Mr. Attorney General, do you think that too much of the first responder training authority has been relinquished by DOJ? To put it another way, how wise would you characterize the decision to transfer what could be considered the most vital aspect of Homeland Security away from the agency with the most experience in handling that vital function?

Answer. In fiscal year 2003, the Administration is requesting that funding for ODP's counterterrorism programs be transferred to FEMA. In May 2001, the President stated his belief that the numerous federal programs offering training and assistance to state and local governments be "seamlessly integrated, harmonious and comprehensive to maximize their effectiveness." This transfer supports the Administration's coordination and streamlining of all terrorism-related activities to provide greater program cohesion and efficiency. The Administration also believes that FEMA, through its newly created Office of National Preparedness (ONP), is the appropriate federal agency to be the single point of contact to facilitate and oversee the President's fiscal year 2003 $3.5 billion First Responder Initiative and to implement national efforts to build and expand on first responder training capabilities. The transfer of ODP's first responder training programs to FEMA will achieve greater integration, coordination, and effectiveness in the administration of the Federal Government's counterterrorism training programs.

Question. My understanding is that the President proposed the transfer of first responder training from the Department of Justice to FEMA last May. At that time, the program totaled about $30 million for the National Domestic Preparedness Consortium (NDPC) and additional amounts for equipment and related expenses. Following the September 11th terrorist attacks, the NDPC grew to a total of $95.7 million plus another $16 million for training grants and support. In total, the Administration plans to transfer $234.5 million in first responder training programs form the Department of Justice, and turn these programs into a $3.5 billion first responder training program in FEMA in fiscal year 2003.

I will ask this same question of FEMA—would the Department of Justice have the capability of implementing a dramatically expanded first responder training program in fiscal year 2003?

Answer. The Department of Justice could use the National Domestic Preparedness Consortium and its other training partners to facilitate some expansion in

training, but dramatic growth would be constrained by the capacity of existing facilities and staff to deliver effective training. It is our understanding that FEMA will continue to support the Consortium in 2003, while also providing states with formula grants for training and examining new methods of training delivery.

Question. Assuming that a comprehensive first responder training program is developed, it is clear that responding to potential attacks using weapons of mass destruction—chemical and biological agents, and even nuclear devices—requires very specialized training. In your opinion, are there the necessary trainers available throughout the country to carry out a significant first responder training program, specifically one that is comprehensive and coordinated to provide a seamless response to a disastrous attack?

Answer. There are enough qualified trainers to meet the current demand for first responder weapons of mass destruction training. While the requested increases in training at all levels of government may strain this capacity in the short term, there is sufficient untapped expertise to carry out a larger program in the near future.

MENTAL HEALTH COURTS

Question. Attorney General Ashcroft, as you are aware, the fiscal year 2002 Commerce, Justice, State, and Judiciary Appropriations Bill contained $4 million for Mental Health Courts. The funding is the result of the America's Law Enforcement and Mental Health Project Act, enacted into law two years ago. The Act authorized the creation of Mental Health Courts with separate dockets to handle cases involving individuals with a mental illness.

The specific thrust of Mental Health Courts is simply to provide an individual with a mental illness and charged with a misdemeanor or nonviolent offense the option of out-patient or in-patient mental health treatment as an alternative to incarceration.

Finally, the Department of Justice estimates that sixteen percent of all inmates in local and state jails suffer from a mental illness and the American Jail Association estimates that as many as 700,000 persons suffering from a mental illness are jailed each year.

Do you believe Mental Health Courts can alleviate prison overcrowding and create greater judicial economy within our court systems?

Answer. Realistically, we do not expect that mental health courts will alleviate prison overcrowding. However, understanding the enormous cost that these individuals bring to law enforcement, judicial, and correctional agencies when these offenders are not treated, many sites are looking to the local courts to try this new initiative. Many mentally ill/mentally impaired individuals commit crimes that require some type of incarceration. Further, they often are not deterred or coerced from further criminal activity by a series of less-punitive sanctions or alternatives; many simply will not comply with a court-ordered treatment plan and may have to be returned to traditional processing that ends in some incarceration sentence. However, by more appropriate triage and response to these individuals early in their processing, mental health courts and the partnerships developed under this setting will provide this population with the best possible combination of accountability and treatment. In addition, these individuals may learn how not to become involved in criminal behaviors that will bring them back into the system later.

By routing these individuals away from the traditional criminal court and into mental health courts, state and local governments will be meeting the objectives of the Law Enforcement and Mental Health Project Act (Public Law 106–515) and will be addressing the special needs of the mentally ill/mentally impaired, who have long been an overlooked population in the criminal justice system. The extent to which this is achievable on a national basis must also depend on how mentally ill defendants are treated in state law and state judicial systems.

Jurisdictions with mental health courts should be able to make a smaller investment of scarce resources in the court and treatment process, rather than a larger investment in jail and prison systems, and may thus see some overall financial savings.

Question. What steps are being taken by DOJ to distribute the $4 million appropriated to implement America's Law Enforcement and Mental Health Project Act?

Answer. The Bureau of Justice Assistance (BJA) will be guided in its implementation of this program by the objectives set forth in the Act. To date, BJA has had several meetings with the Substance Abuse and Mental Health Administration (SAMHSA) and the Department of Health and Human Services to discuss coordination of the implementation of this $4 million appropriation. These discussions have explored potential collaboration on a mental health jail diversion initiative, although no final agreement has been reached. BJA has also had conversations with a num-

ber of advocacy and special interest groups representing courts, court administrators, consumer advocates, prosecutors, defenders, law schools, and other institutions, such as the Bazelon Center and the Council for State Governments.

BJA convened a 3-day meeting beginning March 18, 2002 to receive input from the field. A final competitive solicitation for operational mental health court grants, which will be developed within the parameters of the Act, will be issued. This forum will also assist BJA in crafting a technical assistance strategy.

Question. What plans does DOJ have to provide assistance to court systems seeking to develop and implement a Mental Health Court and does DOJ plan to offer continued technical assistance after the implementation of a Mental Health Court?

Answer. BJA recognizes the need for technical assistance not only among mental health court grantees, but also among those sites that will implement a court without the support of direct federal funding. BJA anticipates a substantial investment of funds available under this appropriation for technical assistance and information dissemination to assist localities in their efforts to plan, implement, operate, and assess mental health court initiatives.

BLACK TAR HEROIN AND METHAMPHETAMINE TRAFFICKING FEDERAL BUREAU OF INVESTIGATION (FBI) AND DRUG ENFORCEMENT AND ADMINISTRATION (DEA)

Question. This Subcommittee has been very helpful over the past 3 years in tackling an issue of great concern to me. That issue is the serious "black tar" heroin problem that has plagued several northern New Mexico counties.

Both the FBI and DEA have cooperated with the state and local law enforcement officials in New Mexico to try to break the serious cycle of black tar heroin trafficking and use. Several major drug busts have been implemented in this area of New Mexico.

Would you please give the Subcommittee the Department's assessment of the progress these joint law enforcement operations in breaking the black tar heroin rings in northern New Mexico?

Answer. Traditionally, Northern New Mexico's primary illegal drug threat has been the transshipment and distribution of cocaine and black tar heroin. Since 1999, DEA and FBI, in cooperation with state and local law enforcement officials, have had three successful joint law enforcement operations targeting heroin trafficking organizations in northern New Mexico. The first two operations in 1999 and in 2000 targeted Nayarit Mexican heroin traffickers who were distributing uncut black tar heroin with purity levels sometimes exceeding 70 percent. This high purity level led to a dramatic increase in heroin overdose deaths in Rio Arriba and Santa Fe counties. The 1999 investigation resulted in 32 federal arrests and 20 state arrests. The 2000 investigation resulted in 13 federal arrests, mostly in New Mexico. Efforts in 2001 focused on finalizing the prior years' investigations and ensuring that the law enforcement operations had dismantled the Nayarit Mexican Trafficking Organizations heroin trafficking network in northern New Mexico. Law enforcement efforts were evidenced by a slight decline in the number of overdose death rates in both Rio Arriba and Santa Fe counties in 2000.

As Reported by the New Mexico OMI	1999 Drug Overdose Related Deaths	2000 Drug Overdose Related Deaths
Santa Fe County	15	13
Rio Arriba County	46	39

During June 2001, law enforcement officials in New Mexico jointly determined that another multi-agency law enforcement operation targeting heroin traffickers was necessary in northern New Mexico. DEA deployed the El Paso Field Division Mobile Enforcement Team (MET) to Rio Arriba and Santa Fe counties in October of 2001. In conjunction with the Albuquerque DEA Office, the New Mexico Department of Public Safety, and the Bureau of Justice Assistance (BJA)—High Intensity Drug Trafficking Area (HIDTA) Region III Narcotics Task Force, the MET has identified approximately 27 targets for federal prosecution and another 28 targets for state prosecution. Both the United States Attorney's Office and the First Judicial District Attorney's Office have provided prosecutorial oversight since this investigation started. Intelligence gathered during this investigation has reinforced two major issues of concern for law enforcement entities working in northern New Mexico:

—Unlike the Nayarit heroin traffickers, current heroin traffickers in Rio Arriba and Santa Fe counties seldom traffic only heroin. Most often, these dealers traffic both heroin and cocaine, and occasionally methamphetamine.

—The New Mexico Office of the Medical Investigator (OMI) has consistently reported that very few overdose deaths in northern New Mexico are strictly heroin overdose. In almost every overdose death, the OMI reports a mixture of multiple narcotics in the victim's toxicology. These substances include heroin, alcohol, cocaine, methadone, prescription drugs, and other unknown substances.

—The use of narcotics is a significant issue in northern New Mexico. Two facts that support this concern are also evidenced in the New Mexico OMI reports:

—Nearly 50 percent of overdose death victims are in the 30–39 age range, another 25 percent are 50 years of age or older. These age ranges indicate long-term drug users and addicts as opposed to youthful experimenters; and

—Over 80 percent of overdose death victims die in their own homes or the home of family member, indicating a tolerance of drug use among family and peers.

While law enforcement efforts in northern New Mexico are effective and successful, law enforcement alone is not the answer to this problem. Consequently, following the conclusion of the current law enforcement operation in northern New Mexico, DEA will send the El Paso Field Division and the Albuquerque District Office Demand Reduction Coordinators to northern New Mexico to provide training and information to area residents. Additionally, forfeiture proceedings against real property seized during the 1999 law enforcement operation have recently been completed. The United States Attorney's Office and DEA have agreed that the most accessible and suitable of the two properties seized will be returned to the northern New Mexico community. Several groups have expressed an interest in using the facility for a community outreach and drug education center. Meanwhile, law enforcement efforts will continue, and DEA will further explore investigative techniques that will be effective in this area.

Question. An equally serious problem is methamphetamine trafficking and usage. I believe both the FBI and DEA have encountered this illegal activity in its law enforcement activities in New Mexico, including northern New Mexico.

Would you please give the Subcommittee your assessment of the effect these joint law enforcement operations in northern New Mexico have had on the methamphetamine trafficking in the area?

Answer. The methamphetamine trafficking problem throughout the state of New Mexico is two-fold:

—New Mexico's remote and mountainous landscape often provides safe haven to clandestine methamphetamine laboratory operators throughout the state. During the late 1980's and early 1990's, these clandestine laboratories decreased dramatically in response to precursor control laws which seriously restricted the availability of essential chemicals needed to manufacture methamphetamine. However, methamphetamine manufacturers (also known as "cooks") have continually updated and refined manufacturing procedures to circumvent precursor control laws.

The late 1990's saw the number of clandestine manufacturing laboratory seizures skyrocket throughout the United States. While New Mexico has not experienced this problem to the extent that some Midwestern states have, these clandestine laboratories have presented a new and costly challenge. During the first quarter of fiscal year 2002, DEA offices in Albuquerque and Las Cruces, New Mexico have seized 23 clandestine methamphetamine laboratories throughout the state. These 23 labs represent only the clandestine laboratories to which DEA agents have responded and do not include numerous "chemical clean-ups" in which state and local law enforcement authorities have seized necessary precursor chemicals even when the laboratory was not operational. The majority of these laboratories are small individual operations, producing personal use amounts up to an ounce or two of methamphetamine at a time. A total of 85 clandestine laboratories have been seized in New Mexico since October 1, 2001. However, only 6 of the laboratories were capable of producing multi-ounce quantities of methamphetamine.

Despite the size of these operations, responding to these laboratories requires an excessive amount of agent hours and resources. On average, when DEA responds to a clandestine methamphetamine laboratory, the team consists of five special agents and a supervisory special agent. The agents must have specialized training and be accompanied by a "Site Safety Officer" who is trained to supervise the health and environmental issues that must be considered when disposing of flammable, explosive, and toxic chemicals and waste products. The average clean-up cost, for even a small laboratory in New Mexico is between $6,000 and $15,000. In fiscal year 2002, DEA has investigated and seized one clandestine laboratory in Santa Fe County, two clandestine laboratories in San Juan County, and one clandestine laboratory in Cibola County in northern New

Mexico. The largest areas for the seizure of clandestine laboratories in northern New Mexico are in Bernalillo County, primarily in the east mountain area, and in Valencia County, the Los Lunas/Meadow Lakes area.

Clandestine methamphetamine laboratories are an ongoing law enforcement issue throughout the United States. While law enforcement entities throughout New Mexico, including DEA, continue conducting clandestine manufacturing investigations successfully, clandestine manufacturing will be deterred. However, while criminal chemists continue to develop and improve their ability to circumvent new laws and regulations, clandestine manufacturing will not be eliminated.

—The second area of methamphetamine trafficking that affects New Mexico is the distribution and transshipment of Mexican produced methamphetamine in and through the state. During the early 1990's, when the first chemical precursor control laws were having a serious impact on the domestic clandestine manufacture of methamphetamine, Mexican polydrug trafficking organizations seized the opportunity and began large scale production of methamphetamine in Mexican-based laboratories. These Mexican labs are capable of producing multi-kilogram quantities of methamphetamine that are smuggled across the international border in the same manner as other illegal drugs. New Mexico highways provide a ready corridor for transporting methamphetamine into the state for distribution and transshipment through New Mexico to eastern markets. Recent investigations have shown that large quantities of methamphetamine in New Mexico are distributed primarily in the areas of Albuquerque and Farmington.

An ongoing Albuquerque investigation has uncovered a large Mexican-based organization that routinely distributes multi-kilogram quantities of methamphetamine in the Albuquerque area. The largest seizure in this investigation has been 25 pounds. The most recent cooperative methamphetamine investigation in the Farmington area resulted in the delivery of 7 kilograms of methamphetamine to an undercover agent. Recent interdiction seizures include a highway interdiction seizure of approximately 2 kilograms of methamphetamine destined for the Birmingham, Alabama, and a kilogram of methamphetamine interdicted from a Greyhound Bus passenger en route to Kansas City, Missouri. Intelligence information obtained from these investigations indicate that Mexican methamphetamine destined for New Mexico, routinely crosses the United States-Mexican Border, or is manufactured by Mexican-based trafficking organizations within California and sent from areas such as Los Angeles and/or Phoenix into or through New Mexico. Many of these trafficking organizations have ties within the Mexican state of Michoacan.

On March 31, 2001, the FBI's Albuquerque Division, Gallup Resident Agency, and the New Mexico Region II Narcotics Task Force initiated an investigation into the seizure of 343 pounds of methamphetamine from a truck stopped at the Arizona/New Mexico port-of-entry of Interstate 40. The investigation revealed that the driver was working for an organization based in Mexicali, Mexico, which was transporting large quantities of illegal drugs across the United States. The driver acquired the 343 pounds of methamphetamine in Calexico, California, and was en route to deliver the drugs to Atlanta, Georgia. The driver had previously transported 100 kilogram quantities of marijuana to Atlanta, Georgia, for the same organization.

Disturbingly, undercover investigations indicate that the Mexican Nationals, who are transporting and distributing these large quantities of methamphetamine, have access to a seemingly unlimited supply of methamphetamine. Investigations and intelligence gathering by federal, state, and local law enforcement agencies are continuing in an attempt to further identify and dismantle those individuals and organizations operating in Mexico, Arizona, and California, that are supplying New Mexico and other eastern cities.

STAFFING AT SANTA TERESA PORT-OF-ENTRY

Question. Mr. Attorney General, I appreciate the work and mission of the United States Immigration and Naturalization Service (INS), especially in the face of the unique demands placed on this agency after the tragedy of September 11.

As I expressed in a November 2001 letter to INS Commissioner James Ziglar, greatly increased traffic at New Mexico's Santa Teresa port-of-entry has created an urgent need for additional INS inspectors to allow the operation of the port's two processing booths throughout the day. Traffic has more than doubled in the past several months compared to fiscal year 2001.

The Santa Teresa port is currently operating with four INS inspectors, two of whom have been temporarily assigned from El Paso border crossings. I was pleased to learn recently that two additional INS personnel will be hired. However, I have been made aware that Santa Teresa still urgently needs an additional seven Immigration personnel to adequately handle increasing traffic.

Additionally, I have learned that the Columbus port-of-entry, New Mexico's only 24-hour non-commercial border crossing, lacks at least six Immigration personnel to handle current traffic volume.

Adequate staffing for these ports-of-entry is essential both for efficient commerce and for the safety and security of all parties involved in the flow of traffic across the border. I am concerned that despite my long-time role in increasing funding and personnel levels for the INS, New Mexico's ports-of-entry have continued to endure personnel shortages, experiencing no measurable benefit from these increased resources.

Supplemental homeland defense funding has rightfully boosted resources for INS personnel, particularly along the Northern border. What assurance can you give me that the Southwest border, and particularly New Mexico's historically understaffed ports-of-entry, will receive personnel increases reflective of recent increased federal resources.

Answer. The INS and the USCS share responsibility for operating the primary lane. Prior to September 11, 2001, Santa Teresa was operational from 6:00 a.m. until 10:00 p.m. On average, 20 cars and 52 people were inspected per hour. Santa Teresa has only two traffic lanes and two immigration inspectors on duty per shift. Immediately following the events of September 11, 2001, all ports were instructed to operate under Threat Level One requiring continuous 24-hour staffing at all land border ports of entry. This threat level also requires at least 2 on-duty officers, 100 percent trunk inspection or its equivalent and 100 percent queries for all pedestrians. Traffic seeking to avoid congestion at the nearby El Paso port, frequently diverts to Santa Teresa. The inability to accommodate the increased regular and holiday traffic combined with Threat Level One condition, resulted in increased wait times. However, in January 2002, the average wait time was 15 minutes.

The INS received 848 new land border inspectors in fiscal year 2002 to enhance enforcement efforts and to reduce delays at ports of entry both north and south. That deployment includes 4 new positions to Columbus, New Mexico and 2 new positions to Santa Teresa, New Mexico. The INS has requested an additional 460 new land border inspectors in fiscal year 2003 to continue securing the ports, enhance enforcement and return to normal processing times. In order to accomplish that, all ports, regardless of their geographic location, must be adequately staffed to ensure that every precaution is taken when determining who should and who should not be admitted into the United States.

INS RESTRUCTURING

Question. The Immigration and Naturalization Service's mission involves carrying out two primary functions. One is an enforcement function that involves preventing aliens from entering the United States illegally and removing aliens who succeed in doing so. The other is a service function that involves providing services or benefits to facilitate entry, residence, employment, and naturalization of legal immigrants.

Several critics have concluded that mission overload has impeded INS from succeeding at either of its primary functions and that the INS' service and enforcement functions should be separated in order to better administer immigration law. Consequently, there have been several proposals to fundamentally restructure the INS.

I am pleased to see that the Administration and you Mr. Attorney General have come to recognize these problems in the past year and have formulated a plan that, in some ways at least, builds upon the separation premise I just mentioned.

Mr. Attorney General, could you please detail your plan to restructure the INS that will hopefully allow it to effectively and efficiently administer the immigration laws?

Secondly, can you give this committee any idea of what kind of financial obligation, if any, the Federal Government might have to undertake in order to achieve this goal or, at the very least, can you elaborate on how the overall funding for the INS will take shape once your plan is initiated?

Answer. Two of the problems that INS continually struggles with under its current organizational design are: (1) competing priorities between its enforcement and services responsibilities; and (2) confusing chains of command. The creation of separate bureaus for enforcement and services will ensure, on one hand, improved provision of immigration services by staff dedicated to that function and, on the other

an integrated law enforcement organization that can respond quickly to combat terrorism, human smuggling operations and illegal immigration activities at the border and the interior.

The proposed organizational configuration eliminates current regional and district offices and creates separate area structures for the Bureaus of Enforcement and Immigration Services. This streamlining and separation will improve accountability and professionalism through the establishment of clearly defined chains of command staffed by individuals with specific expertise at all levels.

It is estimated that the INS restructuring can be accomplished for approximately $70 million, $40 million of which is included in the Department's fiscal year 2003 request. More than half (55 percent) of the costs will be associated with adjustments of facilities, including space modifications and lease acquisition. Another 38 percent will be for buyouts and relocations of personnel in the field.

VIOLENCE AGAINST WOMEN NEW MEXICO FUNDING

Question. In fiscal year 2002, the U.S. Department of Justice (DOJ) did not award any grants under the "Grants to Encourage Arrests" program to New Mexico domestic violence organizations. Several of the New Mexico programs who had their applications denied were previously recipients of these grants. These organizations are now struggling to keep their doors open, cutting back on services that all parties, even the Department of Justice, agree are making a tremendous difference in domestic abuse cases.

In various conversations with representatives from the Violence Against Women Office (VAWO), it was brought to my attention that there are questions about whether New Mexico law complies with the requirements of the grant. These questions have apparently existed in the past, but have not prevented the New Mexico organizations from receiving the grants. In an effort to ensure that this would not be a problem in the future, the entire New Mexico Congressional delegation wrote to the leadership of the New Mexico Legislature and the Governor to encourage them to fix the problems quickly.

On February 12, 2002, the New Mexico House concurred with the New Mexico Senate, unanimously passing the legislation that will erase any of the doubts that might have existed.

Because New Mexico has made a good-faith effort to remove any doubts that might have existed concerning the eligibility of programs dealing with domestic abuse, will you provide a one-year waiver to restore the funding that these programs desperately need?

Answer. The Office of Justice Programs Violence Against Women Office (OJP/VAWO) does not have legal authority to waive statutory certification requirements that govern eligibility for funding under VAWO's Grants to Encourage Arrest Policies and Enforcement of Protection Orders Arrest Program (Arrest Program). [42 U.S.C. § 3796hh relating to the Arrest Program, Id. § 3796hh–1.]

However, even if OJP/VAWO had statutory authority to grant such a waiver, fiscal year 2001 funding for the Arrest Program has already been allocated among qualified grantees.

On February 27, 2002, the state of New Mexico received $1.1 million under VAWO's fiscal year 2002 STOP (Services, Training, Officers, Prosecutors) Violence Against Women Formula Grant Program. Funding from this award may be used to assist domestic violence programs in New Mexico.

Question. Because the programs in New Mexico had been receiving funds through this program in previous years, no one in our state was aware that there was a problem. Therefore, the denial of funding came as a surprise. Would you keep me informed as the Department of Justice reviews the recently-passed New Mexico law to ensure that it erases all doubt about compliance with the DOJ requirements? Would you also make sure that I am made aware should something else arise that would cause the New Mexico programs to be denied funding?

Answer. Every Arrest Program applicant is required, by statute, to submit a letter of certification. The letter of certification is not a Department of Justice (DOJ) requirement. The certification requirements are directly imposed by 42 U.S.C. § 3796hh(c)(1)–(4), which provides:

> "(c) ELIGIBILITY.—Eligible grantees are States, Indian tribal governments, State and local courts (including juvenile courts), or units of local government that—
>
> "(1) certify that their laws or official policies—
>
> "(A) encourage or mandate arrests of domestic violence offenders based on probable cause that an offense has been committed; and
>
> "(B) encourage or mandate arrest of domestic violence offenders who violate the terms of a valid and outstanding protection order;

"(2) demonstrate that their laws, policies, or practices and their training programs discourage dual arrests of offender and victim;

"(3) certify that their laws, policies, or practices prohibit issuance of mutual restraining orders of protection except in cases where both spouses file a claim and the court makes detailed findings of fact indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense; and

"(4) certify that their laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction."

According to VAWO's Fiscal Year 2002 Arrest Program Application and Program Solicitation Guidelines (page 9), eligible applicants are instructed as follows:

"Eligible applicants must submit as part of the application a letter signed by the chief executive officer of the state, Indian tribal government, or unit of local government certifying to the conditions listed above [(1) to (4)]. If (4) above does not yet exist in the applicant jurisdiction, the state, Indian tribal government, state or local court, or unit of local government applying for grant funds must provide assurances that it will be in compliance with this requirement by the date on which the next session of the state legislature or Indian Tribal Legislature ends, or by October 28, 2002."

The fiscal year 2002 Arrest Program application deadline was January 31, 2002. VAWO received and reviewed applications from the City of Albuquerque, Cibola County, Zuni Police Department, and Santa Fe County. Recommendations for fiscal year 2002 funding for some of the New Mexico applicants may be made pending final approval. Once VAWO makes final recommendations for Arrest applicants to receive grant awards, the recommendations then go through a clearance process in OJP's Office of the Comptroller and OJP's Office of Budget and Management Services. If any New Mexico application is approved for fiscal year 2002 Arrest Program funding, VAWO expects to announce these awards to the New Mexico delegation by May 1, 2002.

OJP/VAWO does not ordinarily review state laws, practices and policies to provide legal advice to state officials for the purpose of certification of state compliance with federal statutory requirements. State officials/applicants need to conduct their own review and analysis and subsequently certify that they meet the statutory eligibility requirements. OJP/VAWO must rely on the state's review and certification to the federal statutory requirements, since OJP/VAWO staff are not experts on the laws, policies, and practices of each state and local government applicant. As a matter of policy or practice, OJP/VAWO does not look behind applicant letters that include proper signatures (of Chief Executive Officers) and complete certifications as specified in 42 U.S.C. § 3796hh(c)(1–4) (i.e., certifications using the exact words provided in section 3796hh(c)(1) to (4)).

However, due to the extraordinary circumstances surrounding this issue and at the request of the New Mexico delegation, OJP/VAWO reviewed the newly-passed New Mexico legislation (H.B. 242) and NMSA § 40–13–3.1. Based on this review (as explained immediately below), it is not entirely clear to VAWO that the Arrest Program applicants from New Mexico will be able to meet certification requirements in 42 U.S.C. § 3796hh(c)(3) and (4), regarding mutual restraining orders and imposition of fees (respectively), as described below.

New Mexico's new law (H.B. 242) does not address mutual restraining orders, and this may present an issue under certification requirement (3). OJP/VAWO is aware that courts in New Mexico use a "Stipulated Mutual Protection Order" form that does not meet the standard described in 42 U.S.C. § 3796hh(c)(3). It is not clear, however, that New Mexico will need legislation to amend or prohibit use of this civil court form. For example, VAWO has received a letter from the Chief Justice of the New Mexico Supreme Court, stating that standard protection order forms are currently under review. Therefore, it is possible, assuming the State Supreme Court has such authority and chooses to exercise it, that court action to prohibit use of this form may enable appropriate New Mexico officials to determine that they can certify to the requirement in 42 U.S.C. § 3796hh(c)(3). As mentioned above, OJP/

VAWO will rely on New Mexico officials to determine when (or if) they may certify to this statutory requirement.

In addition, H.B. 242 and NMSA § 40–13–3.1 do not specifically address some of the fee issues covered by the certification requirement provided at 42 U.S.C. § 3796hh(c)(4). The new legislation makes clear that, in New Mexico, an alleged victim of domestic abuse, stalking, or assault is not required to bear the cost of (1) filing a criminal charge against an alleged perpetrator of the offense; (2) the issuance or service of a warrant; (3) the issuance or service of a witness subpoena; or (4) the issuance or service of a protection order. Neither H.B. 242 nor NMSA § 40–13–3.1 address, however, whether such an alleged victim might be made to bear the cost of filing or registering a warrant, witness subpoena, or protection order; nor does either law address the issue of fees for petitions for protection orders. Finally, neither law addresses whether fees might be charged with regard to filing, registering, or serving out-of-state protection orders. OJP/VAWO simply is unable to express an informed opinion on whether New Mexico can certify to requirement (4), because it is quite possible that other state laws, policies, or practices—of which OJP/VAWO is unaware—may govern these issues (e.g., there may be no requirement under state law to file witness subpoenas or there may be no requirement to pay any fees for doing so); under such circumstances, New Mexico easily could certify to (4). To reiterate, OJP/VAWO will rely on state and local officials to review and analyze New Mexico laws, policies, and practices with respect to whether victims are required to bear any of these costs, as part of the certification process by the Chief Executive Officer for the applicant for Arrest Program funds.

In an effort to assist applicants, VAWO routinely guides applicants to page 9 of the VAWO Arrest Program Application and Program Solicitation Guidelines—B. Certification of Eligibility—for sample language that may be included in applicant letters once the review and analysis of state laws, policies, and practices has been completed.

NEW MEXICO

Question. The State Justice Institute (SJI) saw its funding cut from just over $6 million in fiscal year 2001 to $3 million in fiscal year 2002. While the SJI is requesting $13.55 million for fiscal year 2003, the President is now proposing to zero this out. The Judges in New Mexico and the American Bar Association inform me that this has been a very useful program for the judiciary in New Mexico, providing funding for judicial education programs, court administrative processes, community-wide education concerning issues such as domestic violence, substance abuse, and services to pro se litigants.

Are these programs that make a difference in the efficient administration of justice throughout the country?

What will be the effect on the administration of justice if the State Justice Institute is not funded by the Federal Government?

Answer. The State Justice Institute was established by Congress in 1984 as a private, non-profit corporation to make grants and undertake other activities designed to improve the administration of justice in the United States. It was created as an independent agency, and is not funded or administered through the Department of Justice. Therefore, the Department has not undertaken a review of the functions of the State Justice Institute nor are we able to provide any views on this issue.

Question. Attorney General Ashcroft, the Chief Justice of the United States Supreme Court, William H. Rehnquist, and the Chief Circuit Judge for the Tenth Circuit, Deanell Reece Tacha, have described the southwest border states as being in "crisis." This description is based upon the massive number of cases that each federal judge currently has on his or her docket. Chief Circuit Judge Tacha expressed her concern about the district of New Mexico in particular. The district of New Mexico ranked fourth in the nation in criminal filings per judgeship in 2001.

Based upon the experiences of the United States Attorney practicing in this district, would you agree that the judicial system in the district of New Mexico is in a state of crisis?

What would help to alleviate the problems that are making the administration of justice so difficult?

Answer. I am not in a position to characterize the state of the judicial system in the district of New Mexico. Congress, the Administration and the Department have placed considerable emphasis over the last several years on the accelerated rate of crime along the southwest border, especially in illegal drug and alien smuggling. This has led to additional allocations of law enforcement resources for the southwest border states in recent years. As a result of this increased law enforcement pres-

ence, more immigration and drug-related cases are being brought at all levels of the judiciary—state, local, and federal, alike.

In the last few years, the federal criminal justice system across the entire southwest border has processed an unprecedented volume of new cases. This has been made possible through a combination of increased funding received from Congress and a focused Department Southwest Border strategy. Over the last several years, the Executive Office for the United States Attorneys has been addressing the issue of increased violent crime by increasing the number of attorneys and support staff along the southwest border. Specifically, in the District of New Mexico, a total of 22 attorneys and 16 support positions have been added since fiscal year 1997 to help manage this workload. This heavy workload, in turn, impacts the federal judiciary. Increased staffing combined with more efficient case processing procedures has been highly beneficial to the United States Attorneys along the southwest border. An increase in resources and further refinements of the court's case processing procedures might yield similar benefits for the courts.

SCAAP ELIMINATION

Question. Mr. Attorney General, it is clear from the President' budget request that there is a desire to reorganize grant programs to states in an effort to make those programs more efficient and more accessible to the neediest of areas. This desire has resulted in the proposal to completely eliminate funding for many grant programs that states have come to rely upon for assistance.

The State Criminal Alien Assistance Program (SCAAP) is just one of these programs that have been proposed to be eliminated. The purpose of this program is to reimburse some of the expenditures states make when they house and/or transport federal prisoners or detainees, an activity that is vital not only to state interests but federal interests as well. The two entities working together produces the best results for everyone. A program such as this is incredibly important in states like mine where there is a significant amount of human border traffic and the need for law enforcement is great. We cannot expect states to make up for federal expenditures out of their own budgets. I again make the point that this is only one of many programs the President has proposed to eliminate.

I am aware that the President's budget request proposes a new grant program that consolidates many of the aforementioned grant programs but I am concerned that the decrease in funds and no real clear mission for these new grants will leave many states in the proverbial lurch with nowhere to turn.

What is your opinion on this matter Mr. Attorney General and do you have any suggestions for the states that have come to rely on SCAAP funds in order to assist in an activity that is really federal in nature?

Answer. One of the Department's top priorities in fiscal year 2003 is to prevent illegal entry of non-citizens into the United States. SCAAP has provided reimbursement for illegal aliens incarcerated for state and/or local charges or convictions, but it is not intended to reimburse for illegal immigrants who are temporarily held in local jails following their arrest by federal authorities. Such detention costs are the responsibility of the Immigration and Naturalization Service. In 2003, the Department of Justice is requesting approximately $1.4 billion for its new Office of the Detention Trustee to provide bed space for the anticipated detainee population in the custody of the U.S. Marshals Service and the INS. The President's budget also requests $3.2 billion for Immigration Enforcement to stem the flow of illegal aliens into the United States. This represents a $764 million increase over the level of funding provided in 2002. We believe that this increase will result in a reduction of illegal immigration, which in turn should reduce alien criminal activity in the long term.

In addition, DOJ is directing other resources to border states to help them with the costs of processing, detaining, and prosecuting drug cases referred from federal arrests through the proposed $50 million Southwest Border Prosecution Initiative. The $50 million requested in 2003 will provide financial assistance to county and municipal governments in Texas, New Mexico, Arizona, and California for the costs associated with the handling and processing of drug cases referred from federal arrests. These funds may be used for hiring and training more prosecutors, probation officers, and court officials, court costs, detention costs, courtroom technology, administrative expenses, and indigent expense costs. Grants will be awarded based on a number of factors, including southwest border county caseloads for processing, detaining, and prosecuting drug cases referred from federal arrests.

Question. Mr. Attorney General, as you are aware, the President's budget completely eliminates funding for the State Criminal Alien Assistance Program, a $565 million reduction from fiscal year 2002. I understand that the President's budget for

law enforcement emphasizes programs that will have a tangible impact on improving homeland security or reducing violent crime. However, I am highly concerned about the impact cutting this program will have for many already-struggling counties in New Mexico and the southwest.

In past years, I have fought to increase SCAAP resources to relieve the significant burden imposed on local communities by the costs of detaining criminal aliens. The State of New Mexico received $1,672,821 in fiscal year 2001 funding through this program. However, a recent United States-Mexico Border Counties Coalition study detailing costs associated with processing criminal illegal aliens estimates that New Mexico's three border counties spend an estimated $4.7 million annually on criminal justice, law enforcement and emergency medical care for illegal immigrants.

According to the same study, the five state district courts in New Mexico's border counties are swamped with caseloads that are more than four times the national average. These counties' law enforcement and criminal justice systems are overwhelmed with illegal immigrants who are apprehended at the border for possession of drugs in quantities too small to meet the threshold established by the former U.S. Attorney for federal prosecution.

Border counties are growing faster than any other region in the nation. At the same time, they have a lower per capita income and a higher percentage of people below the federal poverty level than any other region, making them the least able to foot the cost of services for criminal illegal aliens.

In the face of burgeoning weight on border criminal justice systems, does the Federal Government have an obligation to assist states and localities with the disproportionate burden they carry in adjudicating criminals who have entered the United States illegally?

Answer. As discussed above, the 2003 President's budget has proposed large increases to the immigration enforcement function of the Immigration and Naturalization Service, increases which should lead to a tighter border and a reduction in the numbers of illegal aliens states must deal with over the long term.

The Federal Government has assisted and will continue to assist the border states by providing funding targeted at defraying the costs of adjudicating criminal aliens. To address the burden placed on southwest border county prosecutors, the 2003 President's budget requests $50 million to continue the Southwest Border Prosecution Initiative.

Originally administered by the Executive Office of U.S. Attorneys (EOUSA), the Southwest Border Initiative's initial purpose was to reimburse local district attorney offices along the southwest border for the costs of processing, detaining, and prosecuting drug cases referred from federal arrests. In 2001, $12 million was provided.

In 2002, funding was increased to $50 million and responsibility for the program was transferred to OJP. The program will provide financial assistance to county and municipal governments in Texas, New Mexico, Arizona, and California for the costs associated with the handling and processing of drug cases referred from federal arrests. These funds may be used for hiring and training of prosecutors, probation officers, and court officials, court costs, detention costs, courtroom technology, administrative expenses, and indigent expense costs. Grants will be awarded based on a number of factors, including southwest border county caseloads for processing, detaining, and prosecuting drug cases referred from federal arrests.

Question. Could the cost of law enforcement, criminal justice and emergency healthcare services for criminal illegal aliens pose a security risk by draining resources from local entities primarily tapped for homeland security, such as emergency medical technicians and law enforcement personnel?

Answer. The 2003 President's budget is requesting $38 billion for homeland security, an $18 billion increase over the 2002 level. Included in the $38 billion request is $3.5 billion in assistance for state and local emergency responder training and equipment and increased funding adding 570 border patrol agents, 30,000 federal airport security workers, scores of air marshals and a host of other law enforcement personnel to deal with homeland security issues. Thus, it is unlikely that reductions to certain long-standing state and local assistance programs aimed at reducing and preventing domestic crime will pose a security risk.

Question. What was the rationale for the Department of Justice eliminating funding to a program with direct impact on the viability of the law enforcement and criminal justice efforts of struggling localities?

Answer. SCAAP is a payment program designed to provide federal funds to states and localities who incur costs for incarcerating certain criminal aliens held as a result of state and/or local charges or convictions. In 2003, the Administration proposes to eliminate SCAAP funding for the following reasons:

—SCAAP does not advance the core mission of the Department of Justice. Since 1995, approximately $3.45 billion has been distributed to eligible state and local

jurisdictions. By statute, SCAAP funds are unrestricted, and recipient jurisdictions may use these funds for any lawful state or local purposes, not limited to correctional or even criminal justice purposes. Thus, in contrast to other programs administered by the Department, funds awarded under SCAAP do not directly support efforts to develop the nation's capacity to prevent and control crime, administer justice or assist crime victims, and funds awarded are not in any way linked to overall performance or evaluation data.

—The redirection of SCAAP funds provides resources that will more directly target specific crime-fighting efforts. Border states (Texas, New Mexico, Arizona and California), which received a large proportion of SCAAP funds, will continue to be beneficiaries of the expanded Southwest Border Assistance Initiative. Under OJP's Southwest Border Assistance program, funds may be used for hiring and training more prosecutors, probation officers, and court officials, court costs, detention costs, courtroom technology, administrative expenses, and indigent expense costs. Grants will be awarded based on a number of factors, including southwest border county caseloads for processing, detaining, and prosecuting drug cases referred from federal arrests.

—Redirecting resources from SCAAP will provide needed resources for other Departmental and Administration initiatives. Funds made available through the proposed elimination of SCAAP will be devoted to areas such as federal counterterrorism and immigration enforcement efforts. This redirection will enhance DOJ's ability to meet its core mission and operational priorities.

SUBCOMMITTEE RECESS

Senator HOLLINGS. We thank you very, very much, and our next hearing with judiciary will be next Tuesday, March 5, at 10 a.m. in this same room. We thank you very, very much, John. We appreciate it.

Attorney General ASHCROFT. Thank you.

Senator HOLLINGS. The subcommittee will be in recess.

[Whereupon, at 12:35 p.m., Tuesday, February 26, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, March 5.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

TUESDAY, MARCH 5, 2002

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:01 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Reed, Gregg, and Domenici.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

STATEMENT OF HON. ANTHONY M. KENNEDY, ASSOCIATE JUSTICE

ACCOMPANIED BY:

HON. CLARENCE THOMAS, ASSOCIATE JUSTICE
SALLY RIDER, ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE
WILLIAM SUTER, CLERK OF THE COURT
PAMELA TALKIN, MARSHAL
ALAN HANTMAN, ARCHITECT OF THE CAPITOL
TONY DONNELLY, DIRECTOR OF BUDGET AND PERSONNEL

OPENING REMARKS

Senator HOLLINGS. Good morning. The subcommittee will come to order. We have the pleasure of welcoming Justice Kennedy and Justice Thomas at our hearing this morning relative to the Supreme Court and its budget. We welcome you both.

Senator Gregg, do you have a comment?

Senator GREGG. It is a pleasure to be here and have the Honorable Justices join us again. I notice there must have been a coup d'etat, because the last 3 or 4 years, Justice Souter was here. He appears to have been replaced.

Justice KENNEDY. We have got him busy, Senator.

Senator HOLLINGS. Very good. We recognize you both at this time and you can present your testimony before the committee. The full statement will be included in the record and you can present it or summarize it as you wish.

Justice KENNEDY. Good morning, Mr. Chairman and members of the committee. Justice Thomas and I bring you greetings from our

colleagues. Thank you very much for having this hearing. I will just summarize my opening remarks, Mr. Chairman.

We have with us today a number of our Court personnel and I will just proceed down the row so that you can identify them: Paul AcAdoo, who is with our Marshals Office; General William Suter, who is the Clerk of the Court, and who I might say runs the best clerk's office of any court in the country; the Marshal of our Court, Pamela Talkin; Tony Donnelly, who is our Budget and Personnel Officer, and who is well known to your staff. He has been working in very close cooperation with them and we appreciate that. Sally Rider, the Administrative Assistant to the Chief Justice is right behind me. We also have, of course, Alan Hantman, the Architect of the Capitol.

Now, I know, Mr. Chairman, that waiting in the wings, we have Judge Heyburn and Ralph Mecham of the Administrative Office and our budget is just about 2 percent of the Courts' total budget, so I recognize that order of priority.

But it is a pleasure to appear here, Mr. Chairman. You know, when we talk to judges from abroad in Africa and Russia and Asia and even in Europe, they talk about this process. They are fascinated with how we have established judicial independence. We tell them, as I say in our opening statement, that the tradition has been, but, of course, it is your constitutional responsibility and your constitutional right to determine the level of funding. The tradition has been you give some deference to us if you are satisfied we have approached our task in the right way and that we have been prudent and careful in analyzing the figures.

SUPREME COURT BUDGET

Now, the budget request, because of the vagaries of the budgeting cycle for our major request, which is the building, is actually less than last year, and I would be very happy if we could make that the headline. As we all recognize, however, we are asking for an operational increase. We are asking for an increase of $6,288,000 on a base of $40,036,000. That is a 16 percent increase. Two-thirds of that increase is for adjustments to the existing base.

The staff did question, and I raised the same question, whether we should have put pay increase for our police in the adjustment base, but our budget officer assured us that was the proper thing to do. I might point out that we have lost some of our very best policemen to the air marshals. They are being paid so highly that we find it difficult to keep some of our very best people, but we are filling those positions.

The increased part of our operations and expenses budget, quite apart from the building, is $2,268,000 and that breaks up really, Mr. Chairman, into two parts. One, we are asking for 14 positions. I think four of those can be described as relating to the workload of the Court. We need an extra telephone operator, we need a case analyst in the clerk's office, and we need two librarians.

Our workload is increasing. If you look at page 1.11 of the budget request submission, you will see that we are pushing toward 9,000 cases a year, and I think we will soon be at 10,000. This means that we must support and sustain and update our computer function. We are computer dependent. We are electronic dependent in

our Court. We are asking, then, for five positions for training and upgrading and maintaining and improving our computer skills. As of this point, we can barely keep up with what we have, but we want to go to the next level of learning because the committees of the Congress have always requested us to do that.

We have five websites. We are heavily dependent on electronic information for much of the administrative work of the Court. Just last year, the Clerk of the Court realized how much time was spent in corresponding with State bar associations about attorney admissions and attorney qualifications. That usually took at least two or three letters each way for each attorney. They devised an electronic system, and I think 38 States are already on this; and it has just been marvelous.

We, during the disruptions of September and October, were very concerned that case filings were in the mail and that they be protected. The post office protects the filing by the postal date. But we were concerned that we would just be way behind because we were not receiving the petition. It would be 2 months before it would come through the mail.

So our Clerk, I think very creatively, got hold of the 30 or 40 biggest printers in the country, found out who had been printing petitions for certiorari and then contacted all the attorneys by e-mail and said, send us your filing by e-mail. By doing that, he was able to pick up 400 cases that otherwise would have been stalled for a couple of months. We think we have cured that gap, but that just shows you how we are dependent on information technology.

The Clerk of the Court prepared for us a list of the hits on our website for just December of last year and that December was roughly a normal operating month. We received over 1,200,000 hits on the computer and we had close to 150,000 net site sessions, where the person asks questions and gets answers and stays with it for a while. That is why we think this request is prudent; and we think it is urgent.

The other positions, Mr. Chairman, are for our offsite facility. That should be up and running in April. That is where we are doing our mail screening. That is where we moved some of the hazardous functions that are now in the Court and should not be there for the maintenance of the Court, the woodshop, et cetera, and we need those positions for that offsite facility.

BUILDING MODERNIZATION

Ordinarily, Mr. Chairman, as you know, it is the prerogative of the Architect of the Capitol to present the portion of our budget which pertains to buildings and grounds, but since there is such a substantial appropriation there, let me just quickly review that history.

As you will both remember, we testified in my earlier tenure on this committee that we were expecting a major request for building improvement, and we said it could be as high as $20 million. The architects then found that all of the systems in the building had to be replaced. We had not known that. When we first heard figures, we heard them in the area of $170 million and we were simply shocked and notified your staff immediately. We were concerned that we had given testimony it would be $20 million and all

of a sudden we are hearing $170 million, so we did three or four things.

We met with the Architect of the Capitol and made it clear that this was not to be an elaborate, precise, historical reconstruction, where you match the original paint and take a great deal of time with that. We are respectful of the building, the building will look beautiful, but it is not a precise historical reconstruction, and that is a substantial cost savings.

Second, the Architect told us that it was normal in a project of this size to have a peer review where other architects and other estimators, other engineers from the outside come and ask the necessary questions to make sure that the budgeting has been done in the appropriate way. We did that and we hired our own architect to make sure we were asking the right questions. The result was a project cost of slightly over $122 million. Over half of it has been appropriated. We are asking in this budget for the remaining appropriation of $49 million plus.

Mr. Chairman, we were very careful to ask whether there would be a cost saving if we moved out of the building and the answer was definitely not. The plan is to more or less work around us. They propose to come into each chambers only once, so each Justice is only disrupted one time. The construction, if authorized by the Congress and if the bidding process goes as anticipated, should begin in 2003 and we will have to live with our jackhammers and yours, which are across the street, until 2009, but we are prepared to do that. We think it is absolutely necessary for the building.

We are even concerned with this timeline. We are in danger of a major systems failure and the electric system at any time, and the same with the air conditioning, but they are patching it together, finding parts for something that was manufactured a long time ago. We are the only major building on Capitol Hill that has not been renovated since it was built. It is 65 years old. In a way, I think we are maybe the victims of our own thrift because we have let it go for that long.

But we think it is absolutely necessary and we very much appreciate the meetings we have had with you and your staff to explain this figure, to explain the necessity for the project, and we very much appreciate your recognizing the importance of preserving the symbolism and the real operational value of the Court.

PREPARED STATEMENTS

In closing, let me say that when we do go to these foreign countries, I am and Justice Thomas is, all of us in the judiciary and I am sure you in the Congress are immensely proud of the judiciary of the United States and we most appreciate your concern in examining our specific request this morning. Thank you.

Senator HOLLINGS. Very good.

[The statements follow:]

PREPARED STATEMENT OF JUSTICE ANTHONY M. KENNEDY

Mr. Chairman and Members of the Committee, Justice Thomas and I appreciate this opportunity to appear before your Committee to address the budget requirements and requests of the Supreme Court for the fiscal year 2003. We bring you greetings from the Chief Justice and from all of our colleagues at the Court.

We have with us today Sally Rider, Administrative Assistant to the Chief Justice; Pamela Talkin, Marshal of the Court; William Suter, Clerk of the Court; and Tony Donnelly, Director of Budget and Personnel.

Judicial independence as it now exists in the United States is still a primary objective for emerging democracies in the modern world, as they seek to establish enduring constitutional structures of their own. The same question is asked again and again in meetings in Africa, in the Russian Federation, in Asia, in South America, and it is this: What are the requisites of judicial independence? One of the points we stress is that judicial independence is not a single historical event but instead a constant, never-ending process.

An aspect of this process which fascinates outside observers is the very implementation of checks and balances that we engage in this morning. We explain the budget process by saying that while it is the privilege, and the constitutional responsibility, of the Congress to determine the funding of the courts, tradition has it that the judiciary's own assessment of its needs be given some deference. In this respect, much depends upon the confidence you place in our submissions. It is our principal objective in coming before you today to assure you that in making our assessments, we have tried to conform to the highest standards of caution and prudence.

As is customary, the Supreme Court's budget request is in two parts. The first is for Salaries and Expenses of the Court. The second is for Care of the Building and Grounds. To address what we understand to be the concerns of the Committee, and to allow full consideration of the major funding request for modernization of our building, we will be pleased to talk about Buildings and Grounds in much more detail than usual.

Let me turn first to Salaries and Expenses. With regard to this portion of the Court's budget, our total fiscal year 2003 budget estimate is $46,324,000. This is an increase of $6,288,000, or 16 percent, over the budget authority for the current fiscal year, 2002.

Most of the fiscal year 2003 increase represents base adjustments—that is, required increases in salary and benefit costs and inflationary increases in fixed costs. Specifically, $3,533,000 of the adjustment represents required increases in salary and benefit costs. Also, $487,000 is requested for inflationary increases in fixed costs, allowing us to keep up with rising costs in all of our operations. This results in a $4,020,000 increase to the budget base.

We have included in the adjustments to base two items related to safety and security that generate unavoidable increases in costs. We request $871,000 to keep our police pay schedule on par with the Capitol Police pay schedule and to cover police overtime costs, and we request $237,000 for the increased cost of larger offsite warehouse facilities, which include an offsite mail screening facility. Both the police overtime and the offsite mail handling are directly related to the need for increased security since the terrorist attacks last September.

In addition, we request $2,268,000 over base adjustments this year to fund fourteen positions and two program increases. Most of the increase, $1,911,000, is related to technological improvements in automation and security. During the last ten years, the Court's use of information technology has increased to such an extent that an automated system is now an essential part of every Court function. We rely on automated systems to docket cases; to draft and publish the Court's opinions; to procure equipment, books and supplies; and to pay bills. The automation has increased effectiveness and efficiency; but automated systems and equipment must be maintained and upgraded. As computer hackers and other wrongdoers become more sophisticated, we must try to stay ahead of them and maintain secure, up-to-date data systems. We were unsuccessful in last year's request for additional funds and staff to address these critical needs and as a result, our current resources are stretched to the limit in keeping our existing systems running. In previous years, this Committee has encouraged the Court to adopt the most modern work processes by using the latest technology. We ask the Committee to support our current request for increases in the Court's automation program in order to enable us to make necessary improvements. At present, our technical staff must spend its time maintaining existing, inadequate systems and equipment, leaving insufficient resources for essential improvements. Security concerns arising after September 11 only exacerbate the situation.

We request four technical positions in the Court's Data Systems office: two PC/Network Specialists to test and deploy new equipment and technology, a Local Area Network/PC Security Specialist to develop and support Intranet/Internet applications and ensure the security of the Court's sensitive data, and a Programmer/Analyst to develop new software applications. The total cost of these four positions is $216,000.

We also request $100,000 for a consulting service contract to upgrade the library's research inquiry database. We are requesting an increase of $1,550,000 to the data systems area of the Court's budget to fund new software and hardware technologies, to provide training, and to enhance computer security. The Court will take necessary steps to ensure cost-effective selection of data systems, and we will try to achieve savings wherever possible. With this authorization we intend to fund such activities as: upgrading equipment for Justices, Court staff and the Court's technology lab; engaging consultants to evaluate and enhance security measures; increasing automation skill levels of Court staff; and introducing specialized technology for security.

The remaining $402,000, an increase to the Salaries and Expenses account, is to add ten positions. Seven of these we asked for in fiscal year 2002 but did not receive: a telephone operator to perform telephone console operations duties, a secretary to provide budget, procurement and other administrative support for the Data Systems Office, and five logistical support positions for our off-site warehouse space—which has been expanded to meet modernization needs and address security concerns such as offsite mail screening. The other three positions we wish to add are: a library technology assistant to support three major library systems with training and user support, a special collections librarian to assist in conserving the Court's rare books and archival records and briefs, and a case analyst to address the docketing of an increasing number of cases filed.

Since we appeared before this Committee five years ago, we have made substantial progress in the planned modernization of the Supreme Court building. Our building, which is a splendid and revered symbol of justice in our democracy, has not been updated since it opened in 1935. Unlike the White House, the Capitol, and most of the government buildings on Capitol Hill, the Court building has had no major renovation. Its basic systems fail to meet modern standards. The heating and air conditioning, and the mechanical and electrical systems must be replaced. They have long outlived their expected useful lives and now require constant maintenance in order to avoid a catastrophic failure. The engineers who designed the electrical system had not heard of computers, faxes or copy machines. The longer we live with these outdated systems, the more likely we are to experience a disruptive—and possibly dangerous—system failure.

The full cost of this project is $122,283,000. Of that sum, the remaining appropriation required is $49,696,000.

We have worked in close cooperation with the Architect of the Capitol, the design architects, an independent peer review panel and our own consulting architect in order to develop the most efficient plan to modernize and upgrade the building. Even prior to September 11, we were considering and designing upgrades to security and safety for building occupants and visitors.

We received the bulk of the funding for the modernization project in fiscal year 2002 and we appreciate your acknowledgment of this necessity. This year, we seek the final portion of funding so that we can keep the project on budget and on schedule. Assuming that we receive this final funding in this fiscal year, we intend to begin construction just over a year from now, in June 2003.

We are convinced that this project is essential for the continued safe and efficient operation of the Supreme Court. We underscore both the necessity of the work and its absolute urgency. Mr. Alan M. Hantman, Architect of the Capitol, will present a separate statement to the Subcommittee regarding this portion of the total budget.

This concludes a brief summary of our request. We will be pleased to respond to any questions that the Members of the Committee may have.

PREPARED STATEMENT OF ALAN M. HANTMAN

Mr. Chairman, I am pleased to submit a formal statement to present the budget for the care of the building and grounds of the Supreme Court.

As background, the Office of the Architect of the Capitol is the agency responsible in the Legislative Branch for the structural and mechanical care, maintenance, cleaning, and operation of the buildings and facilities supporting the Congress, including the Capitol Power Plant. This responsibility extends to the Botanic Garden and the structural and mechanical care and maintenance of the Library of Congress buildings and grounds. This office also undertakes the design and construction of new facilities and alterations of existing facilities.

For the Judicial Branch, the Architect of the Capitol, by authority of 40 U.S.C. 13a–13b dated May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court building and grounds. My responsibilities do

not include custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in the Court's salaries and expenses appropriation.

Working with the Court, my emphasis has been on improving the safety and security of the personnel and building structures. The fiscal year 2003 request continues the efforts to improve the security and safety posture. In the past several fiscal years we placed four new security barricades in the driveways, and upgraded security cameras in all locations. In fiscal year 2002, we have installed bomb blast window film and plan to install a digital recorder by late spring to further increase building security surveillance options. Additionally, we've started work on the fire alarm system and fire pumps to improve safety. Although these last two projects are not proceeding as quickly as I would like, I'm working to complete them as soon as possible.

I'm requesting $53,626,000 to meet the requirements of the Court for the care of the building and grounds in fiscal year 2003. This request supports three major areas: $49,696,000 for the Building Renovation Project, $3,687,000 to maintain current operations and maintenance services, and $243,000 in program changes. This request is $13,904,000 or 20.6 percent less than the fiscal year 2002 available amount of $67,530,000. The funding requested is less than that for fiscal year 2002 because the funds required to support the Supreme Court building renovation and modernization project are less than the amount appropriated last year.

BUILDING RENOVATION AND IMPROVEMENTS

By far, the most significant item in this budget is the funding requested for the modernization of the Supreme Court building. The Supreme Court building, unlike other buildings on Capitol Hill, has not been upgraded since its completion in 1935. At 67 years of age, virtually all of its building systems have far exceeded any reasonable life expectancy, and they require an aggressive daily maintenance schedule to continue operating. In addition, building life safety, security, and essential building system requirements have advanced greatly since 1935. It has become critical that the Supreme Court building is brought up to current standards, since each year that the project is postponed potential risks increase significantly to more than 400 occupants and 1,000,000 visitors a year. For example, the building incorporated the latest in fire resistant technology when it was built, but modern life safety systems, consisting of fire detection, fire suppression, fire alarms, and building egress, have not been provided since the building was completed. Also, security concerns were significantly different in federal facilities in 1935 than they are today—especially after September 11. Likewise, essential building systems, consisting of mechanical and electrical components, have not been upgraded since 1935. Virtually all systems have become obsolete and replacement parts are not available.

The remainder of the funding for the building modernization has been requested in one lump sum in order to keep the project on time and to award a single construction contract. We have continued to move forward with the project with an eye toward awarding a construction contract in the spring of 2003. If we do not receive the remainder of the funding in this budget cycle, we are certain to face a significant delay in the project as well as a significant increase in the cost of the project. A single construction contract is important for several reasons: to achieve single source contractor accountability for integration of the components that comprise the life safety, security, mechanical, and electrical systems; to maximize success in the performance of the integrated components; to minimize damage to the historic building by disturbing ceilings, walls, and floors only once; and to minimize the disruption of court occupants during renovation. A single construction contract is also the most cost-effective, since every construction contract must bear an overhead cost to contract, move on and off the project site, provide tools and equipment, and disturb ceilings, floors, and walls.

With the support of this Subcommittee, much progress has been made toward refining the scope and design for the project. The budget request for this project is now based upon completion of the preliminary design. I am pleased to report that the cost estimate for the modernization project remains at $122 million.

As you may be aware, in fiscal year 1999 we engaged in an independent peer review of the project to objectively evaluate whether the scope and cost were valid. That effort took place in conjunction with an additional set of independent reviewers brought in by the Court. The review took place and the conclusions were threefold: that the scope was valid, that the cost was reasonable, and that the renovation was necessary and should not be delayed. We are now in a position to begin this project with the funding requested in fiscal year 2003.

Currently, a total of $72,587,000 has been appropriated for the modernization project. In fiscal year 1998, an amount of $225,000 was appropriated on an annual

basis to provide for a study on improvements and upgrades to the Supreme Court building and systems. Preliminary design of this project began in fiscal year 1999 with an amount of $1,529,000 which was maintained in the budget base in fiscal year 2000 for continued design work, as well as an amount of $2 million for window upgrades. In fiscal year 2001 an amount of $3.5 million was provided for continued design work, and in fiscal year 2002, $63,804,000 was appropriated. The fiscal year 2002 amount consists of $33,804,000 that was appropriated within the Judiciary Appropriations Act, 2002, and $30,000,000 that was provided in the emergency security supplemental for fiscal year 2002, as part of Division B of the Defense Appropriations Act, 2002. This amount will allow us to continue on schedule. If we receive the remainder of the funding in fiscal year 2003, construction will begin in mid-2003.

Therefore, to attain the total amount of $122,283,000 for this project, it is requested that $49,696,000 of $63,804,000 made available in fiscal year 2002 be retained in the budget base for fiscal year 2003 for full funding for the construction of the project.

OPERATIONS AND MAINTENANCE

As noted above, I'm requesting $3,687,000 to maintain current operations and maintenance services. Costs for current operations and maintenance services have increased from last year by $111,000 for mandated pay-related costs and $159,000 for higher costs projected for utilities, training, exterior point and caulking, and supplies.

PROGRAM CHANGES

A total increase of $243,000 is requested for program changes. An increase of $178,000 will support the hiring for three additional maintenance mechanic positions. The positions are needed to support significant increases for preventive maintenance for all equipment in the plumbing, HVAC, and electrical trade disciplines. Another $65,000 is requested for two capital budget projects. These projects are to upgrade the kitchen fire suppression system ($10,000) and to replace the metal detectors ($55,000).

I assure the Chairman and Members of this Subcommittee that I will work closely with you and the Subcommittee staff, as well as the Court to achieve adequate funding for the care of the building and grounds.

Mr. Chairman, that concludes my statement and I will be pleased to respond to any questions that you and the Subcommittee may have.

Senator HOLLINGS. Justice Thomas, did you have any comment?

Justice THOMAS. Mr. Chairman, I am satisfied with what Justice Kennedy has said.

Justice KENNEDY. He does not always say that.

Senator HOLLINGS. Well, we are glad to get it on record here.

COURT AUTOMATION

Justice THOMAS. But I would like to add that the additions in the offsite facility as well as the technology area are basically built upon requests that we made last year. In order to keep up technologically, we have had to rob Peter to pay Paul, but this year, Peter is broke, too, and there is just no way we are going to be able to be current technologically if we do not make some quick changes. I am beginning to sound like a broken record because I remember saying that at EEOC when I was there, and here I am at the Court again saying the same thing.

But we are falling behind and I think it is imperative that, because we are so information dependent in doing our jobs, in research and producing opinions and in managing the caseload, the docket, that we be current technologically. The Court was much farther behind than many institutions when I arrived, and it is not because of me that it has caught up somewhat, but during my decade on the Court, we have moved quite a bit, but we are still quite

far behind. I think it was critical last year and it is even more critical now that we get caught up.

So these are sort of redundant requests and they have to be looked at in the context of our request last year. That is all I have to add, Mr. Chairman.

Senator HOLLINGS. Very good. I am convinced that the committee and the Congress will take care of that technological need. I think at the time when Lewis Powell came to the Court from Richmond and he said he had a way better office over in Richmond than he had over here in Washington as a Supreme Court Justice we were far behind, word processing, computers, and everything else like that. Technology, of course, will save tremendous time and burden on the Court. There is no question there with respect to that, or in this Senator's opinion, with respect to the construction, that $49.7 million requested to complete funding for the Supreme Court rehabilitation project.

JUDGES' PAY

There is one question, and it is in the headline in the morning Post, relative to pay. I think the Court did the proper thing with respect to not considering that issue further in the sense that your statement, Justice Kennedy, tradition has it that judiciary's own assessment of its needs be given some deference. It is good to have that word "some."

Some in the Congress feel that the Court has had an attitude that tradition has it that the judiciary's own assessment of its needs be given deference, period. The truth of the matter is, on both sides of the ledger, that was not the tradition that prevailed with Justice Powell. In that case, the Court was not asking enough, and on our own, we increased at this particular committee level all the programs with relation to the technological needs.

On the other hand, for the tradition here of the past several years, judges' pay has been tied to the congressional pay and that was made permanent in law last year. If there is any question still, and I am going to look at it and see, perhaps the judges' inclusion in that 1989 provision for COLAs be deleted so there is no question about it for the simple reason that if it were otherwise, the approach that has been taken by some on the Court or within the judiciary that once we passed a COLA in 1989, it would be unconstitutional to repeal that provision from there on. That would be a permanent increase each year, however the economy developed.

I, for one, am not up to speed and fully read because I have not had an opportunity this morning. When reading that Post article, though, I said, wait a minute here, and this feeling that I expressed is within the Senate and the Congress. I can tell you that, because we almost had to sneak in to get last year's pay increase. We had to what we call fence the money in another budget to make sure that giving you the increase would not raise a point of order under a certain Rule 28 that it had never been provided that money in either bill.

So we are very respectful of the Court and the tremendous job the Court is doing. There is no question about that. You folks do know your needs better than any, but ordinarily speaking, that pay issue is tough. I happen to think Senators are underpaid, and I

have stated that, not now, but I stated that 20 years ago and everything else of that kind. I have school board superintendents and so forth back home that are paid way more and do not have to keep up two homes or anything else like that. So we are not trying to hold the judges down, but we are trying to politically, I guess, get some way to attract just working people to public service here in the Congress rather than millionaires.

Having said that, let me yield to my distinguished former chairman.

Senator GREGG. Thank you, Mr. Chairman.

It is always a pleasure to have members of the Court appear at this hearing. I have always felt it is a peculiar situation, and as a result, I have never really taken the opportunity of the legislative branch to be very inquisitive. I am not sure what our Founding Fathers had as their basic philosophy here, but clearly in the separation of power issue, the question of funding for the Court was one of the gray areas. But it does come from the Congress and, therefore, we do have a responsibility in this area, but it is still a peculiar symposium, in my opinion.

I would say I want to second the chairman's comments relative to the decision on pay raise. I happen to have aggressively pursued an effort to delink the two, the court system and the Congress. I feel very strongly that we need to pay our Federal judges more in order to attract and keep quality people on the Federal court, especially on the district court level, because of the fact that we have got people with young families and it is very hard for them to raise those families compared to what they could make if they were not on the court. But, unfortunately, we have not been able to sell that to our colleagues. However, someday, hopefully, we will be able to sell that concept to our colleagues. But in any event, the authority resides with us and I think the Court's decision in this area was an excellent one, not that you need our counsel as to what your decisions are.

We may appear before you as this committee in the future, as a matter of fact, and since we are not asking you any questions, hopefully you will not ask us any questions.

It is with an amicus brief on an issue that affects our jurisdiction rather significantly.

With that, I yield and appreciate the Justices appearing.

Justice KENNEDY. Mr. Chairman, our budget traditionally has not included any request for raise of salaries, and I think the deference that you and I referred to applies primarily to the resources of the judiciary rather than to the salaries.

I did not come here prepared to make a statement about salaries and I am reluctant to state too much, in part because I fear my remarks might be inadequate to express the feeling of frustration and disappointment on the part of Article III judges throughout the United States at having been specifically denied four different COLAs when all other members of the Government, save the Congress, received it.

The decision, I will not comment on. It stands. As you know, even the dissent from failure to grant certiorari is simply to say we think there is an issue here which should be heard, that there is an argument on the other side. It is not an indication of how even

the dissenting judges would rule. Four different Federal judges looked at this and two thought that the denial of COLAs was constitutional, two thought it was not. That decision just will simply have to stand and it speaks for itself.

I will say that from an institutional standpoint, the cloud of that suit has now disappeared. That suit is over. It is finished. It seems to me that once again, it is the absolute urgent responsibility of the Congress of the United States to address the fact that judicial salaries since 1970 compared with the national average of salaries, have declined in real dollar value 36 percent. We are losing, Mr. Chairman, judges at a record rate, and when you lose a judge who is eligible for senior status, you have to pay all his retirement, all his full salary anyway. But then you have to replace that judge by more judges, so it is not cost effective anyway.

We have a judge, just as one example—had a judge who probably was among the 10 most knowledgeable people in the United States on class actions. He handled our asbestos litigation. He had computer websites. He had models for how attorneys intervene, et cetera. It was just like a symphony, the way he conducted that massive suit. We lost him. He left. He left because the Congress would not even grant him a cost-of-living raise to keep his salary even.

There are two issues on the salary, as you well know, Mr. Chairman. One is to keep it from eroding. The other is what the base level should be compared to whatever benchmark you want to decide, private practice or law school deans or whatever.

The suggestion has been that there be a commission appointed to make a recommendation to the Congress, and if that is what the Congress needs to give it the necessary advice and guidance in this area, of course that should be done. How this is done is really for you to decide, but I simply would be remiss, although I was not prepared to make these remarks, in not telling you the urgency that my colleagues in the Federal judiciary feel on this point.

Senator HOLLINGS. I am glad I raised the subject, because your comments are well taken. Again, they can apply just to my crowd. I can see, as you give that one example, I can see Senator Nunn and Senator Bumpers and Senator Ford and Senator Johnson, and I can start going down a list. They just could not keep up two houses and everything else and really take care of their families like they were able to do, and therein lies our problem. I wish I had you in the Senate to make that argument.

Justice KENNEDY. I will come anytime, Senator.

Senator HOLLINGS. We will get you up more and more over here, because it is well taken.

Senator Gregg.

Senator GREGG. I obviously agree. I agree with the concern. I think it is very real, and as the Justice knows, this is not about the belief that we feel that judges are not being paid fairly. We know they are not being compensated adequately. It is about Congress. We have hitched our wagon to your star, regrettably, on this issue.

Senator HOLLINGS. Very good. We appreciate your appearance, both of you, here this morning.

We will now hear the testimony on the Federal judiciary, Chief Judge John G. Heyburn.

Justice KENNEDY. Thank you very much, Mr. Chairman.

Senator HOLLINGS. Thank you very, very much.

Justice THOMAS. Thank you, Senator.

Senator HOLLINGS. Thank you very much, Justice Thomas.

STATEMENT OF JUDGE JOHN G. HEYBURN II, CHAIRMAN, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

ACCOMPANIED BY:

JUDGE M. BLANE MICHAEL, MEMBER, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

LEONIDAS RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, AND MEMBER, EXECUTIVE COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Senator HOLLINGS. We also have Judge Michael of the Fourth Circuit and Mr. Mecham from the Administrative Office of the Courts.

Judge Heyburn, we will be happy to hear from you at this time, sir.

OPENING REMARKS

Judge HEYBURN. Thank you very much, Mr. Chairman, Senator Gregg. It is my very great pleasure to appear before a committee of Congress now for the sixth year and represent and present the judiciary's appropriation request.

As Justice Kennedy indicated, these sessions really never cease to remind me of the majesty as well as the delicacy of our Nation's Constitution. The Founding Fathers created an independent judiciary to protect the rights of all of our citizens, to enforce the laws that you enact, and to mediate the disputes between ordinary citizens, States, and our national government. I appear before you today to share with you the resource requirements that we believe are necessary to do exactly that job that the Founding Fathers had in mind.

I am pleased to have with me Judge Blane Michael from the Fourth Circuit and the great State of West Virginia, and Ralph Mecham, as you know, the Director of the AO from the great State of Utah. They will be pleased to answer any of your questions, as I will.

First, I want to thank you very much for the consideration in the appropriation that you gave the judiciary last year and to also thank your staff for the cooperative way that they have been working with our staff in helping us to answer the questions that you have pertaining to our request. We believe that process is absolutely vital and we are here to work cooperatively with you.

I look forward to answering any questions that you have about specific parts of our request. But before I have that opportunity, I want to make just a couple of comments emphasizing our primary commitments.

First, we do have a commitment, and I have a commitment, to try to explain and give you all the information necessary to make as clear as possible what we are asking for and why we need it. For fiscal year 2003, we are asking for an additional $500 million, and whether you are from Washington, Kentucky, South Carolina, or New Hampshire, that is a lot of money. We recognize that, even though, of course, it is a small amount compared to the entire Federal budget.

But, we believe that the increase is necessary to handle the judiciary's additional workload—a workload, I might add, that is largely uncontrollable. It is thrust upon the court in a variety of different ways: whether it is additional criminal cases; whether it is providing counsel for indigent defendants, who are an increasingly large percentage of those indicted for Federal crimes; whether it is to fund probation officers to take care of the increasing numbers of persons who are on Federal probation, or supervised release; or, whether it is providing for the increased security needs that we all feel post-9/11.

Second, we have a commitment to the stewardship of the funds that you give us each year and we take that stewardship very, very seriously. We do that by developing staffing formulas that try to objectively quantify the personnel needs that we have. We do that by encouraging teleconferencing and long distance learning, as opposed to travel, for court staff for educational purposes. We do that by trying to redeploy the resources that you give us to the proper places, or the proper court units, as technology changes. We do that by trying to determine and enforce standards for court buildings so that they are uniform and adequate. And, we are constantly looking for ways that we can be better stewards of the funds that you give us.

We know we do not have all the answers. In hearings such as this in the past, both before the House and the Senate, we hope that you believe we have been receptive to your ideas, because again, we know we are not the final answer to all the difficult problems that we face.

We know the budget is tight again this year as it has been in the past, but we are confident that we can do a good job with the funds you give us. We are one of the few entities that actually returns funds for use in a subsequent fiscal year. In fact, in this budget, we have already identified $100 million in what we term as carryover. It is not money in hand, but we try to identify for you as early as possible funds which we believe will be saved in the course of our normal operations and we have already identified $100 million. That is $100 million that you do not have to appropriate out of your fiscal year 2003 allocation of funds.

So we are looking forward to working with you. As Justice Kennedy said, it truly is an independent judiciary that sets apart our country in so many ways from the rest of the world. As an institution, we are a pretty conservative lot, I must say. We do not go out and create cases or look for cases. We wait for the cases to be brought before us and then we decide them, and that is how we do justice, one case at a time. And hopefully, the mosaic of those cases, we can all be proud of, and not just the decisions we agree with. We can all disagree, of course, with an individual decision,

but it is the way we go about it and the trust that we place in individual justices and judges and the responding trust that we receive from the public that makes our country so special and unique.

We create justice in many, many ways, enforcing our laws for the poor and the rich, and for people of all colors. We do it by talking to jurors and making them feel good about their public service and making them understand their role. We create justice by sentencing criminals who are dangerous to prisons. We do that by working with probation and pretrial services officers to give people who might benefit from a second chance another opportunity to start on the path of a law-abiding life instead of one of crime and prison. We do that by safeguarding our freedom of religion, our freedom of speech, enforcing the laws against discrimination, and preserving our equal rights.

PREPARED STATEMENTS

Chairman Hollings, Senator Gregg, we present to you today the budget that we believe is necessary to do all those things and we look forward to working with you.

[The statements follow:]

PREPARED STATEMENT OF HONORABLE JOHN G. HEYBURN II

INTRODUCTION

Chairman Hollings, Senator Gregg, and Members of the Subcommittee, thank you for giving me the opportunity to testify on the judiciary's fiscal year 2003 budget request. With me today are Judge M. Blane Michael, Judge of the United States Court of Appeals for the Fourth Circuit; and Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, who is also the Secretary of the Judicial Conference and a member of its Executive Committee.

Before addressing our fiscal year 2003 budget request, on behalf of the entire judiciary I want to express our sincere appreciation for the generous funding levels provided to the judiciary for fiscal year 2002. Faced with responding to both the need for additional resources due to the terrorist and anthrax attacks and continuing fiscal pressure, the Congress was able to provide significant resources for several of the judiciary's highest priorities. While we did not receive funding for all the new probation and pretrial services positions and clerks' office positions, you provided funding for a significant increase in the hourly rates paid to private panel attorneys representing defendants who cannot afford to pay for their representation; the judiciary's highest priority security needs; the first installment on the renovation of the Supreme Court building; and a COLA for judges. Although we did not get all the funding we requested, we are very grateful that you and your dedicated staff worked with us to fund our most pressing needs.

BUDGET OVERVIEW

The judiciary's fiscal year 2003 request totals $5.2 billion, a 10.7 percent or $507 million increase over available fiscal year 2002 appropriations, including the emergency counterterrorism supplemental funding. Three quarters of this requested increase ($375 million) is required to continue current operations such as pay and benefit adjustments, inflationary adjustments, increases in GSA space rental costs, an increase in filled Article III judgeships, and continuation of the enhanced security measures taken since the terrorist and anthrax attacks. The remainder ($132 million) is requested for programmatic and workload related needs such as: additional bankruptcy court staff to process an all time high number of bankruptcy filings; additional probation staff to supervise a record number of offenders released from prisons and living in our communities; and an increase in district court staff to handle the projected growth in criminal filings as the number of Department of Justice prosecutors continues to grow.

In addition to the funds requested, the judiciary has identified $129.8 million required to implement the Administration's proposed legislation to shift the full cost for selected retirement benefits for current employees from the Office of Personnel

Management to each individual agency. If this legislation is enacted, the judiciary would require a total appropriation of $5.4 billion. A detailed explanation of our fiscal year 2003 request is included as an Appendix to this statement.

IMPACT OF THE SEPTEMBER 11TH ATTACKS

An independent judiciary that all citizens trust and respect, which can fairly and expeditiously dispense justice and resolve citizens' disputes, is a fundamental tenet of our nation. The events of September 11th, and the anthrax incidents that followed, tested the judiciary's ability to maintain the high quality of justice our country deserves. I am pleased to report that the men and women of the Third Branch came together in a remarkable show of pride, teamwork, and patriotism to make certain that the work of the judiciary continued unabated.

In New York City, the 2nd Circuit Court of Appeals, the Court of International Trade, and the district and bankruptcy courts, probation and pretrial services offices, and federal public defender offices for the Southern District of New York are all located within a few blocks of the World Trade Center. The judiciary thankfully suffered no casualties as a direct result of the attacks. The attacks resulted in some facility damage, a disruption in court operations, ongoing air quality issues and exerted untold emotional stress on court employees. However, with the assistance of judiciary staff across the country, especially those in the Eastern and Northern Districts of New York, the District of New Jersey, and the Eastern District of Pennsylvania, these courts were able to continue to function. For example:

—Pretrial services officers from New York Eastern and New Jersey provided office space and telephones. They assisted in home confinement/electronic monitoring by following up on alerts for 86 defendants. In many cases, because streets were closed to vehicles and the subway was not operational, officers walked to appointments with defendants.

—The bankruptcy court, which was using the judiciary's new case management/electronic filing system, was up and running within hours after court executives contacted the Administrative Office to receive electronic backups.

—The 2nd Circuit Court of Appeals heard oral arguments at the Association of the Bar of the City of New York while awaiting permission to move back into its courthouse.

—District Court Clerks offices' staff in the Eastern District of Pennsylvania, the District of New Jersey, and the Northern District of New York volunteered to travel to the Southern District of New York to assist with various processing functions that were delayed due to the attacks.

IMPACT OF THE ANTHRAX ATTACKS

The anthrax attacks also had a significant impact on the judiciary. The most dramatic was the evacuation and temporary closing of the Supreme Court building. The Court continued to hear arguments at the ceremonial courtroom in the District of Columbia E. Barrett Prettyman United States Courthouse. Examples of other impacts on the judiciary include: finding alternative ways to receive time sensitive case materials from prosecutors, defendants, and civil litigants without utilizing the U.S. mail; receiving juror qualification questionnaires without relying on the U.S. mail to ensure that adequate numbers of jurors were available to continue trials; significantly scaling back on the Administrative Office's use of the U.S. mail to communicate with the courts and relying almost exclusively on electronic communications via the judiciary's nationwide Data Communications Network; and responding to anthrax hoaxes to ensure the safety of court facilities.

LONG-TERM IMPLICATIONS

In response to the terrorist attacks, the judiciary is taking steps to protect against future incidents that could disrupt the operations of the judiciary. These steps include heightened security, the development of a nationwide continuity-of-operations plan, studying the feasibility of establishing a court operations center located outside of Washington, D.C., and the continued use of technology to decrease the courts' reliance on mail to perform routine business (i.e., the electronic filing of documents, electronic noticing, and processing juror questionnaires).

Also in the long-term, the workload of the judiciary is expected to increase. As additional resources are provided to the various law enforcement agencies of the Department of Justice and additional Assistant U.S. Attorneys are hired to combat terrorism, the result will be continued growth in the workload of the judiciary. Any number of high profile trials could result from prosecutions already known or probable. These cases will cause increased security and defense expenditures. Our budget request does not specifically take into account these potential trials. However, we

will monitor the costs of these proceedings so that Congress and the public can be kept informed.

HEIGHTENED SECURITY

Since the September 11th attacks, the judiciary has significantly enhanced security at judiciary facilities. The additional resources appropriated by Congress in the fiscal year 2002 emergency supplemental will enable the judiciary to maintain the level of court security officer (CSO) coverage recommended by the U.S. Marshals Service, procure upgraded X-ray machines for courthouse loading docks and mailrooms, create 106 new deputy marshal positions to coordinate security in each circuit and district, begin to address the mail handling and screening needs of the courts, and provide increased protection both for CSOs and court facilities, especially those with high-profile terrorist cases.

The judiciary's budget request for Court Security totals $298 million and will continue the current higher level of security in the courts for fiscal year 2003. The request is $1.4 million below our fiscal year 2002 spending plan and takes into account non-recurring funding for security systems provided in the emergency supplemental. Working with the U.S. Marshals Service, the judiciary will continue to evaluate its security needs and will keep the Committee informed of our requirements.

While not part of the judiciary's budget request, the Marshals Service is responsible for the security of courthouses, judges, criminal proceedings, and the transportation and security of prisoners. The impact of the war on terrorism and the growing number of criminal cases has had a dramatic impact on the resource needs of the Marshals Service. The dedication and professionalism which the men and women of the Marshals Service have displayed since the September 11th attacks has been immeasurable. The judiciary appreciates that you were able to provide the Marshals Service with significant funding increases in fiscal year 2002.

We hope that in fiscal year 2003 the Committee will be able to continue to provide the Marshals Service with additional staff for protection of the judicial process. In districts such as the Southern District of Florida and those along the southwest border, the number of defendants detained by the Marshals Service has grown dramatically in recent years, and additional deputy marshals are desperately needed to secure these potentially dangerous defendants. Additional deputy marshals are also needed for counterterrorism efforts associated with the terrorist-related cases the courts are currently hearing and additional cases that may be heard in the future. We encourage you to provide the Marshals Service the necessary resources to support their judicial protection responsibilities.

IMPACT OF ADDITIONAL ASSISTANT U.S. ATTORNEYS (AUSAS)

Over the past few years, additional resources have been provided to the U.S. Attorneys to increase gun prosecutions, promote school safety, combat cyber crime, and establish joint terrorism task forces. As the number of AUSAs continues to grow to address the priorities of Congress and the Administration, workload in the judiciary will continue to grow. The potential growth in criminal filings that could result from additional AUSAs has a far-reaching impact on the judiciary. Additional criminal cases brought to federal courts require additional judges to hear cases, court staff to administer them, pretrial services officers to supervise defendants released in our communities while awaiting trial, court-appointed counsel to represent additional defendants, and more probation officers to prepare presentence reports and supervise offenders released from prison serving their mandatory terms of supervised release.

COURT SUPPORT STAFF

The work of the judiciary is largely uncontrollable. The courts must handle whatever number of civil, criminal, or bankruptcy cases are filed, fairly and expeditiously. The judiciary cannot control the number and length of trials, the resulting number of jurors, and the number of defendants requiring representation. The courts also are unable to control the number of offenders serving a term of supervised release or defendants awaiting trial who require supervision. In order to ensure resources are deployed to match workload demands, the judiciary has developed scientifically-derived staffing formulas that are used to construct the budget request and allocate funding to court clerks' offices and probation and pretrial services offices. Each court program (courts of appeals, bankruptcy courts, district courts, and probation and pretrial services) has its own formula which takes into account the individual workload drivers for the functions performed by these offices.

The staffing formulas were updated in the summer of 2000 after completion of an extensive series of analytical studies of the work performed in clerks' offices and probation and pretrial services offices. The formulas are used to determine the level of resources needed to allow the judiciary to provide a consistent level of service to the bench, bar, and the public, taking into consideration upward and downward changes in workload. As filings and other workload drivers fluctuate from year to year, the application of the formulas to individual court units allows for a corresponding increase or decrease in funding allocations. This allows the judiciary to ensure that resources are allocated equitably to all court units based on their individual workloads.

Although the courts' workload continues to increase in fiscal year 2002 the judiciary was unable, due to funding constraints, to fund fully its staffing formulas. The judiciary was able to provide some additional law enforcement resources only to probation and pretrial services offices where workload is increasing the most.

In fiscal year 2003, the budget requests funding for 1,297 additional FTEs to fund fully the courts' fiscal year 2002 and 2003 workload requirements (461 FTEs for probation and pretrial services and 836 FTEs for clerks' offices). Without sufficient staff, judicial processes are short-changed, civil and bankruptcy cases are delayed, support provided to judges and the public deteriorates, and offenders and defendants living in our communities are not adequately supervised.

PROBATION AND PRETRIAL SERVICES

Federal probation and pretrial services officers protect the public through the investigation and supervision of defendants and released offenders within the federal criminal justice system. A pretrial services officer supervises defendants awaiting trial who are released into our communities and provides a source of information upon which the court can determine conditions of release or detention while criminal cases are pending adjudication. To support sentence determinations, which require both uniformity and attention to individual circumstances, probation officers provide the court with reliable information concerning the offender, the victim, and the offense committed, as well as an impartial application of the sentencing guidelines. Probation officers supervise offenders coming out of federal prison who are required to serve a term of supervised release. Many of those under supervised release have substance abuse and mental health conditions.

In order to highlight the vital role played by these dedicated officers, I would like to offer an example of an incident where a probation officer went the extra mile in preparing a presentence report for the judge.

In March of 2001, a probation officer from the Northern District of California was assigned a presentence report of a case where the defendant pled guilty to Conspiracy to Bring Aliens Into the United States Illegally, Transportation of Minors in Foreign Commerce for Illegal Sexual Activity, and Subscribing to False Tax Returns. The case came to the attention of authorities when a minor female died of carbon monoxide poisoning in one of the defendant's apartment complexes. Further investigation revealed that this female and other minor females were illegal aliens who had been smuggled into the United States with fraudulent visas. The defendant began having sexual relations with many of the victims when they were as young as 11 years old.

The probation officer left no stone unturned in preparation of the presentence report. She interviewed each agency involved, including the city attorney's office, the Immigration and Naturalization Service, the American Civil Liberties Union-Immigration Rights Project, the victims' civil attorney, the Internal Revenue Service, and the mental health professionals who were working with the victims. It was through these interviews that the probation officer determined the extent of the psychological injuries to the victims.

The probation officer's presentence report to the Court recommended that the Court depart upward due to the extreme psychological injury to the victims. This upward departure was not part of the plea agreement, and became a point of contention at the sentencing hearing. The judge believed there was evidence to support this factor and agreed that an upward departure of two levels was warranted on that basis. The attorneys agreed to revise the plea agreement to include the upward departure. The defendant was ultimately sentenced in accordance with all of the factors that were presented and supported through the probation officer's extraordinary investigation.

The mission of our probation and pretrial services officers is not only to protect the public by supervising the activities of offenders and providing information to the

court but it is to help offenders and defendants get back on their feet and integrate back into our communities. For example:

In the Western District of Kentucky, an offender recently released from prison entered the probation office and experienced an emotional breakdown because his proposed housing had fallen through. With the help of a probation officer, the offender was admitted to a Crisis Invention Unit where the offender lived and received emotional counseling for several months. While the offender was admitted, the probation officer helped the offender apply for Social Security benefits and food stamps. The officer also helped the offender secure an apartment, which he was able to pay for using his Social Security benefits. The offender is now living on his own, receiving bi-monthly counseling sessions, and is in total compliance with the terms of his release.

These are only two examples of the dedication and commitment that each employee of the Third Branch brings to the job.

In fiscal year 2001, probation and pretrial services officers supervised a record number of offenders and defendants (139,797) living in our communities. This is above the federal prisoner population and is projected to continue to grow in fiscal year 2002 and fiscal year 2003 as the number of offenders released from federal prisons continues to increase.

The fiscal year 2003 budget requests 461 additional probation and pretrial services FTEs to provide the additional staff required to manage this growing workload. Without the additional resources needed to manage their growing workloads, probation and pretrial services officers will be unable to maintain their high level of service to the community. Without adequate staffing, officers will focus most of their efforts supervising those persons they believe to be the most dangerous felons released from federal prison, while reducing the level of supervision over other released offenders who appear to be less dangerous, but may still pose a threat to the community. In addition, the officers would be unable to devote sufficient time to prepare sentencing recommendations to the court and helping struggling offenders in need of assistance.

CLERKS' OFFICE STAFF

The fiscal year 2003 budget also requests 836 FTEs to support the operations of the courts. This includes 494 FTEs for bankruptcy courts to handle the explosive growth in bankruptcy filings. In fiscal year 2001, bankruptcy filings were a record 1,437,354 and they are projected to continue to increase. The long term impact of insufficient staffing in bankruptcy clerks' offices will be seen in longer disposition times, more case management errors, and reduced level of service to the judges and the bar. Ultimately this will negatively affect both debtors and creditors.

The request also includes 289 FTEs for district courts where the number of criminal defendants is projected to increase by 9 percent in fiscal year 2002 over fiscal year 2001. This anticipated growth in criminal workload reflects the projected increases in the number of cases the U.S. Attorneys offices will be able to prosecute given their recent increases in funding. Without additional staff to process this extra work, we can expect delays in civil filings and decreased service to the bench, bar, and public.

Finally, the request includes 53 FTEs to support circuit courts of appeals where between fiscal year 2000 and fiscal year 2001, appeals increased by 5 percent.

DEFENDER SERVICES

The Sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." In enacting the Criminal Justice Act of 1964, Congress charged the federal judiciary with responsibility for providing counsel in connection with federal criminal prosecutions and related matters and authorized a separate Judiciary account the Defender Services appropriation to pay for these appointed counsel services.

As is true of the Judiciary's workload generally, the demand for appointed counsel services is not within the Judiciary's control. Both the number and complexity of cases in which counsel must be appointed are a function of both decisions made by the Department of Justice and the criminal laws and related statutes enacted by the Congress.

The substantial rate increase you provided for fiscal year 2002 will go a long way toward ensuring that competent counsel are available to meet the demands. I not only want to reiterate and re-emphasize how much this milestone is appreciated by those of us in the Judiciary responsible for managing the appointed counsel process,

but also to let you know that panel attorneys from around the country have asked that we convey to you directly their appreciation for what you have done. At a time when the world's attention is likely to be focused on our federal criminal justice system, we believe that this increase will have a meaningful, positive impact on how well that system operates.

Excluding funding for panel attorney rate increases, we are seeking only a modest increase for Defender Services in fiscal year 2003 to cover workload growth and inflationary increases. Defender Services obligations are projected to grow by just 7.6 percent in fiscal year 2003. Half of this growth is associated with the need to provide representation in the greater number of criminal matters that are expected to be filed in fiscal year 2003 than in fiscal year 2002. The remainder is needed to fund inflationary increases and mandatory pay and benefit adjustments.

COST CONTAINMENT AND THE JUDICIARY'S BUDGET PROCESS

The Constitution created the judiciary as a separate and independent branch of government. One of the by-products of the distinction as a separate branch, is the judiciary's authority to submit its budget request to Congress through the President "without change" by the executive branch. 31 U.S.C. §1105(b).

The judiciary takes this authority seriously. The Judicial Conference of the United States recognizes that the responsibility for budgetary oversight requires stewardship and fiscal responsibility in both providing for the judiciary's requirements while considering the needs of the nation. The Judicial Conference established a Committee on the Budget, of which I am the Chairman, to assemble and present to Congress the budget for the judicial branch. In response to a request from the Congress, the Judicial Conference determined that the Budget Committee's jurisdiction should be expanded to include an Economy Subcommittee responsible primarily for: (1) coordinating efforts of the judiciary to achieve fiscal responsibility, accountability, and efficiency; (2) advising the Budget Committee on development of fiscally responsible budget estimates; and (3) coordinating the development of reliable long-range budget estimates. The Budget Committee continues to meet each of these objectives.

With the assistance of the professional staff at the Administrative Office who support the committees of the Judicial Conference, the Economy Subcommittee and the Budget Committee analyze and debate the budget requests of the various program committees of the Judicial Conference. After intensive review, the Budget Committee recommends a budget request to the Judicial Conference that balances both the judiciary's responsibility to request sufficient funding to effectively operate the courts and the judiciary's duty as stewards of the public's funding.

In addition to the annual review of the budget request by the Budget Committee, the judiciary on a regular basis retains outside consultants to evaluate independently our financial and operational requirements and identify areas for improvements and efficiencies. While these studies are sometimes undertaken at Congress' behest, more often the judiciary itself initiates these reviews. Over the past few years, under the leadership of the Administrative Office, independent consultants have evaluated the courts' space and facilities program, the information technology program, the library services program, and the court security program. Currently, the judiciary is conducting a comprehensive assessment of the probation and pretrial services system. Upon completion of these independent program studies, the Administrative Office and the applicable committees of the Judicial Conference review the results and implement program changes to improve the level of service provided by the courts and make the courts more efficient.

While the judiciary is working at the national level to review budget requests and conduct independent program reviews, we, with the assistance of the Administrative Office, also are working at the local level to ensure that the funding you provide us is spent efficiently. Chief judges and unit executives receive training on the financial responsibilities of operating their court; local court unit financial analysts are trained in budget and accounting; and Administrative Office staff conduct court audits and program assessments that help court managers improve the management of their resources. These efforts are done to ensure that every court—from the large urban courts to the small rural courts—is effectively managing the funding provided to the judiciary.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

As I discussed earlier, the Administrative Office plays a pivotal role in the budgeting and management of the funding you provide the judiciary. It not only performs important administrative functions such as personnel, payroll, procurement, space management and planning, and accounting, but also provides a broad range of legal, financial, management, program, and information technology services to the courts.

The Administrative Office, under the direction of the Judicial Conference, is the manager of change in the judiciary. This change includes: implementing throughout the courts modern automated systems, such as personnel, accounting, library services, jury management, and case management; and expanding the use of technologies to assist in the supervision of offenders and defendants.

The Administrative Office was also instrumental in providing direct support to the courts to restore operations, upgrade security and facilitate new mail handling procedures, after the events of September 11. The exemplary performance was commended in a letter I read from the Chief Judge of the Southern District of New York. He recognized the Administrative Office for the resource and personnel help that enabled the court to carry on its business while bearing the burdens of September 11.

I urge the Committee to fund fully the Administrative Office's budget request including its modest request for eight additional FTEs. The Administrative Office is integral to the judiciary's ability to perform its work. Without the Administrative Office's support, the judiciary could not continue to improve its efficiency. The increase in funding will ensure that the Administrative Office continues to provide program leadership, policy guidance, and administrative support to the courts, and to lead the efforts for them to operate efficiently.

CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the federal judiciary's education, training, and research arm. With Judge Smith, I thank you for last year's programmatic increase, the first such increase in over ten years, and only the second full current services increase in the same period. We are grateful.

The Center is vital to our work as judges, and a main element of its modest 8.7 percent increase this year involves education for judges. I want also to recognize the Center's education for the employees in our clerks, probation, and pretrial offices in these troubled times of employee unease and uncertainty. Center management training, almost all of it offered by satellite and on the web, has never been more important and highlights the need for the three educational technology positions the Center requests.

Center education is also vital to our work as judges. The Center seeks an increase of $500,000 to allow it to restore its basic judicial continuing education programs to an annual basis. Since 1999, the Center's reduced appropriation has meant that district, magistrate, bankruptcy, and appellate judges may attend one of these seminars no more than once every eighteen months. This cutback has been a matter of great concern to judges over the country. The Board of the Center took the unusual step of adding its own statement to supplement Judge Smith's justification for this increase.

These programs provide updates on caselaw trends, on innovations in managing cases, and on such specialized topics as admissibility of scientific evidence. Furthermore, we can share notes with colleagues from other courts as well as with the excellent faculty that the Center assembles. I believe the Center's request deserves the committee's support and urge favorable action on the full amount.

JUDICIAL COMPENSATION

Before closing, I would like to express our appreciation for Congress' approval of a fiscal year 2002 Employment Cost Index (ECI) adjustment for federal judges, members of Congress and top officials in the executive branch. The Judicial Conference strongly encourages Congress to authorize an ECI adjustment for fiscal year 2003, which will require a provision to waive section 140 of Public Law 97–92. While the law provides for a 3.1 percent increase, the President's Budget reduces this adjustment to a maximum 2.6 percent increase. We urge that Congress take action this year to avoid further salary erosion.

CONCLUSION

Chairman Hollings and members of the subcommittee, this concludes my statement. I look forward to working with you and I would be pleased to respond to any questions you may have.

APPENDIX

SUMMARY

The fiscal year 2003 appropriation request for the Courts of Appeals, District Courts and Other Judicial Services totals $4,961,693,000, an increase of

$507,705,000 over the fiscal year 2002 available appropriations which included $82,221,000 in emergency supplemental funding. In addition to appropriated funds, the judiciary utilizes other funding sources to supplement its appropriations. Included in these sources of funding are fee collections, carry forward of fee balances from a prior year, and the use of no-year funds.

Of the $507,705,000 increase in appropriations, 75 percent ($382,134,000) is for adjustments to the fiscal year 2002 base associated with standard pay and other inflationary increases as well as other adjustments that will allow the courts to maintain current services in fiscal year 2003. The remaining 25 percent ($125,571,000) is needed to respond to continued increases in the courts' workload, as well as increased requirements for security, magistrate judges, and federal defender offices. The request for the principal programs are summarized below.

SALARIES AND EXPENSES

The salaries and expenses of circuit, district, and bankruptcy courts and probation and pretrial services offices account for most of the judiciary's request. A total of $4,304,243,000 is required for this activity. Funding totaling $287,352,000 is expected to be available from other sources including fee collections and carryforward balances to fund requirements. This leaves a direct appropriation need of $4,016,891,000, $409,603,000 above the fiscal year 2002 available appropriation which included $5,000,000 in emergency supplemental funding.

Nearly 72 percent of the $409,603,000 increase ($294,157,000) is needed to fund adjustments to the fiscal year 2002 base for pay and benefits increases for courts support staff ($115,100,000), pay and benefits increases for judges ($9,881,000), the filling of vacant judgeships and increases in senior judges ($13,887,000), additional space rental costs ($80,784,000), additional information technology costs ($23,143,000), financing adjustments necessary to maintain current services ($39,655,000), and inflationary increases in other operational costs ($11,707,000).

The remaining increases ($115,446,000) will fund 7 additional magistrate judges and their staff ($2,163,000) to provide an effective, yet less costly, way of providing help to Article III judges to handle the growing volume of civil and criminal cases facing the courts; additional court support staff ($102,727,000) to allow the courts to keep pace with increases in its largely uncontrollable workload; enhanced mail handling facilities and services ($10,000,000) to improve security in mail room operations; medical examinations for probation and pretrial services officers ($200,000); and distance learning and web-based training initiatives ($356,000).

DEFENDER SERVICES

A total of $588,741,000 in appropriations is required for the Defender Services program to provide representation for indigent criminal defendants in fiscal year 2003. This represents an increase of $88,070,000 over the fiscal year 2002 enacted appropriation of $500,671,000.

Most of the increase ($87,470,000) is needed for adjustments to the fiscal year 2002 base for inflationary and workload increases. Included in these adjustments is $18,087,000 for costs associated with maintaining the base level of representations; $30,066,000 to annualize the fiscal year 2002 non-capital private panel attorney rate increase to $90 per hour; $17,142,000 to increase private panel attorney rates to $113 per hour in all districts beginning April 1, 2003; and a $22,175,000 net increase associated with 6,300 additional representations projected in fiscal year 2003.

The remaining increase ($600,000) will fund the start up costs of two new federal defender organizations. The Congress and the Judicial Conference have urged us to establish more federal defender organizations as an alternative to using panel attorneys in districts where this would be appropriate.

FEES OF JURORS AND COMMISSIONERS

For the Fees of Jurors program, an appropriation of $57,826,000 is required, an increase of $9,695,000 from the fiscal year 2002 enacted appropriation of $48,131,000. This increase funds inflationary adjustments ($450,000); a net decrease in projected juror days (−$878,000); and financing adjustment required to avoid a cessation of civil jury trials ($10,123,000).

COURT SECURITY

For the Court Security program, an appropriation of $298,235,000 is required. This is a $337,000 increase over the fiscal year 2002 available appropriation of $297,898,000 which included $77,221,000 in emergency supplemental funding.

Adjustments to base include increases of $33,412,000 including standard pay, benefit, and contractual services increases ($13,273,000); funding to annualize the costs for new deputy U.S. Marshals funded through the emergency supplemental ($9,800,000); funding to annualize 24 new court security officers (CSOs) expected to be brought on in fiscal year 2002 ($584,000); funding for increases associated with new and existing space including 10 new CSOs and security systems and equipment ($2,266,000); and funding for the cyclical replacement of existing security systems and equipment ($7,489,000). These increases are offset by a decrease of $42,600,000 for non-recurring costs that were funded with emergency supplemental appropriations in fiscal year 2002. This results in an overall net reduction in funding for base adjustments of $9,188,000.

The remaining increase ($9,525,000) is for program increases. These include $8,656,000 for security systems and equipment enhancements, $550,000 for CSO and contracting officer technical representative training programs, and $319,000 (4 FTE) for additional judiciary-funded positions at the U.S. Marshals Service to improve the management of the Judicial Facility Security Program.

PREPARED STATEMENT OF LEONIDAS RALPH MECHAM

INTRODUCTION

Chairman Hollings, Senator Gregg, and Members of the Subcommittee: I am pleased to appear before you this morning to present the fiscal year 2003 budget request for the Administrative Office of the United States Courts (AO). I appreciate this opportunity and your time.

Let me first take a moment to thank you for your help in conference on the fiscal year 2002 appropriation for the AO. Your support was critical in allowing us to maintain our current level of service to the courts, and for this I am grateful. I also want to express my appreciation for your leadership in providing the judiciary with the fiscal year 2002 emergency supplemental security funding necessary to address some of the most pressing requirements we identified in the aftermath of September 11th and the anthrax exposures that followed. Without the assistance of this Subcommittee, we would not have received the additional resources to heighten mail and building security across the country; purchase an emergency communications backup system to ensure that judges and court administrators can maintain contact with the AO, the U.S. Marshals Service, and General Services Administration personnel during emergency situations; or improve the physical security of the Thurgood Marshall Federal Judiciary Building. Your attention to the needs of the judiciary, and the focus of your staff, is very much appreciated.

ROLE OF THE ADMINISTRATIVE OFFICE

Created by an Act of Congress in 1939 to eliminate the separation of powers issues raised by the Department of Justice's handling of the judiciary's administrative needs, the Administrative Office of the United States Courts serves as the central support agency for the federal court system, with key responsibility for judicial administration, program management, and oversight.

As such, the AO is the focal point for judiciary communication, information, program leadership, and administrative reform. Our court administrators, accountants, systems engineers, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the federal courts nationwide.

RESPONSE TO 2001 TERRORISM INCIDENTS

Nowhere was the exemplary service and outstanding abilities of the Administrative Office staff more evident than in its response to the terrorist events of September 11, 2001. Calling upon the judiciary's existing disaster response group formed in 1992 after Hurricane Andrew, within hours of the World Trade Center attacks, we assembled an emergency response team to work with court staff in New York City to facilitate recovery of communications and computer systems and return the courts to normal operations as soon as possible.

The emergency response team assisted the courts in acquiring cellular phones, rerouting e-mail and computer networks, resolving procurement issues and ensuring that employees were paid accurately and on time. The team also kept court employees and the public posted on the status of operations in New York on the judiciary's Internet site.

The anthrax contaminations that followed soon after, and the ensuing mail delays, required a number of adjustments to court operations, including the relaxing

of rules about the timeliness of and the means by which cases and pleadings are filed (i.e., electronic and/or fax). The mail delays also required finding creative ways of ensuring that juror questionnaires were returned in a timely manner, guaranteeing that sufficient juror pools would be available to continue trials.

In addition, the threat posed by contaminated mail required the AO to reduce significantly paper mailings to the courts and enhance the use of our nationwide Data Communications Network. The AO expanded its already widely used e-mail broadcast system and created a series of electronic mailing lists to target particular court audiences. The use of these broadcasts went beyond simple letter communications and included the distribution of documents via the judiciary's intranet. AO employees are continuing to rely heavily upon e-mail messages, e-mail broadcasts, faxes, and postings to the judiciary's intranet for communications with court staff. Fortunately, the judiciary's investment in information technology, made possible through the support of this Subcommittee, and the establishment of a nationwide electronic infrastructure, positioned us to move more quickly toward electronic communication solutions during this crisis.

AO staff continued assistance by providing information to all courts on enhanced security, mail handling, testing for anthrax and responding to threats from anthrax and other biological and chemical agents. Information was developed and disseminated to highlight health and safety concerns such as: how to handle crisis benefit issues, including Worker's Compensation and the Employee Assistance Program; public health issues; and special information on how to deal with trauma in the work place.

AO staff also coordinated the judiciary's request for emergency supplemental funds to provide for additional court security, protective window film, upgraded x-ray machines, an emergency communications system, heightened mail screening, and other perimeter security enhancements for the courts. Working with the Office of Management and Budget (OMB) we were provided $19.7 million from funds appropriated to the President to cover the cost of increased court security officer (CSO) coverage. Then, with your leadership and assistance, the judiciary received additional emergency security funds totaling $95.4 million in the fiscal year 2002 emergency supplemental.

Longer-Term Implications

As Chief Justice Rehnquist pointed out in his 2001 Year-End Report on the Federal Judiciary, the Administrative Office played a pivotal role in ensuring that the federal courts around the country have effective security precautions and adequate mail screening procedures in place. But, as the central support agency for the administration of the federal court system, we must now turn our attention to the long-range planning aspects of crisis response, identify and address our vulnerabilities, and determine where changes in court operations are necessary in light of these newly recognized threats.

Offsite Court Operations Support Center

One significant vulnerability is the location of our key administrative and operational support systems at the AO in Washington, D.C. With the encouragement of this Subcommittee, the AO currently is studying the feasibility of opening a court operations support center that would provide a separate location outside Washington, D.C. for the operation of systems critical to the work of the courts. The Support Center also would provide a location from which key personnel could operate in the event the Thurgood Marshall Federal Judiciary Building were forced to close for any reason. From a national perspective, the Support Center would better ensure the continuity of operations of the judiciary's information technology infrastructure that supports the day-to-day operations of the courts so that justice would continue to be served during any situation that might otherwise disrupt normal operations.

Continuity of Operations Planning

Outside of Washington, D.C., courthouses are often the most visible and potentially vulnerable federal facilities. Recognizing this threat, an emergency preparedness function was established at the AO in November 2001 to allow us to better focus on crisis response, occupant emergency planning, and continuity of operations planning. We intend to develop model continuity of operation plans for use by the courts and the AO. The objective of these plans is to ensure the capability exists to continue core business functions throughout the courts, and to achieve an orderly recovery under all emergency situations.

Acceleration of Move to E-business

Another vulnerability, discussed earlier, was how the routine business of the courts, including the filing of motions and receipt of juror questionnaires, was disrupted when mail service became unreliable. For the past several years, the judiciary has been progressing toward heavier use of electronic means of transacting business, including the move toward electronic case filings, as well as incorporating e-business into our voucher and bill payment operations. The judiciary is considering whether the move toward these systems can be accelerated.

Unique Issues Associated with High Threat Trials

The terrorist threat to our nation also means that the federal courts are likely to be the forum for many more highly publicized and security-sensitive criminal proceedings. Already we know of three such trials upcoming—the *Zacarias Moussaoui* and *John Walker Lindh* cases in the Eastern District of Virginia and the *Richard Reid* case in Massachusetts. The courts face unprecedented and extraordinary challenges involving a wide range of issues, including security concerns, information technology, and furnishing closed-circuit broadcasts of the proceedings to victims' families. The AO is providing support and advice to the courts on all of these issues, as we did in the Oklahoma City bombing cases.

I look forward to working with you and the Members of this Subcommittee as we develop more specific plans to ensure that the federal courts are safe and readily accessible to the public, and that the business of the judiciary can and will continue without disruption in the event of a terrorist attack, chemical or biological contamination, or natural disaster.

ADMINISTRATIVE OFFICE BUDGET REQUEST

The fiscal year 2003 budget request for the Administrative Office of the U.S. Courts is $66,912,000, representing an increase of $2,369,000, or 3.7 percent above fiscal year 2002 available appropriations. However, when the emergency supplemental funding is excluded, the fiscal year 2003 increase for the AO is $5,248,000, or 8.5 percent more than the fiscal year 2002 enacted level. In addition to this amount, the AO's budget request identifies $3,947,000 required to implement the Administration's proposed legislation to shift the full cost of selected retirement benefits for current employees and health benefits for retirees from the Office of Personnel Management to each individual agency. If this legislation is enacted, the AO would require a total appropriation of $70,859,000 in fiscal year 2003.

More than three-fourths of the requested increase for the AO, $4,055,000, is necessary to fund standard pay and benefit cost adjustments and general inflationary increases to maintain our current level of service to the courts. The remaining increase of $1,193,000, which I will describe in greater detail in a moment, is requested to strengthen our programmatic oversight role, enhance crisis response, security and safety programs, and allow us to fund an increase in the transit subsidy benefit for AO employees.

Transit Subsidy

Pursuant to the Transportation Equity Act for the 21st Century (Public Law 105–78), the AO implemented a transit subsidy benefit for its employees within available funding in fiscal year 2000. The benefit is currently $60 per month with a participation rate of approximately 50 percent. Executive Order No. 13150 provided for an increase in the allowable benefit to $100 per month in January 2002.

The already limited parking available in and around the Thurgood Marshall Federal Judiciary Building has been reduced by the loss of parking spaces at Union Station due to security considerations. Further, the planned construction of Station Place has eliminated a commercial parking lot immediately behind the AO building where many of our employees parked. This, coupled with the continuing increase in traffic congestion in the Washington, D.C. area, has increased AO employee interest in the transit subsidy program. The requested program increase of $400,000 will allow us to increase the benefit for AO employees to the authorized level of $100 per month and cover the cost of an anticipated increase in the participation rate to 60 percent.

AO Staff Support of the Courts

An increase of $793,000 is requested to provide eight additional FTE for program oversight. Continuing to develop new programs and systems while supporting a court system whose proportional growth far outpaces that of the AO is a daunting task. The staffing level in the AO has remained approximately the same over the last six years, while court staffing has grown by 15 percent during the same time period.

To make the most efficient use of the resources provided the AO, each vacancy that occurs is evaluated and used to fulfill our highest priority needs. However, because sufficient resources must be committed to core functions such as payroll, personnel, and financial management, and to provide support to the committees of the Judicial Conference, program oversight functions are in serious need of additional resources. The eight additional FTE we are requesting will enable the AO to perform more adequately its audit, review, and assessment responsibilities and, as I have detailed in my testimony, the tragic events of last fall highlight the need for new resources to staff adequately our crisis response, security, and safety programs in support of the courts.

RESPONSIBILITIES AND ACCOMPLISHMENTS

As I mentioned earlier, the Administrative Office has key responsibility for judicial administration, program management, and oversight. It supports the Judicial Conference in determining judiciary policies, and develops new methods, systems, and programs for conducting the business of the federal courts. The AO also assists the courts in implementing better management practices, developing and supporting innovative technologies that enhance the operations of the courts, and collecting and analyzing statistics on the business of the federal courts for planning and determining resource needs.

It assists the courts in program management, addressing areas such as case management, jury administration, defender services, court interpreting services, and court reporting. One of our major areas of support is probation and pretrial services. In fiscal year 2001, the AO assisted the probation and pretrial services offices in supervising a record number of offenders and defendants (139,797) living in our community at an average cost of $11 per day. This is above the federal prison population (120,827), which has an average inmate cost of $55 per day. The AO also provides financial management services to the judiciary including budget formulation, execution, and accounting; and personnel and payroll support for 32,000 judiciary employees. It supports the facilities and security needs of over 800 facilities housing judiciary operations, and conducts audits and reviews to ensure the continued quality and integrity of federal court operations.

Throughout 2001, the AO excelled in its day-to-day responsibilities. Let me take a moment to highlight several areas.

Financial Stewardship

Working with the courts to ensure the efficient and effective use of resources is a key AO function. We recognize that it is imperative that we do all in our power to ensure that the monies appropriated to the judiciary are utilized prudently; assets and resources are protected from loss, waste, or abuse; operations are efficient and effective; financial reports are accurate and reliable; and business practices comply with applicable laws and regulations.

In fiscal year 2001, the AO undertook an initiative to assist chief judges and court unit executives in carrying out their fiscal stewardship and management oversight responsibilities. Current delegations of authority and other financial controls were reviewed to ensure they are documented, up-to-date, and clearly defined. The AO also worked to ensure that judges and court managers are provided with tools to assist them in their oversight responsibilities. To do this, the AO convened a group of judges and court executives to develop improved management oversight and stewardship training programs and guidance. Seminars for chief district and bankruptcy judges were delivered, a Handbook on Management Oversight and Stewardship for chief judges and unit executives was published, and a companion educational program for court unit executives is being prepared. In addition, a task force on internal controls is working to develop a model internal control plan for the courts.

Automation

In the area of automated systems, one of our largest initiatives in recent years is the Case Management/Electronic Case Files (CM/ECF) project, which permits courts to receive documents over the Internet and maintain electronic case filings. We began national roll-out of CM/ECF in the bankruptcy courts last March and will begin implementation in the district courts this spring. More than 12,000 attorneys have already filed documents electronically and, in 2001 alone, over 50,000 people signed up for PACER (Public Access to Court Electronic Records), which facilitates all electronic public access to court data, including CM/ECF. This new system will save considerable court resources while also significantly improving public access to federal court records.

Also during 2001, AO staff began delivering the Probation and Pretrial Services Automated Case Tracking System-Electronic Case Management (PACTS–ECM) sys-

tem to the courts. It is a comprehensive system designed to help probation and pretrial services officers by making offender case information more easily accessible. The system electronically generates, stores, and retrieves investigation and supervision case information, and provides digital images of offenders. It also will have remote capabilities to allow officer access while in the field. The PACTS–ECM system will be an invaluable resource as the number of offenders released from Federal prison who are serving terms of supervised release escalates.

Our Bankruptcy Noticing Center had a record-setting year, producing and mailing 84 million notices. By electronically retrieving data from court case management systems, it generated paper notices at a fraction of the time and cost that it would have taken if produced by local courts. The work is performed under contract and managed by AO staff. This program has saved the judiciary almost $23 million since 1993. We are continuing to work with the bankruptcy community to move to an electronic noticing system to avoid postage costs.

And, as detailed in our Report on the Jury System in Federal Courts, prepared at the Subcommittee's request and delivered on February 1, 2002, the judiciary has also nearly completed implementing an electronic Jury Management System that streamlines jury administration. At the end of fiscal year 2001, 74 of the 94 district courts were using the system, with complete deployment expected by June 2002.

In addition to leading the development and installation of these automated systems, the AO has managed the installation of modern audio/visual technologies in new, renovated, and existing courtrooms across the nation. These technologies have proved to be useful tools for video evidence presentation, video conferencing for presentation of testimony, and electronic record-taking.

Policy Guidance

The AO also provides the courts with policy guidance and direction. For example, with the enactment of the DNA Analysis Backlog Elimination Act of 2000, probation officers are required to collect DNA samples for certain federal offenders. The AO worked with the Department of Justice and the Federal Bureau of Investigation (FBI) to determine the type of samples required and the qualifying offenses. The AO then distributed procedures to all probation offices on how to determine which offenders require DNA collection, what steps to take to make the collection, and how to pay for the collection. The AO also aired an educational broadcast on the Federal Judicial Television Network on the probation officers' role in DNA collection and sent the courts instructional videos produced by the FBI. Because of the in-depth instruction on this new program, DNA collection by probation officers can be done consistently across the country to meet the goals of the Congress in collecting DNA from violent offenders.

Another example is the assistance the AO continues to provide district courts in implementing the Civil Justice Reform Act to ensure the just, speedy and inexpensive resolution of civil disputes. Working with a number of judges, the Administrative Office and the Federal Judicial Center drafted the Civil Litigation Management Manual. The manual, which has now been approved by the Judicial Conference and sent to all district and magistrate judges, presents a compendium of litigation management and cost and delay reduction techniques that will assist courts in achieving a high level of case management efficiency.

CONCLUSION

Mr. Chairman, Members of the Subcommittee, I hope I have provided you with a better understanding and appreciation for the wide array of responsibilities vested in the AO and the seriousness with which we undertake them. For every issue that affects the judiciary, every new piece of legislation that expands federal jurisdiction, every Administration initiative that impacts federal law enforcement, every congressional request for information, there are personnel at the AO who must quickly master the subject area and render expert advice.

I am proud of our record of accomplishment and service to the courts and the American public. And, as I stated earlier, nowhere were the capabilities of the dedicated AO staff more evident than in the hours, days, and weeks that followed the terrorist attacks of September 11, 2001. You can count on my efforts to see that this level of service not only continues but also improves through the active oversight and stewardship of the resources you have entrusted to us. I ask your support in accomplishing this by granting the modest increase the AO is seeking for fiscal year 2003.

Thank you for giving me the opportunity to be here today. I would be pleased to answer any questions you may have.

PREPARED STATEMENT OF GREGORY W. CARMAN, CHIEF JUDGE, UNITED STATES COURT OF INTERNATIONAL TRADE

Mr. Chairman, Members of the Committee: Thank you for allowing me this opportunity to submit this statement on behalf of the United States Court of International Trade, which is a national trial-level federal court established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions pertaining to matters arising out of the administration and enforcement of the customs and international trade laws of the United States.

The Court's budget request for fiscal year 2003 is $13,777,000, which is $674,000 or approximately 5.1 percent over the fiscal year 2002 enacted appropriation. This request will enable the Court to maintain current services and provide for standard pay and other inflationary adjustments to base. The Court is not requesting any program increases. I would like to specifically point out that for eight consecutive years the Court's requested increases have been held to below 6 percent.

Since the Court is located in Manhattan, New York City, less than half a mile away from "ground zero," the events of September 11, 2001 have had a direct impact upon the operations of the Court. On September 11th, the Courthouse was evacuated and remained closed for five business days. Because the Court is a national court, the majority of its case filings are received via the U.S. Postal Service. Since there were no mail deliveries for some time after September 11th, the Court experienced a backlog in receiving and processing its filings. The Court's telephone system was disrupted for a number of months and only became fully operational in December 2001. The Court lost its connection to the Judiciary's Data Communications Network (DCN), thereby affecting the Court's ability to send and receive external e-mail and its capability to record obligations and expenditures in the Judiciary's Central Accounting System. Smoke from "ground zero" filtered through the ventilation system forcing GSA to shut all fans that provide and circulate air throughout the Courthouse. Public transportation to and from the Courthouse was disrupted for a period of time, and continues to be problematic in several areas, thus impacting the ability of some of those who work at and have business before the Court to reach the Courthouse.

During the period following the September 11th tragedy, the entire Court staff worked feverishly to ensure that the services of the Court continued and that the needs of the Court family, bar and public were met. The staff developed and implemented alternative methods of connecting to the DCN and arranged to have the accounting data input into the Judiciary's Central Accounting System. Court staff also worked closely with GSA to ensure the physical and environmental integrity of the Courthouse and to obtain cell phones to address our telecommunications needs. Due to the staff's dedication and team approach to problem solving, the obstacles encountered after September 11th were handled effectively.

The Court's fiscal year 2003 request includes funds to pay for increased GSA space rental and building related services costs. The requested amount, $276,000, includes funds to pay the Court's pro rata share of operating and maintaining improvements in the security systems for the perimeter of the Courthouse and Federal Civic Center, implemented in fiscal year 2002 as a result of the tragic events of September 11, 2001.

In accordance with its Long Range Plan, the Court, in fiscal year 2003, remains committed to ensuring that the Court's technology infrastructure will support its short and long term needs, thereby permitting the Court to operate efficiently and effectively. To this end, the Court's request includes funds for continuing the internal and external implementation of the Court's Case Management/Electronic Case Files (CM/ECF) System and the related file tracking, and scanning and indexing solutions. Additionally, there are funds in the request for several ongoing projects, specifically: (1) the Court's Internet and Intranet Web servers that facilitate the external and internal sharing of Court information; (2) the online library automation system that enables the Judges and Court staff to search electronically for books and resource materials in the Court's Information Resource Center's collection; (3) a networked records management and tracking system for all case records; (4) the Court's new phone system, with unified messaging capability, that enables the Court to address its current and future telecommunications needs; and (5) the cyclical maintenance of Court facilities and the replacement of certain furniture with ergonomic designs that will help to minimize the risk of injury to Court personnel.

The Court's fiscal year 2003 request will enable the Court to expand its in-house training programs in the utilization of automation and technology. Additionally, this request will support the Court's effort in the education and training of Judges and Court staff by ensuring the continuation of the Court's interactive training environ-

ment that enables Judges and staff to view and participate in training programs broadcast through the Federal Judicial Training Network.

Lastly, the fiscal year 2003 request also includes funds for the support and maintenance of security system upgrades implemented by the Court in fiscal years 1999 through 2002.

The Court's commitment to fulfill its mission through the use of technology will enable it to enhance the delivery of services to the Court family, bar and public.

I would like to reaffirm that the Court will continue, as it has in the past, to conserve its financial resources through sound and prudent personnel and fiscal management practices.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

PREPARED STATEMENT OF HON. FERN M. SMITH, DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman, members of the subcommittee: Thank you for allowing me the opportunity to submit a statement in support of the Federal Judicial Center's annual request for appropriations. This is the third request I have submitted since becoming Director of the Center in 1999. I have been a U.S. district judge since 1988.

First I want to thank you for the 7.5 percent increase in our 2002 appropriation. It is our first program increase, and our second full current services adjustments increase, in more than ten years. The seven new positions will be of great assistance in our efforts to provide the federal courts effective distance education.

This statement summarizes our 2003 request and, like last year's, provides you a brief accounting of some of the Center's major activities, in particular: Helping the courts deal with the effects of September 11; promoting the fair and efficient disposition of litigation; assessing court administration practices; assisting the judiciaries of foreign countries; and improving the Center workplace.

2003 REQUEST

The requested 2003 appropriation of $21,885,000 represents an 8.7 percent increase to provide adjustments to base and modest program enhancements: a return to a shorter cycle of recurring education and training programs for federal judges and three new automation positions.

The Center's statutory Board, which the Chief Justice chairs, unanimously approved the request before you today. The Board regards the funds for more timely education for federal judges to be sufficiently pressing that it prepared its own brief statement in support of that portion of the request (the statement is included on the next page).

Judicial education and training programs ($500,000)

Center educational programs last year reached almost 50,000 participants, the great majority of them non-judge employees who participated in satellite broadcasts and other forms of distance education. In most respects, distance education has been a great success.

For federal judges, the Center provides education in several forms, such as manuals on scientific evidence, satellite broadcasts about the USA Patriot Act, and small seminars or workshops to orient newly appointed judges to their new responsibilities or provide experienced judges assistance in specific areas, such as mediation or intellectual property law.

Periodic, general continuing education programs for circuit judges, district judges, magistrate judges, and bankruptcy judges are a fundamental element of our education for judges. These programs are our opportunity to assist judges on a variety of subjects, including updating them on the caselaw interpreting frequently litigated statutes, describing new techniques of case management, and reviewing the ethics requirements that govern judges. Moreover, these programs present opportunities for judges to learn from their colleagues as well as from the faculty we assemble and to share innovations that have proven successful and those that have not.

Until 1999, a judge could attend one of our general continuing education programs once a year. In 1999, we shifted to an 18-month cycle as our appropriation declined and because we thought that distance education could compensate for longer intervals between programs.

That decision has provoked considerable commentary from judges across the country to their colleagues on the Center Board and to the staff of the Center. Based

on our analysis, we have concluded that effective third branch education requires restoring these programs to their original 12-month cycle. Below is the statement of the Board of the Center, which explains the importance it attaches to this request.

STATEMENT OF THE BOARD OF THE FEDERAL JUDICIAL CENTER

APPROVED FEBRUARY 8, 2002

At a telephone conference meeting on October 22, 2002, the Board approved the Center's 2003 appropriations request for submission to Congress. This year as every year, we scrutinized the request to be certain it is responsible and seeks no more than is necessary for the Center to do its job.

This year's request includes $500,000 to restore the Center's ability to offer each federal judge the opportunity to attend a three-day general continuing education program once a year. Typically, the Board does not burden Congress with direct communications about the Center's appropriation, relying instead on the Center director for that task. The special importance of restoring these programs to an annual basis merits an exception to that practice.

Of all the comments we receive from other judges about the Center's work, none is as frequent and widespread as the need to make these programs available on an annual basis. The Center's general continuing education programs are the core of its educational effort for judges. They are essential to helping judges meet the challenges of rapid change, increasing complexity, and growing numbers in the cases before them.

We remain committed to the use of non-travel alternatives for third branch education. The staffs of the courts receive almost all of their education through this medium. Judges, however, need the additional opportunity for reflective, interactive discussions with colleagues about common problems and often-sensitive concerns, and need that opportunity more frequently than twice every three years.

We appreciate your consideration of this special need.

THE BOARD OF THE FEDERAL JUDICIAL CENTER

The Chief Justice, *Chair*

Judge Stanley Marcus, U.S. Court of Appeals for the Eleventh Circuit, Miami, Florida

Judge Pauline Newman, U.S. Court of Appeals for Federal Circuit, Washington, D.C.

Judge Robert Bryan, U.S. District Court for the Western District of Washington, Tacoma

Chief Judge Jean Hamilton, U.S. District Court for the Eastern District of Missouri, St. Louis

Judge William Yohn, U.S. District Court for the Eastern District of Pennsylvania, Philadelphia

Magistrate Judge Robert Collings, U.S. District Court, District of Massachusetts, Boston

Chief Judge Robert Hershner, U.S. Bankruptcy Court, Middle District of Georgia

Leonidas Ralph Mecham, Director, Administrative Office of the United States Courts, Washington, D.C.

As the Board statement makes clear, this request in no way signals the Center's retreat from distance education. Our travel budget, with this request, would still be more than $1,000,000 below our travel budget in 1995.

A chart we provided in last year's statement shows that 10 years ago, Center educational programs reached slightly over 10,000 participants, less than half of them through travel-based programs. Our programs now reach almost 50,000 participants a year, but the number of participants in our travel-based programs has actually decreased. We want to continue to exploit cost-effective, non-travel, asynchronous learning for the employees of the courts and for judges to the degree it is effective.

At the same time, we recognize, as do other distance learning proponents, that some face-to-face educational opportunities are essential, especially for those with responsibilities such as those of federal judges. Heavy caseloads and the isolation inherent in performing judicial duties limit opportunities for judges to meet in a detached atmosphere and discuss the nuances of changing precedents and case management techniques. The judge's job is becoming more complicated. Supreme Court decisions, for example, impose on district judges significant new obligations to evaluate the scientific merit of proposed expert testimony and to evaluate patent claims. This new judicial role requires a greater understanding of science and of how to

manage such cases efficiently. These are not subjects or procedures that lend themselves to learning solely by computer or video screen.

Three additional positions to enhance the Center's use of distance education technologies ($192,000)

These three positions are needed to support the Center's long-standing and increasing reliance on distance education technologies that I described above. Last year, 90 percent of the roughly 50,000 participants in Center programs, and in local training events using Center services, used distance education technologies, including but not limited to the Federal Judicial Television Network, which the Center began operating in April 1998. Since fiscal 1998, the Center has been requesting 10 additional positions (video, multimedia, and automation specialists). With the funds provided in 2002, we plan to hire: 2 software engineers to exploit the Web to its full potential, especially as we learn more about interactive computer-based training; 1 automation security officer; 1 additional employee for system maintenance; 1 television assistant for the Media Production Unit; 1 judicial education specialist; and 1 assistant to our Web master.

Our present plan for the three positions we seek in 2003 is to hire two additional software engineers and one computer-training technologist to analyze user needs in the development of projects.

CENTER SERVICES AND ACTIVITIES

Please permit me to describe, as I did last year, some of the Center's current activities, as a means of accounting to you for our stewardship of the funds you provide for the Center.

Helping the courts deal with the effects of September 11

The Center's programs for court leaders and managers continually stress the need for effective leadership. These programs became all the more timely now that all federal courts are on security alert with the rest of the country.

Court leaders and managers must be prepared to deal with safety and with the apprehensions and tensions of court employees, as well as jurors, witnesses and others who visit our courts. The Center has a variety of resources, and is developing some new ones, to assist courts. We are also producing several Federal Judicial Television Network broadcasts, including a new safety series, begun in December, for probation and pretrial services officers, and several broadcasts for court managers and court staff for leading in and coping with extraordinary circumstances. Cyber crime and cyber terrorism are the focus of the next program in our "special needs offenders" series for probation and pretrial services officers. Our conference for chief district judges next month will emphasize leadership, and we will offer another round of seminars based on President Lincoln's leadership in times of crisis. The forthcoming revised edition of our Deskbook for Chief Judges of U.S. District Courts has a chapter on leadership, conceived before September 11 but particularly timely now.

We are also helping the courts understand the new legal environment created in the wake of the terrorist attacks. Our two most recent national workshops for district judges included sessions titled "Domestic Courts in an Interconnected World" and last month we broadcast "Terrorism and the Law: The U.S.A. Patriot Act and Military Commissions," a balanced program of analysis by law professors, Justice Department officials, and legislative staff members about the new law and about the possible relationships between military tribunals and the work of federal courts.

We have also been sensitive to the greater anxiety and need for information of the employees in the Thurgood Marshall building and have instituted a "September 11" lecture series, presenting a program once a month on subjects ranging from "living in times of crisis" to the nature of Islam.

Promoting the fair and efficient disposition of litigation

I described last year our diverse offerings to help judges honor their responsibility to dispose of cases fairly, quickly, and inexpensively. This is the major theme of our initial orientation seminars for newly appointed judges, and we provide judges an extensive array of manuals and sourcebooks about case-management techniques. Recent additions include

—Manual on Recurring Problems in Criminal Trials, Fifth Edition;

—Guide to Judicial Management of Cases in ADR, which helps judges use alternative forms of dispute resolution in appropriate cases to provide more effective, less costly, and more timely justice—The Center for Public Resources, a leading nonprofit organization promoting the use of ADR, especially in commercial disputes, awarded the Guide its best book award for 2001;

—Effective Uses of Courtroom Technology, A Judge's Guide to Pretrial and Trial, which we produced in cooperation with the nonpartisan National Institute for Trial Advocacy, helps judges understand the new technologies that counsel use and to manage cases involving them—in fact, a federal judge, faced recently with the question of whether a civil defendant unnecessarily ran up production costs by printing out 3 million pages of paper cited our Courtroom Technology Guide several times for the proposition that the parties should have met and conferred on electronic discovery procedures at the outset of the case;

—Redistricting Litigation: An Overview of Legal, Statistical, and Case-Management Issues, which will provide judges facing the wave of litigation this year with a resource to understand the statutory and caselaw framework for redistricting litigation, the statistical evidence commonly offered in such cases, and the vagaries of managing the three-judge district courts convened to hear them; and

—the Judicial Conference's Civil Litigation Management Manual, produced pursuant to a legislative mandate with the assistance of Center staff in cooperation with the Administrative Office.

Assessing court administration practices

An important part of the Center's statutory mandate is "to conduct research and study of the operation" of the federal courts. Often that research leads directly to educational manuals such as those described above.

The 28 research projects we are currently conducting for Judicial Conference committees or the courts themselves include assessment of three ADR programs, the impact on litigation costs of discovery involving electronic documents, and the special needs of Native American offenders under federal court supervision. We also developed "plain language" class action notices as models for attorneys to ease confusion in litigation and help everyday citizens understand the legal documents sent to them in regard to class actions.

At the request of the chair and ranking member of the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property, we are conducting an analysis of public orders of chief circuit judges' handling of complaints filed pursuant to 28 U.S.C. § 372(c).

Assisting the judiciaries of foreign countries

In the last twelve months, the Center has provided briefings about the U.S. judicial system to 394 judges and legal officials from 35 countries.

We also provided more substantial assistance, in the form either of specific in-country technical assistance or seminars held here in the United States. I should emphasize, as I did last year, that our briefings as well as our more extensive projects for foreign judiciaries are not funded from the Center's appropriation. We provide this assistance at the request of either U.S. government agencies or foreign institutions, which fund the travel, lodging, and subsistence.

—Puerto Rico's Interamerican Center for the Administration of Justice and Public Policy has begun its programming. As discussed at last year's hearings, we have worked with faculty members of the University of Puerto Rico Law School to help establish the Interamerican Center and design its curriculum and services to teach Latin-American judges how to function under new criminal procedure codes.

—A public defender seminar and observational experiences that we developed with the law school at American University, and seven U.S. federal defender offices, provided Venezuelan chief public defenders with management skills and techniques to help ensure effective representation for defendants in the Venezuelan criminal courts.

—An exchange program in India in which an American delegation, headed by two members of the U.S. Supreme Court, met with the Indian Supreme Court, other judges, and members of the Indian bar, about alternative dispute resolution, case management, and judicial training. I was pleased to be included in the delegation and am anticipating a visit by members of the Indian courts to the United States this year.

—Assistance to the Russian Academy of Justice, the Russian Federation's counterpart to the Federal Judicial Center. Academy officials spent a week at the Center and then three Center officials traveled to Moscow to provide on-site technical assistance.

—The Center provided major assistance to the exchange program involving the Mexican Supreme Court and an American delegation headed by Chief Justice Rehnquist. The exchange occurred shortly after the September 11 attacks. I and the Center's deputy director were members of the U.S. delegation. As a follow-

on, we hope to arrange a seminar in Washington on judicial education techniques requested of us by officials of Mexico's Instituto de la Judicatura Federal.

—Center staff helped Argentina's federal and provincial judiciaries improve their judicial education capabilities.

—The Center is working with the judiciary of Thailand on the development of effective case-management procedures and a court-annexed alternative dispute resolution program.

We have also provided assistance to the growing number of federal judges whose dockets include problems in transnational litigation, such as service of process, discovery in foreign countries, and disputes over choice of law or jurisdiction. Our research suggests that at least a third of federal judges face such matters on an occasional basis or more often. That proportion will surely grow. This year we published International Insolvency, a treatise primarily for bankruptcy judges with cases that include international parties, issues, or implications.

Improving the Center workplace

Finally, I should mention developments affecting Center employees. The Center's statute gives it somewhat greater flexibility in personnel matters than many federal agencies. For example, we adopted a broad paybanding system in 1993 and implemented a revised system last year after we concluded that our initial paybands were too broad to allow effective position classification.

We have had policies in place prior to 1990 permitting flextime for all employees and, since 1994, allowing employees to choose a compressed work schedule. All of our employees use flextime and about 46 percent are on compressed work schedules.

In 1997 we established a telecommuting policy applicable to all Center employees, subject to managers' discretion. I have to say in candor that the number of employees who telecommute regularly is currently only 10 employees or about 7 percent of our present staff. Partly that is because it is not practical to do some Center jobs—such as video production at home. We also make telecommuting available to employees on a case-by-case basis, as the needs present themselves. We believe, however, that we may be able to do more in this regard. Last year I appointed a broad-based employee committee to review the full range of our personnel policies and make recommendations to me. The committee has reported, and we are currently reviewing the recommendations and determining how best to adjust our policies to further our ability to give the taxpayers their due while providing employees flexible work schedules and workplace options. We know that the latter often contributes to the former.

To encourage employee use of public transportation, we offer our employees a transportation subsidy and are looking into increasing the amount from $30 to $60 per month.

Our employees are also eligible to participate in a number of supplemental benefits programs, such as: pretax health insurance premium payments, flexible spending accounts to fund health care, child care, and commuter costs (beyond those covered by the subsidy noted above), and a long-term care insurance program. We are grateful to the AO for developing these innovative policies.

Mr. Chairman, I appreciate this opportunity to explain our budgetary needs for the next fiscal year and to describe some of the Center's work and its effect on the work of the courts.

PREPARED STATEMENT OF DIANA E. MURPHY, CHAIR, UNITED STATES SENTENCING COMMISSION

INTRODUCTION

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to submit a statement in support of the United States Sentencing Commission's appropriation request for fiscal year 2003. The Sentencing Commission is an independent agency within the judicial branch that seeks to respond to national crime and social problems with effective sentencing guidelines. Our work is intended to serve both the statutory purposes of sentencing and the needs of communities, victims, and families affected by crime and the release of offenders. I currently serve as chair of this important agency.

Our substantial workload each year includes developing guideline amendments, analyzing sentencing in federal cases, responding to Congressional directives, and providing information and training on guideline application. This year, however, we join with the rest of the nation in diverting resources from our other critical responsibilities to address the pressing concerns presented by international and domestic

terrorism, achieving homeland security, and preventing corporate crime. Even before September 11, the Commission was concerned about penalties for terrorism offenses, and on May 1, 2001, we sent amendments to Congress that substantially increased penalties for nuclear, chemical, and biological weapon offenses. These penalty increases became effective November 1, 2001, less than two months after the September 11 terrorist attacks, and terrorism is again on our 2002 agenda as we work to implement the USA PATRIOT Act, Public Law 107–56.

After a long period with no commissioners, the Commission was reborn with the appointment of a full complement of seven voting commissioners on November 15, 1999. During the period when there were no commissioners, the Commission's budget was dramatically cut and staff levels dropped by approximately 20 percent. The new Commission nevertheless was able to make progress clearing the backlog of legislative directives that had accumulated during the prolonged absence of commissioners because of extensive background work staff had been able to prepare when there were no other ongoing Commission activities. This helped us accomplish a productive first amendment cycle, but in the next cycle in fiscal year 2001 we became painfully aware of how much our needs surpassed the staffing level we could afford. This realization then affected our appropriation request for fiscal year 2002.

In a relatively short period since our appointments, the Commission has completely cleared the backlog of legislative directives, and Congress has without exception accepted all of the Commission's amendments. These many amendments have implemented new legislation, modified existing guidelines, and resolved circuit court conflicts of guideline interpretation. We have worked hard and made substantial progress, promulgating amendments covering sexual offenses against children, human trafficking and peonage, intellectual property infringement, identity theft, counterfeiting, money laundering, immigration offenses, and ecstasy and methamphetamine offenses, among many others. We would not have been able to accomplish this work if Congress had not responded to our fiscal year 2001 and 2002 requests to begin restoring our appropriation to permit us to restaff. We are still below the level we need, however.

The Commission has also received feedback from other sources which recognizes the quality of our work. The economic crime package passed by the Commission has just been described by Professor Frank Bowman in the Indiana Law Review as "a milestone in the history of the Federal Sentencing Guidelines." Roughly twenty percent of defendants sentenced under the Guidelines have committed economic crimes. This package marks the first time in the history of the guidelines that the Commission has thoroughly rewritten the guidelines governing a major crime category. According to Professor Bowman, "the economic crime package is the first federal sentencing reform initiative in the guidelines era to have been conducted in the public eye from its inception" and is a product of the Commission's now "more open and deliberative process." These guidelines significantly increase penalties for offenses involving high dollar losses, and provide more discretion to judges in sentencing defendants who caused or intended relatively low losses. We expect that judges and other guideline users will find sentencing of economic crimes easier and more just as a result. In addition, new information available this year shows the wisdom of our ecstasy amendment, which was criticized by many as too harsh when promulgated.

This amendment cycle, the Commission is working on many important issues, including terrorism, corporate crime and organizational compliance, drug policy, and Native American issues. We also are developing amendments to ensure that all forms of sex trafficking are covered by the guidelines and to protect our cultural heritage and national treasures, particularly in this time of heightened danger. We remain constrained by inadequate resources, however. We continue to feel the effects of the appropriation setback before our arrival and are simply unable to do the job Congress gave us in the Sentencing Reform Act with our current staffing level. The Commission requests an appropriation of $13,200,000 for fiscal year 2003 to enable us to hire six positions necessary for us to carry out our statutory duties.

New policy initiatives continue to be identified by the Commission, and new crime legislation continues to flow from Congress, the most recent being the USA PATRIOT Act. In response to this important legislation, we expect to submit to Congress on May 1, 2002 a complex multipart amendment that will incorporate the new federal criminal offenses and increased statutory maximum penalties created by the Act into the guidelines. We recognize, however, that our work in this area—like Congress's—will be of an ongoing nature. Rest assured that the Commission stands ready to assist Congress in any way that our resources permit.

The Commission has recently formed an ad hoc advisory committee to study and make recommendations regarding sentencing guidelines for corporations and other organizations, particularly on making compliance programs more effective. The or-

ganizational guidelines created by the Commission have spawned complementary efforts by a number of regulatory and law enforcement authorities and have led to compliance programs across the country to prevent and detect criminal conduct. The organizational guidelines have been in place for over a decade, however, and suggestions have been made as to how they might be strengthened. The fifteen person advisory committee is made up of distinguished and experienced individuals, and we expect this group's contribution to be particularly timely and important in light of recent developments involving Enron and Global Crossing. It will first meet this month, and the Commission expects to begin considering the committee's recommendations in fiscal year 2003.

In fiscal year 2003, the Commission will continue its assessment of how well the guidelines are meeting the goals of the Sentencing Reform Act as they reach their 15th anniversary and have been applied to more than over half a million federal offenders. The purpose of this effort is to give Congress the information necessary to evaluate whether the guidelines are fulfilling legislative intent. We are studying the need to ensure that federal prisons are being used most effectively to incapacitate offenders with extensive criminal histories and high recidivism rates. We are also examining whether quantity should play as large a role in drug sentencing as opposed to other measures of an offender's culpability and role in the offense. These projects require staffing and research costs, but we believe Congress and the public will find value in the results.

The Commission is also forming an ad hoc advisory committee to study the impact of the Federal sentencing guidelines on Native Americans. In June 2001, the Commission held a public hearing in Rapid City, South Dakota, on issues relating to application of the guidelines to Native Americans. In response to the testimony (placed on the Commission website), we conducted three intensive training sessions in South Dakota in fiscal year 2002 to teach local attorneys, other counselors, and probation officers about use of the guidelines. We hope to expand this training to include other states with significant Native American populations. The type of intensive training involved and the complexities of managing a meaningful advisory process on Native American issues will require significant resources in fiscal year 2003.

Congress also has increasingly turned to the Commission for expert advice on sentencing policy. For example, several leading members of Congress have requested that the Commission examine the current federal penalties for drug offenses, specifically crack cocaine and powder cocaine. The Commission is conducting an intensive project which involves analyzing the court documents for 1,600 cocaine offense cases sentenced in fiscal year 2000—representing approximately 20 percent of all Federal cocaine offenses that year. This endeavor involves tracking important variables such as the offender's function in the offense, the geographic scope of the offense, and the presence of certain aggravating factors, including weapon involvement and bodily injury. We plan to report the results of that project in the near future. The Commission is scheduled to conduct a similar study for other major drug types in the near future and, depending on our resources, results of those studies could be available to lawmakers in fiscal year 2003. In addition, the Commission has been monitoring the increased prevalence of abuse of the pain killer Oxycontin and related congressional hearings and plans to study whether the guideline penalties for offenses involving the drug are appropriate.

In fiscal year 2003, the Commission must also struggle to handle the continuing surge in the number of cases sentenced under the guidelines, for it is required under the Sentencing Reform Act to collect the data and analyze these cases. The Commission maintains a comprehensive, computerized data collection system which forms the basis for its clearinghouse of federal sentencing information. This comprehensive database is the basis for the Commission's monitoring and evaluation of guidelines application, for many of its research projects, and for responding to the hundreds of data requests received from Congress and other criminal justice entities each year. We currently are funded and equipped to process approximately 40,000 cases annually, but for the past four years there have been well over 50,000 cases each year. The projected caseload in fiscal year 2002 is 67,000, and there is reason to believe it will be considerably higher in fiscal year 2003.

This appropriation request continues to build on the progress made over the past few years, gradually reestablishing the staffing levels necessary to support a fully functioning Commission.

RESOURCES REQUESTED

The Commission's appropriation request for fiscal year 2003 is $13,200,000. We understand increases are generally hard to justify and that the war on terrorism is costly, but the Commission continues to struggle as a result of budget constraints

and prior staffing reductions and we are playing our role on national problems. Staff resources have become increasingly stretched as the agency must analyze the surge of case filings, develop a significantly increased number of proposed guideline amendments each year, and respond to more directives and requests from Congress and training needs. The Commission asks that Congress approve its request for $13,200,000 in fiscal year 2003 to enable the Commission to meet these increased demands and to continue to improve its services.

JUSTIFICATION

Sentencing Reform Act Requirements

The Commission was created under the Sentencing Reform Act of 1984 as a permanent, independent agency within the judicial branch. Congress gave the Commission a dual mission: (a) to establish and maintain a national guideline system for federal sentencing policies and practices; and (b) to serve as an expert agency and leading authority on federal sentencing matters.

In fulfilling these basic requirements, the Commission annually issues a sentencing guidelines manual that delineates penalty levels for all federal offenses. In addition to encompassing all federal offenses, the guidelines manual incorporates amendments approved by the Commission for newly enacted crime legislation passed by Congress. The guidelines manual is used by prosecutors, defense counsel, and probation officers in making sentencing recommendations to the court. Federal district judges must use the guidelines manual when imposing a sentence, and it must also be relied upon by all federal appellate judges and the justices of the United States Supreme Court when reviewing the imposed penalties. Since the first manual went into effect on November 1, 1987, over half a million defendants have been sentenced under the guideline system.

In fulfilling the second component of its ongoing mission, i.e., to serve as an expert agency and leading authority on federal sentencing matters, the Commission was given continuing statutory responsibility and authority in many areas, including ensuring that sentencing policies and practices provide certainty and fairness, that they avoid unwarranted sentencing disparities while maintaining enough flexibility for individualized sentences when those are warranted, and that they reflect advancements in our knowledge of human behavior as it relates to the criminal justice process.[1]

Demonstrated Accomplishments Following Increased Funding

The work of the Commission generally is determined by three sources: (1) legislative directives by Congress and new crime legislation; (2) resolution of conflicting interpretations of sentencing guidelines among the circuit courts of appeals; and (3) internal priorities that are set by the commissioners following an annual solicitation published in the Federal Register. Due to the extended absence of voting commissioners, the current Commission focused most of its resources the last two amendment cycles addressing the significant backlog of legislation. As a result of the Commission's diligent work in this area, there are no outstanding congressional directives awaiting Commission action. These legislative matters covered a wide range of criminal conduct of great concern to Congress and members of the federal criminal justice system:

Nuclear, Biological, and Chemical Weapons.—In response to the Chemical Weapons Implementation Act of 1998, and a sense of Congress expressed in the National Defense Authorization Act for Fiscal Year 1997, in April 2001, the Commission significantly increased penalties for offenses involving the importing and exporting of nuclear, biological, and chemical weapons. This amendment became effective November 1, 2001.

Human Trafficking.—In response to an emergency directive contained in the Victims of Trafficking and Violence Protection Act of 2000, in February 2001, the Commission amended the guidelines applicable to peonage, involuntary servitude, slave trade offenses, and possession, transfer, and sale of false immigration documents in furtherance of such human trafficking to reflect the heinous nature of these offenses. The amendment accounts for new offenses and increased statutory maxima created by the Act. The Commission currently is considering further changes to address more adequately sex trafficking of children by force, fraud or coercion in violation of 18 U.S.C. § 1591. This amendment also addressed adequate penalties for criminal violations of the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

[1] For a complete list of the Commission's responsibilities under the Sentencing Reform Act, see Appendix A.

Protection of Children.—In response to a directive contained in the Protection of Children from Sexual Predators Act of 1998, in April 2000, the Commission amended the guidelines pertaining to certain sexual abuse offenses and distribution of child pornography to provide, among other things, enhancements for use of a computer in connection with a sexual abuse offense against a minor and misrepresentation of an offender's identity in connection with such an offense. In April 2001, the Commission provided additional increased penalties for violations of chapter 117 of title 18 and for sexual offenses against children that involve a pattern of activity.

Stalking.—In response to a directive contained in the Victims of Trafficking and Violence Protection Act of 2000, in April 2001, the Commission increased penalties for certain stalking and domestic violence offenses.

Identity Theft.—In response to a directive contained in the Identity Theft and Assumption Deterrence Act of 1998, in April 2000, the Commission added to the fraud guideline a sentencing enhancement for violations of 18 U.S.C. § 1028 (relating to fraud in connection with identification documents).

Ecstasy.—In response to an emergency directive in the Ecstasy Anti-Proliferation Act of 2000, in March 2001, the Commission significantly increased penalties for the manufacture, importation, or trafficking of ecstasy and other "club drugs" so that they are comparable to penalties for other major drugs of abuse.

Intellectual Property Offenses.—In response to an emergency directive contained in the No Electronic Theft ("NET") Act of 1997, in April 2000, the Commission made comprehensive changes to the copyright and trademark infringement guideline to more adequately account for the harm caused by these offenses.

Telemarketing Fraud.—In response to a directive contained in the Telemarketing Fraud Prevention Act of 1998, in April 2000, the Commission promulgated a permanent amendment that provides for three separate sentencing enhancements for fraud offenses that involve mass marketing, a large number of vulnerable victims, and the use of sophisticated means to carry out the offense.

Telephone Cloning.—In response to a directive contained in the Wireless Telephone Protection Act of 1998, in April 2000, the Commission added a sentencing enhancement to the fraud guideline for these offenses.

Methamphetamine and Amphetamine Trafficking.—In response to the Methamphetamine Trafficking Penalty Enhancement Act of 1998, and emergency directives in the Methamphetamine Anti-Proliferation Act of 2000, the Commission has amended the guideline's drug quantity table to conform to new mandatory minimum sentences and significantly increase penalties for a given drug quantity, added severe sentencing enhancements for methamphetamine and amphetamine manufacturing that creates a substantial risk of harm to human life, the environment, minors, and incompetents, increased the penalties for amphetamine offenses such that they are identical to the penalties for methamphetamine offenses, and increased the penalties for offenses involving certain precursors of methamphetamine.

Firearms Offenses.—In response to Public Law 105–386, which amended 18 U.S.C. § 924(c) to create a tiered system of mandatory minimums and presumed maxima in cases in which a firearm is involved in a crime of violence or drug trafficking offense, in April 2000, the Commission promulgated an amendment which incorporated the new tiered sentencing scheme into the guideline pertaining to violations of section 924(c). In addition, in April 2001, the Commission added a sentencing enhancement for offenses involving more than 100 firearms. The Commission currently is considering a proposed amendment that would improve the operation of the career offender guideline in the context of section 924(c) offenses.

College Scholarship Fraud.—In response to a directive contained in the College Scholarship Fraud Prevention Act of 2000, in April 2001, the Commission broadened an existing enhancement to specifically cover offenses involving fraud or misrepresentation in connection with the obtaining or providing of information to consumers regarding college scholarships, loans, and grants.

Commissioners Complete Longstanding Policy Work

The Commission also has worked hard to address several policy initiatives that at different points in time have been supported by various constituents, including the Department of Justice and the Committee on Criminal Law of the United States Judicial Conference. In April 2001, the Commission passed amendments that addressed the following important substantive areas:

Economic Crime Guidelines.—After a number of years of data collection, analyses, public comment, and public hearings, the Commission passed a comprehensive economic crime package that, among other things, provides significantly increased penalties for mid and high level fraud, theft, and tax offenses involving moderate and large monetary losses, consolidated the theft, fraud, and property destruction guidelines, and clarified the definition of loss to include all reasonably foreseeable harms.

Our work in this area was extensive. Working in conjunction with the Criminal Law Committee of the Judicial Conference, the Commission conducted a field test of the proposed loss definition by surveying federal judges and probation officers and applying the new definition to actual cases. In addition, in October 2000, the Commission sponsored a two day National Symposium on Federal Sentencing Policy for Economic Crimes and New Technology Offenses at the George Mason University School of Law. The symposium was attended by approximately 150 judges, prosecutors, defense attorneys, and academicians and provided valuable input on the proposed package.

Money Laundering.—Closely related to the economic crimes package, the Commission worked with the Department of Justice to develop a revision to the money laundering guidelines that more accurately captures the seriousness of the money laundering offense conduct. The new guideline structure ties the penalties for money laundering penalties more closely to the penalties for the underlying offense that generated the criminally derived proceeds, distinguishes between offenders who launder funds derived from their own criminal conduct as opposed to those offenders who launder funds for others, and provides significant sentencing enhancements for aggravating money laundering conduct. The amendment is the culmination of several years work of on this area.

Counterfeiting.—In response to recommendations from the Department of Treasury, in April 2001, the Commission voted to provide increased penalties for (1) manufacturers of large amounts of counterfeit currency and (2) offenders who possess counterfeiting paper similar to the distinctive paper used by the United States, or a feature or devise essentially identical to a distinctive counterfeit deterrent used by the United States. This amendment to the counterfeiting guideline addresses recent changes in how counterfeit currency is produced. Because of the advent of new and inexpensive technology, such as laser printers, and the availability of illegal copies of currency on the Internet, offenders now generally print counterfeit currency on an "as needed" basis, with no substantial accumulation of inventory. Thus, an alternative mechanism to achieve increased sentences was needed for this class of offenders.

Safety Valve.—In order to ensure that federal prison space is used to punish serious offenders, in April 2001, the Commission voted to expand the applicability of the two level reduction for non-violent, first time drug offenders who meet the safety valve criteria set forth at 18 U.S.C. § 3553(f)(1)–(5) to defendants who currently receive a sentence below five years.

Illegal Reentry.—In response to difficulties experienced by prosecutors with large caseloads and concerns raised by judges, probation officers, and defense attorneys along the southwest border, in April 2001, the Commission voted to amend the guideline pertaining to illegal reentry to provide a more graduated sentencing enhancement for offenders with prior aggravated felony convictions. The amendment reserves the most serious sentencing increase for the most dangerous offenders and may result in a reduction in the departure rate for such offenses.

Personnel Needed to Meet Other Statutory Duties

Human resource needs of the agency continue to increase as the routine annual amendment cycle is reestablished, new policy initiatives are identified by the reconstituted Commission, and new crime legislation is enacted by Congress. In order to become a fully functional agency that performs all of its statutory functions in an exemplary manner, the Commission needs adequate resources, particularly in the following areas:

Commission Contending with Sharp Increase in Caseload

In fiscal year 2001, the Commission received court documents for more than 67,000 cases sentenced under the Sentencing Reform Act between October 1, 2000, and September 30, 2001. The Commission's organizational structure and physical facilities, however, are designed and funded to handle only 40,000 cases per year.

For each case received, the Commission extracts and enters into its comprehensive database more than 260 pieces of information, including case identifiers, sentence imposed, demographic information, statutory information, the complete range of court guideline application decisions, and departure information. This data is vital to the Commission's deliberations when modifying the guidelines to adjust federal sentencing policy in a timely manner. Yet due to staff vacancies, the Commission even now has a backlog of 20,000 cases that have not yet been processed. The Commission is studying ways to streamline our work process and achieve efficiencies, perhaps by receiving court documents by electronic means. Unless additional staff are hired, however, the Commission will be unable to code data on each case sentenced under the guidelines and will be forced to rely on less reliable statis-

tical sampling to guide its sentencing policy development and to advise Congress on crime policy. Our work depends on this critical information.

Increased Inquiries from Congress for Commission Expertise

The Sentencing Reform Act gives the Commission the responsibility to advise Congress about sentencing and related criminal justice issues. To fulfill this responsibility, the Commission continues to provide members of Congress and their staffs with timely and valuable sentencing related information and analyses. Commission staff have recently responded to requests from Congressional staff for comprehensive briefings on current data and research concerning crack and powder cocaine. Now that the Commission has a full complement of commissioners, Congress is once again turning to the Commission for advice on sentencing policy, a development that the Commission enthusiastically welcomes.

In addition to congressional inquiries such as the request regarding crack cocaine and powder cocaine penalties noted above, the Congress often asks the Commission to provide expert testimony at congressional hearings. For example, on March 21, 2001, I testified before the Senate Caucus on International Narcotics Control about changes made to the Federal sentencing guidelines for ecstasy trafficking, in response to the Ecstasy Anti-Proliferation Act of 2000, Public Law 106–310. I highlighted the harmful pharmacological and physiological effects of ecstasy, its trafficking pattern, and use of ecstasy by minors, as well as the significant impact on sentences for serious traffickers of ecstasy under the amendment.

Each year the Commission also informs Congress's legislative deliberations by responding to hundreds of congressional requests for assistance. These inquiries, both written and oral, include requests for federal sentencing and criminal justice data, analyses of proposed legislation and how it may impact the guidelines, explanations of guideline operation, technical assistance in drafting legislation, and Commission publications and resource materials.

Research and Information Dissemination

The Commission is rebuilding its research staff in order to analyze sentencing patterns and practices, respond to inquiries about the effectiveness of sentencing policies, and assess thoroughly the impact of proposed guideline amendments and new sentencing related legislation. The Commission's research staff, for example, has taken the lead in conducting an intensive coding project on Federal cocaine offenses that we hope to have completed soon. The research staff will be tasked with the same role for a similar project for other major drug types that the Commission plans to conduct during fiscal year 2003, resources permitting.

The research staff also leads the recidivism study the Commission has undertaken as part of the 15 year assessment of the guidelines. When the study is complete, the resulting database would provide the most comprehensive and sophisticated profile of the criminal histories of Federal criminal offenders and their rates and patterns of recidivism. The recidivism study is being accomplished through cooperative efforts with the Federal Bureau of Investigation, the Federal Bureau of Prisons, the United States Parole Commission, the Administrative Office of the United States Courts, with research grants anticipated from the National Institute of Justice. Following its statutory directive to monitor the guidelines to insure that they are meeting the purposes of sentencing required by Congress, the Commission is undertaking this valuable endeavor that will require significant staff resources.

The Commission also continues to advance its statutorily directed research and information dissemination through presentations of analyses at numerous sentencing policy symposia, including the annual meeting of the American Society of Criminology. In fiscal year 2002, Commission staff made presentations on, among other things, Federal drug sentencing policy and drug trafficking trends, sexual predator offenses, and immigration offenses.

The agency annually publishes an updated Guidelines Manual and an Annual Report and accompanying Sourcebook of Federal Sentencing Statistics, which contains statistical charts, tables, and analyses on sentencing pattern and practices gathered from the agency's extensive database. The Commission's sentencing database includes information on sentences imposed for every single district in the country. The Commission also publishes an annual Guide to Publications and Resources and continues to add a variety of publications and sentencing data to its award winning Internet web site.

Increased Training Needs for Larger Federal Criminal Justice System

Over the last several years, as Congress has devoted increased resources to law enforcement, the number of federal judges, prosecutors, probation officers, and defense attorneys who require training and assistance on how to use the guidelines has increased accordingly. The Sentencing Reform Act requires the Commission to

provide guideline training, in part because training promotes uniformity in guideline application and thereby reduces sentencing disparity, both goals of the Act.

Commission staff provided training on the sentencing guidelines in 2001 to more than 2,500 individuals at approximately 50 training programs across the country, including ongoing programs sponsored by the Commission, the Federal Judicial Center, the Department of Justice, the American Bar Association, and other criminal justice agencies. Each year the Commission cosponsors a National Sentencing Seminar to train hundreds of probation officers, prosecutors, and defense attorneys on guideline application. The program is so popular that we must turn away people due to the high volume of interest. Commission also play a major role preparing for and participating in the biennial National Sentencing Institute sponsored by the Federal Judicial Center and attended by a large number of Federal judges. Also, as noted above, in fiscal year 2002, the Commission conducted three days of intensive training in South Dakota as we embarked on a push to improve guideline training in and around Indian County. In fiscal year 2003, we hope to expand those efforts to reach other areas of the nation with large Native American populations, such as Arizona and New Mexico.

The Commission also maintains a telephone HelpLine service to answer guideline application inquiries from federal judges, probation officers, prosecuting and defense attorneys, and law clerks. To expand the availability and cost efficiency of training and information sharing, the Commission has joined the Federal Judicial Center and the Administrative Office of the U.S. Courts in launching a satellite television network to provide programming on sentencing related issues. The Commission makes a regular contribution to a news series for probation and pretrial services designed to update officers on important information regarding the Commission and its activities. However, if the Commission is not provided sufficient funding to restore personnel in other areas of the agency, its quality of training will suffer because its training staff may have to be utilized for more pressing projects as they arise.

As a result of its leadership in the corporate compliance area, Commissioners and staff are regularly invited to share their expertise. The Commission and the Ethics Officer Association (EOA) jointly sponsor a series of regional forums about implementing the organizational guidelines. The Commission also regularly addresses national and regional compliance organizations and responds to numerous inquiries on the organizational sentencing guidelines and compliance issues. Interest and inquiries come from governmental agencies, corporations, industry coalitions, nongovernmental organizations, and academic institutions, both within the United States and overseas.

Commissioners Face Large Number of Circuit Conflicts

In addition to its other work, the Commission has primary responsibility to resolve conflicts in court interpretation of the guidelines. See *Braxton* v. *United States* 500 U.S. 344 (1991). There are presently more than 40 conflicts between circuit courts, many of which accrued during the absence of voting commissioners.

The Commission has made significant progress in reducing the number of outstanding circuit conflicts. In fiscal year 2000, the Commission promulgated amendments that resolved five circuit conflicts, and in fiscal year 2001 another nineteen. Among the conflicts resolved last year are: (i) whether admissions made by the defendant during a guilty plea can be considered "stipulations" for purposes of § 1B1.2(a); (ii) whether the enhancement in the aggravated assault guideline for use of a dangerous weapon during such an assault is impermissible double counting if the weapon used was not inherently dangerous; (iii) whether the enhancement in the fraud guideline for misrepresenting that one acts on behalf of a charitable, educational, religious, or political organization, or a governmental agency applies to a defendant who works for the entity but diverts benefits; and (iv) whether a reduction for mitigating role is precluded in the case of a single defendant drug courier whose base offense level is determined by the quantity personally handled.

The Commission intends to continue resolving circuit conflicts in the process of dealing with other policy work. In addition to monitoring case law to identify circuit conflicts, the Commission continues to follow cases interpreting *New Jersey* v. *Apprendi*, 120 S. Ct. 2348 (2000) (other than the fact of a prior conviction, any fact that increases a penalty for a crime above the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt) to assess its potential impact on the guidelines.

SUMMATION

The Commission has worked very hard with limited resources to clear the significant backlog of crime legislation that await implementation, long standing policy

initiatives that need completion, and circuit conflicts that require resolution. With the necessary resources, in fiscal year 2003 the Commission expects to continue work in important policy areas such as terrorism offenses, corporate misconduct, the impact of the guidelines on Native Americans, calibrating criminal history to account for the risk of recidivism, and drug penalties that account for the culpability of the offender. We cannot undertake a policy agenda of any real significance without appropriate staff levels, however, given the large increase in our caseload and the many demands on us in working for an effective, certain, and fair sentencing system.

APPENDIX A: STATUTORY RESPONSIBILITIES

The responsibilities of the United States Sentencing Commission under the Sentencing Reform Act are:

—ensuring that sentencing policies and practices provide certainty and fairness, that they avoid unwarranted sentencing disparities while maintaining enough flexibility for individualized sentences when those are warranted, and that they reflect advancements in our knowledge of human behavior as it relates to the criminal justice process;
—developing means to measure the effectiveness of sentencing, penal, and correctional practices in meeting the purposes of sentencing;
—monitoring the performance of probation officers regarding sentencing recommendations, including application of the guidelines;
—issuing instructions to probation officers concerning the application of the guidelines;
—establishing a research and development program within the Commission to serve as a clearinghouse and information center for information on Federal sentencing practices;
—consulting with federal courts, departments, and agencies in developing, maintaining, and coordinating sound sentencing practices;
—systematically collecting data from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;
—publishing data concerning the sentencing process;
—systematically collecting and disseminating information concerning sentences actually imposed on more than 61,000 cases sentenced in the Federal district courts each year (and on about 1,000 appellate decisions on sentencing) and the relationship of those sentences to the factors judges are required to consider under 18 U.S.C. § 3553(a);
—systematically collecting and disseminating information regarding the effectiveness of sentences imposed;
—conducting seminars and workshops around the country to provide continuing studies for people engaged in the sentencing field;
—conducting periodic training programs for judicial and probation personnel and other persons connected with the sentencing process;
—making recommendations to Congress on changes that might be made to statutes relating to sentencing, penal, and correctional matters that would help to carry out effective, humane, and rational sentencing policy;
—holding hearings and calling witnesses to assist the Commission in the exercise of its powers and duties;
—recommending any changes in prison facilities that may be necessary because of the sentencing guidelines; and
—performing any other functions necessary to permit federal courts and others in the federal criminal justice system to meet their responsibilities in the sentencing area.

PREPARED STATEMENT OF HALDANE ROBERT MAYER, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Mr. Chairman, I am pleased to submit my statement to the Committee for this court's fiscal year 2003 budget request.

Our 2003 budget request totals $21,893,000. This is an increase of $2,548,000 over the 2002 approved appropriation of $19,345,000. Thirty-one percent of the requested increase, $799,000, is for mandatory, uncontrollable increases in costs. The remaining increase of $1,749,000 is for funding of additional positions and other program increases.

REQUEST FOR PROGRAM INCREASES

A total of $1,749,000 for program increases is requested. The breakdown and further justification for each amount follows. The justifications for the program increases are separated into three categories: staffing; renovations; and technology advancements.

Two New Staff Positions

The court requests $209,000 to cover the cost of two new positions for nine months in fiscal year 2003. The positions requested are for a Deputy to our Circuit Executive position ($130,000) and a Computer Security Specialist ($79,000).

The position of Deputy to the Circuit Executive has become necessary to assist the Circuit Executive with the variety of duties assigned to that office. The Deputy would act in the absence of the Circuit Executive as well as assist in overseeing the offices that operate under the direction of the Circuit Executive.

We also request funding to hire a full-time permanent position entitled Information Technology Specialist. Upon completion of a formal security review and assessment of the court's electronic information system, the National Security Agency concluded that the court should hire an Information Technology Specialist. This person would monitor and protect the security of the court's information system. The Information Technology Specialist would insure that all electronic communications and information in judges' chambers and staff offices are protected and secure from compromise or unlawful release.

Courtroom Renovations

The court is again requesting $900,000 to begin the long-overdue renovations of our courtrooms to bring them up to 21st Century security and technology standards to benefit the judges, attorneys, and litigants. There have been no upgrades to our courtrooms, with the exception of new carpet, since the opening of the courthouse in 1967.

We requested this amount in our 2001 and 2002 budget requests. We have taken our request to GSA with no favorable response. It would be impossible to reprogram current appropriated funds to renovate the courtrooms without reducing our staffing levels or cutting back on the funding for other necessary items such as IT equipment and lawbooks.

Improvements in the Court's Courtroom and Courthouse Computer Technology and Security

We request $640,000 for program advancements in the area of technology in the courtrooms, judges' chambers, and staff offices: $150,000 of this amount is to upgrade the court's e-mail system in order to be a part of the new judiciary-wide e-mail system now being implemented nationwide.

The Judicial Conference of the United States recognized that courtroom technologies are a necessary and integral part of courtrooms. Based on those findings and the fact that the Administrative Office of the U.S. Courts (AO) currently is implementing this program in courts across the country, the court is requesting funding to upgrade the courtroom technology in one of our courtrooms. The figure of $215,000 was provided to the court by the AO based on its experience to date with upgrading courtrooms. Not only would this benefit the Judiciary and the court, it would be a benefit to counsel and litigants. One phase of this new technology will give counsel the opportunity to argue a case offsite while connected to the courtroom as if the attorney were in the courthouse, thus cutting expenses for the litigant.

We request $205,000 to develop and augment a disaster recovery plan for the court's electronic data system. In the event of a major disaster, it will be necessary to access the court's computer network from a remote site as well as locally. This amount is a one-time cost estimate to put this recovery system in place.

The National Security Agency performed a study of court security and recommends improved computer security hardware and software to assist in the detection and prevention of electronic computer attacks and intrusions to the court's computer network. The cost of upgrading the security of the court's computer system is $70,000.

I would be pleased, Mr. Chairman, to answer any questions the Committee may have or to meet with the Committee members or staff about our budget requests. Thank you.

PANEL ATTORNEY RATE INCREASE

Senator HOLLINGS. Judge, that is the key, working with us and particularly our staffs here because we have got a good bipartisan

staff that works on these issues. We will not have any difficulty. In fact, I had a chance last evening to go over each one of these items and I find them, generally speaking, in good order except for when you include an adjustment to the base here on a defender services pay increase. You jump that up from $90 an hour to $113 an hour for panel attorneys.

Judge HEYBURN. Right.

Senator HOLLINGS. What is the justification for that, sir?

Judge HEYBURN. Well, I think there are two separate issues here. We have talked with this committee and the House, as well, about the need to increase the panel attorney rate and we were very, very gratified last year when you increased the hourly rate paid to private attorneys who represent indigent defendants in Federal court. You raised the rate from $75 in court—it was even lower in some places—and $60 out of court, to $90 an hour in and out of court, which is a wonderful achievement and tremendously appreciated.

We had requested $113 an hour, and at the time we put together this budget, we had not learned of the results of your final conference action last year. So the recommendation of the Judicial Conference and our committee still stands at $113 an hour as what we believe is necessary to make up for, I believe it was, 15 years where there was no rate increase.

But you have raised the question, and it is a very legitimate and proper one, now that the rate has been raised to $90 an hour. We do not know, of course, what impact that rate is going to have on the system as a whole because the rate does not go into effect until May. We know it is going to be positive. We still believe that the rate needs to be raised to $113, but it is quite possible that the $90 rate will have a tremendously beneficial impact.

RATE INCREASE AS AN ADJUSTMENT TO BASE

As to the second issue, whether or not the request for $113 should be categorized as an adjustment to base, I think you raise a very good question. I think an argument could just as well be made that this is a program increase rather than an adjustment to base. We include it as an adjustment to base because the CJA statute provides for annual inflationary adjustments and that's what the $113 rate represents. So we considered it like a pay increase, which we consider an adjustment to base. However, I think it is fair enough for you to characterize it as a program increase as well. I think it is certainly a gray area in terms of how you want to categorize it in the budget process and I think you raise a good point.

Senator HOLLINGS. Thank you, sir.

Senator Gregg.

COST OF TERRORISM TRIALS

Senator GREGG. Yes, Judge. I am wondering, and maybe you can get some of your colleagues to comment on this, have you done an estimate as to how much it will cost us in additional funds if we have to run another trial along the lines of what we did for the first World Trade Center bombing? If we bring the September 11 terrorists back here and put them through a criminal justice proc-

ess, I presume the costs are going to be staggering. Do you have a reserve fund for that? Have you tried to anticipate some of these additional costs of trying these terrorists in the United States?

Judge HEYBURN. In our budget request that we present to you today, the possibility of these very expensive trials is not included. We recognize that they may occur, but the estimates for defense costs and other associated related costs of security and the like are based upon the experience that we are now having in 2002. So the estimate, the way we present our budget, is based on the actual 2002 numbers, not a projection of what may happen.

Senator GREGG. So you do not have like a reserve fund, which is reasonable——

Judge HEYBURN. If there was a significant expense in 2003 for a trial such as that, we would simply have to redeploy our resources, and if we have a carryover, perhaps those funds could be used. But it is not specifically a part of our budget.

Senator GREGG. Would you expect to submit a supplemental to us, then, if that were the case?

Judge HEYBURN. In the past, for instance, Oklahoma City, the associated trial costs were significant. There was quite a bit of comment from both the Senate and the House about the expense of defending those persons with private lawyers at Federal expense. I do not know the exact amount, although it was considerably less than the prosecution's expense. But, we could get that to you. I know it was in the millions of dollars. We did not ask for a supplemental on that occasion. It would have to be a fairly extraordinary expense before we would, I think, come in with a supplemental.

[The information follows:]

Summary of Funds Expended for the Representation and Defense of Timothy J. McVeigh from Arrest through Sentencing

Attorneys	$6,741,015
Attorney Support Staff, Housing, and Security	1,467,947
Investigators	1,976,583
Expert and Consulting Services	3,053,405
Travel	541,885
Total	13,780,835

OFF-SITE COURT OPERATIONS SUPPORT CENTER

Senator GREGG. The Administrative Office building over here is a pretty pricey place, very nice, has wonderful trees inside. Of course, coming from New Hampshire, we are wondering why the trees are not outside rather than inside, but that is a technical point.

It would seem that most of the functions of that office could be done somewhere outside of the District and that the security issues raised by 9/11 might imply that it might be better to do those outside of the District. Are you taking a look at moving the Administrative Offices outside the District and then freeing up that space for utilization for departments or agencies which might have to, by their nature, be here in Washington?

Mr. MECHAM. Do you want me to respond to that?

Judge HEYBURN. Yes.

Mr. MECHAM. Pursuant to direction from your committee, we are looking at the necessity for some offsite space to meet emergency

needs. One of the things we discovered from 9/11 and the anthrax situation is that we had inadequate communications. We could not communicate with the Southern District of New York, which was virtually paralyzed, and we realized that we are terribly vulnerable. We could be in a position, if the building were destroyed or otherwise put out of action, where we could not pay the judges, the court staff, or the jurors. Our entire communication system could break down.

However, through your good help, we have a data communications network now that links all courts and judges throughout the United States. So, we applauded your request and are busily engaged in endeavoring to comply with a plan for certain offsite functions.

RELOCATION OF THE AO

With respect to moving the AO, the AO is the principal administrative office function for the entire Federal judiciary. The functions we perform must be done centrally. We have substantially decentralized much of what we used to do here. Starting in 1990, I urged strongly that substantial functions be delegated out to the courts, which they were, and I think we have struck a nice balance.

In the meantime, the courts have grown over the last 6 years by about 15 percent. Our staff has stayed essentially flat because we had decentralized substantial activities. But we still must have a central communication system. You cannot run that in 92 different courts.

Senator GREGG. Yes, but my point is, it does not need to be in the District of Columbia.

Mr. MECHAM. I think it would be very important to have it here. The Chief Justice is our boss. If you want to put us 1,000 miles away from our boss, that is something you could do. I mean, you have that right, but I would not urge that you do that. Many of our functions relate to the General Services Administration. We work with them on buildings and grounds and the planning of buildings. We work closely with the U.S. Marshals Service. It is very important that we be linked to them. We also support the Judicial Conference of the United States, the policy making organization which is headquartered here in Washington. They will be meeting here next week under the direction of the Chief Justice.

Senator GREGG. So you are saying, basically, you think you need to be in the District of Columbia?

Mr. MECHAM. I would say very strongly that the AO needs to be.

Senator GREGG. Rather than in South Carolina or——

Mr. MECHAM. Or New Hampshire, even, perhaps New Mexico.

Judge HEYBURN. We would love to be in South Carolina.

Judge MICHAEL. West Virginia.

Judge HEYBURN. We like West Virginia.

Judge MICHAEL. Very open spaces.

Mr. MECHAM. I personally would like to move it to Salt Lake, now that the Olympics are over, and have it out there. But, I do not think it would be very practical, Senator, in all candor, and I tell you that as somebody on the way out the door, not coming in the door.

Senator GREGG. That was my point. I wanted to get that information. But you are setting up the emergency—you are going to get us some papers on how you are going to be able to handle an emergency that might shut down your——

Mr. MECHAM. We shall, and thanks for asking us to do that.

Senator HOLLINGS. Senator Domenici.

SERVICES FOR THE MENTALLY ILL WITHIN THE JUDICIAL SYSTEM

Senator DOMENICI. Thank you, Mr. Chairman. Two parochial questions and one general one. Let me take the general one first.

I have a great concern for the mentally ill and the courts and the mentally ill and the prisons and jails. It is a startling reality that in the United States, there are more seriously mentally ill people in jails—county and city jails across the land—than there are in all of the hospitals and institutions that we have that try to take care of them. At the national level, non-Federal, we are doing some work with mental health courts with a very small amount of money, thanks to the Congress, and they get to be experts at how to handle the mentally ill that are coming before them.

I hope we can develop a lot more expertise and do a better job across the board, but what does the Federal Government and the judicial system that we call the Federal system, what do they do with reference to mentally ill defendants or people that are accused? What is the process? Is there any way that was built in to help them and to treat them differently?

Judge HEYBURN. I can answer that in a couple of ways. Number one, and just in terms of the facts and figures, I think partly with your urging and the urging of others in Congress, we have dramatically increased the attention and funding for the U.S. Probation and Pretrial Services System for services to mentally ill persons who are within the judicial system. I think the resources that are devoted to that have increased 50 percent over the last couple of years.

From personal experience as a district judge, we from time to time come into contact with defendants who have serious mental illness, whether it is a question of their mental capacity to stand trial or some other mental problem. My experience with the Federal health system has been a very positive one. They are professional, and at least as far as Kentucky is concerned, the hospitals that we can send these people to are within a reasonable proximity.

They do a good job, and these are very, very difficult problems when you have a person who has committed perhaps a serious crime and yet is now—and may have been at the time—under some mental incapacity and is incapable of standing trial. It is a difficult problem for a judge and it is also, of course, difficult for the psychiatrist involved.

I have been very impressed with the ability of the medical services, which are not directly under our control, of course, to respond to our particular needs. But, I do not know if that is the general experience around the country.

Mr. MECHAM. Could I just add one thing to that?

Judge HEYBURN. Please.

Mr. MECHAM. One of our responsibilities here in Washington is to provide administrative support for Federal probation and pretrial services throughout the country.

Senator DOMENICI. Right.

Mr. MECHAM. Judge Heyburn is a chief judge and he has a chief probation officer and a chief pretrial services officer, as do all the courts. There were about 8,700 offenders and defendants, or about 6 percent of the 140,000 under supervision, that received mental health treatment in fiscal year 2001 at a cost of $8.4 million. It is an expanding thing, I regret to say, but yet it is important to do and we are doing our part and we are grateful for the support that this committee has provided that enables us to do that. As Judge Heyburn pointed out, we have had a 50 percent increase in mental health expenditures during the last 2 years.

I should point out, Senator, that we actually supervise more people through the probation system, about 140,000, than there are in the Federal penitentiaries, about 129,000, and we do it at a cost of about $11 per person and the Federal penitentiary is about $55. So we are a bargain for you.

Senator DOMENICI. If you could do them all and we would not need any prisons, that would be fine, but it does not work that way.

Mr. MECHAM. We would probably have to build some prisons to put them in.

Senator DOMENICI. Let me, Mr. Chairman, just take a moment and exchange here with you and for the record some facts with reference to the mentally ill and the court system and the jail system.

Actually, more and more medicines are being developed that help even the most severely mentally ill—schizophrenics, manic depressives, et cetera, but those drugs, in order to be effective, are new, they are experimental, and they are very expensive. One of the problems that we have, whether it is in a county jail or a city jail or a State jail, is that there is not enough money to provide the medication that is necessary to inhibit the hallucinations with which a schizophrenic attempts to live.

Do we have any such problem with reference to the availability of resources for medicine, medication, or would that be under somebody else, Mr. Mecham? Do you have any way of telling us about that, Judge?

MEDICATIONS FOR THE MENTALLY ILL

Judge HEYBURN. I think there is, again, from my own experience as a district judge, there is always a problem. The problem that is least controllable for us is when a defendant is incarcerated prior to trial. At that point in time, even though they are under the supervision of the Marshals Service, they are usually placed in a State facility, a State jail, a county jail for that temporary period of time, and on those occasions and during that limited period of time, it is more difficult for us to ensure that they get the proper medicines that they need, and it comes up more often than we would like.

Now, when they are actually under Federal supervision, that is not in direct custody but under supervised release, under home detention, then they are more directly under the supervision of the

Probation Office and their ability to get the proper medicines is improved as I think the people are much more attentive.

But as you can imagine, with thousands of county jails around the country where Federal prisoners may be held for short times in custody, the quality control, if you will, is just simply not the same as when they are in the Federal system.

Senator DOMENICI. I found out about it today, and I am going to try to do something to see if we cannot put some resources into making sure that medicines are available. At least we can do that much.

STATUS OF LAS CRUCES FEDERAL COURTHOUSE

I have two quick questions about New Mexico. First, I do not think I have to state the background facts with reference to New Mexico as a border State and the city of Las Cruces, which is on the border, and from which the District of New Mexico is now trying two-thirds of their criminal cases. I believe we fit the definition of a district in crisis. I would like to ask, with reference to Las Cruces which is a city about 220 miles from Albuquerque and on the border, about the need for a new courthouse. It is desperately needed. What is the status of the courthouse?

Mr. MECHAM. Through your good efforts, Senator, the Fiscal Year 2002 Treasury and General Government Appropriations Act included $4.1 million for design of the Las Cruces courthouse. Construction is going to cost about $46 million and it is scheduled under the judiciary's 5-year prioritized plan, which obviously you have to agree to or disagree with for next year. It is the seventh item under the 2004 list. It will not be ready for construction in 2003 and therefore was not considered for our 2003 prioritized list. We were directed by Congress to develop priorities. It was a painful process, but we did it.

So it depends a lot, Senator, on whether or not we can fund the projects for 2003. The President only recommended one-fourth of what we need to cover the buildings that are in fiscal year 2003, so if we go down the priority list, if a lot of those are delayed, then that is going to push the Las Cruces project farther down in 2004.

Senator DOMENICI. Thank you very much.

ADDITIONAL JUDGESHIP FOR NEW MEXICO

There is a bill working its way through conference which would provide an additional Article III judgeship for New Mexico, which the judges there have indicated they would like to house in the city of Las Cruces, county of Dona Ana, where this enormous build-up of cases is occurring. Could I ask, based upon your knowledge, would you agree that New Mexico should have an additional Article III judge if we are going to have some border judges in a bill which is in conference?

Mr. MECHAM. Not only do we agree, we strongly support it. It is part of legislation which we have submitted to Congress, which regrettably has not been introduced. We would like to see 54 new judges, but there is a particularly acute need in the border States, as you point out, including New Mexico, which has six district judgeships but has a 681 weighted case filing. We ask for a new judge at 430. Your judges are working hard and their health is

being compromised in at least one case that I know of. We strongly support an additional Article III judgeship for New Mexico.

The Senate has not passed a judgeship authorization bill since 1990, even though the workload has gone up. Mercifully, your committee, however, has taken the lead to authorize 10 in 1999 and 9 in 2000, and I noticed that the Senate, just before you adjourned last year, had put 9 judges in the Department of Justice authorization bill. Unfortunately, it does not include New Mexico.

Senator DOMENICI. I understand.

Mr. MECHAM. It includes five for the Southern District of California, two for Texas, two for North Carolina, all of which are acutely needed, but New Mexico is not in there. I would hope you would talk to the conferees, Senator——

Senator DOMENICI. We are.

Mr. MECHAM [continuing]. In support of New Mexico and maybe some of these other judgeships.

Senator DOMENICI. That is why we asked you, so we can go there and tell them that you agree.

Mr. MECHAM. We agree 100 percent.

Senator DOMENICI. Thank you very much, Mr. Chairman.

Senator HOLLINGS. Thank you. Senator Reed, you are such a quiet and polite Senator, I did not——

Senator REED. I want to apologize. There is a hearing in Armed Services with respect to the CINCs from the Pacific and SOUTHCOM and Korea, so I apologize and I have no questions at this time.

Mr. MECHAM. Senator, can I just make one comment while Senator Reed is here?

Senator HOLLINGS. Certainly.

NEW FEDERAL DEFENDER OFFICE

Mr. MECHAM. Chief Judge Torres has complimented Senator Reed to me and said what a great job he did in supporting a new defender office in Providence. He phoned me to say that Senator Reed had already called him to tell him your committee has approved it and I just want you to know your judges approve of your good work, Senator.

Senator REED. I know I came here for some reason.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Very good. Judge Heyburn, we thank you and your associates here this morning. Thank you very much.

Judge HEYBURN. Thank you very much for allowing us to be here.

[The following questions were not asked at the hearing, but were submitted to the judiciary for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

JUNKETS/EFFORTS TO LOBBY THE JUDICIARY THROUGH SEMINARS

Question. A number of groups and individuals, including Senator Feingold, have expressed concerns about the practice of sitting judges attending resorts for educational seminars bankrolled by corporations and other groups interested in shaping and influencing the development of law in ways that would benefit those who fund

such seminars, for example in the area of environmental law or takings law. The Chief Justice has defended privately funded judicial education seminars.

Nevertheless, I would like to ask each of you whether you have any concerns about the appearance of impropriety created by the attendance of federal judges at educational seminars funded by private groups, including groups that may have interests in the outcome of federal litigation?

Answer. Several ethical guidelines bear on the question whether a judge may properly attend a private educational seminar. Judges are under a statutory duty by virtue of 28 U.S.C. § 455(a) and (b)(1) to disqualify themselves from any case in which they have a "personal bias or prejudice concerning a party" or otherwise where their "impartiality might reasonably be questioned." See also Canon 3C of the Code of Conduct for United States Judges. Specific advice about attending private seminars is contained in Advisory Opinion No. 67, issued by the Judicial Conference Committee on Codes of Conduct. Additionally, the Judicial Conference Gift Regulations and Canon 5C(4) of the Code of Conduct for United States Judges permit judges to accept reimbursement of expenses to attend law-related activities.

The advice contained in Advisory Opinion No. 67 sets out three key principles: (1) whether the sponsor of the seminar is involved (or likely to be involved) in litigation before the judge; (2) whether the source of funding for the seminar is involved (or likely to be involved) in litigation before the judge; and (3) whether the subject matter of the seminar relates to the litigation in which the sponsor or funding source is involved. The opinion advises judges that it would be improper to participate in seminars organized by non-governmental entities if the sponsor or funding source is involved or likely to become involved in litigation and the topics covered in the seminar are related to the subject matter of such litigation. The opinion also observes:

"The education of judges in various academic disciplines serves the public interest. That a lecture or seminar may emphasize a particular viewpoint or school of thought does not in itself preclude a judge from attending. Judges are continually exposed to competing views and arguments and are trained to weigh them."

The analysis in Advisory Opinion No. 67 was endorsed in the most recent federal circuit decision to review this subject, *Aguinda* v. *Texaco, Inc.*, 241 F.3d 194 (2d Cir. 2001). That decision specifically addressed the question of funding and support for private educational seminars. The court ruled that a party's "indirect and minor funding role" in a seminar, coupled with the lack of connection between the litigation and the seminar, did not render a judge's attendance at the seminar improper. As the court observed, "[n]o reasonable person would believe that expense-paid attendance at such [private seminar] events would cause a judge to be partial, or to appear so, in litigation involving a minor donor—whether a party or counsel to a party—to a bar association, law school, or program administering a particular seminar."

Over the years, judges have benefitted from educational programs offered by bar associations, universities, law schools, nonprofit foundations, and other private organizations. It is difficult to determine in the abstract whether a judge's attendance at a particular private seminar will give rise to impartiality concerns. Specific information about the sponsor of the seminar, the source of funding, their involvement in litigation, the content of the seminar, and the judge's relationship to such litigation all bear on the question whether a judge's participation is proper or improper. Additionally, judges who properly attend a seminar may later find it necessary to consider recusal if a case appears on their docket involving the sponsor or source of funding. These factors require consideration on an individual basis.

Question. In what ways do you think that the financial disclosure process could be improved to provide for more complete disclosure of the costs of attendance at such seminars, whether paid for directly by the private group as a "gift" or paid for by the judge and then "reimbursed" by the private group?

Answer. The disclosure requirements set forth in section 102(a)(2)(B) of the Ethics in Government Act of 1978 (5 U.S.C. app. § 102(a)(2)(B)) are quite adequate for reporting reimbursements. Each filer is required to report the source, location, date, and nature of expenses reimbursed by the source. For judges, conflict of interest recusal is based on the identity of the source and not the cost of such reimbursement.

Question. Would you agree that it would be beneficial for financial disclosure statements—after any redactions authorized by the Judicial Conference Committee on Financial Disclosure in accord with the statute—or financial conflicts (investments) lists to be posted at the court houses where the judges sit?

Answer. Financial disclosure statements do not necessarily provide an accurate statement of a judge's financial holdings for recusal monitoring purposes because of

the delay inherent in filing the reports (due May 15) and the time period covered (preceding calendar year). Thus, the listing of assets in a report is already at least four-and-a-half months old when filed and may not accurately reflect a judge's financial holdings on the day of case assignment or trial. In addition, the reports are both over- and under-inclusive, in that they require judges to list interests that are not disqualifying (e.g., bonds), and they fail to require disclosure of interests that are disqualifying (e.g., stock holdings under $1,000).

At the March 1999 meeting, the Judicial Conference of the United States considered whether it should encourage all courts to maintain recusal lists in the courthouse. After reviewing the appropriate Committees' recommendations and discussion, the Conference agreed that the better course of action was to continue to support the efforts of the Committees on Codes of Conduct and Financial Disclosure to educate and inform judges of their responsibilities under 28 U.S.C. § 455, the Code of Conduct for United States Judges, and the financial disclosure provisions of the Ethics in Government Act of 1978. Recently the Chief Justice of the United States has referred the issue of posting recusal lists in the courthouse to the appropriate committees of the Conference for further consideration. This referral was in response to a letter from Representatives Howard Coble and Howard L. Berman of the Subcommittee on Courts, the Internet, and Intellectual property of the House Judiciary Committee concerning hearings held in November 2001 that touched on this issue.

Question. In recent testimony a judicial nominee noted that he now believes the better practice would be not to attend expense-paid seminars unless he knew who was providing the funding to the group sponsoring the seminar so that he could make a better informed judgment about possible conflicts and the appearance of impropriety. What do you think about that suggestion and should it be incorporated in a guideline or rule for federal judges?

Answer. This issue is addressed in current published ethics guidance. Advisory Opinion No. 67, discussed above in response to an earlier questions, advises that, if there is a reasonable question concerning the propriety of a judge's participation in an educational seminar, the judge should take steps to satisfy himself or herself that there is no impropriety. Similar guidance appears in *Aguinda* v. *Texaco, Inc.*, 241 F. 3d 194 (2d Cir. 2001), which states:

"Presentations at bar association meetings or law schools may well relate to particularized issues, and recusal should be considered seriously, but on a case-by-case basis. Judges should be wary of attending presentations involving litigation that is before them or likely to come before them without at the very least assuring themselves that parties or counsel to the litigation are not funding or controlling the presentation."

TRACKING CIVIL CASES

Question. Some have noted that fewer civil cases are going to trial in federal courts these days as more cases are disposed of by motion or settlement. Does the Administrative Office or do the circuits have a process for determining whether judges are being slow or derelict in their responsibilities in timely considering motions?

Answer. The Civil Justice Reform Act of 1990 (CJRA) requires the Director of the Administrative Office of the United States Courts to prepare a semiannual report for every U.S. district and magistrate judge, showing all motions pending before that judge for more than six months, all bench trials that have remained undecided for more than six months, and all civil cases pending for more than three years. Pursuant to that law, these reports are delivered to the Senate and House Judiciary Committees every six months. In addition, the Judicial Conference's Committee on Court Administration and Case Management, which has jurisdiction over the policies relating to the CJRA, has instituted a procedure to identify and assist courts that may be experiencing case processing problems.

Question. All too often litigants complain that judges delay considering timely motions for summary judgment until the eve of trial, after the parties have gone to considerable expense for preparing for trial. Sometimes, we have heard, motions are pending for years and then, when new judges are confirmed to the court, such cases and their old motions are transferred to the new judges, resulting in even more delay. The Administrative Office and the courts have very good procedures for tracking how criminal cases are handled under the Speedy Trial Act. There seems to be precious little accountability, comparatively, regarding how speedily civil cases are handled.

What additional measures of accountability might we build into our civil justice system to provide the public with more information about how promptly civil cases and motions are considered?

Answer. As noted above, the Administrative Office, pursuant to the CJRA and the policy of the Judicial Conference, biannually publishes and provides to Congress a comprehensive and specific report on the status of each federal district and magistrate judge's docket. Individual judge and district reports, which contain more detail, are also available in the clerk's office in each district. In addition, each circuit executive's office maintains copies of their respective districts' CJRA reports. It is not uncommon for the local press to pick up this information and publish a story about the rankings of the judges in their districts.

However, the vast majority of federal district courts dispose of their cases in relatively short order. The median time from filing to disposition for civil cases in district courts is approximately nine months—a figure that has remained fairly constant, never exceeding ten months, over the past 15 years.

Question. Could a computerized tracking system be designed, or could the system that tracks the criminal cases be adapted, to provide such information about the time it takes for courts to dispose of certain types of motions and civil cases?

Answer. For the past three years, the CJRA report discussed above has been primarily prepared by an automated program, the Integrated Case Management System/CJRA Statistical Reporting Program (ICMS/CJRA). As a result, all pending motions, bench trials, three-year old cases, Social Security cases, and bankruptcy appeals are being reported in a standard and consistent fashion. The implementation of this automated processing system has promoted a highly accurate and well-documented analysis of the pending civil caseload for each district and magistrate judge.

SUBCOMMITTEE RECESS

Senator HOLLINGS. The subcommittee will be in recess.

[Whereupon, at 10:56 a.m., Tuesday, March 5, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

THURSDAY, MARCH 7, 2002

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:02 a.m., in room SR–253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Gregg, and Stevens.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF MICHAEL K. POWELL, CHAIRMAN

PREPARED STATEMENT

Senator HOLLINGS. The committee will come to order, and we are pleased this morning in our appropriations oversight to welcome Mr. Michael Powell, the Chairman of the Federal Communications Commission. Mr. Powell, we would be delighted to hear from you, sir.

Mr. POWELL. Thank you, Mr. Chairman, Senator Gregg. It is my understanding that you are interested in getting into some of the policy issues, and in deference to your wishes, I would ask that my full testimony be presented into the record.

Senator HOLLINGS. It will be included, and you can summarize it as you wish.

[The statement follows:]

PREPARED STATEMENT OF MICHAEL K. POWELL

Mr. Chairman, Ranking Minority Member, and Members of the Subcommittee, I appreciate this opportunity to appear before you today to provide you with a report of our work conducted during the past calendar year and to discuss the Federal Communications Commission's ("FCC") fiscal year 2003 Budget.

Less than nine months ago, I appeared before this Subcommittee for the first time and made a personal commitment to effectuate fundamental change within the Commission. I guaranteed that the Commission, as an institution, would complete a thorough self-examination and develop a reform plan designed to make the FCC a more responsive, efficient and effective agency, capable of facing the technological and economic opportunities and challenges of the new millennium. The Commission delivered on this promise and sent you a reprogramming request for its reorganization six months later. We appreciate your rapid consent to our request.

I also pledged to enhance the Commission's independent technical and engineering expertise. The Commission dedicated resources to recruiting, training and re-

taining a solid technology-oriented workforce under our "Excellence in Engineering" Program. We have hired 18 mid- and senior-level and five entry-level engineers. We instituted training programs to keep current and future engineers up to date in their profession. And, we have improved the environment for engineers by purchasing equipment to facilitate the spectrum management process, and to upgrade the Columbia, Maryland Laboratory's testing capabilities. Our on-going efforts in this regard, coupled with the Agency's "FCC University" and "Excellence in Economic Analysis" initiatives, hopefully will preserve our existing wealth of FCC staff knowledge and expertise and enhance and extend that collective knowledge into the new millennium.

When I last appeared before this Subcommittee, I pledged to make the Commission a model of solid management techniques and performance. As such, the Commission moved forward to continue to streamline agency processes and procedures, automate agency processes, provide improved access to agency information, and modernize its information technology infrastructure. During our January 2002 Open Agenda Meeting, the Commission's staff delivered with statistics showing substantial improvement in backlog reduction levels and other management benchmarks.

Finally, I also vowed that the Commission would use the remainder of its fiscal year 2001 and expected fiscal year 2002 funds to implement its statutory mandates and serve as a constructive and fair independent agency, cognizant of the intent of Congress and dedicated to serving the public interest and consumer welfare. I am confident that the Commission has met all of these commitments and, in doing so, has achieved significantly higher levels of customer benefit and policy and management performance.

The Commission has made these achievements, however, against the backdrop of tragic and dramatic national events. The events of September 11, 2001, provided us all with an important lesson in the significance of the FCC's portfolio. We know now that our society has developed more than just an appetite for communications services—America is dependent upon these services in times of crisis and in times of peace. A strong and competitive communications network is essential to a healthy economy and our nation depends on both, whether to bolster its ability to defend itself, or to communicate in times of normalcy.

Last year, this Subcommittee initially provided the Commission with full funding, plus additional resources for the "Excellence in Engineering" Program. Although our final funding was slightly less than originally requested, I am appreciative of this Subcommittee's efforts to ensure that we had adequate resources to achieve our goals and effectuate significant intra-agency reform efforts. For fiscal year 2003, the Commission is requesting $278,092,000, of which $268,327,000 will be dedicated toward our operational requirements.

This year, you have my personal pledge to continue driving forward in a patient and deliberate manner—to handle the expected and the unexpected, from homeland and internal security to biennial reviews, an expected influx of Section 271 long-distance applications, and pending major merger reviews, just to name a few. The Commission intends to use its expected funding to continue its campaign to upgrade the Agency's facilities, as well as to initiate and complete critical rulemakings. The present request is the minimum amount necessary to continue to capitalize our past successes and to carry us through the immense challenges of the next fiscal year. Already, fiscal year 2002 has been marked by a tidal wave of expected and unexpected events and policy and regulatory issues. I expect fiscal year 2003 to be at least as opportune and challenging.

FISCAL YEAR 2002: MAXIMIZING AVAILABLE RESOURCES

It is fitting that we have this hearing on March 7th, a day marked by important historical milestones for the telecommunications industry. On this day in 1876, Alexander Graham Bell received a patent for the telephone. Fifty years later on the same day, the first successful transatlantic radio-telephone conversation took place between London and New York. In retrospect, 50 years seems like a very long period of time between these achievements. Today, we develop new communications products and services at a more rapid speed then ever before, in an exponential fashion that makes science fiction a matter of science fact within just a handful of years. Looking forward, that makes for policy and management opportunities, as well as hurdles and challenges.

As a consequence, the Commission continues to capitalize on its well-established core competencies, especially honed over the past six years, to eliminate barriers to entry in domestic communications markets; to deregulate where appropriate to promote competition; to vigorously enforce Commission rules so that corporate entities compete fairly; and, to promote competition in international communications mar-

kets. Moreover, the Commission continues to build upon the cornerstone principles of the public interest and general consumer welfare to promote access for all Americans to communications service, and to promote heightened consumer education and information.

The Commission must stay abreast of technological advances and be prepared to face the future before the future arrives. To do so, the Commission needs funding to improve its use of internal technology and to develop a highly trained workforce to evaluate communications industry trends. Last year when I appeared before you, I discussed the Commission's critical need to upgrade its infrastructure. I also emphasized our efforts to re-evaluate the Agency and develop a business plan to reform its organizational structure. A well-funded infrastructure and an efficient organizational structure are intrinsically linked. The overall ability of the Commission to function as an institution is dependent upon the quality of both. When I last testified, we already had made strides toward upgrading information technology and technological resources. Six months after my testimony, I sent you a report outlining a significant internal reorganization of the Commission.

The foundation for the Commission's reorganization rests on the shoulders of its staff—a diverse and committed group of people dedicated to utilizing resources to maximum capacity and rebuilding a trim, well-focused organization that meets the needs of America's communications industries and their consumers. The reform and reorganization of the Commission is built along four specific concepts: (1) a clear substantive policy vision; (2) a pointed emphasis on management; (3) an extensive training and development program; and (4) organizational restructuring. The implementation of each of these concepts exemplifies how the Commission utilized its financial resources during the past year, and explains our plans for additional funding in fiscal year 2003.

A Clear Policy Vision

I enumerated above a set of policy and management imperatives that will extend the Commission's mission, evolve its operational strategies, and drive further the culture of efficient, effective and responsive performance. First, we articulated a clear policy vision. The Commission's staff also evaluated our activities in these identified issue areas and tied the highlighted policies to the reform of the Commission as an institution. We initially specified several areas for policy-making emphasis: broadband deployment, competition policy, spectrum policy, building a foundation for media ownership regulation, digital television transition, and homeland security. Although these issues sometimes overlap, their individual significance guides our dedication of resources in the regulatory arena.

Broadband

Recently, I noted that one of the FCC's central policymaking focuses is, and should be, the promotion of efficient, widespread deployment of broadband infrastructure. Recognizing the importance of broadband deployment—a topic of conversation that is extensively discussed here on Capitol Hill, as well as at the Commission, Wall Street, and Main Street—the Commission is taking a concerted, comprehensive approach to bring regulatory clarity to what is, at best, a murky and confusing policy area. To that end, the Commission has committed significant resources to consider and initiate several proceedings that pointedly address broadband issues. Of course, our actions in this area will first and foremost be grounded in the Act, taking into account the statutory objectives of competition, universal service, and consumer protection.

It is important to emphasize that while we have committed significant resources to initiating or completing various rulemakings, the legal and regulatory issues implicated here have yet to be resolved. But they must be resolved if we collectively intend to facilitate the ubiquitous availability of broadband to all Americans. The Commission welcomes the input of all Americans in our deliberative process—especially the opinions of the Members of this Subcommittee and Congress as a whole—as we proceed in developing a regulatory framework for successful broadband deployment.

Competition Policy

Competition is a fundamental and guiding statutory principle under the Telecommunications Act of 1996. It is the root from which most of our other policy areas grow. Under my leadership, the Commission has been outspoken in its support for competition, both inter- and intra-modal. More significantly, however, our actions have backed up our words.

Positive rules to promote competitive entry are meaningless without a credible enforcement effort to back them up. Therefore, we have made enforcement the cornerstone of our competition policy. As you will recall, last year we called on Congress

to increase dramatically the forfeiture amount allowed under the statute. While we eagerly await the fulfillment of this request, we have vigorously enforced our rules that serve to promote competition. In addition, in contemplating our competition policy, we recognized that ensuring that competitors have access to those network elements that are necessary to provide competing telecommunications services is only half the battle. Indeed, the competitive local exchange carrier ("CLEC") community told us that to be useful, network elements must be provisioned in a timely manner. In response to provisioning concerns, we launched two Notice of Proposed Rulemakings on performance standards. Through these proceedings, we have embarked on an effort to simplify performance levels and standards to both clarify obligations and to allow for a mechanism for swift enforcement when those levels and standards are compromised.

Moreover, the Commission has been vigilant in its review of Section 271 applications. Since passage of the 1996 Act, the Commission has denied as many Section 271 applications (this includes situations where the application has been withdrawn, an effective denial) as it has granted. In 2001, despite the fact that the roadmap for approval has been drawn, two Section 271 applications involving three states were withdrawn, demonstrating the Commission's continued determination in ensuring the competitive checklist is met and local markets are open for competition. Furthermore, the Commission has begun a second analytical look at the regulatory implementation of the Act, through our Triennial Review of Unbundled Network Elements Requirements NPRM, that takes account of market experiences to determine which of our regulations are working to provide a competitive environment for consumers and which are not.

Spectrum Policy

The Commission's first assigned task in 1934 was to manage the spectrum. The same basic principles articulated then continue to exist today. The Commission has an obligation to ensure that spectrum, an important and precious resource, is used in a wisely manner that ensures the broadest public benefit and meets urgent public needs.

The Commission has acted decisively—utilizing our staff and the spectrum auctions process to follow Congress' mandate that we work toward the rapid deployment of spectrum. During the past few months, we have reallocated the spectrum used for channels 52–59, designated the 4.9 GHz band for public safety purposes, and authorized the use of spectrum for Ultra-Wideband technology. In a major rulemaking completed on December 28, 2001, the Commission reallocated 27 MHz of spectrum transferred from the Federal Government. This spectrum will permit the initiation of new and flexible services—for example, in the fixed satellite service, fixed mobile service, telemetry, and low power radio. In addition, the Commission has experimented with innovative methods for licensing that encourage private band management within the confines of existing statutory guidelines.

Media Ownership Foundation

The time has come to rebuild the factual foundations that support a contemporary regulatory regime for media ownership regulations. Although the media landscape has changed dramatically since the initiation of many of the Commission's ownership regulations, the longstanding goals of diversity, competition, and localism remain paramount.

As you are aware, the U.S. Court of Appeals for the D.C. Circuit recently vacated some of the Commission's broadcast ownership rules, and has remanded others for our reconsideration. At the heart of the court's concern is the ability of the Commission to justify these restrictions in light of the dynamic changes in today's marketplace.

Long before the recent court decision, however, I expressed concern about the quality of the record the Commission relied on in reaching media ownership decisions. In an effort to shore up this area, I announced the creation of a Media Ownership Working Group on October 29, 2001. This working group is tasked with developing a solid factual and analytical foundation for media ownership regulation. Moreover, they are working to provide an empirical and analytical basis for the Commission to ensure that our regulatory regime in this area actually serves to meet the goals of diversity, localism, and competition in the media marketplace.

It is important to note, however, that the D.C. Circuit's recent decision found that the Act compels the Commission to review the full panoply of media ownership regulations every two years and to repeal these regulations unless the Commission makes an affirmative finding that the rules are necessary to serve the public interest. To address the court's criticism that we lack a factual foundation for our ownership rules, we must expend a meaningful amount of resources to improve the evi-

dence before us. We cannot afford to sit back and hope the public submits all the information we need to make good decisions. We must be proactive in deciding what questions need to be answered, and then to go out and answer them. That is what I have set up the Media Ownership Working Group to do.

We then need to apply those factual findings to our media ownership rules and determine if the rules as written truly promote competition, diversity and localism, or whether today's media market requires different approaches. I welcome that challenge and would simply note that overhauling our knowledge base on media ownership and then re-initializing it every two years hence will require a significant commitment of resources.

In addition to appointing specific FCC personnel to gather empirical information, the Commission has launched a comprehensive examination of rules on multiple ownership of local radio stations and set interim policies to resolve pending radio transfer applications. The Commission also, as recommended by the prior Commission, initiated a proceeding to review the newspaper-broadcast cross-ownership rule. The Commission also began a rulemaking on cable ownership rules last year. In addition, the Commission has proposed new equal employment opportunity rules for broadcast and cable. I believe that by next year, with the proper allocation of resources within the Commission, I will be able to report on significant beneficial progress in this area.

Digital Television Transition

While broadband deployment and the inherent competitive issues involved rank as the most important communications issues facing America, the economic by-products of digital television ("DTV") are equally important in scope and stature. Television is, after all, a central part of our society and provides our citizenry with essential information and entertainment. Consequently, the DTV transition and its economic and regulatory implications maintain an important place in the Commission's overall policy-making efforts. In October 2001, I announced the creation of a Digital Television Task Force. This task force will review the ongoing transition to DTV, and make recommendations to the Commission concerning priorities to facilitate the transition and promote the rapid recovery of broadcast spectrum for other uses. In addition to making recommendations for agency action, the Task Force has been facilitating discussions with the various industries that are largely responsible for the transition.

Homeland Security

In response to the events of September 11, 2001, the Commission established a Homeland Security Policy Council ("HSPC"). The formation of the HSPC and its work involves the use of significant resources in an area that we did not consider for budgetary purposes during the fiscal year 2002 appropriations process. Like other agencies, we are using our current pool of Full-Time Employees ("FTEs") to cope with the events of September 11, 2001, and we are demanding more of them in handling their regular workload along with new tasks.

HSPC is assigned to handle overlapping security issues and respond to specific mission objectives. First, the mission of this group is to assist the Commission in evaluating and strengthening measures for protecting U.S. telecommunications, broadcast and other communications infrastructure and facilities from further terrorist attacks. Second, HSPC assists the Commission in ensuring rapid restoration of U.S. telecommunications, broadcast, and other communications infrastructure and facilities after disruption by a terrorist threat or attack. Third, HSPC assists the Commission in ensuring that public safety, public health, and other emergency and defense personnel have effective communications services available to them in the immediate aftermath of any terrorist attack within the United States.

Emphasis on Management

As an outgrowth of the Commission's self-examination and reform, the Commission has placed a new emphasis on the management of available resources and the creation of tools designed to enhance the operation of the bureaus. We asked all managers to review their internal processes and develop real solutions to existing problems. Specified management initiatives include: (1) backlog reduction; (2) better use of technology, including a re-designed Internet site; (3) improved productivity; and (4) consolidated and simplified licensing systems.

At our January 2002 Open Agenda Meeting, most Bureau and Office Chiefs reported on their reduction in regulatory backlogs—a matter that has dogged the Commission. We have posted these statistics on the Commission's Internet site (<http://www.fcc.gov>), so that our progress in this area is evident to the industry. One major highlight in this area is the Wireless Telecommunications Bureau. In 1998, they had a 13.12 percent backlog of applications pending for more then a year.

By December 2001, that percentage had dropped to 0.24 percent. Likewise, the International Bureau managed to achieve a 55 percent reduction in pending applications for Review and Petitions for Reconsideration, as well as a 56 percent reduction in the number of existing non-routine applications and a 25 percent reduction in existing satellite space station applications.

This past year, the Commission's management maximized improved information technology resources to increase responsiveness to consumers. The FCC's redesigned Internet site is part of our management plan to make the Agency more responsive and transparent. We average approximately 265,000 hits on a daily basis, and we were ranked third overall among federal agencies for Internet site design. At the end of November 2001, the Commission launched a new FCC search engine to improve its Internet site.

In addition to a general managerial emphasis on outreach, the Commission's staff leadership is tasked with improving bureau productivity. For instance, the Commission instituted comprehensive accounting and reporting reform for incumbent local exchange carriers. And, in an effort to reach out to our core constituencies, the bureaus have all undertaken efforts designed to consolidate and simplify licensing systems. The Commission has proposed new procedures to increase the efficiency of satellite licensing procedures. The Commission also has proposed a uniform system for filing informal complaints. This particular change would promote efficiency and predictability for consumers and service providers.

Training and Development

The Commission's long-term policy objectives require a highly trained staff capable of adapting to technological change and industry trends. Accordingly, the Commission has instituted a range of training and technical initiatives: (1) the "FCC University"; (2) the "Excellence in Engineering" Program to recruit engineers and improve their physical resources; and (3) recruitment and retainment of economic experts, or the so-called "Excellence in Economic Analysis" Program.

Already we have instituted internal training programs in a variety of areas and brought outside experts in to train our staff in various disciplines. The most successful element of this program so far, however, is the FCC's "Excellence in Engineering" Program, initiated during the previous fiscal year and continued with funds in our fiscal year 2002 appropriation. Already we have hired 18 mid- and senior-level and five entry-level engineers in open FTE positions. We have instituted a special training program to educate and retain our technological experts. We have dedicated a substantial portion of our funding to improving the physical infrastructure used by the engineers for testing and other purposes. At the Columbia, Maryland Laboratory, we have purchased five new spectrum analyzers and three new signal generators to enhance our ability to adequately measure emissions. As a result of these improvements, we now have the capability to take measurements at 110 GHz instead of the outdated 30 GHz level. We also have dedicated financial resources toward the purchase of equipment designed to measure cellular phone radiation.

Restructuring

Although managerial goals and engineering equipment are essential components of an efficient agency dedicated to high-tech matters, the key to ensuring a well-functioning agency is to create an organizational backdrop that maximizes human and technological resources. On January 17, 2002, the Commission sent the cornerstone of its improvement plan to this Committee—a Section 605 Report detailing the reorganization of the Commission. We are in the initial stages of implementing that reorganization. The Commission's plan is more then a simple retooling of an old agency—it represents an important step in streamlining the Commission. Although there will be no initial budgetary impact from the restructuring, we expect that in years to come, the streamlining approach taken here will pay dividends in efficiency and good management. I have attached to my written testimony a copy of the proposed organizational chart for the Commission.

We intend to dedicate the bulk of our human resources to continue to move forward in these areas, to make the Agency responsive to consumer and industry demands and to facilitate telecommunications growth and deployment. The best way to accomplish this goal is to ensure adequate funding to purchase necessary equipment, improve our information technology capabilities, and hire and retain trained technical personnel capable of assisting the Commission in its decision-making process.

FISCAL YEAR 2003: CONTINUING A YEAR OF PROGRESS

It is important to note that all of the reform and restructuring efforts started in fiscal year 2001 continue to be limited by the available discretionary funding in fis-

cal year 2002. Currently, 69 percent of the fiscal year 2002 appropriation is earmarked for salaries and benefits. Additionally, 29 percent will cover non-discretionary cost increases related to rent and supplies. That amount leaves the Commission with two percent of its total appropriation to implement reform—streamline operations, enhance technical and economic expertise, oversee spectrum management, and provide funds for resolution of ongoing enforcement issues such as cramming/slamming. For this reason, focussing on improving the funding picture in the future—i.e., fiscal year 2003—is especially important.

The $268,327,000 in operational costs requested by the Commission for fiscal year 2003 is the bare minimum needed to allow us to continue the progress made during the past year. In order to achieve our goals, and stay abreast of telecommunications developments, the Commission must keep ahead of changes in technology, economics, and the law. Accordingly, we are requesting $15,066,000 for critical programmatic initiatives. An additional $8,190,000 would be dedicated toward uncontrollable cost increases related to salaries, benefits, and inflationary cost increases for rent and supplies. The Administration's request of $9,765,000 for retirement costs brings the total Commission fiscal year 2003 budget to $278,092,000. The fiscal year 2003 regulatory fee offset for the Commission would be 89 percent of the proposed fiscal year 2003 budget, making our direct appropriation request from this committee 9.5 percent over our total fiscal year budget, or 13.5 percent with the pension costs included.

From the perspective of funding Commission objectives, the critical segment of the overall budget is the $15,066,000 dedicated to programmatic initiatives. Of that amount, $4,986,000 will be dedicated toward Commission employee training, enforcement, and spectrum management initiatives. Due to national security needs identified since September 11, 2001, the Commission also will spend $1,000,000 to improve internal security and support other security efforts. The remainder of these funds, $9,080,000, will improve information technology critical to supporting program performance initiatives. With these funds, the Commission will improve existing systems to ensure compliance with Government-wide standards pertaining to system security, accessibility, and financial management.

In addition to the policy objectives and reform outlined in my testimony, our specific objectives for this funding include:

—Continued expansion of electronic filing and other initiatives to enhance public access and expedite Commission policy decision-making;
—Improved technical and economic expertise of staff;
—Life-cycle replacement of technical monitoring and testing equipment;
—Ongoing infrastructure improvements to Columbia laboratory facility;
—Expeditious and effective response to public requests for assistance and information;
—Enhancement of information technology infrastructure to make it responsive to changes in the industry; and,
—Enable the FCC to improve its homeland security posture.

One of the Commission's main objectives during the next year is to maintain a safe and secure working environment for the FCC's employees and visitors who frequent the Commission. As with most other agencies, the Commission has faced the fallout from September 11, 2001, with unanticipated costs. This year we must provide enhancements to a variety of activities and programs, including on-site physical security; relocation and processing of mail at multiple off-site locations; and systems upgrades to ensure that our information technology infrastructure has adequate cyber-security safeguards. Although we have $1,000,000 specifically set-aside for these projects in fiscal year 2003, the Commission also has requested the use of excess regulatory fees collected in previous years for fiscal year 2002 security needs. In addition to receiving full funding, we would appreciate a favorable decision related to this request.

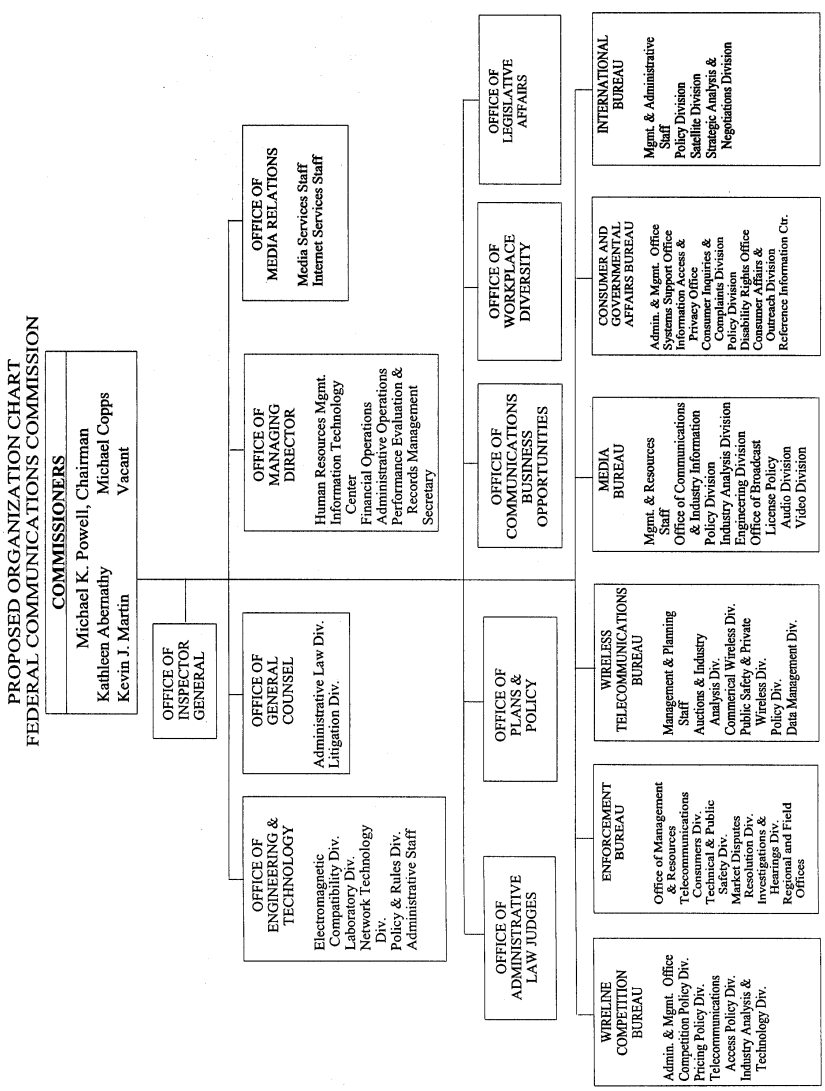
Without adequate support, we will be required to eliminate some of the Commission's programmatic initiatives, or cut back on the implementation of individual programs. I believe that I already have made the hard choices necessary to operate the Commission on as tight a budget as practicable. As I outlined in the first part of my testimony, the infrastructure and manpower initiatives are interconnected to the general health of the agency and the completion of its core mission.

CONCLUSION

The Federal Communications Commission has been using, and continues to use responsibly its financial resources to meet the needs of a dynamic regulatory, economic, and technological environment. This past calendar year, the Commission's staff has handled a new workload based on national exigencies, worked toward im-

proving overall agency management, and initiated a restructuring process designed to ensure that the Commission of today is prepared for the regulatory mission of tomorrow. The Commission's budget request is a reflection of an imperative need. We have trimmed the fat and focused all available resources to follow through on much needed rulemaking matters, reform and restructuring, and other essential programmatic needs. I respectfully request that this Subcommittee grant the Commission its full funding request for fiscal year 2003.

Thank you. I would be happy to answer any questions this Subcommittee may have.


PROPOSED ORGANIZATION CHART
FEDERAL COMMUNICATIONS COMMISSION
COMMISSIONERS
Michael K. Powell, Chairman
Kathleen Abernathy
Michael Copps
Kevin J. Martin
Vacant
OFFICE OF INSPECTOR GENERAL
OFFICE OF ENGINEERING & TECHNOLOGY
Electromagnetic Compatibility Div.
Laboratory Div.
Network Technology Div.
Policy & Rules Div.
Administrative Staff
OFFICE OF GENERAL COUNSEL
Administrative Law Div.
Litigation Div.
OFFICE OF MANAGING DIRECTOR
Human Resources Mgmt.
Information Technology Center
Financial Operations
Administrative Operations
Performance Evaluation & Records Management
Secretary
OFFICE OF MEDIA RELATIONS
Media Services Staff
Internet Services Staff
OFFICE OF ADMINISTRATIVE LAW JUDGES
OFFICE OF PLANS & POLICY
OFFICE OF COMMUNICATIONS BUSINESS OPPORTUNITIES
OFFICE OF WORKPLACE DIVERSITY
OFFICE OF LEGISLATIVE AFFAIRS
WIRELINE COMPETITION BUREAU
Admin. & Mgmt. Office
Competition Policy Div.
Pricing Policy Div.
Telecommunications Access Policy Div.
Industry Analysis & Technology Div.
ENFORCEMENT BUREAU
Office of Management & Resources
Telecommunications Consumers Div.
Technical & Public Safety Div.
Market Disputes Resolution Div.
Investigations & Hearings Div.
Regional and Field Offices
WIRELESS TELECOMMUNICATIONS BUREAU
Management & Planning Staff
Auctions & Industry Analysis Div.
Commercial Wireless Div.
Public Safety & Private Wireless Div.
Policy Div.
Data Management Div.
MEDIA BUREAU
Mgmt. & Resources Staff
Office of Communications & Industry Information
Policy Division
Industry Analysis Division
Engineering Division
Office of Broadcast License Policy
Audio Division
Video Division
CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU
Admin. & Mgmt. Office
Systems Support Office
Information Access & Privacy Office
Consumer Inquiries & Complaints Division
Public Info. Division
Disability Rights Office
Consumer Affairs & Outreach Division
Reference Information Ctr.
INTERNATIONAL BUREAU
Mgmt. & Administrative Staff
Policy Division
Satellite Division
Strategic Analysis & Negotiations Division

SUMMARY STATEMENT

Mr. POWELL. Thank you. I would like to read a brief statement concerning the Commission's fiscal year 2003 appropriations request.

It is fitting that we have this hearing on March 7, a day marked by important historical milestones for the telecommunications industry. On this day in 1876, Alexander Graham Bell received a patent for the telephone. Fifty years later, on the same day, the first successful transatlantic radiotelephone conversation took place between London and New York. In retrospect, 50 years seems like a very long period of time between these achievements. Today, we develop new communications products and services at a more rapid speed than ever before, in an exponential fashion that makes science fiction a matter of science fact within just a handful of years.

Less than 9 months ago, I appeared before this subcommittee for the first time and made a personal commitment to effectuate fundamental change within the Commission. I guaranteed that the Commission as an institution would complete a thorough self-examination and develop a reform plan designed to make the FCC more responsive, efficient, effective, and capable of facing the technological and economic opportunities and challenges of the new millennium. And, as always, to do so in a fashion that always attempts to protect consumer welfare and the public interest.

I believe that the Commission delivered on this promise. We sent you a reprogramming request for the FCC's reorganization 6 months later, in January 2002, and we deeply appreciate the chairman's rapid consent to our request.

I also pledged to enhance the Commission's independent technical and engineering expertise. The Commission dedicated resources to recruiting, training, and retaining a solid technology-oriented workforce under our Excellence in Engineering Program. We have, I am happy to report, hired 18 mid- and senior-level engineers and five entry-level engineers this year, more than the FCC has hired in nearly 20 years. We instituted training programs to keep current and future engineers up to date in their profession. And, we have improved the environment for engineers by purchasing equipment to facilitate the spectrum management process and to upgrade the Columbia, Maryland, laboratory's testing capabilities. Our ongoing efforts in this regard, coupled with the agency's FCC University and Excellence in Economic Analysis initiatives, hopefully will preserve our existing wealth of FCC staff knowledge and expertise and enhance and extend that collective knowledge into the new millennium.

When I first appeared before this subcommittee, I pledged to make the Commission a model of solid management practices. As such, the Commission moved forward to continue to streamline agency processes and procedures, automate agency processes, provide improved access to agency information, and modernize its information technology infrastructure. During our January 2002 Open Agenda Meeting, the Commission's staff delivered—with statistics showing substantial improvement in backlog reduction levels and other management benchmarks.

Finally, I also vowed that the Commission would use the remainder of its fiscal year 2001 and expected fiscal year 2002 funds to implement its statutory mandates. In this regard, the Commission has demonstrated during the past calendar year a continuation of steadfast commitment to its regulatory purpose. The fundamental mission of the Commission, as a constructive and fair independent agency, is to implement the Communications Act of 1934, as amended, in a manner that promotes competition, innovation, deregulation, and the availability of high-quality communications services for all Americans. I am confident the Commission has met this and the rest of our commitments and, in doing so, has achieved significantly higher levels of policy and management performance.

The Commission has made these achievements, however, against the backdrop of tragic and dramatic national events. The events of September 11, 2001 provided us with an important lesson in the significance of the FCC's portfolios and the networks that it oversees. We know now that our society has developed more than just an appetite for communications services. America is heavily dependent on these services in times of crisis and in times of peace. A strong and competitive communications network is essential to a healthy economy, and our Nation depends on both, whether to bolster its ability to defend itself or to communicate in times of normalcy.

I am unwavering in my commitment to implement the long-term business plan outlined in my full written statement. To effectuate our stated goals, however, the FCC has requested $278 million and 1,975 FTEs for fiscal year 2003. This request includes $9.8 million to fund the administration's Government-wide proposal to fully fund retirement costs in each agency's budget.

The Commission's requested operating costs are $268.3 million. These operational costs requested by the Commission for fiscal year 2003 are the bare minimum needed to allow us to continue the progress made during the past year. In order to achieve our goals and stay abreast of telecommunications developments, the Commission must keep ahead of changes in technology, economics, and the law. Accordingly, we are requesting $15 million for critical programmatic initiatives. An additional $8 million would be dedicated toward uncontrollable cost increases related to salaries, benefits, and inflationary cost increases for rent and supplies. The administration's request of $9.8 million for the retirement costs brings the total budget to $278,092,000. The fiscal year 2003 regulatory fee offset for the Commission would be 89 percent of the proposed fiscal year 2003 budget, making our direct appropriation request from this committee a 9.5 percent increase over total fiscal year budget last year, or 13.5 percent if you include the administration's pension costs.

From the perspective of funding Commission objectives, the critical segment of the overall budget is the $15 million dedicated to these initiatives. Of that amount, $4.9 million will be dedicated toward Commission employee training, enforcement initiatives, and spectrum management initiatives. Due to national security needs identified on September 11th, the Commission will also spend $1 million to improve internal security and support other security ef-

forts. The remainder of these funds, $9 million, will include information technology critical to supporting program performance initiatives. With these funds, the Commission will improve existing systems to ensure compliance with Government-wide standards pertaining to security, accessibility, and financial management.

This year, Senators, you have my personal pledge to continue driving forward in a patient and deliberate manner—to handle the expected and the unexpected, from homeland and internal security to biennial reviews and an expected influx of 271 long-distance applications, as well as pending major merger reviews, just to name a few.

The Commission intends to use its expected funding to continue its campaign to upgrade the facilities, as well as to initiate and complete critical rulemakings.

The present request is the minimum amount necessary to continue to capitalize our past success and to carry us through the immense challenges of the next fiscal year. Already, fiscal year 2002 has been marked by a tidal wave of expected and unexpected events and policy and regulatory issues. I expect fiscal year 2003 to be at least as opportune and challenging.

For that reason, I respectfully request that this subcommittee grant the Commission its full funding request for fiscal year 2003. I thank you for your indulgence, and I am happy to answer any questions the subcommittee might have.

Senator HOLLINGS. Chairman Powell, we have no doubt about your management abilities. When you state you are going to drive forward and take care of all these challenges, however, you need to understand that as the Chairman of the FCC all you need to do is to take care of the laws that we pass. And you have just that responsibility. Instead, you seem to abandon that responsibility and assign it to the market. And you stated just 10 days ago, "My religion is the market." You don't care about these regulations. You don't care about the law or what Congress sets down. Working for the public interest, you have to have the attitude to look out for the public interest, and you say the public interest is about as empty a vessel as you can accord a regulatory agency. That is the fundamental. That is the misgiving I have of your administration over there. It just is amazing to me you just pell-mell down the road and seem to not care at all. I think you would be a wonderful executive vice president of a chamber of commerce, but not a Chairman of a regulatory commission at the Government level. Are you happy in your job?

Mr. POWELL. Extremely.

Senator HOLLINGS. And you do think that your religion is the market? Is that right?

Mr. POWELL. I don't recall ever saying that, but——

Senator HOLLINGS. Well, you were quoted in USA Today just on February 25, and the other quote I used was from the American Bar Association, specifically the submission that you made with regard to NextWave. I am reading to you the law. This bothers me because we have got an important appeal by the Federal Communications Commission before the United States Supreme Court, and it is disturbing that perhaps the Commission won't make an authoritative kind of appeal.

1934 COMMUNICATIONS ACT

You are talking with all that history and Ma Bell and everything. Let's go back 68 years ago to the 1934 Communications Act. Let me read from the Act. "It is the purpose of this Act"—I am reading Section 301. "It is the purpose of this Act, among other things, to maintain the control of the United States"—that is the word, "control," not the distribution and taking care of all the new challenges and everything else that you might think of but, rather, the congressional control that has been assigned to you—"the control of the United States over all the channels of radio transmission and to provide for the use of such channels, but not the ownership thereof"—"not the ownership thereof"—"by persons or limited periods of time under licenses granted by Federal authority, and no such license shall be construed to create any right beyond the terms, conditions, and the periods of the license."

Yet you were going along with the market. A good arrangement and everything else, like it had absolutely nothing to do with that. Do you think that is the law?

Mr. POWELL. I absolutely think it is the law. I also think that the law indicates that there are benefits and market economics for the public interest.

Senator HOLLINGS. What is that?

Mr. POWELL. I think that the law also recognizes that the use of market forces can be concomitant with the public interest.

Senator HOLLINGS. But there is no public interest feature to that particular categorical provision, is there?

Mr. POWELL. Certainly there——

Senator HOLLINGS. You think, in other words, that with the public interest you can amend that law?

Mr. POWELL. No, sir. But I think that the public interest confers on the Commission a duty and obligation to implement the statute where there are ambiguities and to look for the mechanisms using regulatory tools, including uses for fostering competitive market economics, that will enhance overall the consumer welfare.

I could also quote provisions of the statute that speak in those terms.

Senator HOLLINGS. That is a wonderful statement for a chamber of commerce executive, but being the Chairman of the regulatory body, where in there is there any discrepancy or vagueness or anything else like that? I don't know how to categorically state it more. In other words, assuming we lose the case—I have thought about that, and if we lose the case, I don't know how to state it better here when it says "the control of the United States over all the channels" and "provide for the use of those channels, but not the ownership thereof."

NEXTWAVE CASE

Now, you wanted to vest the ownership in the *NextWave* case into the bankrupt agency, and it could have no ownership whatsoever. They only had a license, and the license was automatically revoked under the terms of the auction. Where was all that at the big hearing you had and the big brief you had and the testimony you gave over on the House side?

Mr. POWELL. I think it was there. Senator, I am the one who sought certiorari from the——

Senator HOLLINGS. You did what, sir?

Mr. POWELL. I am the individual who sought certiorari in the Supreme Court on the NextWave matter. I am the one who argued for it vociferously, was quite pleased to see it granted. If you will recall, you called me last summer on vacation, and we discussed this matter, and I committed to you the continued pursuit of the litigation.

Senator HOLLINGS. But you ran in both directions. You pursued the litigation, but you got rid of the litigation in a deal that would vest ownership.

Mr. POWELL. That is not accurate. Nothing in the deal led to the termination of the Supreme Court case. I absolutely insisted that any effort to try to settle the matter would not moot the Supreme Court case. Nothing in that agreement did so.

Senator HOLLINGS. Well, I can see we have just got a fundamental difference of opinion, but I was pleased this morning when I saw the article by the most conservative of conservative writers, William Safire, "The Urge to Converge," with "the round-heeled Michael Powell steering the Federal Communications Commission toward terminal fecklessness."

I don't say that to hurt your feelings and all, but I am trying to denote there is a disturbing sense in the Congress, your particular administration, particularly now that we have got this hiatus going on relative to the deregulation of the Bell Companies. They have veritably voted it in the Tauzin-Dingell bill over on the House side, and we will be considering it here, have a hearing on the 20th with Mr. Tauzin himself. But it seems like you are trying to get with the notices you have given for the Commission on hearings in this regard, you are trying to outdo the Congress before we can get to that or before even Tauzin can get to it.

Mr. POWELL. I don't think so. The broadband item that I think you are making reference to has a very fundamental difference from anything being considered by the Congress. I think as you point out, the Commission can only do what it can within the context of the law. The Commission cannot change the law. The Congress is free to modify the statute itself. We are not. And I do not generally agree with some of the characterizations put forth in media that the item is the functional equivalent of currently pending legislation in Congress. I think that we have stated for many, many months, long before the heated aspects of this particular legislation, that there were areas that presented important regulatory questions.

We have a number of courts around the country have criticized the Commission for not clarifying the regulatory classification of these new emerging services, and I think it would be irresponsible for us to continue to leave those questions unanswered in the context of the increasing growth of new Internet access services.

Senator HOLLINGS. Senator Gregg.

Senator GREGG. Thank you, Mr. Chairman.

To continue this discussion, I do find it ironic that members of the other side of the aisle are suddenly outraged that there may be someone who they perceive as pursuing regulatory overreach. It

was the philosophy, it appears to me, of the other side of the aisle during the prior administration for there to be dramatic overreach by the regulatory agencies. But I don't see your agency doing that, anyway, so I don't think it is necessary to defend you on that turf.

TAUZIN-DINGELL BILL

I do have some questions, however. I would be interested in your giving us your analysis of the Tauzin-Dingell bill.

Mr. POWELL. I think I am enough of a politician not to do too much of that.

The best that I can say is that I think the Tauzin-Dingell bill, to the extent that I understand it—and I would have to confess that I am not intimately aware of its most recent details—is an effort to modify the statute itself with respect to specific limitations and regulations, in an effort to dramatically stimulate and in some cases require the deployment of new and advanced infrastructure and architecture.

I do not have an opinion about whether those sweeping efforts are meritorious or compelled by the market conditions. I think that we can, at the Commission, make substantial progress in clarifying the regulatory environment and introducing incentives to stimulate broadband deployment that will be meaningful and will have consumer benefits even within the context of the statute unchanged by legislation.

Senator GREGG. Well, you sort of initiate something here which is called—it has actually been referred to as a national broadband policy in the FCC. How do you see that staying within the context of the present law?

Mr. POWELL. I think that the present law was quite thoughtful in at least being anticipatory of these kinds of changes. For example, one only needs to look at the preamble to the 1996 Act to find support for those objectives: "an act to promote competition and reduce regulation in order to secure lower prices and higher-quality service for American telecom consumers, and encourage the rapid deployment of telecom technologies."

Under Section 706, we are tasked with encouraging the "deployment on a reasonable and timely basis of advanced telecommunications capabilities to all Americans" utilizing regulatory methods that remove barriers to infrastructure investment.

We believe that one of the central things the Commission needs to do in this space is to clarify the regulatory classifications of new and emerging services that have characteristics of different definitions, not our definitions, but those that exist in the statute.

The statute covers multiple classes of communications and attaches different regulatory treatment to each one. If you are a cable service provider, certain regulatory obligations exist, certain do not. The statute defines information service providers; certain obligations apply to them, certain do not. And, it defines telecommunications carriers, in the same way.

When we begin to have convergence and new services entering the space with new characteristics, questions arise as to which proper classification should be applied to them, and then subsequently, what are the consequences for regulatory policies and concerns?

This item is designed to be responsive to that first question principally. How should we classify under the statute's definition these new emerging broadband services? And I think just as importantly, which I think often is omitted in the anxiety expressed in press reports, the Commission tees up ways to protect all types of regulatory policies and concerns that are implicated by that definition.

So I think we are operating within the statute because we are trying to figure out which of the statute's classifications govern which service. It is our duty to figure out which provisions of the statute we continue to apply and how they would continue to apply. I would conclude by emphasizing, that if there are problems, including market power and anti-competitive and access concerns—the Commission also has extensive power that Congress conferred to it in 1934 under Title I. In fact, the Commission has regulated access terms and conditions of information services for the better part of two decades, using its Title I authority, and has been upheld by the courts in doing so.

To the extent that there are categories of services that will not have specific Title II attached to them, we will have Title I authority to exercise in order to protect important governmental interests.

Senator GREGG. Well, trying to reduce that to a simple statement, what happens last mile?

Mr. POWELL. What happens last mile?

Senator GREGG. Yes.

Mr. POWELL. The last mile is the most important part of broadband deployment. A number of things can happen increasingly because that last-mile loop, depending on its construction, may be capable of doing any number of things at the same time.

One of the things I think Congress thought about is focusing on the services being provided and not the nature of the technology underlying it. So what will start to happen, if we continue in this direction, is we will begin to try to classify regulatory treatment, not by the nature of the technology that is that last mile, but the nature of what services are being offered over it.

For example, when America Online or Earth Link or Juno or any number of the major ISPs offer high-speed Internet access service over that infrastructure, they are being regulated as information services, and they are doing so in a much less regulated way than the provision of telecommunications services over that.

So what happens is greater granularity on regulatory treatment, depending less on the architecture and more on the nature of the services being provided.

Senator GREGG. Does that mean you are going to end up asking them to share the last mile?

Mr. POWELL. Yes. I think that to some degree they have to share the last mile, and I think that part is faithful to the statute as well.

Section 251 compels access to those unbundled elements for particular kinds of services that still will have to be available.

If there are questions about other types of services that do not have those obligations attached to them, our computer inquiry decisions—sorry to use more historical regulatory approaches—continue to affix to those services, and they, at least for the moment, will have to be provided on an unbundled basis as well.

Senator GREGG. I know I don't have all the time in the world. I would like to pursue this into the long-distance question.

Senator HOLLINGS. Go right ahead.

Senator GREGG. But let me switch and go on to a question which is more parochial and more to my own interests, which is the NextWave issue that the chairman raised.

This committee has kept its finger in the dike on that issue through a number of Congresses, and then was replaced by the court system and by the FCC carrying the ball on this question. But that risk here is somewhere in the vicinity, depending on whose estimate, of $12 to $16 billion of what I believe are taxpayers' moneys.

OWNERSHIP OF THE SPECTRUM

And my question is: When the FCC files its briefs, what will be the theory of the brief, if you are willing to disclose them at this time? And will it be based on the belief that the ownership of the spectrum is a taxpayer asset?

Mr. POWELL. Absolutely. The Commission, I think, has fought this long consistently on that principle, the belief that we are not another creditor in bankruptcy, and that no property rights attach to spectrum in auctions. I do not even think that is a disputable proposition under the statute, which expressly states that there are no property interest or ownership interest rights in the spectrum.

The difficulty in the context of auctions is we have been treated by the court systems as a creditor and subject to the bankruptcy limitations thereof. I thought very strongly that the D.C. Circuit opinion was wrong. I thought it was wrong because I think it denied the regime that Congress established for the allocation of public spectrum and the Commission's rights under that statutory provision to reclaim its property, the property of the public, when a person defaults on the terms and conditions established for its permissive use.

I always have believed a license automatically cancelled. Everything that we have done has preserved that principle. So even in the context of the Supreme Court case—and you can see some of this in our cert petition that was granted—we argue quite strongly that the D.C. Circuit failed to provide the appropriate deference with regard to the telecommunications policies of the United States and that the Bankruptcy Code should not be interpreted as in conflict with that.

Hopefully that got the court's attention, and hopefully that will be the basis of reversal of the D.C. Circuit's decision.

Senator GREGG. Well, I certainly hope so, too, and I believe that the Congress has a legitimate interest here, too, as the protector of the taxpayers' rights here. And I hope we will file an amicus brief on behalf of your position.

One last question, and then I would yield my time. The Northpoint issue. I just don't understand why it has taken so long to get a decision, number one; and, number two, I don't understand why you would have to go back to auction since, as I understand it, the technology is only—it is agreed that the spectrum can be shared, and the technology is understood to exist, and there is only

one group that met the requirements of filing necessary. So why aren't we just making a decision on this thing and moving forward?

Mr. POWELL. Well, I do not really want to offer any excuses. I had hoped the Commission would be done with this at the end of last year. It has failed to do so. I think that is unfortunate.

I would say that we did put an item on the floor in November. I personally have voted for the item. I am awaiting the votes of some of my colleagues who are continuing to wrestle with particular questions. I continue to urge them to do so expeditiously.

Regrettably, it is not appropriate for me to talk specifically about the merits of pending issues, including whether to auction or not to auction, which, candidly, have not been resolved until there has been a majority conclusion as to those questions.

I continue to hope and push hard for a decision, and I would still like to characterize it as imminent. I would love to talk to you in more detail, perhaps privately or in a context consistent with our ex parte rules, about the specific merits of the pending claims, but I am not permitted to do so in this forum.

Senator GREGG. I appreciate that. Thank you.

Senator HOLLINGS. Senator Stevens.

Senator STEVENS. Well, thank you very much.

UNIVERSAL SERVICE FUND

Mr. Chairman, I commend your notice of inquiry on ways to finance the Universal Service Fund. I am a little worried about that, as we have talked about privately. I do think that the fund was created originally to assure that rural America could keep up with continuing developments as far as telecommunications is concerned, and now the major drains on the fund are for the inner-city applications of the E-Rate.

There is a proposal pending to increase the fund by $500 million to provide additional resources to schools and libraries, and that is, again, inner-city money. It is coming down at an enormous rate.

Can you tell me, what do you see for the future of universal service under these circumstances?

Mr. POWELL. Well, as we have discussed, I think the Commission, too, shares some of your concerns, and indeed it has initiated a number of proceedings to begin to explore perhaps modifications to the collection and contribution regime in order to ensure, as the statute requires, the preservation and advancement of the objectives as well as their sufficiency.

I also think that the Commission has been somewhat bold and willing to start to entertain whether the threats to the universal service program are sufficient to begin to justify us to consider exercising the discretionary authority that you gave us to extend contribution obligations to carriers that are not specifically telecommunication carriers but use telecommunications.

Heretofore, we have never done that, and it may not yet be warranted. But it seems to me that under Section 254(d) the Congress anticipated that possibility and gave us discretionary authority to extend the pool of people that contribute in order to protect their sufficiency.

Indeed, in the broadband item, as controversial as it may be, more ink is dedicated substantively to the questions about uni-

versal service than any other subject in the item. Indeed, we openly ask questions about to what degree universal service will be impacted by the rise of advanced services and whether some honest consideration of whether the extension of contributions is warranted.

We did not reach any conclusions, but we did put those important questions on the table, and, I would note, over some dissent. That is an area in which I think that we have one of our most sacred regulatory obligations. I think we will continue to push for new and creative ways to allow that program and the objectives to continue to flourish.

I also think one of the values of the promotions of some of the newer and advanced technologies is they have enormous cost benefits, many of them. In many ways they have the potential for solving parts of our universal service anxieties by virtue of their much more efficient infrastructure and architecture. So I think in some ways a pro-new-technology approach is also a pro-universal service approach in that we at least see the possibilities through getting companies to migrate to more advanced architectures to lower the cost of the provision of those services, which has always been the problem for rural America and places like Alaska.

As you know and since you fought so hard for DBS services, providing video components to the State of Alaska was vital. Through the use of new technology, it allowed it to lower the traditional costs associated with having to wire such a large region.

So those are the major things we are doing, and we do share some of your concerns.

Senator STEVENS. But you are proposing new rules for broadband, as I understand it, and I think that those two have a real impact on the continuing expansion of the demand on universal service. But I have got to tell you, when I look at some of the places up our way which have never had communications services before and are now getting communications services for schools, libraries, and health facilities. However, they are not getting it in the rest of the city or village at all, and I wonder seriously about the policies we have set to extend so much money to the inner cities while we still have many places in the country with no service at all, except for the schools, libraries, and health facilities in those communities. We are leaving a lot of people behind. There is a line of thinking now that considers the E-Rate connection to a small area pipe. If that pipe isn't full, they think maybe they can lease that pipe out to someone else. We are seeing the fudging the concept of E-Rate in order to extend service to those that are left behind. I think we ought to be right up front and admit that we have got to have two funds: one for rural America and one for the inner city. Right now, this is just a way to take money from the rural fund and put it into areas where the Congress has not provided enough money to assist the inner core cities for schools. I have heard of portions of schools actually being rebuilt with the E-Rates in inner cities.

I don't want to belabor it, but I do hope that in the future universal service remains one of the really predominant goals of the Commission to assure that rural America keeps up with the rest of the country as we progress.

You did comment on Senator Gregg's question about the Supreme Court case on NextWave and the position of—I don't know if we are going to file an amicus brief or not, but what about the problem of the delay? The further the delay extends, the less merit there is to whatever the Court decides. If it agrees with you, it is going to go back to the bankruptcy court, and we will start all over again getting a decision. It will be appealed right back up through the chain again. Meanwhile, the money is sitting there, and the spectrum is tied up, which is vital, really, to the recovery of the whole industry.

Have you given thought to asking us to find some way to resolve this issue, as we almost did last year with the approval of some mechanism that would bring about a settlement so this matter could be resolved within the industry itself with your approval?

Mr. POWELL. Yes, sir. As we have asked, I think repeatedly, for any number of years—and I am looking at three members who have been extremely supportive of our efforts to try to avoid this problem with the law and change it—I still think that the public interest is served in some ways if Congress altered the law and made the modification, because if they could do that, I believe that we could get the spectrum into use much more expeditiously.

I believe 100 percent in my case, and I believe I have the opportunity to win it. I also know it is going to come at a huge cost because I cannot do anything about the extraordinary delay that will be a consequence of it.

This case is not likely to be argued until next term. At best, we are going to have a decision in January 2003, perhaps as late as June 2003. There were very critical issues that the D.C. Circuit did not decide because it thought their order took care of everything, so I would anticipate even if we won, we will be remanded to the D.C. Circuit for resolution of those issues. Even when we get through that, we are in bankruptcy court again for the allocation of rights under the statute.

I think that one of the reasons I did, somewhat reluctantly but willingly, accept an effort to try to settle the case previously was because I think the public's interest is not exclusively in the money that it would provide; it is also in having spectrum put to productive use. While I believed in the case, I believed that it would cost the consumer the ability to make use of that spectrum for a very long time, perhaps 2 and 3 years more.

We only have two options, though. I agree with Senator Hollings. First and foremost, this legal principle has to be rectified, and I do not think there is any real opportunity for a good, productive resolution of the claims without being assured that this component is completed. And there are only two ways, either our continued pursuit of the case or an act by the Congress that removes that risk for future auctions and would allow us to pursue other options to get the public its money and the public its spectrum.

But we are committed to the long course of the case if that is the preference of this institution.

Senator STEVENS. I am still committed to try and work it out so that spectrum can be put into use. I remember too well the meeting we had that indicated the status of our industry and the global economy of telecommunications is severely limited because of the

availability of spectrum right here at home. I really think we should do something about it.

Let me shift gears, though. When the World Trade Towers came down, KNET, the public station, went down and it has not been able to go back up. It tried to get other providers like satellites to help them, but that was refused.

EMERGENCY BROADCAST PLATFORMS

Do you have the authority to require other platforms or carriers to broadcast signals in times of emergency and post-emergency periods? And if you don't, do you think Congress should give that to you?

Mr. POWELL. That is a good question. I do not know the full range of that. To some extent, the answer is partly yes in advance because the cable companies, for example, under the must-carry obligations carried them. For example, in New York, we lost a lot of broadcast stations initially, but a lot of consumers still had access to that local broadcast feed over the cable architecture which they were watching as opposed to over the air. That was a benefit.

I would have to look specifically at questions like whether we have the authority to direct broadcast satellite carriage, although Congress has required must-carry there as well, and that is progressing.

The Commission recognized this concern. We have long had Federal advisory committees that helped us with these network security emergency issues in the phone system. We recognized that we did not have the functional equivalent in the broadcast or communications, news types of system. One of the things we have just announced is that we are creating a companion to the telephone service's system called NRIC. We are creating a network reliability group to focus on media issues in times of emergency and looking for ways to develop mutual assistance planning so that if there was critical news and information that was not available because of an outage, there would be perhaps some effort to shift coverage and responsibility.

A number of other major cable channels fortunately also were willing to convert capacity to broadcast signals. For example, the Viacom properties that covered—they normally carry things like MTV and other of their cable programs, switched to the local broadcast feed for coverage in the New York City area.

We are looking for ways to make that not coincidental and gratuitous, but hopefully a little more planned for and anticipated.

Senator STEVENS. Well, I hope you will notify this committee—and there is also the Commerce Committee—if there is something that we need to do to extend your powers in order to meet those emergency situations.

DIGITAL CONVERSION

My last question, Mr. Chairman, pertains to digital conversion. The public and commercial broadcasters in my area of Alaska, Anchorage, have developed a plan to allow them to meet digital conversion deadlines by providing full service to the vast geographic area in the Anchorage area. Because of our unique geographic con-

ditions, it will require the use of two towers, and both digital and analog spectrum.

Now, we were told yesterday—Mr. Stewart has indicated the Commission may not have legal authority to approve this plan. We think this is a crisis for our area, and we would like to move forward as rapidly as possible. I would appreciate it if you would contact your people and see if there is a change in the law that is required in order to approve this rather unique partnership that has been formed in our State with public and commercial broadcasters. It ought to be a model for the rest of the country, but I am disturbed to learn that what they have worked on now may be beyond your legal authority, and I would appreciate it very much if you would look at it and give us a report on it. I don't expect an answer now, but I would appreciate it very much because I think they have worked very hard and have got a format now that allows conversion for public and digital broadcasters at a much lower cost and within the time frame anticipated by Congress. And it would be difficult for us to wait for Congress to act in the future if that is the case.

Mr. POWELL. We will get you at least an answer on where we think the legal authority exists very quickly.

Senator STEVENS. Thank you for your patience, Mr. Chairman.

Senator HOLLINGS. Thank you, Senator.

VIEW ON ABOLISHING THE FCC

Chairman Powell, reference has been made to a political view of your regulatory commission, and I readily acknowledge that there is the view that we ought to just abolish the FCC. In fact, you referred to Section 251 of the Tauzin-Dingell bill that abolishes your oversight responsibility. You, the FCC, and the State Commission under Section 4(a) no longer will have authority over the access to the Bell monopolies. But be that as it may, I want to emphasize, since you brought in the history of the thing, that you do not advocate abandoning your regulatory authority to the market. We know what market forces do to communications. Back in 1912, when Sarnoff got on top of the Wanamaker Building, and the Titanic sank, everybody got into wireless, and by the mid-1920s, the communications industry begged Herbert Hoover, then-Secretary of Commerce, to please regulate us because everybody was using all the same frequencies, and there was nothing but a jamming. Nobody could hear anybody. So that resulted in the 1934 Act.

Otherwise, I think of the loss the day before yesterday of a distinguished chairman here, Howard Cannon, who chaired the Commerce Committee. We had the airline deregulation, and we thought it wise that, by gosh, there would be no question that we would not only deregulate, we got rid of the deregulatory entity, namely, the Civil Aeronautics Board. And there have been bankruptcies and takeovers, in fact, regulated European takeovers of the unregulated American airlines, many of them facing bankruptcy. And you will get the wiseacres who will come up and say deregulation is fine. But it has ruined the airline industry.

Knowing that, in 1996, we did not do away with the so-called CAB, namely, you, the Federal Communications Commission. We wanted a regulatory body to oversee in a deliberate way total de-

regulation. Now, of course, the bottleneck in it is the Bell companies that lied. They begged and begged and begged. I know, because I helped write that thing, and I met with Jim Cullen from Bell Atlantic that represented all seven of the monopoly Bells, and it was a 4-year hiatus getting that bill out. And at all times they said we want to get into long distance, we want to get into long distance, by gosh, deregulate us, we want to compete, we want to compete. We passed the 1996 Act, and instead of competing, they combined. And that is exactly what is written about in the New York Times, merger mania that seemingly is approved again and again by the Commission. And so we have just got bigger monopolies, and if it continues, we will be back to AT&T. And regarding Ma Bell, if we can't get it done in the Congress, we will have to get a Federal judge.

That is what goes through a lot of minds here in the Congress. You can look at that debate over on the House side. They have got me, you know, I am adamantly against it, and how much I am a big friend of AT&T. I told the head of AT&T just last week, Mr. Armstrong, I said, You know, I know intimately the Bell South crowd down in South Carolina. I can't name who represents you down there in South Carolina. I have gotten contributions from both.

But I do have a feel for the wonderful Federal Communications Commission. I have been working with it now for over 35 years, since we started, and to see it just go pell-mell down the road with these statements made that the market is your religion and you don't know where in the world can anybody discern or find a public interest, that is about as nebulous as anything. And then the rulings that we have, it is hard to play catch-up ball over here at the congressional level with your administration of the Federal Communications Commission.

We don't want to cut you short on money. We will give you all the money because you have got many, many questions before you. But just mind you me, we are passing the rules and regulations and the policies, and it is your responsibility to administer those regulations and those policies, not the market. That is why we have got you. There are some who want to get rid of you, and in part that is what Tauzin-Dingell does. That is what bothers me. AT&T and Bell South don't want to get rid of you. I have got a lot of friends in Bell South. I would like to get one of their retirement policies and get on their board.

Mr. POWELL. Me, too.

Senator HOLLINGS. They are in 22 countries. They are very competitive, and I have followed them, and they are making money. I don't know why their stock is down. If they ever get this monopoly expanded, it will go through the ceiling. You buy some. Call me and we will both buy it.

But let's look at this thing objectively. Competition does count, and we have got a dynamic, competitive situation all over communications, save 93 percent of that last line into the home and business, is still by those Bell monopolies. They squatted in the middle of the road. They questioned the constitutionality of the act. They have taken us through a legal gymnast of a 6-year period, and we are not getting anything done. And if they go forward, they have

gotten so bold now with Tauzin-Dingell that they have got no idea of deregulating or competing.

ADDITIONAL COMMITTEE QUESTIONS

We appreciate your appearance this morning.

Mr. POWELL. Thank you, Senator.

Senator HOLLINGS. Thank you very much.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Question. As stated, in its broadband NPRM, the FCC concluded that broadband Internet access service is an information service, and the transmission component of the service is telecommunications, rather than telecommunications services. If the FCC concluded that the transmission component is not a telecommunications service would that mean that competitors would not be able to obtain unbundled network elements (consistent with the requirements of section 251) in order to provide DSL or broadband service? Under what authority could the FCC impose such requirements for DSL service?

Answer. Although the Commission will decide this issue through statutory interpretation in our Broadband NPRM proceeding, classification of the transmission aspect of an information service as "telecommunications" would not preclude competitors from obtaining unbundled network elements. For example, one possible reading of Section 251(c)(3) of the 1996 Act is that the availability of elements turns on whether the competitor offers a "telecommunications service." Thus, competitors who choose to offer DSL separate from Internet access could, under this one possible reading, obtain network elements to provision that offering. As I have stated, however, the Commission will resolve this issue in the Broadband NPRM proceeding.

The Broadband NPRM seeks to develop a robust and comprehensive record on the obligations that providers of wireline broadband Internet access service, including the incumbent LECs, may face under the Act if we adopt the tentative conclusions that your question references. In particular, the Commission, in the Broadband NPRM, asked several questions regarding the implications and interplay between the tentative conclusion that wireline broadband Internet access service is an information service and the obligations in section 251, including the unbundling obligations. The Commission will, of course, implement and enforce the law, including unbundling of the local loop for telephone service, regardless of its ultimate conclusion with respect to the classification of wireline broadband Internet access service. Moreover, the Commission has authority pursuant to Title I of the Act to impose access obligations for the provision of services falling within Title I. Indeed, the Commission exercised this authority in the Computer Inquiries proceedings, which initially recognized distinctions between telecommunications and information services. My hope is that the record on these questions will inform our understanding and help shape future Commission policy regarding the ability of competitors to obtain unbundled network elements for broadband services.

Question. If CLECs and ISPs are unable to obtain Bell facilities in order to provide broadband service, would this allow the ILECs to leverage their existing local monopolies into the broadband and Internet business and residential markets? If so, how would this result be consistent with the competitive requirements of the 1996 Act, and the FCC's own longstanding precedent in the Computer II and Computer III cases?

Answer. At the outset, I would note that ILECs' ability to leverage their market power in local telephony would be constrained by the presence and growth of other broadband providers, such as cable modem service providers. For example, cable modem providers enjoy a marked lead over ILEC broadband DSL providers in terms of buildout and subscribers, particularly in the residential markets. With such real broadband alternatives available to consumers, ILECs will risk losing subscribers to cable if they attempt to exercise market power.

That said, the Commission's mandate under the 1996 Act is to encourage robust competition among various communications providers. We are therefore examining the regulatory requirements that should apply to the provision of broadband services so that we can preserve and encourage opportunities for broadband competition in light of the ILECs' position in the local exchange market. The Broadband NPRM

seeks comment on whether the Computer Inquiry requirements, which provide for access to Bell facilities based on assumptions shaped largely by certain service and market characteristics that were prevalent decades before passage of the 1996 Act, should be modified or eliminated for the nascent broadband market. Notably, we have not reached any conclusions, tentative or otherwise, on whether to require access to Bell facilities to provide broadband Internet access service.

We are conducting the Broadband NPRM in conjunction with the Incumbent LEC Broadband Notice in which we are examining the competitive characteristics of the domestic broadband telecommunications services market and the appropriate regulatory framework that should apply to the incumbent LEC provision of these services. We recognize that the findings related to market power that we may make in that proceeding can inform our decision in the Broadband NPRM. Specifically, to the extent that the Commission finds there is sufficient competition in the broadband telecommunications services market to warrant modification of some or all of the Computer Inquiry requirements, but not enough competition to warrant complete deregulation, we will consider alternative requirements.

Question. Could you share views as to how the FCC's broadband NPRM will impact existing CLECs and ISPs seeking access to incumbent networks in the market? In answering this question please explain your view as to the NPRM's impact on market certainty, private capital's flow to competitors, and your view as to the future financial viability of competitors in light of the NPRM.

Answer. The NPRM has no immediate impact because it only serves to initiate a rulemaking and does not change existing Commission rules or precedent. Rather, the NPRM expressly seeks comment on the implications of the classification of Internet access as an information service on key legal and policy objectives, such as unbundling, access and universal service obligations. One of my primary goals, however, is to provide as much regulatory certainty and clarity as possible in order to promote investment and innovation in broadband-capable networks and, in turn, investment and innovation in the services and applications that will ride over those networks. Therefore, a main focus of our pending proceedings is to ensure clarity, certainty, and predictability in the rules governing local competition and broadband. Furthermore, it is worth mentioning that, in some instances, capital has been flowing to some CLECs who are building their own facilities.

While these are difficult questions, I firmly believe that we must answer them now in order to provide market certainty and flow of capital. Only with these answers will incumbents and competitors know what to expect and be able to make prudent decisions to build and enter new broadband markets. We can encourage capital flow to competitors by minimizing regulatory costs and uncertainty in our rules governing broadband and engaging in swift enforcement when those rules are compromised. While I realize that recent economic conditions have made it difficult to compete, I believe that creating a regulatory environment in which competitors can access the incumbents' networks through certain and established mechanisms, even if they are market-based arrangements, will encourage investors.

Question. Currently the FCC has a number of proceedings that address issues such as whether RBOCs should be declared nondominant in the provision of broadband services, whether RBOCs should no longer have to provide high capacity unbundled network elements, and whether RBOC broadband services and facilities used to provide Internet access should be reclassified as information services. Do you intend in these proceedings to reduce a state commission's authority to implement or enforce the Telecommunications Act of 1996 or to take away the authority of state commissions to promote competition for local telecommunication services? Would these proceedings impact state commissions ability to protect consumers in any way?

Could these proceedings promote duopoly competition as opposed to multiple competitors across multiple platforms? Would these proceedings result in de facto duopoly markets even if that is not your intent?

Answer. Our state partners play a key role in promoting competition and protecting consumer interests. On these issues we share the same goal as our state colleagues to ensure that our policies afford consumers high-quality, innovative services provided in a robustly competitive market. Moreover, because of the importance of the state role, we expressly sought comment in the proceedings you reference, on state views concerning broadband deployment. We also recognized that states bring particular knowledge of their local competitive landscapes and consumer concerns. We look forward to input from our state colleagues on these issues.

Our intent in these proceedings is to create consumer benefits through increased competition. That competition will come, as it has to date, in many forms, including competition between and among different broadband delivery platforms (intermodal competition). In our Triennial Review proceeding to update incumbent LECs'

unbundling obligations, for example, we will continue to require unbundling as Congress directed in section 251 and will tailor incumbent LECs' unbundling obligations to where competitors are actually impaired without access to the incumbents' networks. We therefore expect intramodal competition through access to the incumbents' networks to continue to be a viable option for some competitors. In combination with the growth in intramodal competition through new wireline facilities construction, and the growth in intermodal competition from cable, wireless, satellite, and fixed wireless providers, the possibility of duopoly is remote.

Question. The Telecommunications Act of 1996 promoted both inter-modal and intra-modal competition. Intra-modal competition is affected by the ability of CLECs to use unbundled loops and other pieces of the ILEC networks to provide services to customers. Do you believe the FCC should continue a policy of promoting and enforcing both modes of competition equally?

Answer. Yes. The Commission's responsibility is to interpret and execute the Telecommunications Act in a manner that is faithful to Congress's intent and promotes the public interest. Thus, the Commission is statutorily bound to require incumbents to permit both facilities-based and non-facilities-based entry. Moreover, faithful to this statutory mandate, the Commission has implemented regulations that provide competitors with unbundling and resale rights consistent with market-opening provisions of the Act. At the same time, the Commission has previously recognized that only through the promotion of facilities-based competition, which creates greater opportunity for innovation and price differentiation, will sustainable competition take root in the marketplace. So long as the Commission continues to find that competitors are impaired without access to the incumbents' networks, then the Commission will enforce unbundling rules on the incumbents, thus promoting intramodal competition. Our overall objective, however, is not to pick winners or losers, but to encourage competition in order to deliver benefits to consumers.

Question. Setting aside rural and underserved areas, would you agree that low consumer demand for broadband services is a greater obstacle to widespread broadband adoption than the pace of broadband deployment?

Answer. No. Widespread consumer adoption of broadband requires both availability and demand. With respect to availability, the Commission recently concluded its third inquiry concerning the availability of advanced telecommunications capability in the United States. Although the Report focused on the availability of advanced services capability, we acknowledged the important relationship between demand and deployment and recognized that subscription rates may influence business and investment decisions. The Report indicates that high-speed subscribers were reported in 78 percent of the zip codes in the United States and 7 percent of American households subscribe to high-speed services. But it remains unclear whether subscribers throughout these zip codes, particularly in residential areas, generally have any choice in broadband infrastructure providers. Thus, in keeping with the Act's mandate that we encourage deployment "to all Americans," we must continue to find new ways to promote broadband infrastructure investment.

Demand can be a useful measure of consumers' appetite for certain broadband applications, or their willingness to pay for broadband services. Nevertheless, I am hesitant to speculate about the meaning of adoption rates at this time. Indeed, the broadband market is continuing to develop, and many questions remain as to what broadband services consumers will value. At this early stage, I believe that it is important to ensure that the market takes its cues from consumers, and that market participants should be given the opportunity to resolve challenges of matching supply to demand through relative marketplace advantages in areas such as marketing, service and innovation.

Question. On November 8, 2001, in conjunction with the FCC's Notice of Proposed Rulemaking, Performance Measures and Standards for Unbundled Network Elements and Interconnection et al., CC Docket Nos. 01–318 et al. you made the statement:

"This Notice acknowledges what has been apparent for some time: that facilities-based competition is the mode of market entry most likely to foster simultaneously and sustainably the Act's mandates of competition, deregulation and innovation."

On February 27, the FCC released data on the status of competition in the local telephone market. The report cited a growth rate of 16 percent in the CLEC market during the first six months of 2001. In terms of how the service is provided, CLEC's reported: 33 percent of lines were served using their own facilities; 23 percent by reselling ILEC services; and 44 percent by using unbundled network elements.

In light of the fact that almost half of the total competition is provisioned through UNEs, and given the reluctance of capital markets to advance funding for facilities-

based construction, do you believe that facilities-based competition is most likely mode to bring about competition in the local telephone market?

Answer. We believe that facilities-based competition holds the most promise, in the long run, for sustained competition and the consumer benefits that competition brings. Facilities-based competition creates greater opportunity for innovation and price differentiation. The Commission has also been clear, however, that with respect to facilities-based entry, we seek to promote entry not only by fully facilities-based carriers, but by those facilities-based carriers that purchase UNEs, such as the local loop, as well. Indeed, investment in facilities also furthers public safety and infrastructure development goals, which have become increasingly important since the events of September 11th. At the same time as we implement the Act's mandate to make unbundled network elements and resale options available to CLECs, I am encouraged by the fact that even during the first six months of 2001, the number of customers served by CLEC-owned lines actually grew by 11 percent. That being said, our pending proceedings do not—and could not consistent with the statutory framework—contemplate eliminating unbundled access to incumbent facilities for competitors seeking to provide telecommunications services.

Question. Can the FCC realistically hope to meet the burden imposed by the Fox case of showing, every two years, the necessity of retaining your broadcast ownership and many other telecommunications rules? If not, will the Commission seek further review of the D.C. Circuit's decision, or should Congress act to revise the biennial review provisions included in the 1996 Telecommunications Act?

Answer. Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its media ownership rules biennially to determine if these "rules are necessary in the public interest as the result of competition." The statute also states that once the agency makes the determination, it must "repeal or modify any regulation it determines to be no longer in the public interest." In Fox Television Stations, a three-judge panel of the D.C. Circuit addressed the Commission's 1998 and 2000 determinations not to repeal or modify the national television broadcast ownership rule (NTSO) or the cable-broadcast ownership rule (CBCO). The Commission had argued that its determination was appropriate because the rules continue to serve the public interest. The Fox court held, however, that, in order to retain the rules, the Commission was required to show not only that that the rules serve the public interest, but rather that they remain "necessary" to serve the public interest. The court also held that the Commission failed to satisfy that standard. See *Fox Television Stations* v. *FCC*, 280 F.3d 1027, 1042 (D.C. Cir. 2002) ("Commission has no valid reason to think the NTSO Rule is necessary to safeguard competition."). Specifically, under the Court's interpretation of the statute, the Commission must review and prove, every two years after any rule's promulgation, each media ownership rule is "necessary" to serve the public interest. The Commission respectfully disagrees with the court's decision. As required by federal regulations (28 C.F.R. 0.20), the Commission is discussing with the United States Department of Justice and the Office of the Solicitor General the possibility of appealing. If a decision is made not to seek further review of the court's ruling, or if the government seeks further review and the Fox decision is not reversed, then the Commission will be bound by the court's decision unless the Congress revises the biennial review statute to clarify that the statute does not impose a higher burden on the Commission than that already required for agency rulemaking, i.e., the rule must not be arbitrary or capricious.

Question. Because the D.C. Circuit vacated the cable/broadcast cross-ownership rule without giving the Commission a chance to reconsider its significance in the digital age, does the Commission plan to challenge the Court's order to repeal the cross-ownership rule?

Answer. As an initial matter, the D.C. Circuit ruling in Fox permits the Commission to reissue the cable/broadcast cross-ownership rule if it can justify the rule. See *Fox Television Stations* v. *FCC*, 280 F.3d 1027, 1052 (D.C. Cir. 2002) ("[i]f the agency wants to re-promulgate the Rule and is able to justify doing so, it presumably can require any entity then in violation of the Rule to divest either its broadcast station or its cable system in any market where it owns both."). The court vacated the CBCO rule because it doubted that the Commission would be able to justify the re-issuance of the rule. The Commission is also discussing with the United States Department of Justice and the Office of the Solicitor General the possibility of seeking further review of the Fox court's decision to vacate the CBCO rule.

Question. Please detail for Committee the specific steps taken by your media ownership working group to examine consolidation in the media marketplace. Please detail what steps are planned to conduct detailed, objective analysis of media consolidation and its impact on diversity of ownership, diversity of viewpoints, and on localism. Do your analyses plan to include research conducted by retained outside

market experts, economists, and academics capable of performing the significant objective market research necessary?

Answer. I am committed to improving the factual record on which the Commission addresses media ownership issues. Although I am confident that the public will submit insightful, factual information about the media market in our ownership rulemakings, I took the step of establishing the media ownership working group to improve our collective understanding of the media market. At this point, I anticipate that the group will focus its work on three areas:

1. How do consumers experience the media? It is essential that the Commission put the consumer at the center of our media ownership policymaking. We can do that only if we have a better understanding of how Americans use the various media options available to them. For instance, I would like to know the extent to which various media outlets might be substitutes for one another. Existing Commission ownership rules make assumptions about how consumers substitute among media, but we need better data about the nature of that behavior to ensure that our current rules are based on today's market reality. I expect the ownership group will address these questions both by studying past consumer usage of different media as well as conducting an actual survey of consumer attitudes.

2. How has the media landscape changed over time? We understand that growth in electronic media options at the national level has expanded dramatically, but Americans experience media at the local level, not the national level. Therefore, we need to ask questions such as "What did the media world look like to a resident of a particular market in 1960 versus today? How do those changes compare to the changes experienced by a resident of another market between 1960 and today?" Data such as these will give us valuable context for addressing our media ownership questions.

3. How do media market structures affect output? We intend to take advantage of past rule changes and waivers of our ownership rules to study whether certain market structures affect competition, diversity and localism. For example, I would like to know the extent to which broadcast-newspaper combinations affect viewpoint diversity and competition, as well as any other benefits or costs they have produced. Since there are a number of grandfathered broadcast-newspaper combinations, we will study how they affect the realization of our policy goals.

Finally, Commission economists and attorneys and outside experts will perform the media ownership working group's research and analysis. I have full confidence that all the contributors to the media ownership group have the expertise and objectivity to perform the analysis that the Commission requires.

Question. You've had a DTV Task Force in place since last year. Tell us what steps the FCC plans to take, and when, to move the transition to digital television forward?

Answer. In October 2001, I announced the formation of a Digital Television Task Force at the FCC. The Task Force is a cross-Bureau, cross-disciplinary group that has several functions, including: (1) helping to coordinate and establish priorities for the Commission's DTV efforts; (2) bringing outside parties together to attempt to resolve important issues that may be impeding the transition; and (3) providing a single point of contact for outside parties on DTV matters. More broadly, the Task Force reflects my commitment to doing everything we can to move the DTV transition forward for consumers and to recover spectrum for other uses such as public safety and advanced wireless services. At the same time, I believe we need to recognize that the success of the transition depends in no small measure on consumer demand for services and purchase of equipment over which the FCC has no direct control.

During the past several months, the Task Force and other Commission staff have taken proactive steps in several areas, including the DTV build-out, cable compatibility and copy protection. Regarding the build-out, for instance, we temporarily deferred some of our regulatory requirements to make it less expensive for broadcasters to get on the air with a digital signal. On cable compatibility and copy protection, the Task Force has held several meetings with the consumer electronics industry, cable, content producers, and others, in an attempt to work through some of the difficult issues that may be hindering the transition. While much work remains, I'm encouraged by the results thus far. We plan to stay actively involved in these issues to ensure that progress continues.

We also have several ongoing proceedings at the Commission related to the DTV transition e.g., DTV must-carry, mandatory DTV tuners and labeling for "cable ready" DTV sets—that I hope to act on as expeditiously as possible. Most immediately, we are conducting a close staff examination of the approximately 850 extension requests filed by commercial broadcasters seeking relief from the upcoming May 1, 2002 build-out deadline. We will work with those broadcasters that have

demonstrated a legitimate need for an extension, to help them get on the air with a digital signal as soon as possible.

In addition, I anticipate that we will initiate at least two other proceedings in the coming months to move the DTV transition forward. First, I plan to ask the Commission to begin a proceeding to develop rules for low-power stations and TV translators to make the transition to digital. These stations play an important role in our broadcast system, and we need to begin the process of helping them make the transition to digital. Second, we will begin our next periodic review of the progress of the conversion to digital television, a review that the Commission undertakes every two years to ensure that progress on the transition continues and that any potential sources of delay within our purview are eliminated.

In sum, I am committed to doing what we can to promote a smooth and expeditious DTV transition for the American public, and I look forward to working with the Committee as the transition continues to progress.

Question. Last fall, the FCC received a petition proposing to open the 70 and 80 GHz frequencies for commercial "gigabit broadband" use and setting forth spectrum license rules that would expedite such use. What is the Commission's schedule for beginning and completing the rulemaking?

Answer. On September 10, 2001, Loea Communications Corporation filed a petition requesting the commencement of a rulemaking proceeding to adopt service rules governing the licensing and point-to-point use of the 71.0–76.0 GHz and 81.0–86.0 GHz (70–80 GHz) spectrum bands. The Commission promptly sought comment on Loea's Petition. The period for filing comments to Loea's Petition ended on November 13, 2001. Commission staff is currently analyzing the comments received and the technical issues involved in establishing service rules for this spectrum, which is shared with the government.

The Commission expects to initiate a formal proceeding on Loea's Petition during the second quarter of 2002. Licensing the 70–80 GHz band will require consideration of a number of intricate issues; thus it is difficult at this time to predict a completion date for the rulemaking. In particular, the shared aspect of the spectrum (between government and non-government) will require careful coordination of this proceeding with the National Telecommunications and Information Administration.

Question. What efforts are being made by the FCC to follow Congress' directive under section 222 of the Act to ensure that wireless location information cannot be used by carriers without the prior consent of a wireless subscriber? Does the Act provide the FCC with sufficient authority to similarly limit the re-disclosure of wireless location information by third parties or must Congress provide future legislative authority?

Answer. The statutory amendments to section 222 of the Act addressing privacy of wireless location information became effective on October 26, 1999, and telecommunications carriers are bound by those requirements. Carriers are aware of the requirements and, to our knowledge, the carriers are following them. Indeed, in November 2000, the Cellular Telecommunications and Internet Association (CTIA) filed a petition for rulemaking seeking adoption of certain privacy principles pursuant to the wireless location information provisions of section 222. The Commission issued a Public Notice on March 16, 2001, requesting comment on the petition. The record has now closed and the Commission is analyzing the comments and reply comments that were received.

As to the breadth of the statute, by their terms, the wireless location information provisions, as part of the overall statutory scheme of section 222, apply only to telecommunications carriers. The terms of the provisions do not expressly address non-carriers and, thus, the privacy limitations imposed on carriers' use or disclosure of wireless location information would not appear to be directly applicable to third parties' use or disclosure of such information. A number of parties have raised the issue of third-party disclosure of location information in the context of the CTIA petition for rulemaking, however. Thus, this issue is before the Commission for consideration.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

Question. The FCC recently concluded that broadband service is being deployed in a timely manner. I also understand that broadband has achieved 10 percent penetration in 4 years and that compares favorably with the adoption rates for other consumer technologies such as PCs (10 percent in 4 years), CD players (10 percent in 4.5 years), cell phones (10 percent in 8 years), VCRs (10 percent in 10 years), and color TVs (10 percent in 12 years). The Congress may need to work to make sure that broadband is deployed in rural or underserved areas. However, deregula-

tion of ILECs won't solve this problem. Therefore, in light of this, why has the FCC proposed in its Broadband rulemaking proceeding to take action so drastic that it would undermine competition under the guise of deploying broadband service.

Answer. I agree that the penetration and deployment rates for broadband have been encouraging as we recently announced in our 706 Report to Congress. These facts alone, however, do not establish that the Commission has achieved the broadband deployment goals that Congress set forth in the Act. Section 706 mandates that the Commission promote the deployment of broadband to all Americans using tools such as regulatory forbearance and the removal of barriers to infrastructure investment. To satisfy this mandate, we must facilitate the deployment of at least one and preferably multiple broadband infrastructures throughout the Nation. At the same time, we must safeguard the ability of competitors to use the incumbent telephone company network to provide telecommunications services, as prescribed by the Act. By clarifying the regulatory classifications and treatment of wireline broadband Internet access service, I believe that we will improve the environment for competition by providing both incumbents and competitors with the certainty they need to make decisions to build and deploy broadband. I also believe that to the extent that our final rules remove regulatory barriers to deployment, we will remain faithful to the Congress' directive to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal and State regulation." In addition, by clearly defining and developing the rules under which broadband services will be regulated, the Commission will allow for a more stable environment for the investment needed to build broadband-capable networks. By providing regulatory clarity in this area, the Commission will serve to lower the risks associated with investing in these networks, which in turn should help spur the deployment of broadband-capable networks to all Americans and provide for an environment that promotes investment and innovation in broadband services and applications.

Question. In October of last year, the Commission granted waivers submitted to the six largest wireless carriers from the FCC's "E911" rules. These rules would require that wireless carriers make certain information available to public safety entities in order to help pinpoint the location of wireless callers. In adopting these waivers, the FCC required each of the six carriers to comply with specific implementation schedules with enforceable, interim benchmarks that would ensure the timely, nationwide rollout of E911 services by 2005. Today, not five months later, three of the six carriers have already filed additional waivers and a fourth (Nextel) has no need to file a waiver yet, because its first benchmark will not occur until the end of this year. Given these developments, is the Commission committed to aggressively enforcing these rules and to looking disfavorably upon further waivers?

Answer. The Commission is committed to having Phase II of E911 deployed as soon as possible, and to pursuing aggressive enforcement action where necessary and appropriate. As the Commission acknowledged when it first adopted the E911 requirements, the implementation of wireless E911 is very complicated. Wireless location technology did not exist at the time of the original mandate, and has developed differently than originally predicted. Adding to the complexity of the problem is that Phase II deployment requires coordinated action by the CMRS carriers, their vendors, the incumbent local exchange carriers, and local public safety entities. In light of these complications, the Commission recognized that, in some situations, individual carriers might have to seek relief from certain of the requirements.

In September 2000 and October 2001, the Commission granted individualized waivers to the six large nationwide wireless carriers AT&T, Cingular, Nextel, Sprint, Verizon, and VoiceStream conditioned upon adherence to detailed E911 Phase II compliance plans proposed by each carrier. The orders granting these waivers sent a clear message to carriers that there will be penalties if they fail to comply with the rollout schedules contained in their plans. Further, the orders signal that the Commission will look disfavorably upon any requests for further relief, indicating that they will not be entertained absent "extraordinary circumstances."

The Commission has already referred two carriers to the Enforcement Bureau regarding their TDMA markets, and we will not hesitate to make more referrals to ensure that E911 capability is implemented as quickly as possible. It should be noted that while certain of the nationwide carriers have again requested additional time, others appear to be on track to meet their benchmarks. We applaud the efforts of these carriers in leading the way in deployment of this lifesaving technology.

Question. It has been just over four years since the Commission released a Notice of Proposed Rulemaking on updating its rules for the Direct Broadcast Satellite ("DBS") Service. Since the NPRM was issued, a vast consolidation has occurred among DBS licensees. In addition, after years of waiting, DBS licensees have only recently begun providing DBS programming packages to consumers in Alaska and

Hawaii. Unfortunately, much of the subscriber packages are not comparable with the programming that is available to consumers in the mainland 48 states and are not competitive with cable television services in Hawaii.

The 1998 NPRM proposed to improve the FCC's geographic service requirements in order to ensure that consumers in Alaska and Hawaii are provided with comparable multichannel video programming opportunities as consumers in the rest of the United States. Unfortunately, the Commission has not yet released an order in the proceeding resolving the issue. Recognizing the importance of comparable multichannel video programming opportunities for residents in Alaska and Hawaii, when does the Commission estimate it will be able to release an order concluding this long-pending proceeding?

Answer. The Commission is in the process of completing its DBS rulemaking that addresses service to Alaska and Hawaii, among other issues. We expect to release an order in the near future. In the process of our consideration, Commission staff has carefully reviewed the numerous ex parte filings of the State of Hawaii and we share the state's concern that its citizens, as well as those of Alaska, receive DBS service. According to recent filings, Hawaii is receiving DBS service but with fewer channels than are available to mainland consumers. We note that the Commission has undertaken several efforts over the years to facilitate joint discussions with government representatives from the States of Hawaii and Alaska and the two DBS licensees, and that thereafter, offerings of DBS service in those states improved.

Question. Media consolidation is of great concern to me. I have been troubled by some of your comments that ownership caps are based on "romantic notions." Although the level of consolidation in the media industry in the marketplace today may not rise to the level of a violation of our antitrust laws, it nonetheless may have an adverse impact on such public interest objectives as diversity of ownership, diversity of voices, and localism. Will you work to honor these public interest objectives?

Answer. I remain fully committed to a media market that is not only robustly competitive but that is serves the Commission's longstanding goals of localism and diversity. Our framework for achieving these goals will give significant attention to how consumers actually use the media so that our ownership policies truly reflect the realities of today's media environment. Our framework also will consider how existing regulations affect the continued economic viability of media outlets such as local broadcast television stations and broadcast television networks. I continue to have concerns about how some of our rules affect the financial health of broadcasters, especially in small and medium sized markets and television networks.

With respect to our policy goals of promoting competition, diversity and localism, our challenge is to develop a method of analysis that fairly reflects all of these objectives. There are well-settled metrics for assessing how certain market structures promote or diminish competition in economic markets, including media markets. But far less thought has been given to how various market structures affect "viewpoints" and "localism." I intend to bring a closer scrutiny to these concepts so that we have real-world evidence to inform our media ownership decisions.

Question. What steps are being taken by the FCC to identify and clear new spectrum that can be used by the CMRS industry to provide 3G broadband services? What if any obstacles must Congress address to help facilitate this process?

Answer. Due to the increased growth of wireless mobile services and requests for additional spectrum to support 3G, or advanced wireless services, the Commission initiated a rulemaking proceeding seeking public comment on potential frequency bands for 3G wireless systems, as well as potential frequency bands for relocating incumbent spectrum users. In addition to the ongoing Commission rulemaking proceeding, and because some of the spectrum that may be allocated for 3G wireless systems is currently allocated for federal government use, last October, FCC staff and the National Telecommunications and Information Agency (NTIA) began a joint interagency staff-level effort to examine and develop possible spectrum options for 3G wireless systems. This effort is also evaluating the potential for sharing between 3G wireless systems and current spectrum users, as well as reviewing possible options for relocation spectrum.

FCC staff are focusing on a 60 MHz block of spectrum—from 2,110–2,170 MHz—that is currently allocated for commercial use, and the executive branch agencies are focusing on a 60 MHz block of spectrum—from 1,710–1,770 MHz—that is currently allocated for federal government users, most notably the U.S. Department of Defense. Importantly, the U.S. Congress has already facilitated this process and has previously mandated that 45 MHz of spectrum be transferred to the commercial sector from the federal sector—from 1,710–1,755 MHz. Thus, one of the principal focuses of the interagency staff working group is to determine the feasibility of whether an additional 15 MHz of spectrum—from 1,755–1,770 MHz—can be made avail-

able for commercial 3G wireless systems. The U.S. Department of Defense currently operates over these frequencies.

This interagency effort is scheduled to be completed in late spring of this year. The result of this assessment will be considered, along with all of the other information in the public record, in the ongoing Commission rulemaking proceeding relating to 3G services. Because there is existing consumer demand for these services, the Commission will strive for an expeditious resolution of these spectrum issues.

However, because reaching careful and complete decisions as to appropriate spectrum for 3G services is of considerable significance to the economy and the national security of the United States, I do have graver concerns about the current statutory auction deadline of September 30, 2002, established by the Balanced Budget Act of 1997. While the FCC, NTIA, and other federal agencies have worked diligently since October 2000 to identify appropriate 3G spectrum, and much progress has been accomplished toward completing this joint interagency effort to select the 3G bands by late Spring 2002, it is becoming increasingly clear that the original timeframe contemplated for auction of 3G spectrum is not consistent with our obligations to act in the best interests of national security and sound spectrum management.

The Administration has already suggested the need for legislation that would shift the statutory auction deadlines from September 30, 2002 to September 30, 2004. As the Secretary of Commerce wrote to Congress, "[w]hile the Federal Government is committed to identifying spectrum for 3G services as expeditiously as possible, the current statutory auction deadline affecting certain of the bands under consideration does not provide sufficient time to conclude the identification process and conduct an auction before September 30, 2002." I note further that the President's fiscal year 2003 budget plan endorsed moving the auction deadline to September 30, 2004. Congress' support for flexibility and relief from the auction dates would be appreciated.

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

Question. Access to high-speed Internet connections is crucial to consumers and communities in today's economy. High speed connections to the Internet can provide a lifeline to small business, schools and hospitals and can help communities prosper and grow in the Information Age.

It is my understanding that the FCC has been grappling with a solution—how big a fund, who should pay in and who should receive payouts since the enactment of the Telecommunications Act of 1996.

Can you tell me what you are doing to address the issue of universal service as it applies to the Internet to ensure that residential and business customers, as well as rural and urban, have service and a choice about to who serves them?

Answer. I agree that widespread deployment of broadband infrastructure has become the central communications policy objective of our day. The Commission is acting to remove barriers to deployment and investment and minimize the cost of bringing service to consumers by minimizing regulatory costs. In doing so, the Commission is actively working to promote broadband availability throughout the Nation over multiple technical platforms.

As shown by our recent report to Congress, advanced services are being deployed by wireline carriers, cable providers and satellite operators in a reasonable and timely manner. We believe that by promoting the development and deployment of broadband services over multiple platforms, competition in the provision of these services can thrive, and thereby ensure that the needs and demands of the consuming public are met. I assure you that I am committed to preserving and advancing universal service and encouraging the ubiquitous availability of broadband to all Americans.

We are examining how to accomplish these goals through a variety of vehicles, including our recent examination of the classification of wireline broadband Internet access and our on-going examination of the way in which universal service contributions are collected. I am confident that all of these actions taken together will continue to ensure that broadband services are deployed throughout the nation.

Question. What effect has more choice had on prices for broadband services? In areas of the country where consumers have less choice in providers, are prices generally higher or lower for those services as compared to areas that have more competition?

Answer. The Commission does have some data on the national range of prices for broadband services. We do know that for basic ADSL services, monthly charges range from $45 to $59, and installation charges range from free to $250. Free installation generally requires that customers install premises equipment themselves. For

cable services, monthly charges range from $45 to $60. On the other hand, Starband, one of only two major satellite providers, charges a monthly fee of $70. Starband's customers also buy an equipment package that retails for $499. The standard installation charge for that equipment starts at $199. This data suggests that customers whose only option is satellite are paying more on a monthly basis for broadband services and are also paying one-time fees that are at least as costly as those charged by other providers.

That said, both the cable television and telephone industries appear to price their high-speed Internet access services (cable modem service and DSL respectively) largely in a uniform manner across markets independent of whether or not the other service is available in a particular market. For example, cable operators typically price cable modem service at between $45–$50/month across their markets. Likewise, Verizon, for example offers four price points for it's DSL service ($49.95, $59.95, $69.95, and $79.95) depending upon data speed and other features independent of whether a local area has cable modem service. Some cable operators and DSL providers have "specials" including free modems, free first month(s), or lower prices for the first several months of service. These marketing specials appear to be more frequent now that both cable modem service and DSL are more widely available and perceived by consumers to be competitors.

Question. Would you please describe the status of the CLEC industry today? Are there more or fewer competitive providers than there were three years ago? Please give specific numbers, if possible.

Answer. Although we do not collect data on the number of CLECs providing service per se, we do measure the CLEC industry by the number of access lines served by competitors. The Commission's most recent statistics on the CLEC industry reflect data from June 30, 2001 and show a 16 percent growth in CLEC market size during the first six months of 2001. This builds on top of a 63 percent increase in the six months ending December 2000. I recognize that recent economic conditions have made it difficult to compete in the telecommunications sector and that a number of CLECs have exited the market. The FCC is absolutely committed to doing what it can to stimulate competition in a manner that comports with the statute and with market dynamics. We are therefore taking a number of actions that CLECs have requested to improve their ability to provide service. Specifically, we have strengthened enforcement of our local competition rules, initiated rulemakings on performance measurements for unbundled network elements and special access services that incumbent LECs provide to CLECs, and we have been working with the Local State Government Advisory Committee to improve access to rights-of-way.

Question. Is the availability of investment capital a major part of the problem facing the CLEC industry today?

Answer. Yes. Capital is less available to the CLEC industry today than it has been. Although the Commission cannot be guided by reacting to short-term fluctuations in the capital markets, one of our primary goals is to provide as much regulatory certainty as possible in order to promote investor confidence. Therefore, a main focus of our pending proceedings is to ensure clarity, certainty, and predictability in the rules governing local competition and broadband. Furthermore, it is worth mentioning that, in some instances, capital has been flowing to some CLECs who are building their own facilities. In addition, cable telephony providers are competing with ILECs without relying on incumbent network facilities. Indeed, even in the first six months of 2001, the number of customer lines served by CLEC-owned facilities grew by 11 percent.

Question. It is my understanding that the FCC has recently initiated three major proceedings Docket 01–338, which is considering whether to eliminate high capacity Unbundled Network Elements; Docket 01–337, which is considering whether the Bell companies should be declared non-dominant in the provision of broadband services and facilities; and Docket 02–33, which is considering whether the Bell companies' broadband services and facilities used to provide Internet Access should be reclassified and removed from the regulations that apply to telecommunications services. All three of these proceedings are considering fundamental changes to the rules and regulations that govern the provision of broadband services to consumers.

What effect will these proceedings have on consumers of broadband services who are currently served by competitive carriers who rely upon access to unbundled network elements at TELRIC prices? Will these consumers be able to continue receiving services if the Commission decides to eliminate some unbundled network elements or decides to change the pricing structure?

Answer. The Commission launched the three proceedings you have referenced to consider in a unified way, the appropriate legal and policy framework for broadband services. The goal of these proceedings is not to reduce consumer choice but to ensure a robustly competitive market for broadband services generally. Ultimately,

when the Commission reaches its conclusions in these proceedings, it will consider whether the interests of consumers not individual competitors are served.

Clearly, one of our primary goals is for consumers to have the opportunity to access broadband services from a variety of sources. Our Triennial Review (Docket No. 01–33) evaluation of the incumbent LECs' wholesale obligations to make their facilities available to competitive LECs for the provision of broadband services is designed to evaluate these rules, first adopted in 1996, in light of the six years of real market experience we have gained. This proceeding was scheduled to take place at this time to ensure that our unbundling rules keep pace with market realities. Integral to our unbundling analysis is whether viable alternatives to the incumbent network are available to competitors to serve their customers. If we were to determine that certain elements were no longer unbundled, it would be based, in part, on our assessment of available viable alternatives. Through these alternatives, consumers would be able to continue to receive services from competitors.

The second proceeding you reference (Docket No. 01–337) would have no effect on the availability and pricing of network elements used by competitors to provide service.

In the Broadband NPRM, Docket No. 02–33, which examines the appropriate classification of broadband Internet access services under the Act, the Commission also asks many questions about the appropriate approach to providing competitive broadband providers with access to the incumbent LECs' networks to provide services. We look forward to vigorous comment and analysis on this issue in the record.

QUESTIONS SUBMITTED BY SENATOR HERB KOHL

Question. The FCC's 1997 Benchmark Order continues to be effective in driving down U.S. carriers' international settlement charges and prices to U.S. consumers. However, there are two areas that need attention.

First, I understand that foreign carriers are beginning to charge higher prices for completing calls from the United States to mobile phones overseas. With the growth of mobile phone usage worldwide, this new factor could undo the positive impact of the Benchmark Order. What could the FCC do to work with foreign regulators and carriers to lower these charges that are raising U.S. consumer prices?

Second, even with full implementation of the Benchmark Order, settlement rates will remain at levels that are above cost. In some instances, these high rates create profit incentives for scam operators to devise schemes that lure American consumers to unknowingly place international calls. In any event, these settlement rates are certainly above the levels that we consider reasonable for call termination in the domestic marketplace.

Is it time to update the Benchmark Order, and beyond that, what other steps can the Commission take to ensure that U.S. carriers and consumers are not paying too much for international calling?

Answer. Foreign regulatory authorities are concerned that termination rates on mobile networks may be too high and thus, adversely impact consumers. At the same time, the Commission is continuing to look at ways to achieve lower consumer rates for international calls. Through continued enforcement of the benchmarks policy and interaction with foreign regulators and multilateral organizations, the Commission can reinforce the importance of lower accounting rates to U.S. and foreign consumers and carriers. Thus, the FCC is determined to continue discussions with our regulatory counterparts overseas. In these discussions, we will note the impact on U.S. consumers when international calls are completed on mobile networks and share our experiences with respect to mobile termination in the United States. Termination rates on mobile networks in the United States are often lower than similar rates in foreign markets.

Pursuant to the policies the Commission set forth in its Benchmarks Order, there remains one additional round of foreign routes (countries with a teledensity that is less than 1) for which carriers must negotiate benchmark-compliant agreements for traffic beginning January 1, 2003. In addition to the benchmarks policy, market forces, bypass, and refiling of traffic continue to place pressures on foreign carriers to lower their accounting rates to and below the benchmark rates. The trend toward lower accounting rates is benefiting U.S. consumers through lower average consumer calling prices, as accounting rates are the major cost component in international calling prices. Currently, over 90 percent of the minutes for U.S.-international traffic are being settled at or below the benchmark rate.

Question. You may recall that I asked you last year what the FCC could do to bring more competition to the set top box market, and to ensure that set top boxes are available for purchase at retail stores so that consumers have another choice

besides renting them from cable operators. A year has passed, and very little has changed.

To be sure, the National Cable Television Association has published the OpenCable Application Platform (OCAP) specification, and this is an important first step. However, absent implementation of this specification in the next generation of digital set top boxes and cable ready televisions, or even a commitment from the cable industry to use this standard in their own equipment, I fear a retail market employing the OpenCable standard will not develop.

Moreover, the Pod-Host Interface License Agreement (PHILA) is also crucial to the creation of a viable competitive market. Even if we could immediately resolve the standards-related difficulties posed by the adoption of the OpenCable specification, competitive devices would not be able to connect to digital cable systems without first signing PHILA. To make matters worse, the FCC has not yet published PHILA for public comment a process that is essential to create digital ready products that will work on cable systems across the country.

So again I ask the question: what can the FCC do to both bring more competition to the set top box market and ensure the creation of a digital cable ready consumer electronics product market? Also, why hasn't the FCC published PHILA for public comment? Absent a compelling reason, this is an act I trust the FCC will take as soon as possible.

How important is it to the development of a competitive set top box market that the cable companies adhere to the OCAP specification in the same manner as a competitive set top box manufacturer?

Do you believe the FCC has the jurisdiction to require device manufacturers to respond to a "broadcast flag" that would prevent redistribution of free over-the-air digital broadcasting to the Internet?

Answer. The Commission continues to work with the relevant industries to develop retail set-top boxes and digital television sets that can be interconnected with cable television systems. Pursuant to Section 629 of the Telecommunications Act of 1996, the Commission adopted rules in 1998 to create a regulatory framework that would allow for the manufacture of such devices while adequately protecting the security of cable operators' systems and services. In September 2000, the Commission issued a Further Notice of Proposed Rulemaking and Declaratory Ruling. The Further Notice sought comment on three areas: (i) whether OpenCable, the cable industry's initiative for set-top box and television receiver interconnection specifications, adequately represents the full range of interested parties and delivered specifications that allow consumer electronics manufacturers to build competitive devices for purchase at retail; (ii) whether the Commission should revise the January 1, 2005 phase-out of the provision by cable operators of set-top boxes with integrated security; and (iii) any obstacles to the development of commercial availability or other factors "impeding or affecting achievement of the goals of Section 629." The Declaratory Ruling aspect of that Order is discussed below. The pleading cycle in the Further Notice is complete and the Commission anticipates that a Second Report and Order resolving these issues will be issued in the near future.

The successful achievement of a competitive retail market for set-top boxes and digital cable ready television sets involves a confluence of market sectors, and the resolution of issues, which, in many cases, the Commission has less-than-clear jurisdiction, as well as the development of numerous complex and interrelated technical specifications. For example, the following specifications developed in conjunction with the retail availability of set-top boxes and digital television receivers that can be interconnected with cable television systems have been adopted as ANSI or SCTE standards: Modulation and Compression Standards; Network Interface; POD-Host Interface; Pod-Host Copy Protection; Digital Transmission Content Protection ("DTCP"); Digital Visual Interface ("DVI") output with High Bandwidth Digital Content Protection ("HDCP"); and IEEE 1394.

In addition, CableLabs has recently published the OpenCable Application Platform Specification ("OCAP") version 1.0. CableLabs has stated that reducing the OCAP specification to a finalized standard is its number one priority. Although not without difficulties, given the number of parties and the conflicting interests involved, progress has been made towards resolving the standards issues. The Commission continues to monitor these developments and assist, where it can, to further progress in this area.

Another recent development is the NCTA proposal to make digital-only set-top boxes available at retail as soon as possible. NCTA asserts that its plan addresses retailer's major concerns about competing with "superior" set-tops leased from a cable operator because the devices at retail are identical to the boxes available from a cable operator. NCTA maintains that its proposal also eliminates objections related to the PHILA license because no license is necessary with an integrated box.

Finally, NCTA states that its proposal also substantially addresses portability concerns through its buy-back component. While NCTA's proposal will not lead to the manufacturing freedom and open cable architecture envisioned by Section 629, it could serve as a first step in establishing a set-top retail presence and should acquaint consumers with the concept of obtaining their set-top box from sources other than their cable provider.

Finally, it is also important to remember that, although the Commission has established a regulatory framework, the availability of competitive set-top boxes is also dependent upon other factors, some of which are largely outside of the Commission's control. Significantly, for example, there continue to be sharp and unresolved differences between the cable and retail industries on what business model is most appropriate for the manufacture and sale of competitive set-top boxes.

Content Protection/PHILA

The development of a comprehensive mechanism to protect digital content from unauthorized uses, such as retransmission over the Internet, also has proven to be difficult. It was in this context that the Commission issued its Declaratory Ruling in September 2000. The Declaratory Ruling addressed the narrow issue of whether technology licenses, such as the Dynamic Feedback Arrangement Scrambling Technique ("DFAST") license, now called the POD-Host Interface License Agreement ("PHILA"), requiring copy protection measures to be located within a set-top box are consistent with the Commission's navigation devices rules. The Declaratory Ruling found that some measure of anti-copying encryption in both the POD module and the host device to protect a gap where digital data would otherwise be available "in the clear" and accessible for digital copying is consistent with the intent of the rules. The Commission clearly stated that:

". . . we do not intend this declaratory ruling to signal that any terms or technology associated with such licenses and designated as necessary for copy protection purposes are consistent with our rules. We believe, however, that such issues are best resolved if specific concerns involving finalized licenses that implicate our navigation devices rules are presented to the Commission."

The Declaratory Ruling also required CableLabs to submit to the Commission a report on the status of the DFAST/PHILA license, including a final version of a completed license agreement. CableLabs submitted its report and a draft final license to the Commission in December 2000. This draft license has been available to the public since that time. To date, no formal complaints have been filed with the Commission. The Commission recently requested and received for evaluation an updated version of the PHILA. This version, which appears to differ only slightly from the December 2000 license, was submitted with a request for confidentiality. The Commission is currently evaluating the merits of the confidentiality request. Should the Commission deny the request for confidentiality, it would then consider whether to put the PHILA out for public comment.

The Commission is keenly aware that content protection is central to all facets of the digital transition, including the retail availability of set-top boxes. We continue to work with interested parties in the digital transition to encourage them to forge a resolution on content protection matters that is fair to consumers, program distributors, and content owners alike.

Cable Reliance on OCAP

Our rules as currently constituted do not require cable operators to adhere to the OCAP specification. As noted above, eight large cable MSOs have committed to support OCAP on their systems. In addition, our rules require that, after January 1, 2005, cable operators are prohibited from deploying new set-tops that contain integrated security, i.e., cable operators must rely on the POD and POD-Host interface to decrypt scrambled programming. In this atmosphere, it appears more likely that cable MSOs may voluntarily rely on an OCAP-based system for these nonintegrated devices. Such reliance, however, is not mandated. Cable operators could use a proprietary system that operates in conjunction with the POD and POD-Host interface but it would be expected that these set-tops would function no better or worse than competitive set-top boxes obtained at retail. On the other hand, competitive manufacturers have advantages that may be unavailable to cable operators. Manufacturers have the ability to combine OCAP-reliant navigation devices with other consumer electronic products, such as television receivers, DVD players, digital video recorders, and home theater systems, or combine all into a simple product. This may be highly desirable to consumers, as was the case with cable ready analog television receivers. Moreover, competitive set-top manufacturers are equally free to develop

new applications that will operate with or in conjunction with the OCAP platform that will differentiate their product from devices available from cable operators.

Undoubtedly, requiring cable operators to adhere to OCAP in exactly the same manner as competitive manufacturers would create the most level playing field possible. At the same time, such a regime is not consonant with the intent in which the Commission implemented Section 629. Our rules were specifically crafted so as not to freeze in place technology. In the Navigation Devices Order, the Commission stated that permitting the development of a commonly used interface specification ". . . is a rather loose and flexible requirement which we believe, however, may provide the involved parties sufficient guidance to proceed while not creating barriers to the types of change and technical advance that the Section 624A [Consumer Electronics Equipment Compatibility] amendments sought to protect." Requiring cable operators to move in "lockstep" with competitive manufacturers may have the ultimate effect of impeding competition by stifling innovation and leading to one "vanilla" set-top box. The flexibility inherent in our rules will provide the cable operator with the freedom to test new service offerings that may not initially conform to the OCAP standard or any other existing standard. Any successful service could then be included in an existing or newly created OpenCable standard for inclusion in newer models of competitive set-top boxes.

Finally, with respect to the Commission's authority to require devices to respond to a "broadcast flag," there is no statute that explicitly grants the Commission jurisdiction to impose such a requirement. The best argument that could be made is that the Commission could invoke its ancillary jurisdiction to impose such a requirement in order to effectuate the Commission's responsibilities to promote DTV services and to ensure the viability of a free over-the-air system of broadcasting. However, such an argument likely would be challenged in court, and it would be difficult to defend without explicit statutory authority.

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

Question. In its recently issued Broadband Initiative, the FCC proposes to deregulate the provision of advanced services by incumbent local exchange carriers, based partly on the presence of competition from cable and satellite service providers.

How will the FCC promote the provision of broadband via satellite? Will satellite systems be viable competitors to future ILEC advanced service providers?

Answer. Currently, satellite providers are offering high-speed Ku-band broadband service to residential and business customers on long-distance and last-mile bases in the United States. The number of satellite broadband providers and subscribers is expected to grow. The FCC has now authorized sixteen companies in two rounds of application processing to provide fixed-satellite service in the Ka-band. A couple of those licensees plan to launch their first Ka-band satellites as early as 2003. Many of the Ka-band licensees propose to provide via satellite a wide variety of broadband interactive, direct-to-home and digital services to all areas of the United States, including underserved and rural areas, and around the world. With the development of Ka-band systems, we anticipate that satellite systems will be viable competitors to ILECs and cable systems, particularly in areas where terrestrial services cannot easily provide broadband service.

Question. A number of global and domestic satellite providers—among them ICO—are betting their business on providing satellite services at broadband speeds to both urban and rural users. They're seeking FCC approval for flexible spectrum use in order to do this.

What is the status of these proceedings?

Answer. On August 17, 2001, the Commission released a Notice of Proposed Rulemaking to consider whether to grant flexibility in delivery of communications by mobile satellite service operators. The proceeding was initiated in part to consider proposals by New ICO Global Communications and Mobile Satellite Ventures Subsidiary LLC to integrate ancillary terrestrial components with their networks using their assigned satellite spectrum. Comments on the proposals were due on October 22, 2001, and reply comments were due on November 13, 2001. On March 6, 2002, the International Bureau released a public notice seeking limited technical comment on specific issues raised in the proceeding. Comments on the Technical Public Notice are due on March 22, 2002.

The record in this proceeding now exceeds 1,700 pages. The Commission staff is currently in the process of reviewing and analyzing comments from the industry on the Commission's proposals and analyzing the possibilities for providing spectrum flexibility in the mobile satellite service bands. The Commission staff will begin reviewing the additional technical comments as soon as they are filed.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

Question. You told NARUC that, "We need to keep incentives alive that encourage investment in alternate platforms (such as cable, wireless, and satellite) and push entrepreneurs to find creative ways to bypass incumbents and get into the home" (10/25/01). I voted for the Telecommunications Act of 1996, which envisioned intramodal competition as well. What are you doing to promote competition over the local loop?

Answer. We take very seriously our obligations to carry out the unbundling provisions of the Telecommunications Act, and have found in both unbundling proceedings to date that competitors are impaired without access to the local loop. We have also recently initiated two proceedings, the UNE Performance Measurements and Special Access Performance Measurements proceedings, to explore ways to measure how well incumbents are performing their unbundling obligations, including provisioning the local loop, and how we could use those measures to enforce incumbents' obligations. The Commission has been aggressive about using our current enforcement authority to ensure that carriers comply with their statutory obligations. Finally, the Commission proactively monitors ILEC compliance with section 271. The Commission's Enforcement Bureau identifies and monitors section 271 compliance risk areas, coordinates with state public service commissions, and meets with competing carriers and other parties to hear allegations of 271 violations.

Question. New Mexico has a number of rural areas and tribal regions. How can we best ensure that broadband reaches these people? If you see USF as part of the solution, are you concerned that data deregulation would reduce the amount of funding available for universal service support?

Answer. I understand your concern regarding the availability of advanced services in rural and tribal areas in New Mexico. You should be assured of my commitment to providing the appropriate regulatory framework that will help promote the deployment of broadband services to all Americans, especially those living in more remote regions of our nation.

You will be interested to know that during the Commission's recent inquiry concerning the availability of advanced telecommunications capability, the Commission found that there has been promising growth in the availability of broadband services in rural and tribal areas. Specifically, between December 1999 and June 2001 the reporting of high-speed subscribership increased from 19.9 percent to 36.8 percent for the least densely populated zip codes. Additionally, the reporting of high-speed services in tribal areas increased from 49 percent to 71.3 percent.

Despite the encouraging progress in rural and tribal areas, I agree that it is important to consider closely the unique challenges to providing broadband services in more rural areas of our nation. Indeed, market trends in rural areas appear to be in a period of transition, and service providers are working hard to establish viable business plans that will make the successful deployment of broadband services in rural areas economically feasible. Recent trends in technology are also especially promising for rural areas. For example, service providers recently deployed a two-way platform for satellite high-speed services in all 50 states. In addition, various DSL extensions products have been developed that may bring consumers, especially those in low-density areas, within range for DSL services.

The second part of your question raises an important issue. Section 254(d) of the Communications Act requires all telecommunications carriers that provide interstate telecommunications services to contribute to universal service. Because information service providers are not telecommunications carriers, they are not currently required to contribute directly to support universal service. Section 254(d), however, gives the Commission discretion to require providers of interstate telecommunications to contribute if the public interest so requires. Cognizant of this discretionary authority, we devoted substantial attention in the recent Broadband NPRM to the question of how to sustain universal service in an evolving communications market.

I assure you that I am committed to preserving and advancing the universal service goals set forth in the Act. We are examining universal service issues through a variety of vehicles, including our on-going examination of the way in which universal service contributions are collected. I am confident that all of these actions taken together will continue to ensure specific, predictable, and sufficient support mechanisms.

QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

Question. Please describe your broadband vision and new regulatory policy paradigm. In addition, please share your timeframe objective for establishing a national, technology-neutral broadband policy.

Answer. I, and the full Commission, have articulated the principles and goals for our national broadband policy most recently in the Broadband NPRM and in the Cable Modem Declaratory Ruling. First and foremost, we emphasized that the Commission's broadband policy will be guided by, and grounded in, the Communications Act. I, therefore, view the Communications Act, and its mandate to both encourage robust competition among various communications providers and preserve and advance universal service, to be the foundation of the Commission's broadband policy.

In addition, the Commission is guided by several other principles and goals. Specifically, our primary policy goal is to "encourage the ubiquitous availability of broadband to all Americans." Section 706 of the Telecommunications Act of 1996 charges the Commission with "encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" by "regulatory forbearance, measures that promote competition . . ., or other regulating methods that remove barriers to infrastructure investment." Moreover, consistent with section 230(b)(2) of the Act, we seek "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."

As your reference to a technology-neutral policy also suggests, the Commission's broadband policy will recognize that broadband is evolving across multiple electronic platforms as traditional wireless, cable, satellite and wireline providers have made substantial investments in broadband capable infrastructures. We believe that by promoting the development and deployment of multiple platforms, broadband competition can thrive and the needs and demands of consumers can be met. As we commit to preserving opportunities for broadband competition, we must be cautious not to embed particular technologies, and instead, create a rational and consistent framework for the regulation of competing services that are provided via different technologies and network architectures. Finally, we believe that broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market. We recognize that substantial investment is required to build out the networks that will support future broadband capabilities and applications. Therefore, our policy and regulatory framework will work to foster this investment by limiting regulatory uncertainty and unnecessary or unduly burdensome regulatory costs.

With regard to a timeframe objective, we have several proceedings pending that are part of our effort to establish a national broadband policy. Specifically, the Broadband NPRM focuses on the appropriate legal and policy framework for broadband access to the Internet over domestic wireline facilities. We have already issued the Cable Modem Declaratory Ruling, which also contains an NPRM seeking comment on the regulatory implications of our finding that cable modem service is an information service. In the Incumbent LEC Broadband Notice, we are examining whether incumbent LECs that are dominant in the provision of traditional local exchange and exchange access service should also be considered dominant when they provide broadband telecommunications services. In the Triennial UNE Review Notice, we address, among other things, the incumbent LECs' wholesale obligations under section 251 of the Act to make their facilities available as unbundled network elements to competitive LECs for the provision of broadband services. Depending on resource constraints and the need to satisfy any statutory deadlines or mandates, we hope to resolve some, if not most, of these issues by the end of the year.

Question. In its current broadband rulemakings, will the FCC consider the extent to which regulation may increase a broadband facility provider's infrastructure and operational costs and the potential impact on the price consumers' pay for broadband services?

Answer. In all of the proceedings the Commission has initiated to establish a national broadband policy, we have focused on the need to create a minimal regulatory environment for such services. One of our primary goals is to provide as much regulatory certainty and clarity as possible in order to promote investment and innovation in facilities and in turn, investment and innovation in the services and applications that will be delivered to consumers via those networks. I fully intend, therefore, to consider the costs and benefits of all of our broadband regulations and their impact on all existing and potential providers of broadband services. Moreover, I believe that in creating a clear regime for broadband regulation we will provide the certainty necessary for the markets to make the investment decisions that will fund further deployment and provision of broadband services.

In particular, the Triennial Review of Unbundled Network Element Obligations proceeding is intended to develop a comprehensive record on how changes in the marketplace, technology and other factors have affected whether competitors are impaired without access to such elements. It is our hope that by examining the real world experience of incumbents, new entrants, cable operators, and wireless service providers that we will be able to more accurately gauge the impact, including costs, of our unbundling rules. For example, as it did in the UNE Remand Order, the Commission has specifically asked for comment on how to assess the impact of our unbundling requirements on carriers' incentives to invest in facilities and to further deploy broadband services. We also acknowledge that there may be significant tension between our duties under the Communications Act to promote competition in opening the local exchange bottleneck and to promote continued investment in bringing broadband services to America. We seek, therefore, to identify and adopt regulatory requirements that preserve and encourage opportunities for facilities-based competition, maximize incentives for further infrastructure deployment, and minimize the regulatory costs on providers of broadband services.

We also note that in the Broadband NPRM, the Commission is considering specifically the costs and benefits associated with any requirements that it might impose on broadband facilities providers to allow competitive providers to access their infrastructure. As part of this inquiry, we have asked parties to comment on the costs and benefits associated with both the Commission's existing access regulations as well as alternative market-based approaches to broadband regulation.

Finally, we recognize that the price consumers are charged for retail broadband services is subject not only to the costs of providing that service, but by the degree of competitive alternatives available to that consumer. In view of our section 706 mandate to promote the deployment of broadband to all Americans, our aim is to further this goal by fostering the deployment of at least one and preferably multiple broadband infrastructures throughout the Nation.

Question. I understand the FCC has recently contemplated revision to the current universal service funding mechanism. How has competition and technological advances changed the traditional funding regime? What changes and/or revisions to the funding mechanism is the FCC considering? Please explain the various funding alternatives and the pros and cons of each. Also, how does the FCC intend to address the recent Court remand related to *Qwest* v. *FCC*?

Answer. In 1997, the Commission adopted a system under which telecommunications providers contribute to universal service based on their interstate end-user telecommunications revenues. As you note, since that time, the telecommunications marketplace has changed rapidly and technologies have evolved. For example, customers are migrating from traditional wireline telephone services to new products and services, such as mobile wireless services, bundled service offerings, and/or services utilizing broadband platforms, for which interstate telecommunications revenues may be difficult to identify. Other changes include Regional Bell Operating Company entry into the long distance market and related price competition. These trends may erode the contribution base over time and may lead to regulatory uncertainty and marketplace distortions.

In light of these trends, the Commission began a proceeding to revisit its universal service contribution methodology in May 2001. Commenters representing all segments of the industry, consumer groups, and state regulatory bodies submitted a range of innovative ideas and proposals for reforming the current system. In February 2002, the Commission requested additional comment on a specific industry proposal to replace the existing, revenue-based assessment mechanism with one based on the number and capacity of connections provided to a public network. The Commission also invited commenters to present any further arguments or data regarding proposals to modify the existing revenue-based system. We look forward to a lively discussion on these issues from industry and consumers groups, among others.

Under the industry proposal, wireless and wireline carriers would contribute $1 per month for each physical connection provided to residential customers. Contributions for business connections would be based on the maximum available capacity, or bandwidth, of the connection. The proponents of this proposal argue that, because the number of connections historically has been more stable than interstate revenues, a connection-based system would provide a more stable funding source for universal service as technologies evolve. They also argue that a connection-based system also would eliminate some of the complexity involved with charges that carriers often pass-through to their customers and would simplify contributor reporting obligations by eliminating distinctions between interstate and intrastate revenues, or telecommunications and non-telecommunications revenues.

Other proposals seek to address specific concerns regarding the existing revenue-based system. For example, some have proposed looking at projected revenue to address the concern that basing contributions on historical revenue data benefits new entrants and contributors with increasing assessable revenues, while disadvantaging contributors with declining revenues. Other proposals include assessing collected instead of billed revenues to account for uncollectibles. Opponents of these proposals assert they would increase the complexity and decrease the stability of universal service contributions.

Of course, modifying the Commission's contribution methodology would potentially require a transition period for carriers to adjust to changed reporting requirements and may result in a shifting of contribution obligations among different industry segments. The Commission is actively considering these and other alternative proposals regarding whether and how to change the way carriers currently contribute to universal service.

In response to your last question, the Commission intends to address the remand in *Qwest* v. *FCC* with an order following recommendations from the Federal-State Joint Board on Universal Service (Joint Board). Because the Joint Board previously considered many of the issues remanded by the court, we concluded that further Joint Board input would be beneficial. Accordingly, we referred these issues to the Joint Board and requested a recommended decision by August 15, 2002.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF HARVEY L. PITT, CHAIRMAN

PREPARED STATEMENT

Senator HOLLINGS. The committee will next hear from Harvey L. Pitt, the Chairman of the Securities and Exchange Commission.

Chairman Pitt, the committee welcomes you, and we would be delighted to receive your statement at this time in its entirety, if you wish, or you can file it and highlight it, as you wish.

Mr. PITT. Well, thank you, Mr. Chairman, and Senator Gregg. I would ask that my full statement be included in the record, and I have a few opening remarks, if that is okay.

Senator HOLLINGS. Yes, sir.

[The statement follows:]

PREPARED STATEMENT OF HARVEY L. PITT

Chairman Hollings, Senator Gregg, and Members of the Subcommittee: Thank you for the opportunity to testify before you today on behalf of the Securities and Exchange Commission regarding the President's fiscal 2003 budget request. This is the first time I have appeared before this Subcommittee, and I want to begin by expressing my gratitude, and that of the entire SEC, for the tremendous bipartisan support this Subcommittee has given the Commission over the years. I look forward to continuing this strong and positive working relationship.

The past year has tested the mettle and resiliency of our country, our markets, and the investing public's confidence. At a time when the complexity of our financial markets continues to grow unabated, and the number of Americans who participate in them is steadily increasing, the Commission must ensure that its traditional high standards are not compromised. The goal of the SEC is to ensure that our financial markets are transparent and fair to all investors, and to do so, we must make certain that the public is adequately informed about investing and that corporate America provides the disclosure investors need to make fully informed decisions based on sound and reliable information. An integral part of our investor protection efforts is the SEC's aggressive law enforcement program, which protects investors from fraudulent and unfair practices. Given this backdrop, it is therefore critical that the SEC have the resources it needs to fulfill its multiple missions.

I was privileged to spend the first ten years of my career as a lawyer at the SEC. When I returned there last fall, 23 years later, I had hoped to have the opportunity to perform an in-depth review of the Commission's operations, effectiveness, and resource needs prior to beginning the fiscal 2003 budget process. With the events of September 11th, the destruction of our Northeast Regional Office, and the recent bankruptcy of Enron, I have not had this chance. Yet all of these events have demonstrated just how critical the Nation's capital markets are to national security, and the essential role of the SEC.

FUNDING LEVEL

The President's budget requests an appropriation of $466.9 million for the Commission in fiscal 2003. This amount excludes $13 million that would be provided to the SEC to fund the Administration's retirement accrual proposal, if enacted. The

2003 appropriation request is therefore approximately 6.6 percent more than our fiscal 2002 budget of $437.9 million.[1]

This proposed funding level provides the SEC with a "zero-growth" budget in that it provides no new staff and only modest amounts for the SEC's e-government and information technology initiatives, telecommunications systems, and security enhancements. The Commission has not received a staffing increase in the last two years, despite the additional responsibilities we have received as a result of enactment of the Commodity Futures Modernization Act and the Gramm-Leach-Bliley financial services modernization act. If the SEC remains at its current staffing level, the agency will be required to continue to divert resources from other program areas to meet our enforcement needs and to address the additional initiatives we are undertaking to improve financial reporting and disclosure.

PAY PARITY

Although the Commission requested full funding for "pay parity" in fiscal 2003, as authorized by the "Investor and Capital Markets Fee Relief Act" (Public Law 107–123), enacted this January, the Administration's proposed funding level provides no new money to implement this vitally important program. We estimate that an additional $76 million is needed to provide pay parity for the agency in fiscal 2003.[2] At this critical time for the Nation's financial markets, the SEC must be able to keep our most experienced, talented, valuable and productive employees. The only way I believe we can do that is to provide staff with pay parity at levels comparable to those with whom they regularly work at the other federal financial regulatory agencies.

Since the Senate confirmed me this past August, pay parity has been and remains my highest budget priority. In making this funding request, I am grateful to have bipartisan backing from the Chairman and Ranking Member of the SEC's Senate oversight body, the Committee on Banking, Housing and Urban Affairs. Notably, in the past month, Chairman Paul Sarbanes and Senator Phil Gramm both have called for full funding of pay parity. Chairman Sarbanes and Senator Gramm have pointed out that this is a crucial time in the development and strategic future direction of our capital markets. The SEC cannot afford to continue suffering the staffing crisis it has endured for the past decade at such an important juncture. Pay parity provides benefits we truly need to meet the increasing regulatory challenges we face.

If we receive funding for pay parity, I want to assure you that the SEC intends to make responsible increases in staff salaries and benefits to ensure the appropriate use of merit and performance-based principles. Our $76 million cost estimate represents a conservative approach that is lower than the amount that we believe would be required to match what several of the banking agencies currently provide. A fully implemented system identical to the FDIC model, for example, could easily cost more than $100 million. We do not intend to provide large-scale, across-the-board increases. Instead, we intend to base our system on the intent of Congress and begin a modest, considered approach to pay parity that we can assess responsibly before including additional benefits. Merit will be an integral component of any program we put in place.

However, I want to make emphatically clear that failure to fund pay parity now would only exacerbate the problems that the legislation passed by Congress last December was intended to cure. By raising expectations and hopes in anticipation of finally achieving pay parity, I believe we will face even greater employee losses and suffer greater irreparable harm to morale if pay parity is not funded in fiscal 2003, and thereafter. Even if we can cobble together a pay parity program for the remainder of this fiscal year, which OMB has said it would support, the threat of either terminating the program in fiscal 2003 or terminating approximately 700 employees—the number we estimate would have to be cut from the agency to continue the program—would cripple many of the projects we have underway, which are important for the protection of investors and Americans whose retirement accounts are invested in the securities of public companies.

So, if there is one message I can leave with you today, it is: Please, please fully fund pay parity for the SEC in fiscal 2003.

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[1] In fiscal 2002, the Commission also received a supplemental appropriation of $20.7 million to cover some of the costs associated with rebuilding our Northeast Regional Office and increasing security agency-wide.

[2] In fiscal 2001, the Commission received approval and funding to implement "special pay" to help begin addressing our recruitment and attrition problems. In fiscal 2002, we also received funding to continue special pay. The appropriation proposal for fiscal 2003 provides $19 million to fund special pay. We estimate that an additional $76 million is needed to fund pay parity for fiscal 2003.

ADDITIONAL STAFFING NEEDS

Because of recent events, we need to restore full confidence in our capital markets, and I believe we cannot do that without additional personnel. Accordingly, in addition to requesting additional funds needed to implement pay parity, I am requesting that the 2003 staffing level be increased by 100 positions to meet our immediate resource needs. Although I intend to make a strategic, agency-wide assessment of resource needs over the next several months in preparation for the fiscal 2004 budget, with the goal of identifying efficiencies that we can introduce, I have been able to identify some immediate needs that I hope this Subcommittee will consider funding in fiscal 2003. These 100 positions would allow us to add:

—35 accountants and lawyers in the Division of Enforcement to deal with the increasing workload from financial fraud and reporting cases. To give you a sense of scale of this increasing workload, consider that over the first two months of this year, the Division of Enforcement has opened 49 cases investigating financial fraud and reporting, compared to 18 cases that were opened over the same time period last year.

—30 professional staff, including accountants and lawyers, in the Division of Corporation Finance to expand, improve and expedite our review of periodic filings. Our Division of Corporation Finance has undertaken to monitor the annual reports submitted by all Fortune 500 companies that file periodic reports with the Commission in 2002. This new initiative, which we announced in December, significantly expands the Division's review of financial and non-financial disclosures made by public companies.

—35 accountants, lawyers, and other professionals in the other divisions—including the Office of Chief Accountant—to deal with new programmatic needs and policy.

Under a pay parity system, this increased staffing level will require an additional $15 million to our budget request. These are the minimum staffing levels I believe we require to deal with our immediate post-Enron needs. I will be examining closely our need for resources throughout the agency and expect that our 2004 budget request, even with identified efficiencies, may reflect other increases, particularly in our examination program to meet our goals for timely and frequent on-site exams of investment companies and advisers, broker-dealers, and the exchanges. The remainder of my testimony addresses initiatives we are undertaking in the areas of enforcement, corporate disclosure and accounting, investor education and technology.

REAL-TIME ENFORCEMENT

One of our major new initiatives—"real-time" enforcement—is an important component of our fiscal 2003 budget. Our goal is to provide quicker, and more effective, protection for investors, and better oversight of the markets with our limited enforcement resources. As recent experience has reinforced, the SEC must resolve cases and investigations before investors' funds vanish forever; that means we must act more quickly, both in identifying violations and taking prompt corrective action to protect investors. Faster enforcement can help prevent continued fleecing of public investors and dissipation of assets, and will promote investor confidence in the integrity of our markets. As a result, you will see us moving faster to obtain temporary restraining orders, freezes of assets, and appointment of court monitors to oversee enterprises that commit, or used to commit, securities fraud. These efforts necessarily require resources, the most important of which is appropriate staffing. An immediate staffing increase of 35 accountants and lawyers in our Division of Enforcement, which I have already outlined, would strengthen our real-time enforcement program, especially in the area of financial fraud and reporting cases, which involve complex and time-consuming investigations.

DISCLOSURE AND ACCOUNTING

Recent events also have underscored the need for public companies to have a strong commitment to full disclosure, accounting and compliance with all regulatory regimes to which their companies are subject. In his State of the Union Address, the President appropriately demanded "stricter accounting standards and tougher disclosure requirements." He also stated that he wants corporate America to "be made more accountable to employees and shareholders and held to the highest standard of conduct." The SEC shares and embraces these principles, and I am firmly committed to making them a reality.

Recently, we announced our intention to propose changes in corporate disclosure rules as the first in a series of steps designed to improve our financial reporting and

disclosure system. The proposed rules would require companies to report additional critical information on a current basis and in a complete manner, such as transactions by company insiders, critical accounting policies, and changes in rating agency decisions. They also would expedite the filing of existing periodic reports. While these proposed rules would only be a first step, they will provide the most dramatic and significant improvements in our disclosure system in at least two decades, and they can be implemented quickly while other, more sweeping proposals are considered. During the remainder of 2002, we anticipate proposing further comprehensive reform proposals covering financial reporting and disclosure requirements, accounting standard setting, regulation of the auditing process and profession and corporate governance. These initiatives include the following:

—*A "current" disclosure system*.—Investors need current information, not just periodic disclosures. We want investors to have an accurate and current view of the posture of their company, as seen through the eyes of management. Public companies should be required to make affirmative disclosures of unquestionably material information in real time, including providing updates to prior disclosures.

—*Public company disclosure of significant current "trend" and "evaluative" data*.—Providing current trend and evaluative data would enable investors to assess a company's evolving financial posture. This information, upon which corporate executives and bankers already base critical decisions, can be presented without confusing or misleading investors, prejudicing legitimate corporate interests or exposing companies to unfair assertions of liability.

—*Clear and informative financial statements*.—Investors, and employees concerned with preserving and increasing their savings and retirement funds, deserve comprehensive financial reports they can easily and quickly interpret and understand.

—*Conscientious identification and assessment of critical accounting principles*.—Public companies should be required to identify the most critical accounting principles upon which a company's financial status depends, and which involve the most complex, subjective, or ambiguous assessments. Investors should be told, concisely and clearly, how these principles are applied, and should be informed about a range of possible effects in differing applications of these principles.

—*More meaningful investor protection by audit committees*.—Audit committees must be proactive, not merely reactive, to ensure the quality and integrity of corporate financial reports. Especially critical is the need to improve interaction between audit committee members and senior management and outside auditors. Audit committees must understand why critical accounting principles were chosen, how they were applied, and have a basis to believe the end result fairly presents the company's actual status.

—*Effective oversight of those who audit public companies*.—We are firmly committed to taking a lead role in assuring that the accounting profession functions properly, expeditiously and in the public interest. To that end, we are addressing how best to restructure the regulatory system that governs the accounting profession. We envision a regulatory body that will assume responsibility for auditor and accountant discipline and quality control. A substantial majority of its members would be unaffiliated with the accounting profession, and the oversight body would be funded not by the accounting profession but from the private sector.

—*Ensuring those entrusted with the important public responsibility of auditing public companies are single-minded in their devotion to the public interest, and not subject to conflicts that might confuse or divert them*.—Those who perform audits must be truly independent and in particular must not be subject to the conflict of increasing their own compensation at the risk of ensuring the public's protection. Their fidelity to the cause of full, fair and understandable financial reporting must be ironclad and unequivocal.

These are just some of the initiatives that we are working on, both on our own and together with Congress, the President's Working Group, investor groups and other SEC constituents to improve corporate disclosure and accounting. These initiatives, if done properly and responsibly, will require additional resources to plan and implement, if we are to keep up with our existing, on-going responsibilities at the same time.

Regrettably, at this time, I cannot give you even an estimate of those costs. As I stated at the outset of my testimony, I plan to conduct a top-to-bottom review of the way the Commission currently allocates its resources, with the intention of making better use of our existing resources. But, in light of the events of the past six

months, I think it is foreseeable that the SEC will require additional funding to implement improvements to our corporate disclosure and accounting systems.

INVESTOR EDUCATION

Even with our shift toward real-time enforcement and our current efforts to improve financial disclosure, the first line of defense against fraud is always an educated investor. The Commission works with numerous public and private organizations to foster investor educational programs. Our staff gives presentations to countless schools, religious organizations, and investor clubs, explaining basic investing concepts and answering questions. We also host "Investor Town Meetings" across the United States, that bring together industry, federal, and local government officials to educate investors on basic financial concepts. And this spring we will host our first "Investor's Summit," to discuss policies and proposals that impact them. We want to give all Americans an opportunity and an avenue to weigh in on the broad policy objectives that ultimately could impact their ability to send their children to college or retire comfortably. We plan to use the Internet to broadcast the summit so that anyone can participate. We also are asking people to write us and call us so that we can hear the broadest possible range of viewpoints. We want to hear the concerns and aspirations of America's investors.

INFORMATION TECHNOLOGY

Like the rest of the government, our needs in the area of information technology continue to increase. Given the critical and increasing role of technology in the financial markets, the President's budget requests $4.0 million to fund the SEC's e-government initiatives. This is an area where the Commission needs to improve, both internally and externally. Technology is constantly altering the landscape of our markets, and SEC staff must have the necessary tools at their disposal to successfully meet the increasing demands that we face. In particular, funds proposed for fiscal 2003 will allow the SEC to get better and more timely enforcement information from the markets, enhance our intrusion detection capabilities, and meet the President's security requirements for information technology. These initiatives are a small, but important, first step toward meeting the Commission's technology needs.

With the advent of alternative trading systems that have grown from only a handful to over 60 today, and as a result of the Internet, the SEC also must consider what effect our regulatory actions and decisions have on the industry's use of technology. To respond to this need, we are seeking a Chief Technology Officer to provide the Commission with the technical expertise and advice necessary to improve the Commission's oversight of the markets. On February 4, 2002, I sent you a reprogramming request that lays out in detail the proposed activities of this office. Generally, this office will be responsible for ensuring that the SEC's regulatory, disclosure, examination, and law enforcement programs are implemented with the benefit of a state of the art understanding of technology. Through this process, the agency can be confident that what we implement or approve is technologically sound and cost effective to the private sector.

FUNDING STRUCTURE

Last, I would be remiss if I did not take this chance to thank you for your support in helping enact the fee reduction/pay parity legislation that I discussed earlier in my testimony. This new law is extremely important to the SEC and the securities industry, which has consistently supported both fee reduction and pay parity. The new legislation not only reduces potential excess fees paid by investors and provides authority for pay parity for the Commission's staff, but also provides the SEC with a stable, long-term funding structure, which is consistent with the original fee structure implemented to fund the SEC.

Under the fee reduction/pay parity legislation, the Commission is slated to collect a total of $1.33 billion in offsetting collections in fiscal 2003, $180 million more than this year's estimate. Even after funding pay parity and the additional positions described above, the Commission will still collect $772 million more in fees than its fiscal 2003 budget request.

The fee reduction/pay parity legislation requires the Commission to adjust fee rates on a periodic basis after consulting with the Congressional Budget Office and the Office of Management and Budget. While the fee rates are going to be higher than anticipated in the short term, due to changes in the economy and declines in market indices since CBO developed its original dollar volume estimates over a year ago, we firmly believe that over the longer term the fee reduction legislation will provide the investing public with the benefits and security it was designed to pro-

vide, in addition to benefiting the Commission and this Committee by providing a stable, long-term funding source.

CONCLUSION

In conclusion, I want to observe that the SEC currently oversees our nation's securities markets with a modest staff and limited resources, operating in conjunction with the states and self-regulatory organizations. This cooperative structure enables the Commission to leverage its resources to fulfill its mission, but leverage can only go so far. Without knowing exactly where and how many, I can say with certainty that the SEC needs more staff; that is why I have recommended an immediate fiscal 2003 increase of 100 key professional staff and will be making a more thorough, agency-wide assessment over the next several months.

The SEC regulates industries and markets that have grown enormously, in both size and complexity. The Commission currently oversees an estimated 8,000 brokerage firms employing nearly 700,000 brokers; 7,500 investment advisers with approximately $20 trillion in assets under management; 34,000 investment company portfolios; and over 17,000 reporting companies. The Commission also has oversight responsibilities for nine registered securities exchanges, the National Association of Securities Dealers, the National Futures Association, 13 registered clearing agencies, and the Municipal Securities Rulemaking Board.

I take quite seriously my stewardship responsibilities and the Oath of Office I took regarding the Commission and its resource needs. I hope that we can work together to make sure that the SEC has sufficient resources to ensure that our markets remain the envy of the world and are as fair and transparent to all investors as we can possibly make them. Thank you for the opportunity to testify today. I am pleased to respond to any questions the Subcommittee may have.

OPENING REMARKS

Mr. PITT. Let me say first that I appreciate the opportunity to testify on fiscal year 2003 appropriations for the Securities and Exchange Commission. This is my first appearance before this subcommittee since I became SEC Chairman 6 months ago. I want to express my gratitude and that of the entire SEC for the bipartisan support this subcommittee and its staff have given the Commission over the years. And I look forward to continuing the strong and positive working relationship.

The events of the past 6 months have tested the mettle and resiliency of our country, our capital markets, and the Securities and Exchange Commission. At the same time, they have put the investing public's confidence in our capital markets to a severe test. September 11th and the Enron tragedy demonstrate how critical the Nation's capital markets are to national security and economic growth.

Because the agency I am privileged to chair is integral to the success of our capital markets, it is vital that the SEC have the resources it needs to fulfill its multiple missions. We need these resources even more if we are to restore the public's full confidence in our capital markets.

The President's budget for fiscal year 2003 requests an appropriation of nearly $467 million for the Commission. It is clear to me from recent events, including the program the President is announcing this morning to improve and strengthen the duties of those whose conduct is at the core of our securities markets, that the SEC critically needs to receive additional money in fiscal year 2003 to fully fund pay parity and that we should be authorized to add additional staff to address some pressing immediate needs.

JUSTIFICATION FOR FUNDING PAY PARITY

Let me address pay parity first. The Investor and Capital Markets Fee Relief Act, enacted this January, authorized pay parity for the employees of the Securities and Exchange Commission. Our Commission has been subject to extremely high attrition, with the principal reason being the fact that our employees earn substantially less than their counterparts in the other financial service regulatory agencies, not to mention the private sector.

The OMB-proposed funding level, $467 million, did not provide any money to implement pay parity, a disappointment to our most valued employees. We estimate that an additional $76 million is needed to provide for a modest implementation of pay parity for the agency in fiscal year 2003.

At this critical time to the Nation's financial markets, we must rely on our most experienced, talented, valuable, and productive employees. The only way to do that is for us to be able to provide our staff with pay parity at levels comparable to those received by colleagues with whom they regularly work at the other Federal financial regulatory agencies.

If we receive funding for pay parity, I can assure you that the Commission intends to make responsible increases in staff salaries and benefits, with a significant component of the increases subject to true merit pay.

INCREASED STAFFING REQUEST

In addition to the absence of funds to implement pay parity, we were originally given a no-growth budget, which means that we were not going to add any new personnel. Indeed, under current funding levels for 2002, we are effectively precluded from hiring any new personnel. I do not believe that the solution to every problem starts and ends with larger and more expensive Government. I am committed to doing a thorough review of our deployment of personnel to see whether and how we can effectuate meaningful efficiencies.

But the events of 9/11 and the tragedy of Enron have made any contemplative review of our needs impossible. Given the enormous surge in our enforcement activities, the desire to do a better job than has been done previously in reviewing public company filings and overseeing a restructured accounting profession, even before looking for efficiencies, I must request that SEC staffing be increased by 100 positions in fiscal year 2003. These are the minimum staffing levels I believe we require to deal with our immediate post-Enron needs.

Under a pay parity system, this increased staffing level would require an additional $15 million. This additional staff will start helping us meet our immediate enforcement needs as well as address initiatives we are undertaking to improve financial reporting and disclosure.

I might add that the Commission has not received a staffing increase in the last 2 years, despite additional responsibilities the agency has received as a result of the Commodity Futures Modernization Act and the Gramm-Leach-Bliley Financial Services Modernization Act.

A staffing increase is even more critical in light of recent events. I am very happy to be able to say that yesterday I spoke with OMB Director Daniels, who advised me that OMB is receptive to our request for additional staff and will work with us to meet our resource needs.

In the coming months, I will be examining closely our need for resources throughout the agency in preparation for the fiscal year 2004 budget, with the goal of identifying efficiencies we can employ. However, given current events, it is very likely that we will have to come back and ask for resources over and above what I have requested here today.

If there is one message that I can leave you with today, it is, please, please, fully fund pay parity for the SEC in fiscal year 2003.

I thank you for this opportunity to testify, and I look forward to trying to respond to any questions the subcommittee may have.

SEC STAFFING LEVELS AND COMMISSION WORKLOAD

Senator HOLLINGS. Well, I thank you for talking to Mitch Daniels. I noticed in the morning's paper that evidently the head of the Corps of Engineers didn't, and he is gone. You ask for $76 million more in your statement than OMB gave for pay parity, and $15 million more for increased staff. Let the record show that this subcommittee approved yesterday the reprogramming request of $24 million to pay for pay parity this fiscal year.

Yes, I will agree, and I take it my distinguished colleague will also, on both pay parity and the additional personnel, because we received the GAO report that came out yesterday which states that over the last decade corporate filings have increased 60 percent, and related review staff has only increased by 29 percent. The number of complaints and inquiries received increased by 100 percent while the staff dedicated to investigate complaints and other matters increased by only 16 percent. Thereby the imbalance between workload and resources has resulted in the Securities and Exchange Commission taking longer to process filings, issue guidance, and review applications. These delays could affect industry competition and efficiency.

And the imbalance between workload and resources has raised concerns that the Securities and Exchange Commission cannot properly carry out its enforcement role. The number of cases pending as of the end of the year increased 77 percent from 1991 to 2000.

So those are the two things that concern me, Chairman Pitt, and I wanted to make sure that we support your agency's efforts because we know the Securities and Exchange Commission generally is highly respected and is working around the clock, and it is Congress who has tried to give even more than the President asks for every year, more than OMB would allow. So I am glad you have ironed out these issues with the Office of Management and Budget.

Senator Gregg.

Senator GREGG. Mr. Chairman, I want to second your comments. I think they are right on point, and I appreciate the Chairman testifying today about the needs of the SEC.

This committee has been sensitive to that need for a long time. We fought the battle for pay parity. It was a fight that required

us to go up the hill a number of times. It was successful. Now it needs to be funded. There is no question about that. And I appreciate the chairman's commitment to do that.

The additional personnel is also obvious in the present climate. I hate for us to have to work late until the next appropriations cycle. I would hope that we could put all this in the supplemental, and since you have already signed on Mr. Daniels, I would hope that you would have signed him on for that exercise also. But, in any event, I will certainly support the chairman in however he wants to pursue this funding, and aggressively pursue it, because we all understand that the cornerstone of our capital markets is transparency and the integrity of the numbers, and that comes down to the SEC's disciplining of the marketplace and the accounting firms that are responsible for producing those numbers. And if we don't have strong capital markets, we don't have a strong economy and we don't have prosperity because we don't have creation of economic activity and jobs.

So you could argue that the essence of our prosperity starts with having a strong SEC. So we certainly want to support you in this effort.

PRESIDENT'S PROPOSED APPROACH TO ADDRESS ISSUES

I would be interested to hear your analysis of the President's proposal relative to the new responsibilities that they are suggesting that the operating officers and executive officers of corporations have, almost putting them in a fiduciary position, if not actually putting them in a fiduciary position. Do you feel that is an appropriate step?

Mr. PITT. I think our President has laid out this morning a very serious and substantive and thoughtful approach to the problems that we are seeing or have been witnessing. I think that one of the concomitant factors with the President's proposals is that we intend to sit down and analyze those proposals and move just as quickly as we can to implement those elements of the proposal that are within our power to implement. And I believe most of them are within our power and we will be anxious to bring them to fruition and reality.

I think that what he has outlined is sort of a tripartite approach to the problems we have witnessed. The first is to improve the functioning and dedication and loyalty of corporate offices and executives and directors to the investing public, who are, after all, the true owners of every corporation.

GREATER RESPONSIBILITIES ON CEOS

This proposal that the President has put forth would place greater responsibility on chief executive officers, and one of the things that runs throughout the President's announced program is the fact that people who think that they can get by or get away with mere technical compliance, and aren't truly committed to the functions their offices require them to serve, will be sorely disappointed.

In terms of our own enforcement efforts, we intend to make that a reality, and we will start as soon as we can looking at companies where executives have profited from illusory or sham earnings that

ultimately get restated, where the shareholders wind up holding an empty bag and the executives walk away with millions and millions of dollars. We will go into court, and we will seek the return of those moneys to the corporation and those investors, as the President has suggested.

IMPROVING THE DISCLOSURE SYSTEM

The second prong of the President's proposal addresses the disclosure process in general. Here I think we have the unfortunate occurrence of a statute which is almost 70 years old and has not been revitalized in most of that time frame in terms of its disclosure obligations. So it is approaching many of the issues today the way they were approached in 1934 when we didn't have the kind of technology and communications that we have today.

In my view, many of the problems which the Enron situation have evidenced have been evident for 5 to 10 years, and they have not been dealt with. It is our intention and the President has made it clear that he expects of us that we will, in fact, turn our attention to that. We need to improve the disclosure system not so that shareholders are just given detail on detail on detail, many of which, at least speaking for myself when I read corporate filings, appear to me to be designed to avoid liability rather than being designed to inform.

We have a very committed approach to revitalizing disclosure in this country and giving shareholders the same view of the companies they own as the people who manage and run those corporations.

REVIEW AND REFORM OF ACCOUNTING INDUSTRY

And his final area, which is quite significant, is dealing with the accounting profession. The accounting profession has very noble origins in this country, and it performs an incredibly important public service. At some point it is required, I guess, that we step back and make sure that everyone in the profession and everyone who depends on the profession is assured that the profession is acting in the public interest and not self-interest.

I believe that we have the capacity and we have the inclination and the commitment to develop a strong private sector regulatory system that will provide, for the first time, meaningful regulation of the accounting profession from outside the profession, which is what the President has suggested.

In addition, we will seek to reform the way in which accounting standards are articulated, and we will seek to provide for shareholders not just the protection of the law, not just the avoidance of illegal acts, but the establishment of the highest ethical and competence standards which will be enforced by a truly independent body that will have the authority to make certain that individual accountants and entire accounting firms live up to their public responsibilities.

NEW LEGISLATIVE NEEDS

Senator GREGG. To what extent are you going to need legislative action to pursue those three goals?

Mr. PITT. I am sorry, sir?

Senator GREGG. To what extent are you going to need legislative action to pursue those three goals?

Mr. PITT. I do not believe that we need legislative action to pursue those. We have been working closely in both Houses of Congress and on both sides of the aisle to lend our expertise because we understand that some Members of Congress believe that legislation is the appropriate way to go, and I have made clear that we will work to support whatever Congress believes is the appropriate approach.

But I think the needs we have are pressing, and I believe it is imperative that we not spend excessive amounts of time worrying about how this will be done, but instead work together to try and get it done. And so we are in the process of soliciting views from the public. We will put out some proposals which we will discuss with Congress and our oversight committees before we ever put them out, and we will work with the Congress to come up with a package that I think lives up to the President's challenge.

Senator GREGG. Thank you.

EFFECTIVENESS OF REGULATORY PROTECTION

Senator HOLLINGS. Chairman Pitt, your testimony is strongly supportive of regulatory protection outside the industry. We see in Business Week and other headlines that the regulatory protection that you have considered so far is weak: SEC prescribes weak cures for accounting industry's ills. I think there are three authorizing bills that are being discussed today, however, they wouldn't tell me the cost because they are having their own news conferences while you and I are testifying. I will look into these proposals, once made public, because this subcommittee of appropriations will have to respond to the authorization levels based on what is worked out.

But, mind you me, the problems we see are not due to a lack of laws. The chief executives and those in charge are all coming up to Congress either taking the Fifth Amendment or they can't remember anything. But, of course there is no law to make everybody remember. It is very, very unfortunate because there has been a sort of weak operation all the way around with respect to the accountants also being the consultants, as you have already indicated in some of the comments that you have made. So that has got to be corrected, and it has got to be—and I would emphasize that, too—regulated outside the industry and supported by fees. We want to make sure that whatever regulatory body is created is not beholden to industry, and is therefore fully supported by fees.

SUBCOMMITTEE RECESS

Chairman Pitt, we thank you for your appearance here. The subcommittee record will stay open for any further questions. Thank you very much.

Mr. PITT. Thank you.

[Whereupon, at 11:16 a.m., Thursday, March 7, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

TUESDAY, MARCH 12, 2002

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:03 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Inouye, Mikulski, Leahy, Reed, Gregg, Domenici, and Campbell.

DEPARTMENT OF STATE

OFFICE OF THE SECRETARY

STATEMENT OF HON. COLIN L. POWELL, SECRETARY OF STATE

PREPARED STATEMENT

Senator HOLLINGS. Welcome, and we appreciate very much your appearance here this morning because you have more places to be than most any. We will be glad to receive your statement in its entirety at this time or you can highlight it, as you wish. It will be made part of the record.

Secretary POWELL. Thank you, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF COLIN L. POWELL

Mr. Chairman, members of the subcommittee, I am pleased to appear before you to testify in support of President Bush's budget request for fiscal year 2003.

Let me say at the outset, Mr. Chairman, before I go into the specifics of the budget request for the State Department and Related Agencies, that President Bush has two overriding objectives that our foreign policy must serve before all else. These two objectives are to win the war on terrorism and to protect Americans at home and abroad. This Administration will not be deterred from accomplishing these objectives. I have no doubt that this subcommittee and the Congress feel the same way. As you will see when I address the details of the budget request, a sizeable part is related to accomplishing these two objectives.

As many of you will recall, at my first budget testimony to this committee last May, I told you that what I was asking for at that time was really just the first fiscal step in our efforts to align both the organization for and the conduct of America's foreign relations with the dictates and demands of the modern world.

And I told you that as Secretary of State, I really wear two hats. By law, I am the principal foreign policy advisor to the President of the United States. But I am also the leader, the manager, the CEO of the Department of State, and I take that

role and that charge very, very seriously. And to be successful in both roles, I have to make sure that the Department is properly organized, equipped and manned to conduct America's foreign policy, as well as formulate good foreign policy in the name of the President and the American people.

And you heard my testimony as CEO and you responded, and we are grateful. Because of your understanding and generosity, we have made significant progress. We will make even more in fiscal year 2003.

The President's discretionary request for the Department of State and Related Agencies for fiscal year 2003 International Affairs is $8.1 billion. These dollars will allow us to:

—Continue initiatives to recruit, hire, train, and deploy the right work force. The budget request includes $100 million for the next step in the hiring process we began last year. With these dollars, we will be able to bring on board 399 more foreign affairs professionals and be well on our way to repairing the large gap created in our personnel structure and, thus, the strain put on our people by almost a decade of too few hires, an inability to train properly, and hundreds of unfilled positions. By fiscal year 2004, we hope to have completed our multi-year hiring effort with respect to overseas staffing—to include establishing the training pool I described to you last year that is so important if we are to allow our people to complete the training we feel is needed for them to do their jobs. Next March, I will be back up here briefing you on the results of our domestic staffing review.

—Continue to upgrade and enhance our worldwide security readiness—even more important in light of our success in disrupting and damaging the al-Qaida terrorist network. The budget request includes $553 million that builds on the funding provided from the Emergency Response Fund for the increased hiring of security agents and for counterterrorism programs.

—Continue to upgrade the security of our overseas facilities. The budget request includes over $1.3 billion to improve physical security, correct serious deficiencies that still exist, and provide for security-driven construction of new facilities at high-risk posts around the world. Mr. Chairman, we are right-sizing, shaping up and bringing smarter management practices to our overseas buildings program, as I told you we would do last year. The first change we made was to put retired General Chuck Williams in charge and give him assistant secretary equivalent rank. Now, his Overseas Building Operations (OBO) has developed the Department's first long-range plan, which projects our major facility requirements over a five-year period.

The OBO is using best practices from industry, new embassy templates, and strong leadership to lower costs, increase quality, and decrease construction time.

As I told you last year, one of our goals is to reduce the average cost to build an embassy. I believe we are well on the way to doing that.

And General Williams is making all of our facilities, overseas and stateside, more secure. By the end of fiscal year 2002, over two-thirds of our overseas posts should reach minimal security standards, meaning secure doors, windows, and perimeters.

We are also making progress in efforts to provide new facilities that are fully secure, with 13 major capital projects in design or construction, another eight expected to begin this fiscal year, and nine more in fiscal year 2003.

—Continue our program to provide state-of-the-art information technology to our people everywhere. Because of your support in fiscal year 2002, we are well on the way to doing this. We have an aggressive deployment schedule for our unclassified system which will provide desktop Internet access to over 30,000 State users worldwide in fiscal year 2003 using fiscal year 2002 funds. And we are deploying our classified connectivity program over the next two years. We have included $177 million in the Capital Investment Fund for IT requirements. Combined with $86 million in estimated Expedited Passport Fees, a total of $263 million will be available for our information technology and communications systems initiatives. Our goal is to put the Internet in the service of diplomacy and we are well on the way to accomplishing it.

—Continue to meet our obligations to international organizations—also important as we pursue the war on terrorism to its end. The budget request includes $891.4 million to fund U.S. assessments to 43 international organizations, active membership of which furthers U.S. economic, political, security, social, and cultural interests.

—Continue to meet our obligations to international peacekeeping activities. The budget request includes $726 million to pay our projected United Nations peacekeeping assessments—all the more important as we seek to avoid increasing

even further our U.N. arrearages. And, Mr. Chairman, I ask for your help in getting the cap on our assessments lifted so that we can eventually eliminate all our arrearages. These peacekeeping activities allow us to leverage our political, military, and financial assets through the authority of the United Nations Security Council and the participation of other countries in providing funds and peacekeepers for conflicts worldwide.

—Continue and also enhance an aggressive effort to eliminate support for terrorists and thus deny them safe haven through our ongoing public diplomacy activities, our educational and cultural exchange programs, and international broadcasting. The budget request includes $287 million for public diplomacy, including information and cultural programs carried out by overseas missions and supported by public diplomacy personnel in our regional and functional bureaus. These resources help to educate the international public on the war against terrorism and America's commitment to peace and prosperity for all nations. The budget request also includes $247 million for educational and cultural exchange programs that build mutual understanding and develop friendly relations between America and the peoples of the world. These activities help build the trust, confidence, and international cooperation necessary to sustain and advance the full range of our interests. Such activities have gained a new sense of urgency and importance since the brutal attacks of September. We need to teach more about America to the world. We need to show people who we are and what we stand for, and these programs do just that. Moreover, the budget request includes almost $518 million for International Broadcasting, of which $60 million is for the war on terrorism to continue increased media broadcasts to Afghanistan and the surrounding countries and throughout the Middle East. These international broadcasts help inform local public opinion about the true nature of al-Qaida and the purposes of the war on terrorism, building support for the coalition's global campaign.

Mr. Chairman, on the subject of public diplomacy let me expand my remarks.

The terrorist attacks of September 11 underscored the urgency of implementing an effective public diplomacy campaign. Those who abet terror by spreading distortion and hate and inciting others, take full advantage of the global news cycle. We must also use that cycle. Since September 11, there have been over 2,000 media appearances by State Department officials. Our continuous presence in Arabic and regional media by officials with language and media skills, has been unprecedented. Our international information website on terror is now online in seven languages. Internet search engines show it is the hottest page on the topic. Our 25-page color publication, "The Network of Terrorism", is now available in 30 languages with many different adaptations, including a full insert in the Arabic edition of Newsweek. "Right content, right format, right audience, right now" describes our strategic aim in seeing that U.S. policies are explained and placed in the proper context in the minds of foreign audiences.

I also serve, ex officio, as a member of the Broadcasting Board of Governors, the agency that oversees the efforts of Voice of America and Radio Free Europe/Radio Liberty to broadcast our message into South Central Asia and the Middle East. With the support of the Congress, our broadcasting has increased dramatically since September 11. We have almost doubled the number of broadcast hours to areas that have been the breeding grounds of terrorists. The dollars we have requested for international broadcasting will help sustain these key efforts through the next fiscal year.

Mr. Chairman, we are working closely right now with OMB to examine our overall requirements. We believe that there are valid fiscal year 2002 needs that cannot wait until fiscal year 2003. The Administration will bring the specific details of this supplemental request to the Congress in the near future. We have not quite finished our review at this point, but it should not take much longer.

Mr. Chairman, all of these State Department and Related Agencies programs and initiatives are critical to the conduct of America's foreign policy. Some of you know my feelings about the importance to the success of any enterprise of having the right people in the right places. If I had to put one of these priorities at the pinnacle of our management efforts, it would be our hiring efforts. We must sustain the strong recruiting program we began last year—with your support and the support of the Congress as a whole.

Last year, in new hires for the Foreign Service, we made great strides. We doubled the number of candidates for the Foreign Service Written Examination—and this year we will give the exam twice instead of just once. Moreover, our new recruits better reflect the diversity of our country with nearly 17 percent of those who passed last September's written exam being members of minority groups. For exam-

ple, we tripled the number of African-Americans and doubled the number of Latino-Americans.

We have also improved Civil Service recruitment by creating new web-based recruiting tools and by vigorously asserting the truth. The truth, Mr. Chairman, that we are a team at State and that the Foreign Service and the Civil Service are each very important team members. Both are vital to our mission. And now both know it.

Another improvement is that once we identify the best people we bring them on more quickly—a great boon to hiring the best. For Foreign Service recruits, for instance, we have reduced the time from written exam to entry into service from 27 months to less than a year. We are going to reduce it even further.

We are also working with OMB to create extensive new performance measures to ensure that the people we hire remain the best throughout their careers.

Mr. Chairman, all of these activities have improved morale at the State Department. Our people see things happening, things that enhance their quality of life, their security, their ability to do their jobs. Things like our interim childcare center at the National Foreign Affairs Training Center. It opened on September 4 and can handle a full complement of 30 infants and toddlers.

This idea of teamwork, this idea of family and the quality of life that must always nourish it even in the remotest station, is uppermost in our minds at the Department. While we concentrate on the nation's foreign affairs we must also focus on taking care of those Americans who conduct it, as well as the many thousands of Foreign Service Nationals who help us across the globe.

These are an extraordinary group of people, Mr. Chairman. For example, our sixty Afghan employees in Kabul worked diligently to maintain and protect our facilities throughout the 13 years the Embassy was closed. They worked at considerable personal risk and often went months without getting paid. They even repaired the chancery roof when it was damaged by a rocket attack. This is the sort of diligence and loyalty that is typical of our outstanding Foreign Service Nationals.

Our whole team at State is vital to mission accomplishment—Foreign Service, Civil Service, and Foreign Service Nationals. The dollars you helped to provide us last year allowed us to make our team more cohesive and more effective. We want to continue that process.

Mr. Chairman, one message that the tragic events of September 11th and the days that followed have made very clear is that American leadership in international affairs is critical. Out on the front lines of diplomacy, we want a first-class offense for America. As a soldier, I can tell you that quality people with high morale, combined with superb training and adequate resources, are the key to a first-class offense.

So as the State Department's CEO, let me thank you again for what you have done to help us create such a first-class offense—and I want to ask you to continue your excellent support so we can finish the job of bringing the Department of State and the conduct of America's foreign policy into the 21st century. I ask for your important support in full committee and in the Senate as a whole, both for the $8.1 billion we are requesting for the Department and related agencies and for the $16.1 billion we are requesting for foreign operations. In addition, I ask for your help with whatever supplemental request we present in the near future. With your help, and the help of the whole Congress, we will continue the progress we have already begun.

Thank you and I will be pleased to take your questions.

Senator HOLLINGS. Go ahead. You are on.

Secretary POWELL. Well, thank you for that very effusive and long introduction. It is a great pleasure——

Senator HOLLINGS. Yes, siree.

OPENING STATEMENT OF SECRETARY POWELL

Secretary POWELL. This is my seventh hearing in the course of hearings this year, and I appreciate the opportunity to get right into it.

Mr. Chairman, it is a pleasure to once again be before the committee, and thank you for accepting my testimony in its fullness and making it a part of the record. I would like to give an abbreviated statement and then get right to your questions.

As many of you will recall, at my first budget testimony to this committee last May, I told you that what I was asking for at that time was really just the first fiscal step in our efforts to align the organization for the conduct of America's foreign policy, with the dictates and the demands of the modern world and that there were more fiscal steps to come.

I told you that, as Secretary of State, I really wear two hats. By law, I am the principal foreign policy advisor to the President of the United States, but I am also the leader, the manager, the CEO of the Department of State, and I take that role and that charge very, very seriously. To be successful in both roles, I have to make sure that the Department is properly organized, equipped, and manned to conduct America's foreign policy, as well as to formulate good foreign policy in the name of the President and in the name of the American people.

You heard my testimony last May, and you responded, and we are grateful. Because of your understanding and the generosity of the Congress, we have made significant progress, and now I am here to tell you about the second fiscal step, so we can continue to make progress in fiscal year 2003.

The President's discretionary request for the Department of State and related agencies for fiscal year 2003 is $8.1 billion. These dollars will allow us to continue initiatives to recruit, hire, train and deploy the right workforce.

The budget request includes $100 million for the next step in the hiring process we began last year. With these dollars, we will be able to bring on board into the Department 399 more foreign affairs professionals, as well as other technical experts, and be well on our way to repairing a large gap in our personnel structure. This gap has put enormous strain on our people as they have had to deal with a decade of too few hires, an inability to train properly, and hundreds of unfilled positions.

By fiscal year 2004, we hope to have completed our multi-year effort with respect to overseas staffing to include establishing the training pool I described to you last year. The training pool is important so we have some flexibility in the system to send people to school without keeping them out of jobs they need to be doing, a "schools account," so to speak, and next March, I will be back up here briefing you on the results of our domestic staffing review.

In addition to getting more people on board, we will continue to upgrade and enhance our worldwide security readiness, even more important in light of our success in disrupting and damaging the al Qaeda terrorist network. The budget request includes $553 million for worldwide security upgrades. It builds on the funding provided from the emergency response fund for the increased hiring of security agents and for counterterrorism programs.

We will also continue to upgrade the security of our overseas facilities. The budget request includes over $1.3 billion to improve physical security, correct serious deficiencies that still exist, and provide for security-driven construction of new facilities at high-risk posts around the world.

Mr. Chairman, we are right-sizing, shaping up, and bringing smarter management practices to our overseas building program, as I told you we would do last year. The first change we made, as

you well know, sir, and members of the committee, was to put retired Major General Chuck Williams in charge and give him Assistant Secretary-equivalent rank and a more direct reporting chain up to the top. Now his Office of Overseas Building Operations has developed the Department's first long-range master plan, which projects our major facility requirements over a 5-year period.

Mr. Chairman, I know that General Williams briefed you in mid-February. He told you how the OBO is using best practices from industry, new Embassy templates, and strong leadership to lower costs, increase quality, and decrease construction time. Those are not just words. We are actually seeing results against those standards.

As I told you last year, one of our goals is to reduce the average cost to build an Embassy, and I believe we are well on our way to doing that.

General Williams is making all of our facilities overseas more secure. By the end of fiscal year 2002, over two-thirds of our overseas posts should reach minimal security standards, meaning secure doors, windows, and perimeters. We are also making progress in efforts to provide new facilities that are fully secure, with 13 major capital projects in design or construction, another 8 expected to begin this fiscal year, and 9 more in fiscal year 2003.

With this budget, Mr. Chairman, we will also be able to continue our program to provide state-of-the-art information technology to our people everywhere. Because of your support in 2002, we are well on our way to doing this. We have an aggressive deployment schedule for our unclassified system which will provide desktop Internet access to over 30,000 State users worldwide in fiscal year 2003, using fiscal year 2002 funds. I am determined to see this happen. I am determined to use the power of the Information Technology Revolution to serve America's foreign policy interests.

When President Bush gave his State of the Union address a few weeks ago, as the last word was coming out of the President's mouth, it was being translated into six different languages, being broadcast around the world, and being downloaded over the Internet at all of our Embassies. Thirty minutes after completion of the speech, transcripts of the speech in seven different languages were being downloaded over the Internet at our Embassies all around the world.

It is that speed, that agility, that quickness of response, that we have to get throughout the Department, not just in delivering speeches, but in communicating with each other, connecting with one another, responding to the 24-hour-a-day news cycle that we now have, and making sure that we are on the cutting edge of diplomacy. We are the front line, the offensive line, of our foreign policy efforts around the world.

We have included $177 million in the Capital Investment Fund for IT requirements. Combined with the $86 million in estimated expedited passport fees, we will have a total of $263 million for our IT initiatives. Our goal, as I said, is to put the Internet fully in the service of diplomacy.

Mr. Chairman, we want to continue to meet our obligations to international organizations—also more important as we pursue the war on terrorism to its end. We are very proud of the work that

has been done by our coalition partners in this campaign against terrorism. You saw it yesterday, when the President was speaking to all of those Ambassadors on stage representing the coalition, and the three Ambassadors who spoke so movingly of how they were with us in this campaign.

We have to be with them as well in the international activities that we have committed ourselves to. So the budget request includes $891 million to fund U.S. assessments to 43 international organizations. Our active membership in these organizations furthers U.S. economic, political, security, social, and cultural interests. We also want to continue to meet our obligations to international peacekeeping activities.

The budget request includes $726 million to pay our projected United Nations peacekeeping assessments—all the more important as we seek to avoid increasing even further our U.N. arrearages. Mr. Chairman, I ask for your help in lifting the cap on our peacekeeping assessments so that we can eventually eliminate all of our arrearages and not let them continue to build up. These peacekeeping activities allow us to leverage our political, military, and financial assets through the authority of the United Nations Security Council and the participation of other countries in providing funds and peacekeepers for conflicts worldwide.

We will also continue and enhance an aggressive effort to eliminate support for terrorists and thus deny them safe haven through our ongoing public diplomacy efforts, our educational and cultural exchange programs and through international broadcasting. The budget request includes $287 million for public diplomacy, including information and cultural programs carried out by our overseas missions and supported by public diplomacy personnel in our regional and functional bureaus.

These resources help to educate the international public on the war on terrorism and America's commitment to peace and prosperity for all nations. As we have seen in recent weeks and months, Mr. Chairman, we have not been doing a good enough job in taking our case to the people of the world, and we are going to do a better job. Our new Under Secretary for Public Diplomacy, Charlotte Beers, comes with great experience from the civilian world in marketing, getting a message out, and moving a product out. We have got a great message. We have got a great product, the humanitarian values upon which this Nation is founded. We have got to do a better job of reaching out.

The budget request also includes $247 million for educational and cultural exchanges, where we take people from other lands, bring them here, let them go to our schools, and let them participate in activities with our families and with our communities. Then they return home and take those values back with them. It is a long-term investment in a better future.

These activities help build the trust, confidence, and international cooperation necessary to sustain and advance the full range of our interests. Such activities have gained a new sense of urgency and importance since the brutal attacks of September 11th. We need to teach more about America to the world. We need to show people who we are and what we stand for, and these programs do just that.

Moreover, the budget request includes almost $518 million for international broadcasting, of which $60 million is for the war on terrorism to continue increased media broadcasts to Afghanistan, the surrounding countries and throughout the Middle East. These international broadcasts help inform local public opinion about the true nature of al Qaeda and the purposes of the war on terrorism, building support for the coalition's global campaign.

Let me just say a bit more about public diplomacy. These attacks underscore the urgency of implementing this public diplomacy campaign in the Middle East. Since September 11th, over 2,000 media appearances have taken place by State Department officials. Our continuous presence in Arabic and regional media is necessary, and we are determined to do more of it.

We are looking for unusual ways of getting our word out. My staff said to me, "Well, why do you not go on MTV and speak to the MTV audience, 17 to 25 years of age all around the world, 33 different MTV channels that touch something like 146 countries?" And so I did it, and they gave me an hour to go on and talk to young people assembled in six different locations around the world, as well as in the studio.

I was here in Washington and went for 60 minutes, and it was going well, so they did it for 90 minutes—90 straight, uninterrupted minutes talking to 346 million households in 146 countries through 33 MTV stations, and we talked about everything. Kids are not like adults. They will ask you what is on their minds. They will call it out. They will take you to account, and they do not want to hear "snowy" answers. It is the kind of exposure our officials should be doing more and more of.

Now I happened to make news in an area that I had not intended to make news. Be that as it may.

Senator HOLLINGS. You have been explaining it to the adults back here ever since, I think.

Secretary POWELL. But, nevertheless, as you know, I do not step back 1 inch from what I said because it was the right thing for those young people to hear around the world. But they also heard about the American value system. They also heard why we are not the Satan of the world; we are the protector of the world. They also heard that America, over the last 10 years, has rescued Muslims in Kuwait, rescued Muslims in Kosovo, and rescued Muslims in Afghanistan. We go to no nation to take land. We go to no nation to oppress people, and that is a message they need to hear as well.

So it is those kinds of opportunities we are seeking in the Department that take us out of the old tried and true methods into new methods and new ways of communicating, without abandoning the tried and the true.

The budget requests I have just outlined for you deals with our overall requirements for fiscal year 2003. There are also some valid requirements that we have in fiscal year 2002 that cannot wait for fiscal year 2003. And so as you might well imagine, we are working with OMB on a supplemental request that will be coming to the Congress in due course, and the specific details are not yet available.

Mr. Chairman, all of these State Department and related agency programs and initiatives are critical to the conduct of America's

foreign policy. Some of you know my feelings about the importance of putting the right people in the right place at the right time, and that remains my number one objective with respect to the management of the Department—bring new people in.

We had a two-fold increase, 100-percent increase, in the number of people applying for the Foreign Service exam last September, three times as many minorities as ever before. We will bring in more minorities in this next tranche of youngsters coming into the Department than ever before, and we are going to keep doing that until we have a State Department that is fully staffed with people who are well motivated, morale is high, and a State Department which looks like all of America. That is our greatest strength, that of diversity, and I want that diversity to be reflected throughout the State Department, so we can be an example to the rest of the world.

Mr. Chairman, I want to close by thanking you and the members of the committee and, frankly, the entire Congress, for the support that you have provided to me and to the Department during my first year of service as Secretary of State. I hope that we will continue to enjoy your strong support, and I hope that you will continue to reward our stewardship of the Department. Stewardship means a lot to us. We want to take care of the people entrusted to our care, make sure we are accomplishing what the American people want us to accomplish, and make sure that we are good stewards of the resources provided to us by the American people through their Congress.

Thank you, Mr. Chairman.

PERSONNEL

Senator HOLLINGS. Thank you, Mr. Secretary. The committee thanks you for your stewardship. There is no question that the morale is up in the Department of State. I just recently traveled with the intelligence group to Brussels, Berlin, Leipzig, Prague, Budapest, Vienna, London, and otherwise. I credit you with the morale that has improved materially in the Department of State, and I say that advisedly because I have been doing this job now 35 years.

Otherwise, on talking about personnel, you gave us a good man on property. Who handles the personnel?

Secretary POWELL. We have a number of people. The person directly in charge of personnel——

Senator HOLLINGS. Can you not give me a General Williams that I can talk to?

Secretary POWELL. Yes, Ruth Davis is the Director General of the Foreign Service and our Director of Human Resources. She is a Career Ambassador of the Foreign Service, and she has day-to-day management responsibility for our personnel system. You can also speak to the Under Secretary of Management, Mr. Grant Green, who works with Ambassador Davis, but if you ever have a personnel question, please feel free to come directly to me or to Deputy Secretary Armitage because we are the top personnel managers of the Department. There is not a day that goes by we do not talk about people.

Senator HOLLINGS. The question is then, you know, we supported the 749 additional positions last year. I want to support the re-

quest for 631 this year. On the other hand, checking there in Germany, we have 590 State Department personnel in Germany. That is a lot of people.

Secretary POWELL. We have a lot of people——

Senator HOLLINGS. And——

Secretary POWELL. Yes, sir?

Senator HOLLINGS. And 390 down in Mexico, 374 in Japan, 381 in Vietnam, and I know Saigon or Ho Chi Minh City well, and up at Hanoi, I have been there, but what are we going to do with almost 400 people in Vietnam? I mean, they have not gotten back yet? We did not leave them there, did we?

Secretary POWELL. No, these are new hires. They brought me home some years ago.

Senator HOLLINGS. Yes, sir.

Secretary POWELL. We are constantly reviewing the overseas presence of each one of our missions. In some of our missions, our more complicated missions, such as Germany, and France, and the United Kingdom, we have a variety of programs that have to be managed and supervised and a lot of new activities taking place: FBI activities, legal assistance activities, and a lot of economic consular activities that might not have been there in the past. So these have all grown.

Senator HOLLINGS. I know you are the landlord for all of those, but we are talking just about State Department personnel.

Secretary POWELL. Well, there has also been an increase in the security requirements in a lot of these places.

Senator HOLLINGS. Right.

Secretary POWELL. But with any one of them, I would be more than pleased to sit with you or members of your staff, Mr. Chairman, and justify them, and if I cannot justify them, let us cut them.

VICTIMS OF TERRORISM COMPENSATION

Senator HOLLINGS. Looking over the personnel, an item came to our attention last year with a case with respect to the Iranian hostages and working with the Department of State on the House side we said, in language in the bill itself, that what we needed was a comprehensive and equitable solution that would provide an appropriate level of compensation for all U.S. victims of terrorism. We have got to look out for our people. We were thinking about not only Nairobi, and Dar es Salaam, the U.S.S. *Cole*, but specifically sort of the beginning of it, in a sense, in a way the most egregious in this Senator's opinion, was in Tehran, the 444 days there. The court was ready to act, and we were ready to act, but then we said let us get a comprehensive plan submitted by the Department of State in this budget request, and we do not have it.

What are your comments?

Secretary POWELL. We have developed a comprehensive plan for victims of terrorism, and we submitted our plan to OMB and to the White House, but they have not completed their review of the plan in time for submission with the budget. But, yes, we took your guidance and direction very much to heart, and a plan has been prepared. I am sure that as soon as OMB has completed its review of it, it will be forwarded to the Congress. Whether it will be in

time for action on this bill or in this session, I do not know, but I will certainly try to find out.

Senator HOLLINGS. That is good, and I do appreciate the fact that you recognize that bill language because I think the lawyer, maybe it was not for the Department of State, the Attorney General's office said, "Well, that was only report language that we put in, and that was not law, and therefore it ought to be ignored," but it is not your position that it be ignored.

Secretary POWELL. I always follow the law and listen to report guidance.

Senator HOLLINGS. With respect to—yes, sir?

Senator GREGG. That is one of those "snowy" answers.

Secretary POWELL. But accurate.

[The information follows:]

As Secretary Powell indicated at the hearing on March 12, the State Department responded immediately to the provision in the Fiscal Year 2002 Commerce, Justice, State Appropriations Act, and crafted draft legislation establishing a comprehensive federal program to compensate U.S. victims of international terrorism. This draft legislation was submitted in December, 2001 to the Office of Management and Budget for inter-agency review and clearance. Departmental representatives have had several discussions with OMB and the White House concerning the proposal. We are hopeful that the inter-agency review will be completed shortly, and that the Administration will submit a legislative proposal to the Congress this session.

FACILITY IN MADAGASCAR

Senator HOLLINGS. With respect to facilities, let me mention Madagascar. Just write it down there because I have got a good source that they have had discord, some violence, and the facility that we have in the capital of Antananarivo is not secure, and it ought to be double-checked. I mentioned it to General Williams, but you sent him out of town this morning.

Secretary POWELL. We keep him on the road, sir.

Senator HOLLINGS. Yes, I was looking forward to seeing him, though, and see if he had an answer on it, but you can find out for the committee.

Secretary POWELL. Yes.

[The information follows:]

Secretary Powell has asked me to respond further to your inquiry made during the March 12, 2002 hearing regarding security at our embassy in Antananarivo, Madagascar. We appreciate the opportunity to provide updated information on the Department's $600,000 effort to enhance security at Embassy Antananarivo, Madagascar.

Our chancery in Antananarivo is overcrowded but habitable. Like many of our existing embassies, it lacks proper security setback and is located on a busy and crowded downtown street. In light of recent developments, the Department has moved the planned design and construction of a New Office Building from fiscal year 2007 to fiscal year 2006. In the interim, the Department continues to provide substantial security upgrades to support our facilities in Antananarivo.

After the embassy bombings in East Africa in 1998, many security enhancements were made to Embassy Antananarivo and continue today. Immediately after the bombings, $290,000 was made available for forced entry/ballistic resistant (FE/BR) doors; shatter resistant window film (SRWF); jersey barriers; anti-ram drop arm vehicle barriers; and related shipping and installation costs. Since then, an additional $305,000 was provided to purchase and install three hydraulic anti-ram vehicle barriers and three FE/BR-rated guard booths to replace the non-rated locally constructed units.

Within our resource constraints, the Department continues to be vigilant in providing safe and secure facilities for our overseas employees. Using our business case

approach, we continue to pursue ways to not only cut costs, but also to expedite the improved security posture of our embassies.

EMBASSY CONSTRUCTION

Senator HOLLINGS. In construction, we have a list of several facilities that really go up, up and away as to the cost. For example, down in Panama City, we were looking at that carefully, and we had a list that in Panama City, for example, $145 million. I know you, Mr. Secretary, and I know me, that is expensive. You know, Kazakhstan, I do not want to make the smart remark that I thought you could buy these places for that much, much less just build a building, but Kazakhstan, $92 million.

Look at those and have General Williams look. I do not know how you would spend $145 million in Panama City.

Secretary POWELL. General Williams is looking at all of these, and his report to me was that he thinks in our first year he has been able to reduce the overall cost of these facilities by some 20 percent. He is taking a particular look at some of the very, very expensive ones that we found when we came in last year, such as in Beijing, and he has been able to reduce the cost.

One of the problems with our facilities is that they are done to rather high standards. You just do not go into Kazakhstan and throw up a cinder-block building. In many cases, our facilities are done with equipment, materials, and workers that are brought in from the United States; the security requirements drive the cost as well. And so it is not quite the same as just building an average office building in those cities. They are rather unique facilities, and that drives the cost considerably.

Senator HOLLINGS. You know, you have personnel in trailers in Kiev and several other places around, that has to be looked at because we want to look out, as you do, for your personnel, and why have the State Department personnel in trailers and then down in Panama, $145 million buildings, that kind of thing. We are looking at that very closely.

BERLIN EMBASSY SITE

With respect to the Berlin situation, right there in the city next to the Brandenburg Gate, it is only a 3-acre proposition, and there are streets on three sides, but it is right next to an apartment building, the wall there. Of course, General Williams said he can make the wall as secure as he can make it, but is that secure enough where somebody cannot just "rent" terrorists and come into the apartment building that confronts it and just blow up our wall too? I mean, if that is the case, what I am getting at is then why the 100-foot setback requirement of security? See what I am saying?

Secretary POWELL. Yes, sir. I am very familiar with the Berlin site. I have been there myself and have seen it and looked at it. I have spent a lot of time looking at the maps, looking at aerial photographs, and I recognize that there is some additional danger associated with that condominium next door, but I believe we have minimized that danger. It is perhaps the safest square anywhere in Christendom, when you consider that the United States Embassy, the British Embassy, the French Embassy, the Russian Em-

bassy, and the head of the German Government are all located right there.

I thought the symbolic, absolute symbolic necessity of the United States being in the heart of Berlin, in the heart of Germany, with our friends and allies and with the German Government, was so important that we could deal with whatever additional, slight additional, threat that might be presented by the location of the condominium.

After General Williams went and made an in-depth analysis of it as well, I felt rather comfortable in approving it and making some waivers. The German Government and the Berlin police authorities have been especially forthcoming in requests we have made to them with respect to the routing of traffic.

MUSLIM CENTER IN VIENNA

Senator HOLLINGS. I want to limit myself, and we are not going to use the clock. I appreciate the wonderful attendance we have here this morning. There is one other thing, Secretary Powell, I wish you would look at. When I was in Vienna talking to the Chancellor, they have an ongoing relationship with the Muslim world, in the sense that they have got a Muslim-Christian center. He talks to the Ayatollah Khomeini once a week at least and more.

I have the feeling terrorist martyrs are being created faster than I can get rid of them, and we cannot invade every land. That goes to the peacekeeping thing. We had 13, and now we are adding Georgia, and Afghanistan, and we are adding the Philippines, and we are adding Yemen, and we cannot just use a military response. We have to get, as you indicated in your statement, a better relationship and understanding of the United States.

The East-West Center in Hawaii has worked extremely well, the North-South Center in Miami has worked extremely well. Look into that and let us see if we cannot put some money there and get a sort of civilian-type or State Department, diplomatic-type endeavor like an East-West Center for the Muslim world there in Vienna.

We have got one that is ongoing, and he was pretty proud of it and indicated that we ought to give it greater support. It sounded good to me, and I would like to have your comment.

Secretary POWELL. I will take a look at it, Mr. Chairman.

Senator HOLLINGS. Thank you very much.

[The information follows:]

I am writing to follow up on your proposal at the March 12 hearing to consider supporting a center for the Muslim world in Vienna, along the lines of the East-West Center in Hawaii, to deal with Muslim cultural issues and to foster a better relationship and understanding of the United States. The East-West Center is a highly respected institution, and we have been pleased to work with them for over forty years in the effort to build stronger ties and cooperation between the United States and the Asia-Pacific region.

We appreciate your interest in expanded educational and cultural exchanges with the Muslim world. The Department of State's Bureau of Educational and Cultural Affairs has a wide range of existing programs to engage Muslim audiences in all world regions. Since last fall, we have increased the number of Fulbright scholarships, professional exchanges, and cultural programs with the region. We are also developing thematic initiatives involving media, young people, Afghan women, and other critical groups.

We believe that the most effective approach to reaching the Muslim world is to build on the proven successes of Fulbright and other Bureau exchanges, while at the same time refining our methods to reach broader, deeper, and more diverse au-

diences. We plan to implement most of our programs through grant awards to qualified U.S. non-profit organizations, in order to maximize the involvement of the American exchanges community, which is strongly committed to improving our relations with the region. These programs will primarily take place either in the United States or in the countries of the Muslim world, and will provide a "total immersion" experience that maximizes learning about the other culture.

While we applaud the initiative of the Austrian Chancellor in developing a Muslim-Christian Center, we believe that U.S. interests can best be served by supporting a range of American institutions to carry out specific exchange activities, allowing us the flexibility to work with those best suited to conduct particular projects.

We would be pleased to discuss further our educational and cultural programs for the Muslim world or to provide additional information. Thank you again for your support for these important activities.

WINNING THE WAR ON TERRORISM

Senator Gregg.

Senator GREGG. Thank you, Mr. Chairman. We appreciate your being here, Mr. Secretary, and I want to begin by congratulating you for the extraordinary job you and the administration are doing in building the coalition to fight terrorism.

I had the opportunity to participate in yesterday's ceremony, and it was extremely impressive, to say the least. It looked like there were over 100 members of the foreign delegation there supporting our coalition and expressing a commitment to fighting on behalf of civilization against forces which essentially want to bring down civilization. So I congratulate you for what I think is an exceptional job.

I am interested both on a philosophical level and on a practical level. There has been some representation that catching bin Laden is the defining moment as to whether we win this effort or not. I am not sure that it is, but I am interested in hearing what you believe is the defining moment. How do we get our hands around a movement which appears to be based in a culture, and a religion, and a perversion of that religion, regrettably, for those who follow this terrorist movement? Where do you see the light at the end of the tunnel?

Secretary POWELL. With respect to al Qaeda, I think we have struck a very serious blow with what we did in Afghanistan. I mean, he cannot really function in Afghanistan any longer. Even though there are some al Qaeda members and Taliban members remaining in the country looking to make trouble, I think that it is a controllable, manageable situation.

We have hit them in other places in the world, and more and more nations are making it inhospitable for al Qaeda or its cells to be located in those countries, to try to do financial transactions in those countries, or to avoid the police or avoid intelligence services in countries around the world.

As Senator Hollings mentioned a few moments ago, in some countries, we have gone beyond that, and we are going to help them go after al Qaeda-oriented cells, such as in Yemen or in the Philippines or in Georgia. But in these instances, we are not planning to send U.S. troops in there to stay. What we are doing is using our military forces for something they are so good at, training others to do the job, so that the Georgians can deal with their threats, so that the Filipinos can deal with their threats, so the Yemenese can deal with their threats.

I do not think a day will ever come when somebody can come up to you and say, "Well, it is over. There is no longer a terrorist threat facing the United States or its friends and allies, and we have gotten rid of every last al Qaeda individual or cell in the world." They will keep trying. It is a false religion that they are practicing. They are hiding behind their religion, as you indicated, Senator Gregg.

But I do think that we can reach a point where we can be less fearful of their ability to strike at us. We are doing a much better job than we had been doing in the past with respect to tearing up their networks, understanding how they operate, going after them through intelligence efforts, as well as through law-enforcement efforts, through counterintelligence efforts, through protecting our borders and through homeland security activities. Therefore, we are making it a lot harder for them to do their evil work, and by so doing, we are bringing more security to our society.

So things are going to get better, but at the same time, there will continue to be dangers, dangers that I think we are up to the task of dealing with.

TERRORIST TRAINING CAMPS IN AFGHANISTAN

Senator GREGG. Do you have an estimate of how many people went through those terrorist training camps in Afghanistan?

Secretary POWELL. The number is in the thousands. I have seen a variety of estimates. I would say the numbers are in the tens of thousands. How many of them left those training camps and are card-carrying terrorists who are meaning us ill or how many of them went back into their societies and may be disgruntled, but are not participating in any activities that may be harmful to us? That is a question that I cannot answer, nor do I think anybody else can.

STATE AND INS COORDINATION

Senator GREGG. In that area, to get specific, we have got an issue of people coming into our country, which we obviously want. We want to remain an open society, which allows people to visit us regularly, especially people who are coming here to learn.

I am wondering what sort of progress you, in a joint effort with the INS, are making, number one, in getting your houses coordinated, and number two in the area of biometric identification for people applying for visas?

Secretary POWELL. We are working very closely with the INS, with Customs Service, with Governor Ridge and his efforts, and I think we are making considerable progress. We have a lot of work going on with the Canadians and the Mexicans because those were sources of easy access to the United States previously. We are going to do a better job of controlling our borders, and this will be a subject of President Bush's discussions with President Fox in Mexico next week.

We are doing a better job rationalizing our databases so that when somebody first surfaces at an American Embassy or an American consulate office somewhere overseas and applies for a visa, that information comes back and is not just held in State De-

partment channels. It goes everywhere to see whether anybody has information on this person.

We tried a new technique during the Olympics in Salt Lake City that showed considerable promise that we are getting on top of this issue of how to make all of our databases talk to one another.

With respect to biometrics, we are looking at that and seeing how best to integrate that into our passport system and into our other identification systems. One way we are going to be looking at it, frankly, is with some of the detainees we have. They are going to be "biometricked." So, for any of those we are unable to hold, we will always be able to track these people in the future. If they ever try to get back into our country, we will know a great deal about them, and that should give us some experience with respect to the use of biometric measures and biometric identification techniques.

BIOMETRIC IDENTIFICATION

Senator GREGG. Is it reasonable to ask that we have biometric identification for someone who is visiting our country as a student, a card or something, whether it is a fingerprint or retinal scan, and also to track where they are using that identification?

Secretary POWELL. I do not think it is unreasonable to ask people coming into the country to give us a reliable measure of their identification of who they are. I am not sure I am yet persuaded what the best way to do that is, whether it is with just fingerprints and photographs or whether it is a visual scan or other biometric techniques that are being looked at.

It is much more difficult once they are in the country, and as you know, there are hundreds of thousands of people in the country that we can no longer track. Unless they surface somewhere and identify themselves either through a biometric measure or some other measure, they can just stay within the country and be very hard to find because we do not have the means to do it. It is essentially a local law enforcement problem and beyond the capacity of the INS to track everybody within the country.

But these are the kinds of issues that Governor Ridge is working on under his homeland security charter, and I know that the Attorney General is hard at work at it as well because, at that point, it is not a State Department problem, but an INS and Homeland Security problem. How do we keep track of those people who have entered our country under acceptable, legal documentation, and how do we make sure that they do not overstay their welcome, and they do not overstay their documentation? How do we find them, how do we locate them, how do we deal with them, how do we get them out of the country, or how do we revalidate their entry documents? It is an issue of high priority for the administration.

PEACEKEEPING IN THE CONGO

Senator GREGG. On the subject of the Congo peacekeeping mission, former Ambassador Holbrook laid out what we would require before the United States would support the peacekeeping mission to the Congo. I am wondering what the policy of the State Department is, whether the Holbrook understanding is still the position of the State Department.

Secretary POWELL. Which understanding are you referring to, sir?

Senator GREGG. He basically set out a series of conditions for when we would support the Congo peacekeeping mission.

Secretary POWELL. Our principal participation is through financing, and as you know, the amount we are asking for has gone up considerably over the last couple of years because the U.N. peacekeeping force is actually now being deployed and growing in number. But we have no plans, at the moment, to deploy any U.S. troops into DROC peacekeeping activities.

Senator GREGG. Do we have plans not to give them money unless it is being done pursuant to the policy which we outlined? My point here is that we were funding, in Sierra Leone, for a number of years a program which was facilitating the RUF, terrorists, through the United Nations. Now that has been adjusted, and there is progress being made in Sierra Leone. I do not want the same thing to happen in the Congo. I do not want to see us end up funding a mission which is not consistent with U.S. policy.

Secretary POWELL. I think you are quite correct, Senator, and you can be sure that the money that we will provide to the United Nations for this peacekeeping effort will be consistent with our policies. We are in touch with President Kabila and other individuals in the region, trying to get the peace process moving along. I have met with President Kabila on two occasions, and Secretary General Annan and I discuss the Congo on a regular basis. They understand that we are looking for progress that will protect human rights, and end illicit trading in people and commodities such as diamonds. So we remain committed to those kinds of principles as we provide the peacekeeping monies needed to put in place the force that will provide some hope for this country.

Senator GREGG. I hope you will take a hard look at it because I think we are heading down the wrong road again.

[The information follows:]

Secretary Powell has asked me to follow up with you on his response to your question at the March 12 CJS Hearing about the U.N. Mission in the Democratic Republic of the Congo (MONUC). In your question, you asked if the Administration continues to follow the policy laid down by former U.N. Ambassador Holbrooke when the U.N. expanded its mission in the Congo in February 2000.

The conditions outlined at that time by former Ambassador Holbrooke for the successful deployment of MONUC generally have been met since early 2001: Combatants withdrew in the first half of 2001 to lines specified in the Kampala and Harare Disengagement Plans of April and December of 2000, respectively. A cease-fire has generally held since January of 2001, and the signatories of the cease-fire agreement have permitted MONUC access to areas under their control.

While recent fighting at Moliro and occasional obstruction of MONUC deployment by the Rally for Congolese Democracy's Goma faction have caused concern, we expect that all parties to the Lusaka Agreement will continue to respect its provisions. MONUC's continuation remains conditioned on their doing so.

In your question you express concern that MONUC may stray from its original purposes outlined in its mandate, which the U.S. supported. We are working closely with the U.N. to make sure that MONUC carries out the tasks assigned to it by the Security Council, with the goal of bringing this terrible war to an end. We do not see MONUC as an open-ended commitment. Any decision to support changes in the mission's mandate or size will, of course, be notified to Congress.

OVERSEAS BUILDINGS PROGRAM

Senator GREGG. I want to reinforce what the chairman said about buildings. I know we have all talked about this. This is an

ongoing issue with this committee and I appreciate your bringing on General Williams who is doing such a good job there, but the fact is the price tag is not going down.

I am interested in knowing whether there is not some structural change we need to make. In other words, do we have to use, for every building, the same standards of American labor, American parts, and American facilities. Or are there some places like Panama, for example, which is in this hemisphere, where we could possibly build it for less by not having the stricture of levels of conditions relative to construction that we have today.

Secretary POWELL. I am sure that that is the case, Senator, but I think we have tried to be faithful to the guidance we have received from the Congress and the work that was done by previous commissions that looked into Embassy security, Admiral Crowe's work, and Admiral Inman's work. We have to be sensitive to the very practical considerations that if we find a problem in one of our Embassies with respect to security, there will be a big investigation, and the questions will be: why did you allow local artisans or workers to do this when you knew it could be a compromising situation?

So we are always trying to find the right balance between those things that we really have to do ourselves, with American contractors and equipment that are subject totally to our control, with perhaps a fence or other work arounds that can still permit work to be done at an Embassy very efficiently at the local level.

I think General Williams understands that this has to be looked at with a very, very skeptical eye to try to get the costs down. The costs are significant. I cannot deny that fact, but I think that Chuck Williams has done a pretty good job of reducing the overall costs and continues to look for ways to do that; templating, using standard furnaces, and heaters, and standardizing windows and all of the other things that are used in civilian construction to try to minimize cost-growth escalation and get the overall costs down.

FIVE-YEAR EMBASSY CONSTRUCTION PLAN

Senator GREGG. Thank you. I appreciate that answer.

My last question in this area goes to you say you are going to have this 5-year Embassy construction plan. Are you going to build that around the model that you used at DOD, where you tied it to your money or is it going to be irrelevant?

Secretary POWELL. Well, that is not the way I did it in DOD, Senator.

Senator GREGG. There was theoretically a cash-flow stream that it was tied to.

Secretary POWELL. I do not know all of the assumptions that General Williams has in it, but the guidance he has is to put together a plan that represents some sense of reality of what is likely to be the out-year funding stream. But to do what I think we need to do around the world, with our facilities, and to represent the American people well, to protect our people who are out there, to make sure that their quality of life and their quality of workplace are adequate, and to make sure they are secure, is going to take a significant amount of money for a fairly extended period of time.

We have got a lot of work that needs to be done, as evidenced by the fact that we still see trailers, and we still see other things that are desperately in need of repair. It was a lot easier before the cold war ended, when we did not require the same kind of presence in all of the countries that we now require presence in, places such as Vietnam. So it is going to be a long-term proposition, but I know that General Williams is trying to do it in not just a completely "blue sky" fashion, where his work and the master plan bears no reality to the likely resources that will be available.

Senator GREGG. This committee is very strongly committed to rebuilding the facilities and the technology capabilities of the Department, but we would like it to be in the context of a——

Secretary POWELL. I hope that in your review of the master plan, and it was done so that you could see what we are doing, but I hope that you will be critical of it, constructively and destructively, as the case might be. I need your help. I need your guidance. I need your sense of what the possible is, what the achievable is.

Senator GREGG. Thank you.

Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you.

My list shows Leahy, Campbell, Reed, Mikulski, Inouye, Domenici.

Senator Leahy.

EMBASSY CONSTRUCTION

Senator LEAHY. Thank you very much, Mr. Chairman.

To follow up on what my friend and neighbor from New Hampshire was saying on the construction of buildings, there are ways it could be done very well. I am very impressed with the Embassy we have in Ottawa. Here we were given a choice location, as the Canadians were on Pennsylvania Avenue, and we utilized it very well to build a modern building surrounded by architecturally beautiful, old, significantly historical buildings, used a lot of Canadian materials, sensitive to the wishes of the people, and came out with something very beautiful. When you compare that with the horrible, ugly, disgraceful, eyesore of our Embassy in London, for example, something that makes about as much sense as putting a garbage truck in the middle of a Rolls Royce parking lot, the one in Ottawa is very good.

I am glad to see you here, Mr. Secretary, because you have been a voice of reason and balance in not only this administration, but each administration you have served in, and you are going to be before our Subcommittee on Foreign Operations, so I will not go into too much on that.

BUDGET ISSUES

Just on some of the budgetary things, I think it is great you have selected Lorne Craner to head up the Bureau for Democracy, and Human Rights and Labor. I hope we can give them an adequate budget. That budget has been sort of ignored by administrations in both parties for 25 years. Even though there is a modest increase requested this year, we actually need more.

CURRENT EVENTS

Colombia, I hope you are looking at very closely. We all want to help Colombia. We want to help President Pastrana before he leaves, but as we rush to expand our presence there, I hope we are extremely careful what we are doing so that we do not end up doing more harm than good and something that not only this administration, but subsequent administrations, will have to deal with.

I know you are going to accompany the President to the United Nations Conference on Financing for Development to be held in Monterrey, Mexico, next week. I am glad you are going. I am glad the President is going. I am very disappointed that the administration continues to oppose the plan put forth by the British, after all, our closest ally on the war on terrorism, for industrialized countries to significantly increase spending on foreign aid.

There is a huge shift, a bipartisan shift, in the Congress and a willingness to spend money on foreign aid, above and beyond what you are going to request for Afghanistan, and I hope the administration will make a request for more, as a nation as rich and powerful as we are, it is in our security's best interests to have democracies around the world. Certainly, it is also in our moral best interests to help eradicate disease and to do all of the things necessary.

I am glad General Zinni is going back to the Middle East. Some would feel a pox on both the sides there, and of course we cannot do that. We need to do more to condemn and discourage the Palestinian suicide attacks which are targeted at innocent civilians and locations to cause death, but at the same time, we cannot ignore the Israelis using high-powered U.S. military equipment, including F–16s and Apache helicopters to strike at targets in densely populated civilian areas, and we end up getting blamed for that.

FOREIGN AID FUNDING

Let me ask you on the funding for foreign aid. The President has said we will defeat the terrorists by destroying their networks wherever they are found. We will defeat the terrorists by building an enduring prosperity that promises more opportunity and better lives for all of the world's people. I completely agree with the President on that.

I would also say that 41 Senators are now on record supporting an increase in foreign aid. That is more than at any time I can remember in my 27 years here.

You recently testified that the idea of doubling foreign aid is not a bad idea, and you would like to triple it. When are we going to follow up? The rhetoric is all in the right place. We are going to add $48 billion for the Defense Department. I am sure they can use it, but foreign aid is also about national security. If we spend less than 1 percent of our budget to build democratic allies and promote market economies around the world, that is nowhere near enough. Can we not do better?

Secretary POWELL. Senator Leahy, I would like to do a lot better, and I have testified last year and this year that I am pleased the President was able to find increases in both years for our foreign

assistance accounts. The need is much greater, and I hope that we will be seeing additional help in the supplemental request for fiscal year 2002. The President, I, and my other colleagues in the administration are already hard at work seeing how much better we can do for fiscal year 2004.

I think this year, in light of the new demands that were placed on the budget by the recession that we are now coming out of, the fact that a surplus has turned into a deficit, the fact that the military needed a big infusion to deal with the campaign against terror, and the new demands placed on the budget by homeland security, I am pleased that we were able to get an increase. But would I like to see more? Yes. Will I be arguing for more? Yes.

The specific number that our British colleagues had put down, a doubling of foreign aid as a percentage of GDP, was a bit more than we could sign on to. We are looking at other ways of doing it, whether it be by development assistance or grant aid or other techniques and methods that might be more appropriate.

At the end of the day, what we really need in most of these countries is trade, even more so than aid, and I spend a lot of my time talking to them about what they have to do to change their societies, not just to draw more aid, but really to create conditions that draw trade.

U.S. LONG-TERM COMMITMENT TO DEVELOPING COUNTRIES

Senator LEAHY. Of course, they have to do more, but there also has to be a long-term commitment on our part. I mean, trade by itself is not going to do away with river blindness and is not, by itself, going to help with the AIDS epidemic in Africa. It is not going to help in countries where our children cannot go to school, especially girls cannot. Boys might be able to if there are schools, but girls cannot. All of those things and microenterprise, which would take a relatively small amount—we sometimes can go very hard on the big-ticket item, but I look at the areas. I mean, one example we use I am very proud of the War Victims Fund, and I appreciate the fact that my Republican colleagues renamed it the Leahy War Victims Fund. That is something that touched me more than just about anything here. We spend money on that for land mine victims. I will not go into the issue of land mine banning, but one of the things I found in one place we went, my wife is a nurse, and she is helping to care for a little boy in one of these countries in one of the land mine victim hospitals, badly crippled. When they were bathing the little boy, she said, but there are no scars on him. No, it is from polio. In this case, they could not get the polio vaccine to the village because of the land mines around it, but there are whole areas where there is no vaccine.

Now you are now a grandfather, as am I. Your grandchildren, when the pediatrician says, "And this is the day you get your polio vaccine," of course, you just mark it down and do it. You take it for granted. When you and I were youngsters, swimming pools and everything else would close because it was polio season. We do not have to worry about that. This is something we could eradicate. Tuberculosis could be eradicated. A third of all of the tuberculosis cases we see here in this country come from abroad. We could

eradicate that, but it is going to take a long-term and fairly expensive up-front commitment. The long-term aspects are great.

I mention that, Mr. Secretary, and I know I preach to the converted, but it is going to take money, and it is going to take a lot more money than we have, and ultimately the amounts of money that we have to spend, and none of us begrudge the money we have to spend to defend against terrorism, maybe some of that would not be necessary if we did more at the front end.

Secretary POWELL. I totally agree with you, Senator, and I will continue to make that case within the administration. The President, I think, has been generous in the first two budget submissions, and I hope he will be able to do even more in the supplemental and in the next year's budget submission. I do also appreciate the fact that there seems to be a growing understanding within the Congress of the importance of this account, and I am very pleased that it is bipartisan and in both bodies.

Senator LEAHY. Senator McConnell and I have worked very hard, as you know, and worked together to do that in our Appropriations Subcommittee. I have asked a number of other questions that, as we have a vote coming up, I will submit for the record.

SITUATION IN COLOMBIA

Secretary POWELL. If I may say a word on Colombia. With the end of the safe havens, of course, the Colombians have come to us with new requests, increased intelligence sharing and other support we might be able to provide them. They are not asking for U.S. troops, nor do I see U.S. troops going to Colombia, but we do believe we should help this democracy that is being threatened by narco-traffickers and terrorists. Therefore, we will be sending up, in the not-too-distant future, language which would give us greater flexibility with respect to the kind of support we can provide, while at the same time being very, very mindful of human rights, particularly other legislation named for you dealing with human rights. We will not, in any way, do anything that would undercut our commitment to making sure that as we support Colombia, we hold them to the highest standards of human rights performance on the part of their military and their police forces.

Senator LEAHY. I have a lot of questions on that. The Colombians have talked to me at length about what they request. I have not heard anything from the administration about what they are hearing, and I know that you are all very busy, but if you can turn somebody loose to possibly, I have a listed telephone number.

Secretary POWELL. It is mostly intelligence, and as you know, we have a proposal on the pipeline security.

Senator LEAHY. I read in the paper, but some of this may end up coming before my committee, if somebody could take the time to see what the Colombians have and let me know what they think about it. I am always happy to hear from you.

Secretary POWELL. Thank you, sir.

Senator LEAHY. Thank you.

Senator INOUYE [presiding]. Senator Campbell.

Senator CAMPBELL. Thank you, Mr. Chairman.

I understand we are going to vote in just a few minutes, so I would ask unanimous consent to put my complete statement in the record.

Senator HOLLINGS. Without objection.

[The statement follows:]

PREPARED STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL

Mr. Chairman, I appreciate this opportunity to make a few brief remarks this morning drawing on my work as Chairman of the Helsinki Commission. The Organization for Security and Cooperation in Europe (OSCE) can serve as a valuable tool for promoting human rights and democratic development and advancing U.S. interests in the expansive OSCE region, covering 55 countries.

In the aftermath of the terrorist attacks of September 11, it is crucial that we redouble our efforts to advance the fundamental principles of democracy, human rights and the rule of law throughout the OSCE region even as we pursue practical cooperation aimed at rooting out terrorism.

During my chairmanship, the Commission has paid increasing attention to the multidimensional threats posed by corruption and international crime as well as the strong nexus between them and terrorism.

The OSCE provides an excellent framework for advancing these vital and complementary objectives. My hope is that "Operation Enduring Freedom" will bring enduring freedom to people throughout the OSCE area, including those in the five nations of Central Asia.

Erosion of our common commitment to human rights would only lead to greater instability, not less. It is essential that we communicate to every corner of the world, the U.S. commitment to the preservation of democracy and human rights. To do otherwise would imperil the very values and principles which terrorists seek to destroy. Paying lip service to human rights will not suffice.

I note that the President of Uzbekistan is in Washington today and will be interested in Secretary Powell's assessment of the state of human rights and democracy in that country. A decade after Uzbekistan joined the OSCE, the gap between word and deed in these areas remains enormous.

Egregious human rights violations continue in Chechnya as international attention is directed elsewhere and Russian officials attempt to clamp down further on journalists who attempt to report on developments in that war torn region of Russia.

I am also concerned over continued repression in the Republic of Belarus the last surviving dictatorship in Europe. Fundamentally flawed presidential and parliamentary elections there leave that country without legitimate leadership and have led to its self-imposed isolation.

Finally, there are important parliamentary elections coming up in Ukraine later this month. I have introduced a resolution urging the Government of Ukraine to ensure a democratic, transparent, and fair election process leading up to those elections. Congressional interest in the elections, and, for that matter, U.S. interest, is because an independent, secured, democratic, economically stable Ukraine is important, and we want to encourage Ukraine in realizing its own goal of integration into Europe.

Thank you, Mr. Chairman. I look forward to the testimony and comments from Secretary Powell.

ROLE OF THE OSCE

Senator CAMPBELL. And I would ask the Secretary if he would answer some of the questions I am going to pose in writing because we are going to simply run out of time.

I would tell, Mr. Secretary, I was happy to hear you talk about the war effort in national security, the war effort on terrorism and the multidimensions of it. You alluded to the cultural, the educational, the public information and the diplomatic efforts that need to be made, and I absolutely agree. It seems to me if we do not redouble our efforts to advance fundamental principles of democracy and the rule of law, we are just destined to fight more battles on the battle fields, whether it is one country or another.

I am particularly interested in one area that I am involved in, and that is the OSCE. I am sure you are familiar with that. If you go anywhere in Europe, almost everybody knows what the OSCE is. They talk about it in the United States, and everybody kind of goes blank. Apparently, we are not doing a very good job of telling the people of the importance of the OSCE, but you know as well as I do that it is.

Let me ask you about it in particular. As you know, there are 55 member nations and a number of observer nations too. Some of the observers have suggested that the human rights situation in some countries, such as Turkmenistan and several others, is so bad that they ought to be suspended from the OSCE, the way Yugoslavia was in 1992.

I would ask you if there is a point where the OSCE does not play a constructive role or, to the contrary, is it used inadvertently by some brutal regimes to give them some legitimacy?

Secretary POWELL. The OSCE does a fine job, and I certainly know what the organization is and what it does and have worked with it for many years. I am sure there are nations whose human rights performance we do not approve of that might well be trying to use the OSCE to give them some legitimacy or cover. I would rather provide an answer for the record as to whether or not the rules, regulations, and basic principles, which govern the OSCE, should be looked at to see whether these nations should or should not be suspended, and which ones.

Senator CAMPBELL. I appreciate that, if you would answer that to your best ability in writing.

[The information follows:]

The OSCE has not relaxed its human rights expectations for the Central Asian republics or other participating states. Through its missions in Central Asia, the Permanent Council in Vienna, and around the world, the OSCE continues to raise the issue of ongoing human rights abuses and lack of democratic institutions in the region. It is therefore important for the OSCE to continue to engage these countries. The process of having OSCE participating states remind each other of their commitments, complemented by recommendations for improvements, is essential to building a more democratic, prosperous, and secure future for the region.

In the case of Turkmenistan and several other Central Asian states, it is through its engagement in the region that the OSCE is able to improve faltering human rights and foster democratic development, while at the same time addressing urgent security, environmental and economic needs.

We do believe that suspending participation in the OSCE should always remain an option should a government commit egregious human rights violations, such as those of the former regime in Yugoslavia. However, this option should be weighed carefully against the costs of disengaging a country from the OSCE process.

The OSCE continues to be an important forum to discuss human rights issues and promote steps toward democracy in Central Asia and elsewhere. There is still a need to address human rights along with security interests. In order to combat terrorism and defeat extremist insurgencies in the region, we need to encourage the development of democratic governments that respect human rights.

OSCE AND HUMAN RIGHTS

Senator CAMPBELL. Russia, along with a small number of former Soviet states have complained that the OSCE is unbalanced, that we put too much emphasis on the human dimension. Those countries have also complained about that there is too much attention focused on former Communist countries that were once part of the Soviet Union. Do you think there is any merit to that?

Secretary POWELL. No, I think it is quite appropriate that the OSCE should focus on human rights. All of these various organizations flow back to the Helsinki Final Act on the Rights of Men and Women, something President Ford signed back in the mid-seventies, and it was a remarkable occasion and document when he signed it. There was quite a disagreement as to whether he should, but he did. And by aligning the United States for human rights, that essentially, I think, helped bring down the Soviet Union because they could not ignore this international standard of human rights performance that was put in front of them to deal with. We should continue to do that.

Some of the former republics of the Soviet Union do not have good human rights records, and I am meeting with the leaders of Uzbekistan today. They have been very supportive of our efforts during the war. President Karimov has been a solid coalition partner, but, at the same time, there are problems with respect to human rights in Uzbekistan, and we will not shrink from discussing them with the president of Uzbekistan.

If I could draw your attention to our annual Human Rights Report, which we issued last week, you will see a very long section on each one of these republics. We call it the way it is. Even though we need their cooperation and security in other areas, we believe it is in their interests for us not to hold back on human rights problems that they have. If they really want to be a participating nation in the 21st century in a coalition that rests on democracy, human rights, free-market activity, and if they want assistance from the United States, development assistance or economic assistance, then they have to move in this direction. We are not shrinking from that standard, and we are not holding back.

UNITED STATES-RUSSIA RELATIONS

Senator CAMPBELL. I appreciate that answer. Uzbekistan is one of the countries that has the sort of mixed approaches, where they are allied with us, and yet their human rights violations are renowned. Also, Russia itself, we now have some people that are going to be going into Georgia, and I understand, that Russia does not agree with that. They look at us with the view that they are fighting terrorists in Chechnya, and yet we are condemning what they are doing in Chechnya while we are fighting terrorists too.

I know it is terribly complicated. I just want to tell you that I understand that and wish you well in trying to find a solution.

Secretary POWELL. It is very complicated. In the case of our willingness to help the Georgian Armed Forces become more proficient to deal with terrorists in the Pankisi Gorge, even though some Russian officials said they were not happy with that, President Putin understands it and appreciates the fact that we are working with President Shevardnaze. So it is one of those cases where we have a common goal, and that is to defeat terrorism.

Throughout Central Asia, people said the Russians will not let you do things in Tajikistan, Turkmenistan, Uzbekistan, and Kazakhstan. But quite the contrary, they are cooperating with us because it is a common enemy. It is not the United States versus Russia, but it is the United States and Russia working against ter-

rorism, fundamentalism, smuggling, drug running, all of those things that are a greater threat to Russia than they are to us.

So we have found new ways to cooperate that would have been unthinkable 2 years ago.

Senator CAMPBELL. I am glad you mentioned the drug component, too, because the fact is that some of the terrorists finance their activities through drug sales.

Secretary POWELL. Yes, sir.

POLICE TRAINING IN OSCE COUNTRIES

Senator CAMPBELL. Let me ask just one final one so I can leave a little time for my colleagues before we go vote, and that is on the police activities. I visited the police academy in Kosovo some time ago, and I know that in Serbia and Macedonia there are some efforts to developing police training. I think it is very effective, frankly.

I just want to know about the State Department. Are you considering efforts to support expanding police training activities in the OSCE countries?

Secretary POWELL. Yes. The real solution to many of the problems that exist is inadequate police forces, police forces that are not up to the kinds of standards we would expect here in the United States, particularly in places like Bosnia, and Macedonia, and Kosovo. So, yes, we are looking, and we are working with the Justice Department and other organizations, including international police organizations, to do everything we can to stand up more competent police forces in OSCE and other nations.

Senator CAMPBELL. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Senator INOUYE. Thank you.

Senator Reed.

LIBERIAN IMMIGRANTS IN THE UNITED STATES

Senator REED. Thank you, Mr. Secretary, for your testimony today, and let me also thank you for your understanding and sensitivity with respect to the Liberian population here in the United States.

As you know, for more than a decade, we have had a significant number of Liberians here, first, under temporary protective status and now under DED, and it is an annual rite where they face the process of deportation. I thank you, and the Attorney General last year, you extended DED once again, but I believe it is time now for some type of permanent solution, and I would like to work with you and the Attorney General to, this year, avoid the last-minute reprieve and give these good people a sense of permanency here in the United States that they want.

Secretary POWELL. I am pleased to look at it, Senator.

Senator REED. Thank you, Mr. Secretary.

[The information follows:]

We recognize that many Liberians have lived in the United States with temporary protection from removal for an extended period of time. As you know, only the Congress has the authority to grant lawful permanent resident status to this group. We will be exploring with the Immigration and Naturalization Service and others in the Administration whether there is an appropriate way to address this issue.

ARMS CONTROL

Senator REED. Mr. Secretary, last weekend the Los Angeles Times described the Nuclear Posture Review, which represents a profound shift I think in our thinking about arms control and will complicate your job immensely as you go about the world trying to explain it and defend it.

From the reports in the Los Angeles Times, the indication is that we are beginning to target countries like Libya and Syria who, to my knowledge, do not possess nuclear weapons, that we are at least suggesting the preemptive use of nuclear weapons, that we are preparing to develop new classes of weapons which would penetrate deep underground, and this raises quite a few questions. I must say, as an aside, one of the subtexts in the discussion of the ABM Treaty has been the immorality of using nuclear weapons as a balance of terror, but it seems that such moral objections did not infuse this Nuclear Posture Review.

But getting to the more specific points. It seems to me that we are turning away from what was our traditional approach to arms control, which was a very deliberate, concerted, consistent effort to limit the use of nuclear weapons, not to expand their use.

Second, with the discovery of these new targets, it seems to me that the hope of many sides that we could reduce the number of warheads and launches might be frustrated by the simple increase in targets in these different countries.

Finally, the proposal or discussion to develop new classes of nuclear weapons raises the issue of nuclear testing. Why do you not comment in general on these issues and specifically whether you would anticipate that we would begin to test nuclear weapons to develop this new class of systems.

Secretary POWELL. With pleasure, Senator.

Senator REED. Thank you, Mr. Secretary.

Secretary POWELL. After reading the articles over the weekend and the continued commentary today, I had to go back and read the report again because the articles did not comport with my understanding of the report.

Let me answer it this way: When I was Chairman of the Joint Chiefs of Staff, the first day I took over, October 1, 1989, we had 29,000 nuclear weapons in our operational inventory. I was responsible to the President and the American people as to how they might be used. Now, some 13 years later, that number is well, well under 10,000. We have removed from our operational inventory two-thirds of the weapons that were there when I was Chairman.

We have gone from a situation where we had day-to-day alert targeting on specific targets all over the Soviet Union and other nations of the Warsaw Pact, to a situation today where not a single country in the world is on a day-to-day target list. We are working with the Russians for further reductions. We have said in this report, the Nuclear Posture Review, that we do not really view Russia as an enemy the way we used to view Russia as an enemy, and therefore, we can make even more significant reductions in our nuclear forces.

The President has gone so far as to say, "Look, President Putin, we do not even need a treaty for this because I am going down

whether you are or not. I do not need as many nuclear weapons as we used to have."

So, quite the contrary, the philosophy of President Bush, the philosophy of this administration, is to continue driving down the number of nuclear weapons.

I was pleased to be the Chairman of the Joint Chiefs of Staff in 1991, or early 1992—the year escapes me as I get older, Senator Reed. I will have to go back and check my records—but when I went to the President of the United States with my boss, Secretary of Defense Cheney, and said to former President Bush, "We no longer need any nuclear weapons in the Army. They are all gone. The marines have gotten rid of theirs. We no longer need any tactical nuclear weapons in the United States Navy. They are all gone. We still have the ballistic missiles in the Navy. And we need many fewer nuclear weapons in the Air Force."

And so, frankly, we have gone down significantly, and we will continue to go down. That is point one. So, even though traditional arms control has changed, the drive to reduce the number of nuclear weapons has not changed; it is accelerating, even in the absence of traditional arms control kinds of negotiations.

With respect to reports that somehow we are thinking of preemptively going after somebody, or that, in one editorial I read this morning, we have lowered the nuclear threshold, we have done no such thing. There is no way to read that document and come to the conclusion that the United States will be more likely or will more quickly go to the use of nuclear weapons. Quite the contrary. We have now an overwhelming conventional non-nuclear capacity, even greater than it was 10 years ago.

The discrepancy in conventional capability between the United States and any other nation or combination of nations is greater than it was 10 years ago. So we are not fools. We are not going to suddenly say let us more quickly go to nuclear weapons, when we have such conventional capability.

What we have done in this report, quite sensibly, is to say the American President has to have all of the options that are available to him, alive and well, and thought through. And so when we look at the dangers that are out there and when we look at nations that might be developing weapons of mass destruction, it is prudent, commonsensical, and good thinking, politically and militarily, to consider these nations and to consider what range of options the President should have.

Nuclear weapons have not gone away from the face of the Earth. I wish they were. I wish there was not a single nuclear weapon in the world, but there are. I am pleased to have been part of several administrations that have driven the number down. I do not know if I will still be around when they are all gone, but I hope they will be some day. But as long as we do have nuclear weapons and as long as there are nations that continue to move in this direction, the security of the American people, the security of our Nation, and the security of our friends requires us to think the unthinkable.

But nothing in this Nuclear Posture Review seems to me to represent a major departure in thinking from previous administrations, in terms of continuing to go down and continuing to find new ways of stability in our strategic framework. That is why we are

so committed to missile defense. Missile defense does not kill a single individual. Missile defense protects people from offensive weapons of the kind we are trying to get rid of. It is offensive weapons we are trying to get rid of that kill people.

With respect to the development of new nuclear weapons, we are examining whether or not, within our inventory, improvements can be made or there are new things which we should be looking at that are sensible. But in looking this over the weekend, after the stories broke, the report I have from the Pentagon states just that, we are looking at it. There is no new design out there or new nuclear weapon about to be commissioned into production that would require testing. We remain committed to a moratorium on testing. Even though we are not in the CTBT, the President remains committed to a moratorium on testing.

So there is no testing breakout coming. There is no new escalation in the kinds and types of nuclear weapons we wish to have. There is no change in the threshold that people like to talk about. There is no more intention to preempt than there might have been in some previous administration. What we are doing is taking a look at the world that is out there right now. And for those nations that are developing these kinds of weapons of mass destruction, it does not seem to us to be a bad thing for them to look out from their little countries and their little capitals and see a United States that has a full range of options and an American President that has a full range of options available to him to deter, in the first instance, and to defend the United States of America, the American people, our way of life and our friends and allies.

Senator REED. Thank you, Mr. Secretary. The thoughtfulness and thoroughness of your answer suggests the seriousness of this topic, and I suspect this will not be the last exchange you have with the Congress——

Secretary POWELL. I am sure not.

Senator REED [continuing]. Nor your fellow foreign ministers around the globe. This is a very important issue.

MISSILE DEFENSE AND RUSSIA

Secretary POWELL. It is, and I can assure you, for example, my Russian colleague, Foreign Minister Ivanov and I, we discuss this constantly. Sergei Ivanov, the Russian Minister of Defense, is in town today to have similar discussions with Secretary Rumsfeld. The Russians want the reductions to be legally binding. We have agreed to that because they felt it was so important because they wanted predictability about the future. Who knows who the next President is going to be in Russia and in the United States, so let us put it in international law. We understand that. But the President, while willing to do this, is just as willing to say, and has said across the table to President Putin, in my presence more than once, "Mr. President, we are no longer enemies. You have what you think you need to protect yourselves, and we will have what we think we need to protect ourselves, and we are going down. I am cutting. So, if you want to cut, fine."

President Putin said, "Yes, I want to cut, but I really need predictability in the future. Therefore, let us make it legally binding."

"If that is what you need, we will try to accommodate you, but we are going down anyway."

Senator REED. Thank you, Mr. Secretary.

Senator HOLLINGS [presiding]. Thank you.

Senator Inouye.

CONSULTATION WITH CONGRESS

Senator INOUYE. Thank you very much, Mr. Secretary. It is always a pleasure to be in your company and to listen to your testimony, either as Chairman of the Joint Chiefs or Chairman of America's Promise or Secretary of State.

As you may recall, Mr. Secretary, several years ago a few Members of Congress received calls from the White House to report to the Cabinet room to meet with the President on a special problem, and we gathered early in the morning the following morning, and we, when the President called the meeting to order, his announcement was very simple. "At this moment, our troops are landing on the Island of Grenada."

I can tell you that not all of us were advised of this military action. However, Grenada was a small island country, weak, and so very few Members of Congress took any note of that. But since 9/11, our front pages, magazine covers have been filled with attacking Iraq, attacking Yemen, attacking Somalia. My question is, if this country is seriously considering attacking one of these countries, I would hope that the Congress of the United States would be brought into and at least consulted or discussed, carry on a dialogue, get our views, because I would hate to see another repetition of Grenada, and Grenada is not Iraq.

Do you have any thoughts on that?

Secretary POWELL. Yes, I do, Senator. I remember Grenada as well. It was a sudden crisis that suddenly sprung on the scene over a terrible weekend that also included the weekend of the Beirut bombing, as you will recall, back in 1983. It just was something that had to be done quickly, and nobody could even find Grenada on most maps without a little bit of coaching at that time. And so President Reagan was faced with an immediate crisis, and because of problems of operational security, he found it necessary to bring Congress in just as the invasion and operation were taking place.

With respect to the current situation we are in, the President has no plans on his desk and no recommendations from his national security advisors to undertake military action against any country. In a couple of the ones you mentioned, say, Yemen, it is not a matter of sending armed forces into combat in those countries but a question of the Armed Forces of the United States assisting the governments of those countries in dealing with the threats they are facing from terrorist activities that have found haven in those countries.

U.S. POLICY ON IRAQ

With respect to Iraq, our policy remains as it has been for some time. One, we are working in a multilateral organization, the United Nations, to make sure that Iraq abides by the conditions of the end of the gulf war, saying you cannot develop weapons of mass destruction, and inspectors, a U.N. inspection team, will determine whether you are or you are not. Iraq, apparently, has once again

refused, rather strongly in recent days, to allow the inspectors back in. Therefore, the sanctions must remain, and the Oil-for-Food program must control roughly 80 percent of the money that goes to the Iraqi regime, so we know what they are spending it on.

But the United States also believes that the Iraqi people, the region, and the world would be better off if that regime were changed, if it were no longer there. We are in consultation with our friends and allies, and the President speaks to Members of Congress, the leaders of the Congress, on a regular basis as to what his thinking is. But he has made no decisions with respect to any changes in the way we are approaching this problem.

We examine our options, we work with Iraqi opposition groups to see how they can be made more effective, and as you know, I consult on a regular basis with my foreign minister colleagues around the world. Vice President Cheney is on a trip now to talk about many things, including the Middle East peace process, energy plans, energy programs, and the campaign against terrorism, and I am sure in the course of his 10 nation visit, he will also talk about the problem associated with Iraq, as well as Iran's situation, their support for terrorist activities, and their efforts to develop a nuclear capability. But I am sure the President understands, I know he understands, that Congress is terribly interested in this issue, and he will continue his discussions and consultations with the leadership.

Senator INOUYE. Thank you very much.

Mr. Chairman, I have questions I would like to submit, questions such as—they are regional types, Mr. Secretary.

Secretary POWELL. Yes, sir.

Senator INOUYE. East-West Center, Coral Bed ecosystem, Pacific Northwest long line fishing, that type.

Secretary POWELL. Yes, sir.

Senator INOUYE. So, if I may——

Secretary POWELL. By all means, sir.

Senator HOLLINGS. Very good.

Mr. Secretary, Senator Domenici has definitely some questions, and he is racing back right now, but you can see from the tone of questioning and the concern that maybe Ms. Charlotte Beers, is she Deputy Secretary? You ought to assign her not necessarily to get the American message of freedom and individual rights and peace out to the world around, but get her over to the Defense Department that you headed up and coordinate the administration's message because you get this "axis of evil," and then the next thing you know we have the threat of limited nuclear attacks, adding two more countries to the "axis of evil." Then there are all these questions about what is going on, and you have to explain to a committee, to all people, to us, the Congress, that there is no change in nuclear disposition or use or whatever it is.

But right to the point, tell Karl Rove to cool it. I know he is trying to keep the war fires burning until November, but that is not helping you out at all. How can you get diplomacy in State, and friends, and influence, and bring about peace?

SITUATION IN COLOMBIA

Incidently, Colombia, we went down there last year, and the Government itself had not seemed to make up its mind to get rid of the FARC and everybody else occupying that area down there. They were trying to modulate more peace, and draw lines, and everything else. It reminded me of the time, with Ben Gurion and the early Prime Minister behind him, they had a boatload of weaponry coming in, and—Menachem Begin—and Ben Gurion had already agreed with the United Nations to withhold any kind of military activity, being recognized as a country, and he had to of course call Begin down on that boatload of arms that he continued to use on the premise he said that in a country there can be only one military force, and that has got to be in the hands of the Government.

Similarly, down there in Colombia tell them or maybe you can get Pastrana to Israel and Sharon to Colombia. Maybe that swap would really get us going somewhere.

I see you do not want to comment, but——

Secretary POWELL. No, sir.

EXPANSION OF THE WAR ON TERRORISM

Senator HOLLINGS. Well, you get down there, you get the training. I thought I was back in Vietnam. We had the colonels get all around the table and give us all a briefing. We are ready to go, and we are moving there and everything else like that. Then there is Georgias where we have just trainees, but sometimes the trainers accompany the trainees, and then they come under fire, and then they get engaged, and then we have to send in reinforcements, the same old Vietnam situation.

So as we get into the Philippines, and Yemen or Georgia and these other places, you are a product of it. You understand it better than any, and let us watch it as closely as you possibly can.

Secretary POWELL. We certainly will, Mr. Chairman, and I do not think the models there really compare back to Vietnam.

The FARC is a terrorist organization, and the ELN is a terrorist organization. They can damage Colombia's democracy. They cannot really destroy the nation or take it over, but they cause a great deal of disturbance throughout the society with their terrorist acts, with their acts of violence, and with their connection to narco-trafficking. I think it is very reasonable for us to help them. There is no request for United States military troops, even as trainers accompanying advisers and the kind of problem you mentioned. I am very aware of that and very sensitive to it because I was one of them some 40 years ago this year. So we are very sensitive to that.

I also think that is the case in the Philippines, where the Abu Sayyaf group, with its al Qaeda connections, cannot bring down or overtake the Government of the Philippines. But it is a threat to the democracy of the Philippines, and therefore it is quite legitimate for us to assist those nations. But neither nation has indicated they want U.S. troops to come in, and I do not think we will slide down that slope.

Senator HOLLINGS. Very good.

Senator Domenici.

Senator DOMENICI. Thank you very much, Mr. Chairman.

Mr. Secretary, it is good to see you.
Secretary POWELL. Good to see you, sir.

MICRO LENDING PROGRAM IN AFGHANISTAN

Senator DOMENICI. I want to open with the idea that I have raised with you on one occasion on the telephone and put it on the record here.

You know, obviously, for Afghanistan to stabilize, at some point people are going to have to be in business, big business, little business, many businesses. I wonder if you would consider doing some evaluation as to whether the micro lending that has been successful in underdeveloped countries might be suitable in Afghanistan. Micro lending has turned into a hugely successful banking operation, but it is not really banking. It is just fundamentally that you do not have to worry about security, you do not have to worry about checking people's credit.

What you do is lend them small amounts, $100, $300, $500, for a particular little business that they have got. The relationship is kind of personal with the lender. We found across the land and, in fact, in the United States, micro lending is about as secure as any kind of lending around. Those kinds of enterprises pay their bills.

I would think that, while we are busy worrying about from where the other kind of financing is going to come, that we might do well to experiment with micro lending for the Afghani people. In the United States, I might say in some of our States, women, as part of the initial setting up of women's business advocacy groups, have taken on micro lending to get started and found it to be hugely successful. The dollar amount here is higher. I think we tried it in Mexico with success. I wonder if you could comment on it, and then later we will talk with the chairman and ranking member about doing something to authorize it.

Secretary POWELL. I think micro lending is a great idea. I have had some experience with it. Before I came back into Government, I made a trip to India, and I went into one of the poorest neighborhoods in Mumbai. I saw what some women had been able to do with micro lending programs in their community and how they were saving the profits that they were already making in order to pay back the micro lending facility. In the local community, a micro lending facility had been set up. And so it is a good way to get people back into business, back into commerce.

As Chairman Karzai, the Interim Authority head in Kabul, said to me when I was there, "Afghanistan will not be successful until we are generating our own revenue, and until our economy starts to work, we will not be successful. We do not want aid. We want our own economy functioning. We want to support ourselves. We do not want aid. We want investment." Micro lending certainly lends itself to that.

I think we will need a little more time to see the country stabilize a bit more and to have greater confidence in the banking and financial system, in order to support any kind of lending, to include micro lending. But I certainly would encourage anything that moves us in that direction, Senator.

Senator DOMENICI. Mr. Chairman, I wonder if we might explore this with your staff. I do not know if it needs specific authorization.

I do not think so. I think it could be part of our foreign aid provision in this or another bill. I, personally, would hope that I could get your support. That would make it for sure, and I think it is worthy of us starting that.

Senator HOLLINGS. If you have it, we will work on it, and get Secretary Powell's approval here of our language.

Senator DOMENICI. Very good.

Senator HOLLINGS. Good.

[The information follows:]

As Secretary Powell indicated on March 12, he is a strong supporter of microfinance, especially as Afghanistan stabilizes. The U.S. Agency for International Development (USAID) is currently exploring both the multilateral and bilateral options available to us for supporting a microfinance development program in Afghanistan.

On the multilateral front, USAID is working closely with the Consultative Group to Assist the Poorest (CGAP), a consortium of 28 donors housed in the World Bank, to establish a common framework for the development of an Afghan microfinance sector. USAID, which partially finances CGAP, is working with the consortium to undertake a national microfinance framework review planned for May 2002. USAID has publicly indicated its willingness to co-host a donor meeting to discuss the review findings.

As this longer-term strategy unfolds, USAID is also examining possible shorter-term bilateral investment options. Choices will not be easy. Strict interpretations of Islamic law with respect to interest earnings, the level of indebtedness of rural Afghan families, and the limited capacity of local microfinance organizations represent unique challenges that USAID will have to take into account. One option USAID is considering is the creation of a nongovernmental organization competitive grants program to support microfinance start-up activities.

INTERNATIONAL LAW ENFORCEMENT ACADEMY [ILEA]

Senator DOMENICI. Mr. Secretary, on a parochial note, we have a law enforcement academy in Roswell, New Mexico, that is known as ILEA, I-L-E-A, facilities. I have a few questions about where that program is going, but I wanted to share with you that the initiation of this program in Roswell, New Mexico, went extremely well.

Secretary POWELL. Yes.

Senator DOMENICI. That the first group of foreigners that came were from a very poor country, and they were very, very impressed that the United States would take this opportunity to help them with law enforcement, the appreciation of it and the fundamentals. I would like to make sure that because our emphasis seems to be moving in other directions, either toward the drug war or against terrorism, that we will not shirk this because this is fundamental training. None of the other kinds of law enforcement are going to work if we shirk this one.

Would you mind looking into this and answering in the record as to what your position is, what the State Department's position is on ILEA's?

Secretary POWELL. I would be delighted to, sir. I am very familiar with the facility. I have even seen some tapes of the facility. It looks like a very professionally run organization.

Senator DOMENICI. I am going to put about 10 questions in the record because it is getting late.

[The information follows:]

The Department, through the Bureau for International Narcotics and Law Enforcement Affairs, intends to continue its support for the ILEAs. These institutions

are recognized as key elements in the international response to drug trafficking and other criminal activity.

Now more than ever, the Academies will play a significant global role in combating not only criminality, but the terrorist elements who often use criminal enterprises to accomplish their goals.

VISA AND PASSPORT ACTIVITIES

Senator DOMENICI. I just wanted to take one last issue and talk with you about it.

You know the visa and passport activities of your Department are very, very important. We all know how important it is because our constituents probably talk to us about visa situations as much as any other foreign policy issue because passports take too long to process or they get mixed up. So we all get a taste of it in a pretty good way, and I just want to comment that visa fraud and the whole issue is very important in the war on terrorism. I would hope that there is a real effort to work your innovations and improvements into what the other Departments have to do with reference to border functioning.

Are you going to be working together, with reference to the implementation?

Secretary POWELL. Yes, I must say the events of 9/11 have made it clear that a higher level of coordination and cooperation between the various Departments is needed. Assistant Secretary Mary Ryan, who heads Consular Affairs for us and deals with all of these kinds of issues, is working closely with INS and others as part of the homeland security work of Governor Ridge.

Senator DOMENICI. The rest of my questions will be submitted in writing to be answered whenever the chairman sets the time.

FUTURE OF AFGHANISTAN

I just want to close where I should have begun, by complimenting you on the effort of the President, the Secretary of Defense, yourself and all of those who are part of America's most, most successful effort to combat terrorism. I leave you with one question that you might answer for us.

In Afghanistan, what do you see as the next step in governance there based upon your experience and knowing the people? When this very interim situation is up, what do you think the next governance——

Secretary POWELL. I am very pleased at how well the Interim Authority has done. It has certainly got a lot of work ahead of it, but when you consider where we were a couple of months ago, wondering if we could ever get this thing started, I think Chairman Karzai is off to a great start. The next thing that will happen is later this spring, when there will be a grand assembly and another government will be selected, and then in 2 years' time, there will be an election. All of that seems to be progressing rather well, with the assistance of the United Nations.

Chairman Karzai's real challenge now is to make sure that he can put in place a national army and a police force to guarantee security throughout the country and tamp down the ambitions of various warlords, so that it does not go back to old Afghanistan, but new Afghanistan.

And then I think one of the biggest challenges they are going to have, Senator, is just putting in place some of the fundamental administrative systems and processes that we take for granted. The ability to write a government check does not exist yet, and neither does the ability to talk to one another from office to office, or to communicate with computers. Unless you have these basic administrative systems down, it is hard to run a country in the 21st century. That is going to be a major challenge for him, as will be putting in place a cabinet and sub-cabinet-level government that will represent competent people, committed people, educated people, so we do not get into the business of cronyism or paying off one warlord with a position and another warlord with a position. It is those basic administrative systems, noncorrupt and transparent, that will allow this government to start to act like a government.

Senator DOMENICI. Might I follow up with one comment?

Senator HOLLINGS. Surely. Go ahead.

CAPITALISM

Senator DOMENICI. Mr. Secretary, I am a bit concerned. We all learned up here over the past decade to say that what we really were proud of was that the world was moving toward democracy, toward freedom, and then we always added and toward free enterprise or capitalism. So we were saying the world is now moving toward capitalism as a form of economic policy, and freedom, and liberty and democracy as the underpinning.

There seems to have grown up here a group of Americans who do not agree with the capitalism part of this because they talk about it being too big, and the corporations have taken over. On the other hand, in some of these countries their banking system failed after they were well along and left some very bad connotations about whether capitalism will work to move a country from a very poor and underdeveloped stage on through to growth and prosperity.

Does it concern you that there have been some failures that are very visible to the world? And, if so, what do we do about underpinning those governments more? Do we involve ourself more in their basic economic policies so they will not make mistakes like Mexico made. Had they not been as strong and had such a powerful neighbor, their mistake would have taken the country down.

Secretary POWELL. I think capitalism still remains the model of choice. Nothing else really works effectively in the 21st century. Globalization is here to stay. Whether people like it or not, it is an integrated world. We have seen countries such as China and Russia moving in this direction because it works for them. They have accumulated a level of wealth they could have never dreamed of previously.

Have there been failures? Have there been mistakes? Yes, when you look at the Asian financial crisis of, say, 5 or 6 years ago, and when you look at what happened in Mexico. But it is interesting; the system adjusted and learned from those early errors, those early catastrophes, the Russian bankruptcy of the middle 1990s. People have learned, so that when we now have crises, let us say in Argentina and some challenges in Turkey, contagion is not as

big a problem as it was 5 or 8 years ago. People have learned how to deal with this.

Even with a system as advanced and developed as ours, we have demonstrated rather vividly in recent months that we can still have catastrophic failures that are unimaginable. But they happen. And what people have to learn is that capitalism means risk. Capitalism means the destruction of organizations that are no longer relevant or are no longer responding to the market or have been run ineptly. As long as you understand that capitalism is constructive, but it also has a necessary destructive element to it, then I think we can keep the world moving in the right direction.

Senator DOMENICI. Thank you very much.

Thank you, Mr. Chairman.

MEXICO

Senator HOLLINGS. Now, when we get into, well, let us say, first, Mexico, at the time, Mr. Secretary, when we were getting into NAFTA, we had a wonderful witness. He was on the satellite. His name was Vicente Fox, and he was attesting, along with other witnesses from Mexico City, what we really needed was a sort of common-market, rather than a free-market, approach. "Over here capitalism, Senator, is very good if you have got an open-market market, you have got a respected judiciary, you have got labor rights," and you can go right on down the list.

And we found in Europe that you could not have that, under the free-market approach, so the European community taxed themselves for 5 years to the tune of $5 billion before they allowed Greece and Portugal into the common market. Instead we use the free market. I am for free market. I voted for free trade with North America because we have the same standard of living between Canada and the United States, not so with Mexico.

And so when you begin to talk of capitalism, we have got to help Mr. Fox out down there on the one hand. I had asked last year, and maybe you can answer, about the coordination perhaps of establishing an FBI school down there, because they would not allow it before, but if we can train their law enforcement, and he is trying to beef it up, Jorge Castanedo, the Foreign Minister, is ready to go. See if you can do that, and otherwise work out a little Marshall Plan for Mexico. Because all we did in NAFTA was send down $12 billion, and it went through the banks. Now they owe it to Deutsche Bank, and the money went back up to Wall Street, and nothing happened, and he is having a heck of a struggle happening, bringing it into capitalism and all of those things. So we can help with law enforcement.

But if you really want to take our neighbor and not worry about Yemen or what might be happening down in East Timor, I am worried about what is happening in Mexico, and I would like to see this fellow succeed, but he needs help, not just meetings and headlines. We have got to start making some headway.

I would vote tomorrow morning or this afternoon for a $12 billion Marshall Plan for Mexico and just have the stated things that must be developed and must occur before the money, in increments, is divvied up, otherwise, see, I speak feelingly because I have lost 50,900 textile jobs to Mexico already since NAFTA passed. In other

words, as Senator Domenici and Senator Hollings stated, before you open up Powell Manufacturing, you have got to have a minimum wage, clean air, clean water, Social Security, Medicare, Medicaid, plant closing notice, parental leave, safe work in place, safe machinery, OSHA. I can keep going down the list, but you can go for 58 cents an hour and none of that.

And so if your competition moves, you have got to go or you are going out of business, and they are all Republican anyway, Secretary Powell, so I am not too worried about them.

GLOBALIZATION AND COMPETITION

But they are all gone now. We have lost 670-some-thousand jobs in steel, and what you have is the enemy within. They have moved, Senator Domenici, their production, these multinationals. They call it globalization, globalization, and people have got to realize it, and understand, and we have got to live with it whether they like it or not. Well, they are moving their manufacturing into protectionism of Mexico, Malaysia, Japan, Korea, China. You are guaranteed a profit when you go to China. Oh, yes, sir. Yes. They are moving their production to protectionism, and they are babbling at me free trade, free trade, fast track, fast track.

Do not worry about all of that. Let us get into the real world of the so-called globalization and competition. The only way you are going to remove these barriers is to raise a barrier and then remove them both. I mean, we are all for the Marshall Plan, and capitalism has defeated communism because we gave away a good bit of our production, there is no question, but as has been stated long ago, our security is like a three-legged stool, your values, unquestioned; your defense, unquestioned; but your economic security has been fractured over the past 50 years. And as hard as you can work, we are going out of business unless we begin to compete on capitalism.

Senator DOMENICI. Mr. Chairman, I raised the issue, and I certainly stayed to make sure that I heard your views.

Senator HOLLINGS. Yes.

Senator DOMENICI. I think you know that I would not agree with all of them, clearly, but I would say that when the Mexican banks had their problems, it was quite obvious that the United States could not be part of helping a country and then have no standards, with reference to their banks, of the kinds of things that everybody knows you would have to have in order to maintain viability.

I understand that after that event some work was done jointly by the United States private sector and the Government to establish some new kinds of rules, like transparency, which obviously means that they cannot hide so many of the transactions and/or relationships of the bank from individuals, businesses and the international markets, and a few other basic principles.

I think it would be interesting and, perhaps without burdening you all too much in your response, maybe you might furnish us with a little summary of what the United States has done with reference to the changes that we expect as part of the capitalist systems that we help because there is more than just transparency.

You remember this situation. I think you were out of Government during that period; is that correct?

Secretary POWELL. Yes, I believe that is correct.

Senator DOMENICI. I think so. Well, in any event, would you do that for us?

Secretary POWELL. We will take a look at it. I have people who are competent to do that.

Senator DOMENICI. Thank you.

[The information follows:]

The United States, led by the Department of the Treasury, has strongly supported International Monetary Fund (IMF) initiatives to strengthen surveillance and crisis prevention measures. With U.S. government support, the IMF and World Bank initiated the Financial Sector Assessment Program in 1999 to assess members' financial systems and the regulatory and legal framework underlying their operations. The results are incorporated into the IMF's reviews of national economies.

Spearheaded by the Asian financial crisis, the IMF's standards and codes initiative promotes the development and dissemination of codes of good practice in the financial sector. Reports on the Observance of Standards and Codes (ROSCs) summarize the extent to which countries observe international norms in a number of areas crucial to the health of financial systems. Reports are used for official discussions, as well as for risk assessment by rating agencies and the private sector.

The United States has supported efforts to improve dialogue among market participants, the International Financial Institutions, and sovereign governments. In June, 2001, the IMF created an International Capital Markets Department as part of an initiative to strengthen the international financial architecture. The Department serves as a liaison with the private sector and enables the IMF to conduct more effective surveillance.

At the urging of the United States and its G–7 partners, the Financial Stability Forum (FSF) was established in 1999 to improve cooperation in financial surveillance and supervision. The FSF is comprised of finance ministry and regulatory officials, as well as International Financial Institutions and international banking representatives. The FSF encourages implementation of measures to improve the health of financial systems, including improved disclosure practices, deposit insurance programs, accounting standards, and counter-party risk management.

The Basel Committee on Banking Supervision is playing a fundamental role in strengthening the safety and soundness of the international banking system. Chaired by New York Federal Reserve President William McDonough, the Committee is revising the Basel Capital Accord to redefine minimum capital requirements, improve supervisory review standards of internal bank assessment processes, and ensure effective disclosure standards to encourage sound banking practices.

The Committee on Banking Supervision and the Bank for International Settlements jointly created the Financial Stability Institute in 1999 to help bank supervisors improve financial systems worldwide. The Institute organizes seminars, regional workshops, and informational programs on bank supervision issues. Upcoming seminars in Muscat, Khartoum, Lusaka, Bangkok, and Vilnius are indicative of the worldwide scope of its efforts to improve banking standards.

Finally, the United States is working on a bilateral basis, where appropriate, to address areas of concern. The Treasury Department's technical assistance team and USAID's banking and capital market reform team have worked with governments in Asia, Eastern Europe, South America, Africa, and the Middle East on a wide range of bank reform issues.

An appropriate financial policy framework facilitates the mobilization of capital and is a critical condition for stable economic growth. As the United States works with its partners to promote the spread of market-based economies, efforts to strengthen the financial and banking sectors will remain a priority.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Mr. Secretary, we are lucky to have you, and the record will stay open for the questions by the members who got disrupted here by the rollcall. But thank you very, very much.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

HAWAIIAN-BASED FISHING FLEETS

Question. Longline vessels operating out of Hawaii are banned, by judicial order, from swordfish fisheries in the Pacific Ocean due to the unintended bycatch of endangered turtles. Foreign fleets, however, are allowed to fish in the same waters our domestic fishing fleet is prohibited from utilizing. The foreign fleets have been able to take advantage of the unmet demand in the U.S. swordfish market caused by the swordfish fishing ban placed on Hawaii-based longliners. The foreign fleets are able to freely export their swordfish catch to the United States, although they are believed to have higher sea turtle interaction rates and to inflict greater levels of harm than the Hawaii-based fishing fleet. What meaningful measures is the State Department taking to address this problem?

Answer. The issue of addressing the bycatch of sea turtles in longline fisheries in the world's oceans is both challenging and complex. As noted in the Department's report to Congress earlier this year, the Department of State has been working closely with the National Marine Fisheries Service (NMFS) to understand how technical solutions might be implemented in a practical, verifiable, and enforceable manner throughout the fisheries, where longline and sea turtle interactions occur. Once such technical gear or management solutions have been developed and demonstrated to be effective for long-term resolution of this problem, the Departments of Commerce and State will look for ways in which such a solution could be implemented throughout the world's fleets.

In the meantime, the Department and NMFS will work to bring U.S. concerns about sea turtle bycatch in pelagic longline fisheries to the attention of other countries and entities engaged in these fisheries, as well as the relevant international fisheries bodies, including the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Inter-American Tropical Tuna Commission (IATTC), the soon-to-be-established Western and Central Pacific Fisheries Commission (WCPFC), the APEC Fisheries Working Group, and others. Through these contacts, we will seek both information relating to the nature and extent of sea turtle bycatch (which to date is incomplete for all fisheries and fleets involved), as well as consideration of any appropriate mitigative management measures.

One area where the United States will make particular efforts is in the Asia-Pacific Economic Cooperation forum (APEC). The United States has the position of lead shepherd in the Fisheries Working Group (FWG) of APEC, and NOAA Administrator Lautenbacher will attend the APEC Oceans Ministerial on behalf of the United States in April 2002. The Department is also working with the Western Pacific Fisheries Management Council on preparations for the second International Fisheries Forum (IFF 2), which will address sea turtle and seabird bycatch issues. IFF 2 is tentatively scheduled to be held in November 2002 in Honolulu.

NET FRAGMENTS

Question. Nets from Russian, Asian and U.S. trawling vessels, which are lost or discarded, float around the North Pacific Ocean and ultimately wash up in the Northwestern Hawaiian Islands. These net fragments trap and drown or injure endangered Hawaiian monk seals and severely damage the unique coral reef ecosystem of the Northwestern Hawaiian Islands, which accounts for approximately 70 percent of all coral reefs in U.S. waters. What has the Department of State done to work with other nations to identify the sources of these derelict net fragments and to minimize the volume of derelict net fragments in the Pacific Ocean?

Answer. The Department of State recognizes the magnitude of the current problem in Hawaii and is seeking ways to raise awareness of the issue in the international arena and to engage in a productive dialogue with other nations. To this end, the Department of State participated in the International Marine Debris Conference, held in Honolulu, HI in August 2000, and plans to submit an Asian Pacific Economic Cooperation (APEC) proposal to the APEC Fisheries Working Group designed to create a dialogue between all stakeholders, in accordance with priorities of the APEC Osaka Action Agenda. The proposal outlines an outreach seminar that would (1) provide participants with technical and scientific information on the problem of derelict fishing gear and related debris and its impacts, particularly the oceanographic variables that exacerbate the problem in the Pacific, in order to highlight the economic, financial, environmental, and marine hazard aspects of the problem; (2) provide a forum to examine ways in which derelict fishing gear and related debris actually occurs and allow policy-makers, industry leaders, and fishermen to exchange best practices and practical experience to explore possible options to minimize net and gear loss; (3) provide the opportunity to review regulatory and infra-

structure mechanisms pertinent to gear loss or disposal to determine the international policy and legal frameworks that are in place, if any, to address disposal or accidental loss and identify potential forums and mechanisms to address this issue; and (4) identify potential gaps or obstacles to mitigating gear loss and ways to ensure proper disposal.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Question. On March 8, 2002, the world celebrated International Women's Day. You attended an event in honor of International Women's Day and pledged to continue to advocate the rights of women throughout the world. In furtherance of women's rights in 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women which was ratified in 1981. More than 160 countries have ratified this important treaty, but the United States remained only a signatory to the treaty since 1980. Does your pledge to advocate for women's rights include advocating for the ratification by the United States of the Convention on the Elimination of All Forms of Discrimination Against Women and what steps have you taken toward that end?

Answer. The Administration is very supportive of women's equality. Women and men must be able to exercise and enjoy their human rights and fundamental freedoms on a basis of equality and without discrimination.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is in category three of the Administration's treaty priority list. That is the category of treaties the Administration believes are generally desirable and should be approved. We will need to fully assess the implications of ratification on domestic law. Not only must we review the package of reservations, understandings, and declarations submitted to the Senate in 1994, but we must also update the legal analysis that was submitted at that time.

PUBLIC DIPLOMACY

Question. How can State better carry out its Public Diplomacy since September 11? Do you view the Public Diplomacy mission differently because of September 11?

Are you integrating your Public Diplomacy efforts with DOD and the Broadcasting Board of Governors?

Answer. No other event in our history demonstrates the tragic consequences of misperceptions of the United States, its values, and its society more than the September 11 attacks.

Well before September 11, I committed the Department to a program to develop an aggressive, effective Public Diplomacy program. I asked Charlotte Beers, one of the most dynamic and recognized advertising executives in the United States, to become Under Secretary for Public Diplomacy and Public Affairs, I fought to ensure that Public Diplomacy resources were increased after twelve years of continuous reductions.

The nature and challenges of Public Diplomacy have not changed since September 11, but their urgency has increased geometrically. We are engaged as much in a struggle of ideas and values as we are in a war against terrorism. We must reach out to wider, broader, and younger audiences throughout the world and in particular, in Muslim majority nations. We must convince them that the democratic and open values that we offer and espouse are a road map to a peaceful and prosperous future.

As resources and personnel allow, we are addressing these critical issues. The Bureau of Educational and Cultural Exchanges has developed specific programs to work closely with Muslim majority states to create new exchange programs, develop modern and objective curricula in these regions, and increase exposure of young professionals and educators to the United States. The Office of International Information Programs has created numerous outreach materials, creative websites, and speaker programs to bring our message to millions. Public Affairs (PA) has done a tremendous job with its Foreign Press Centers in Washington, New York, and Los Angeles. Its television Co-Operative programs with foreign broadcasters have changed the vision many have of the United States since September 11. All of these initiatives have been executed by the outstanding work of our Embassies abroad.

Under Secretary Beers is working with the White House and other agencies, as well as private and public institutions, to develop approaches that will allow the United States to enter a broader dialogue with crucial audiences in critical regions. We coordinate regularly with Defense, the NSC, and other agencies to develop a cogent, coherent message from the United States to foreign audiences. We believe a

formal structure is needed, however, and are working with the White House and the NSC to establish an appropriate mechanism.

I am a member of the Broadcasting Board of Governors and take an active and close interest in its program. Under Secretary Beers is my representative to the Board. She and her staff are in daily contact with the Board, the broadcasting services (VOA, RFE/RFL and Radio Free Europe), and the International Broadcasting Board (IBB).

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

AFGHAN WOMEN

Question. Afghanistan cannot rebuild without the participation of its women. Last year, I joined with Senator Hutchison and the other women of the Senate in introducing the Afghan Women and Children Relief Act. That legislation, signed into law last December, authorized education and healthcare assistance to women and children in Afghanistan and Afghan refugees.

What are we doing to help the women and children of Afghanistan overcome decades of war and Taliban oppression?

What programs are underway and what funds have been dedicated to implement the Afghan Women and Children Relief Act?

What has this effort accomplished so far in education? in healthcare?

Are we working with Afghan and international NGOs to provide this aid?

Answer. The worldwide advancement of women's issues is not only in keeping with deeply held values of the American people; it is strongly in our national interest as well. Peace, prosperity, and stable governance cannot exist in the long term in societies where women are denied basic human rights and dignities. The United States opposed the Taliban's treatment of women for years. The war on terrorism and the overthrow of al-Qaida and Taliban forces in Afghanistan have given the women of Afghanistan an unique and unanticipated opportunity to reclaim their futures. The Bonn agreement signed by Afghan representatives last December underscores the centrality of democratic principles and human rights in its provisional arrangements, including the protection of the rights of women.

Our delegation to the Commission on the Status of Women sponsored a Resolution on women in Afghanistan, cosponsored by 46 other countries, welcoming the positive steps the Afghan government has taken to include women in the recovery and reconstruction process, but also urging that this progress continue and expand. Since the Taliban's defeat, the situation of Afghan women has greatly improved. Women are now able to travel more freely in the cities, they are beginning to return to work, and schools for boys and girls have just reopened. Women now are receiving health care deprived to them for years.

The United States has contributed significant assistance to the AIA and the Women's Ministry, contributing $4 million to the UNDP Afghanistan Interim Authority Fund (AIAF) to cover the Interim Administration's start-up costs for all Afghan ministries.

With the strong encouragement of the United States, two women were appointed to the Afghan Interim Authority: Sima Samar, Vice Chair and Minister of Women's Affairs, and Suhaila Siddiq, Minister of Public Health. In addition, three women have been appointed to the 21 member Commission organizing the Emergency Loya Jirga. Today, Afghan women and men are working together as political decisionmakers, recovery planners, program implementers, opinion leaders, and community organizers.

The Women's Ministry and its Minister, Dr. Sima Samar, now have a rehabilitated office space, in a building that once housed the Women's Institute. I am happy to give a detailed breakdown of U.S. assistance to the Women's Ministry. A percentage of our contribution to the UNDP Afghan Interim Authority Fund provided the Ministry of Women's Affairs with 2 computers, a satellite phone, office furniture and supplies, and a vehicle. It also helped rehabilitate the Ministry's offices and assisted in the preparation of the payrolls so that its staff can be paid.

In addition to providing funds for the Women's Ministry through the UNDP, the United States has contributed directly to the Ministry's refurbishment through the Agency for International Development (AID). AID has provided $64,000 towards the renovation of the building, including office equipment and technical advisers. Minister Samar is now working out of the building. In a meeting on February 19 with U.S. Chargé Ryan Crocker, Minister Samar noted her pleasure that Women's Affairs is the first ministry in the AIA to receive a grant from the United States government. Significant renovations were completed by March 8, in time to host cere-

monial meetings in Kabul on the occasion of International Women's Day. Furthermore, I am informed that the Government of Belgium has just put $500,000 into the AIA Fund, earmarked for the Women's Ministry. The Administration, together with the international community, will continue to consider requests for assistance from all the Ministries of the Interim Authority.

Consistent with the provisions of the 2001 Afghan Women and Children Relief Act, the United States has provided funds for education and health. A significant amount of these funds have been channeled through NGOs. On March 23, schools for girls reopened for the first time in many years. Many girls and boys entered the classroom for the first time.

To assist in the opening of schools, the United States spent $6.9 million for almost 10 million Dari and Pashto textbooks for science, math, and reading to grades 1–12 and 4,000 teacher-training kits. Five million of these books arrived in time for the March 23 opening of schools. Working with Vital Voices, an NGO, we have sent fabric and sewing machines so that Afghan women can make uniforms for girls to wear at school. $200,000 has been obligated to send teams of teacher trainers and educators to develop curricula. The United States has also provided funds and staff to support UNICEF's vaccination campaign, targeting 2.26 million boys and girls. In addition, we have contributed $68,000 towards the refurbishment of the women's dormitory at the University of Kabul, which will allow women to remain on campus, in a secure environment.

The Department of Labor has approved $1.5 million to assess women's skills and provide vocational training to women and $300,000 for training and start up wages for women working on the girls' uniforms project. USAID is providing $5 million to support the Ministry of Health and expand health services nationwide, including maternal and child health care services, using local and international NGO partners on the ground. American boys and girls, through the Fund for Afghan Children, have contributed over $4 million—dollar bill by dollar bill—to pay for food, shelter, clothing, healthcare, and toys for Afghan boys and girls.

The Administration has forwarded a request to Congress for supplemental funds which would provide additional programs to assist women, both directly and indirectly, including for the following:

Education:

The United States is encouraging education through support for food distribution programs. If supplemental funds are approved, children who attend school regularly will not only receive meals during the school day, but also will receive take-home rations for good attendance. These funds will also ensure that the Afghan government will be able to pay teachers from the UNDP Afghan Interim Authority Fund. If approved, funds would facilitate Fulbright program exchanges to provide scholarships for students and exchanges for educators and administrators; to partner U.S. colleges and universities with their Afghan counterparts; and for English language training. In addition, there would be funding for NGOs for education, including encouraging literacy.

Health:

Supplemental funds would enable the Department of State, USAID and the Department of Health and Human Services, to assist in restoring primary health care services, including maternal health and child care services, and train health care providers to ensure that Afghan women—who have one of the highest maternal mortality rates in the world—once again have access to child-birth services and maternal care. Funds would also provide for the rehabilitation and integration of land mine victims, for polio vaccinations; and for training in nutrition surveillance and education.

Economic Participation:

These funds would allow us to continue and expand a program in which we send wheat to bakeries run by widows. These bakeries help feed a quarter of Kabul's population. If additional funding is approved, funds would be used to provide access to micro-credit; finance small women-led businesses; provide vocational training for the disabled, including women; assess women's needs and provide women with management skills.

Political Participation:

If Congress approves this request, funds will be available to strengthen women's political leadership skills, and to provide training in conflict resolution and women's advocacy.

Refugees:

From fiscal year 2001 through March 1, 2002 we have spent $92.7 million for Afghan refugees in Pakistan and elsewhere: to build NGO capacity, to support female education, provide drought relief, health care, including maternal health care, and provide nutrition, water and sanitation, mine awareness, civic programs, and teacher training. In addition, $52 million will be used to facilitate the repatriation and reintegration of refugees and internally displaced persons, and many of the programs listed above will be replicated in Afghanistan.

United States-Afghan Women's Council:

Some of these funds would be used to leverage private support for projects which would be undertaken by the United States-Afghan Women's Council. The Council will facilitate partnerships between United States and Afghan institutions and will mobilize private resources to advance women's interests. Initially, the Council will focus on education and health programs and micro-credit for women, and encourage women's participation in the political and economic sectors.

PEACEKEEPING AND SECURITY IN AFGHANISTAN

Question. The people of Afghanistan need security to overcome decades of war and oppression. Training and equipping Afghan forces—which tend to be regional and factional and undependable in their loyalties—may contribute to the problem rather than solving it. Interim Afghan Administration Chairman Hamid Karzai has sought increased international forces to provide security as his country recovers from decades of war and Taliban rule. Why has the United States resisted Karzai's calls for an expanded international security presence, even though other nations are prepared to take the lead in this peacekeeping mission?

Answer. There are at least three reasons for the USG's decision not to support ISAF expansion at this time. First, information from U.S. military and intelligence sources indicates that there is not currently a need to expand the international security presence in Afghanistan.

Second, it is important to realize that the United States and its coalition allies already have a military presence in several locations around the country, including at least a small detachment in every major city. In the course of conducting their primary missions, the presence of these forces has a secondary, stabilizing, effect on regional security. Thus, to expand ISAF to these same areas would be in many ways redundant, and potentially even disruptive to co-located OEF forces.

Third, other nations have not expressed any willingness to lead an expanded ISAF peacekeeping mission. Turkey is the most obvious candidate to take over ISAF command from the British, having indicated its interest in this role several months ago. Nevertheless, the Turkish government has yet to make a definitive decision to command ISAF. One of the legitimate issues weighing on Turkish deliberations is concern over the possible geographic expansion of the mission. To address these concerns, we have assured the Turks that their commitment would be only to Kabul.

Question. Why has the United States opposed making the International Security Assistance Force (ISAF) a United Nations peacekeeping operation? Who is paying for it, since it's not an assessed U.N. peacekeeping operation?

Answer. In order to prosecute the war on terrorism with the greatest possible efficiency and success, the USG believes that CENTCOM should have operational authority over ISAF for the purpose of de-conflicting ISAF and OEF operations in Afghanistan. The USG believes it would have been very difficult for the U.N. to place a peacekeeping operation under U.S. authority in this manner. Therefore, the USG favored establishing ISAF as a non-U.N. force. Other key U.S. allies agreed with this reasoning.

The current participants in ISAF are operating on a self-financing basis. A U.N. trust fund has been established, however, to accept contributions that would pay the operational costs of any future participants who cannot finance themselves.

Question. How will we help Afghanistan's leaders overcome tribal conflicts between Afghan forces which appear to be a primary threat to stability and security in Afghanistan?

Answer. The USG is helping Afghanistan's leadership address the security problem posed by tribal conflict in several ways. First, we are acting on the President's commitment to help the Afghans build a new military that will be loyal to the central government. U.S. forces will begin training the first elements of a new Afghan army in about a month. As it grows in size, equipment, and proficiency, this force will enable the Afghan government to broker and enforce the resolution of tribal conflicts from a position of strength.

A second related initiative is the financial support we are giving to demobilization programs. These plans, which are being developed by the U.N.'s International Organization for Migration (IOM), will combine education, training, job creation, and other benefits to encourage the soldiers in tribal armies to return to civilian life. This will reduce the potential for violent conflict between tribal leaders.

Third, the United States, along with many other members of the international community, is channeling financial assistance to the Afghan central government. This support strengthens Afghan government ministries, enhances the country's capacity to manage its own internal affairs, and gives the central authorities added financial influence over regional leaders.

Finally, the United States supports the Afghan national leadership through political and diplomatic means. The USG has given high profile public support to members of the Afghan central government in its diplomatic exchanges, and insists upon the political prerogatives of central administration officials over regional leaders. These actions enhance the influence that Afghanistan's national leaders wield over tribal power brokers and strengthen the government's hand in cases of tribal conflict.

NUCLEAR POSTURE REVIEW (NPR)

Question. The contents of the Nuclear Posture Review, provided to Congress January 8, have recently become public.

Why does the list of target countries include Russia, which President Bush says is now our friend?

Answer. You are correct that Russia is no longer our adversary, as President Bush has stated on numerous occasions. For the first time, the NPR reflects that we are no longer in the Cold War. The NPR directs a major shift in strategic policy: the United States will no longer plan, size, or sustain its forces as though Russia presented merely a smaller version of the threat posed by the former Soviet Union. The NPR makes it clear that treating Russia as if it were the Soviet Union is inconsistent with today's realities and the desire to develop a new strategic relationship. Characterizing Russia as a "potential" contingency is a significant step toward a more cooperative relationship while still recognizing that the United States still has concerns with Russia and its formidable nuclear forces and uncharted future. While the NPR deems conflict with Russia extremely unlikely in the foreseeable future, it is also true that Russia is the only other country in the world with nuclear force levels comparable to that of the United States. Prudent planning dictates that we take that fact into account in the event of currently unforeseen changes in political circumstances in Russia.

Question. How would we react if Russia decided to put nuclear warheads taken out of service into storage rather than destroying them?

Answer. In essence, this is what we and Russia both did when implementing the INF and START Treaties, since INF and START did not seek to require destruction of the nuclear payloads on INF and START missiles. It is important to note that no arms control agreement between the United States and Russia has ever called for the destruction of warheads or limits on either nation's nuclear stockpiles. Beyond that, the United States and Russia have vastly different practices when handling nuclear warheads. The United States has no weapons production capability and must rely on its stockpile to respond to potential contingency and to maintain its forces, i.e., to provide insurance against a problem of safety and reliability of an entire class of warheads.

Russia, on the hand, has a large, active production complex and builds nuclear warheads to replace those that have reached the end of their relatively shorter service life. Russia has thousands of warheads that are currently in storage, and a large number of them awaiting elimination. In fact, the United States is assisting Russia in strengthening the security of its nuclear weapon storage sites.

Question. Why does the list of target countries include states which we do not believe have nuclear weapons?

Answer. It is important to note that the NPR is not a targeting document, nor does it provide operational guidance on nuclear targeting or planning. What the NPR does, however, is shift the planning of America's strategic forces from a threat-based to a capabilities-based approach. In light of terrorists or rogue states armed with weapons of mass destruction, whether they be nuclear, chemical, or biological, we will need a range of capabilities to assure friends and foes alike of U.S. resolve. The new U.S. strategic posture will consist of nuclear and nonnuclear offensive systems, active and passive defenses, and a revitalized defense infrastructure. U.S. forces must pose a credible deterrent to potential adversaries who have access to modern military technology, including NBC weapons and the means to deliver them.

Also, while this NPR focuses more sharply on WMD threats posed by rogue states than have past reviews, the record is clear that past Administrations have recognized the need for deterrence to apply to such states.

Question. Are we really treating nuclear weapons—normally considered weapons of mass destruction—as just another form of conventional warfare? Don't you think it's important to maintain a clear dividing line between conventional weapons and nuclear weapons?

Answer. Political leaders and military planners alike understand nuclear weapons to be qualitatively different from conventional weapons. By outlining a defense strategy that increases the role of advanced conventional strike forces, missile defenses, and intelligence capabilities, the NPR places emphasis on alternatives to relying upon nuclear weapons alone for deterrence. It is designed to provide the President with a broad array of options to address a wide range of contingencies, and paved the way to his decision to deeply reduce the number of operationally deployed U.S. strategic nuclear weapons.

Question. The Nuclear Posture Review talks about the possibility of using nuclear weapons "in the event of surprising military developments." What does that mean?

Answer. The NPR deals with planning our future strategic forces and their capabilities. It is not a targeting document, nor does it provide operational guidance on possible nuclear use. Thus, the section of the NPR to which you refer is discussion about the contingencies against which we must maintain nuclear capabilities. Its point is to emphasize the uncertainties of today's world by underlining that some dangers are immediate and well-recognized; some are plausible, but not immediate; and some are unpredicted, but ones that could arise suddenly. The conclusion drawn by that section is that present capabilities need to be maintained against immediate dangers, along with a small margin in the event of a surprise development. However, dangers that do not pose an immediate threat do not require immediate capabilities, and therefore would require only a responsive capability to augment the operational force over a period of weeks, months or years. This approach allowed the NPR to lower the size of our operational requirements and supported the President's goal of reducing our nuclear requirements to the lowest possible level consistent with our needs.

Question. What is Administration policy on first use of nuclear weapons? Wouldn't the development of new, smaller nuclear weapons suggest a readiness to use them in conventional conflicts?

Answer. The long-standing policy of the United States has not changed regarding the first use of nuclear weapons. There has been no change in U.S. negative assurances policy toward non-nuclear weapon states to the NPT. The United States will do whatever is necessary to defend America, our forces abroad, as well as our friends and allies. While the NPR does direct attention to deficiencies in our nuclear warhead infrastructure, the NPR does not call for the development of new nuclear weapons design.

Question. How would the United States react if other countries—like Russia or China—would adopt a similar policy, with the United States on its list of targets?

Answer. The question assumes that Russia and China are on a United States "list of targets." As the Administration has made clear, we, like our predecessors, do not target any country on a day-to-day basis. The NPR focuses U.S. nuclear force planning requirements on needed capabilities for deterrence and defense rather than on assumptions about specific threat countries.

Obviously, Russia and China have, for many years, possessed the forces and, we assume, other technical capabilities needed to strike the United States with strategic nuclear weapons. Nonetheless, regardless of whether the United States is targeted by other countries, the conclusions of the NPR remain valid. What is important, as President Bush has made clear, is that his Administration will pursue policies that reflect today's world and that put behind us the hostile relationships based on mutual assured destruction of the Cold War.

Question. Won't this Nuclear Posture Review hinder cooperation among member states to prevent non-state actors—terrorist groups like Al Qaida—from acquiring and using weapons of mass destruction?

Answer. We believe that the four goals of the NPR will help ensure that such a scenario will not happen, The goals of the NPR are to: (1) assure allies and friends of our continued cooperation in maintaining our military commitments; (2) dissuade adversaries that could threaten U.S. interests; (3) deter threats against the United States and its allies; and (4) defeat any adversary and defend against attack should deterrence fail. We view these goals as completely complementary with and mutually supportive of diplomatic, political and other coalition efforts to prevent or dissuade states or terrorist entities from acquiring or using WMD.

PEACEKEEPING FUNDING

Question. The fiscal year 2003 budget request significantly reduces funds for U.N. Peacekeeping.

In the present international environment, does it make sense to assume that there will be no new U.N. peacekeeping operation in fiscal year 2003?

Is it realistic to assume to predict that all but 2 ongoing operations will be reduced in size and cost?

If these assumptions prove unrealistic, will the Administration block U.N. Security Council authorization for new or expanded peacekeeping operations? Or will you seek emergency supplemental appropriations?

Answer. We believe it is realistic that costs will decrease from fiscal year 2002 to fiscal year 2003. UNMIBH (Bosnia) is projected to be completed with fiscal year 2002 funding, while UNTAET (East Timor) and UNAMSIL (Sierra Leone) are projected to downsize in fiscal year 2003. Further, the U.N. peacekeeping assessment rate for the United States will decrease by a small amount and we estimate that there will be small increases in efficiency.

We have not attempted to project all possible new missions that could come along or ones that suddenly and unexpectedly begin to significantly expand. Should these things occur, we would notify Congress.

RESYNCHRONIZATION OF U.N. DUES

Question. The United States always pays its United Nations dues late. This delay is reflected as U.S. arrears to the U.N., which have contributed to opposition to U.S. positions.

Last year, this Subcommittee—thanks to Chairman Hollings' leadership—provided the funds for the United States to resynchronize payment of dues with the U.N.'s calendar assessment schedule. Unfortunately, we were not able to sustain that funding in Conference.

Wouldn't it help achieve a better relationship with the U.N. and other member states for the United States to pay its dues on time?

Why doesn't the budget request include any funds toward dues resynchronization?

Answer. We believe we would achieve a better relationship with the U.N. and other member states were we to pay our assessments to the U.N. on time. The same holds true for the eight other fully deferred organizations. Our budget request does not include funds to resynchronize our payments as that would add over $600 million to our request. For the U.N. alone it would cost some $280 million in fiscal year 2003 to reverse the deferred payment. We hope to address this situation in a future budget.

UNITED NATIONS POPULATION FUND (UNFPA)

Question. The United Nations Population Fund provides critical family planning assistance. Could you assure us that the Administration will contribute to the United Nations Population Fund (UNFPA) the full $34 million allocated by Congress in the fiscal year 2002 Foreign Operations bill? Why has this been delayed?

Answer. The Administration continues to broadly support the work of UNFPA and specifically, its response to the emergency needs of vulnerable populations, such as in Afghanistan. However, we remain mindful of our obligations under the Kemp-Kasten amendment to the annual Foreign Operations, Export Financing and Related Programs Appropriations Act. This legislation provides that no U.S. funds can go to an organization that supports or participates in the management of a program of coercive abortion or involuntary sterilization.

In light of recent allegations of the Fund's complicity in coercive family planning practices in China, the Administration is reviewing the issue of UNFPA funding. While we are aware of UNFPA's response to these allegations that it is not involved in coercive practices and is, in fact, supporting a program that stresses the importance of voluntarism and non-coercion, it is incumbent upon us to review the allegations. The State Department is expediting the launch of an assessment team to China to look into the matter.

ARABIC VOICE OF AMERICA

Question. Arab Public Opinion about the United States is often rooted in beliefs learned from biased and inaccurate press reports. We need to stop broadcasts, which incite violence, replace hate with reliable, unbiased information, and provide a forum to formally present U.S. policy directly to the people.

How do you plan to improve our communication with the Arab world?

What progress has been made in expanding and improving Arabic VOA broadcasts?

Could you assure the Committee that dedicated VOA personnel in Washington won't lose their jobs as Arabic VOA broadcasts are strengthened?

Answer. Well before September 11, we recognized that we had lost crucial audiences in Arab and many Muslim majority states. The Department began working last year to rebuild outreach programs and avenues to these audiences. Since September 11, this program has become even more critical.

U.S. officials and experts appear on Arab media with greater frequency; we have extended our public diplomacy outreach programs throughout the Arab world, often with impressive results. The Department is preparing to launch expanded scholarship, professional training, and other exchange initiatives, and we are increasing our public diplomacy budgets and personnel in the Middle East to the extent that resources allow.

We have carried out extensive research into attitudes and perceptions in the Middle East and other Muslim majority states, such as Indonesia. We are engaged in a major effort to understand how the United States is perceived and what steps we must take to moderate attitudes and convey an objective vision of American values and society. Under Secretary of State for Public Affairs and Public Diplomacy, Charlotte Beers, is working with the White House and other agencies, as well as public and private institutions, to develop approaches that will allow the United States to establish a wider dialogue with younger, broader audiences.

VOA Arabic service has done well since September 11. It expanded broadcasts to eleven hours per day and brought our message to millions. However, transmission difficulties and format constraints limit its audience. The Department has supported the new format, AM and FM transmitted, Middle East Radio Network (MERN) now undergoing trials. We believe that the MERN can be an instrument that will reach the broader, younger audience that is crucial to our current and future relationships in the region.

Regarding the establishment of the MERN and the future employment status of current VOA Arabic service employees, it is beyond my mandate to give the Committee a final assessment of these concerns. I know that VOA Director Robert Reilly has taken energetic steps to address these anxieties.

FUNDING FOR THE FIGHT AGAINST GLOBAL AIDS

Question. Last year, the President pledged a $200 million "down payment" to the global fight against AIDS. In the meantime, AIDS has surpassed malaria as the leading cause of death in sub-Saharan Africa, and it kills many times more people than Africa's armed conflicts. UNAIDS estimate that in the last year, 3.4 million new HIV infections have occurred. Why has President Bush not proposed a greater increase in funding for the fight against Global AIDS?

Answer. The United States is the global leader in the fight against HIV/AIDS. In fiscal year 2002, the Bush Administration will dedicate nearly $1 billion to the international fight against HIV/AIDS, roughly one-third of all international spending against the disease. This does not include the amount dedicated to domestic research and development programs, programs that have direct benefits for the international community in the form of new drugs and other medical and scientific advances. The fiscal year 2003 budget request of $1.1 billion represents a 53.9 percent increase over fiscal year 2001 spending on international AIDS.

The majority of these funds are channeled through bilateral programs. President Bush pledged $200 million and Congress appropriated an additional $100 million for the new Global Fund to Fight AIDS, Tuberculosis and Malaria. This represents over a third of the funds pledged for 2001–2002 and demonstrates U.S. leadership in the global fight against these diseases. President Bush has requested an additional $200 million for the Fund in his fiscal year 2003 Budget, bringing the total U.S. pledge to $500 million. In a speech to the Inter-American Development bank in March 2002, President Bush said that he will work with Congress to increase the U.S. commitment to the Fund as it finalizes its organization, develops a strategy, and shows success.

Question. How do you expect the international community to come up with the $10 billion or even $20 billion per year public health experts estimate addressing HIV/AIDS, malaria and TB will cost if the United States doesn't contribute its share?

Answer. While there have been varying estimates about the amount needed to address HIV/AIDS, malaria and TB, there has never been an expectation that the Global Fund to Fight AIDS, Tuberculosis and Malaria would represent the only funding mechanism. Most estimates assess the need for increased global spending,

which includes resources from both developing and developed countries. Much help will continue to flow through already existing bilateral and multilateral mechanisms. The Fund is uniquely placed to leverage further contributions, including those from the private sector.

GLOBAL HUNGER

Question. The U.N. Food and Agriculture Organization estimates that 815 million people, mostly in developing countries, suffer from hunger and malnutrition. 24,000 people die each day of hunger-related causes. Yet the Administration's budget request effectively reduces the total amount of food aid America will provide. Why are we cutting back in our fight against global hunger?

Do you believe there is a reduced need for U.S. food aid, as one Administration official recently suggested?

Answer. Reducing hunger around the world is one of this Administration's priorities, and the President is in fact proposing increases in key resources to meet this objective. The Administration's fiscal year 2003 request for food aid appropriations of $1.345 billion under Public Law 480, both Titles I and II, constitutes a $225 million increase over the fiscal year 2002 level of $1.120 billion. This increase will help offset a large decline in section 416(b) surplus food resources, which are unappropriated allocations, and inconsistently available historically. This shift toward a more sustainable, on-budget allocation of food aid resources, which Public Law 480 represents, and away from the commodity surplus driven alternative of section 416(b), will help ensure that the United States continues to do its part in meeting global needs for food aid.

The United States consistently provides about 50 percent of food aid worldwide, far more than any other donor. The Administration remains committed to maintaining U.S. leadership in supplying food aid to vulnerable people. The Administration is proposing to adjust the delivery of international food aid programs. This plan will: (1) improve feeding effectiveness; (2) reform administration and reduce duplication; and (3) ensure more reliable food aid by reducing the year-to-year reliance on surplus commodities. Reducing the reliance on surplus U.S. commodities will increase the predictability of supply for hungry populations overseas and non-profit organizations that serve them. The fiscal year 2003 President's budget reflects a Public Law 480 Title II discretionary funding request of $1.185 billion, $335 million greater than the original fiscal year 2002 enacted level. This will help offset decreased mandatory programs. The U.S. Department of Agriculture's (USDA) Bill Emerson Trust will be used to provide food aid if dire emergency needs.exceed programmed resources.

USAID is also working to combat hunger and malnutrition through new agriculture and nutrition strategies. Policy reforms and agricultural research, including research in biotechnology, new information technologies, increased international trade and investments in sustainable agriculture, sound environmental management, along with better focused mother and child health and nutrition programming, present hope for addressing food problems worldwide. A continued emphasis on conflict prevention will also help to alleviate one of the principal causes of growing food insecurity.

USAID has committed $30 million in fiscal year 2001 funds to launch "Quick Start" programs in Africa designed to boost agricultural development immediately. The fiscal year 2003 USAID Congressional budget justification, in recognition of the role that acute hunger and malnutrition play in exacerbating individual suffering and impeding economic development, calls for increasing agricultural development funds by 29 percent. Funding for agricultural development in the Development Assistance (DA) account alone is projected to rise to $260.5 million from $200.4 million in fiscal year 2002, as part of a proposed ten percent increase in the overall development assistance budget to $2.74 billion in fiscal year 2003.

USAID is also pursuing a more aggressive strategy to expand basic education. Development Assistance funding for basic education will increase from $103 million in fiscal year 2001 and $150 million in fiscal year 2002 to $165 million in fiscal year 2003. These efforts, focused in large part on youth, will equip people with better farm skills and enable them to market their produce, earning higher incomes, and thereby reducing poverty and hunger.

BREAKDOWN OF TITLES I AND II OF PUBLIC LAW 480

[In millions of dollars]

	Fiscal year 2002	Increase/decrease	Fiscal year 2003 request
Title I	175.0	(15.0)	160.0
Title II	850.0	335.0	1,185.0
Total	[1] 1,120.0	225.0	1,345.0

[1] Includes $95 million from Emergency Response Fund Supplemental.

NATO ENLARGEMENT

Question. The security and stability of the Baltic region is vital to the peace of Europe and the transatlantic community. Security and stability in the region is best achieved through Baltic membership in NATO. What progress are you making in building support among our NATO allies to reach consensus in inviting the Baltic States and other qualified countries to join NATO at the summit later this year?

Answer. Our goal is to build a strong Allied consensus on specific candidates by Prague. The President has stated that he believes all of Europe's new democracies, from the Baltics to the Black Sea, should have the same chance to join the institutions of Europe as the older democracies.

All Allies support further enlargement and a broad consensus is forming behind President Bush's vision of the most robust round possible, for all aspirants that are ready to assume the responsibilities of membership. We have encouraged Allies not to advocate specific candidates until we can develop an agreed Alliance consensus. Under Secretary Grossman will be travelling to many NATO capitals in Europe from April 15–19 to consult further on a common Allied approach to the upcoming Prague NATO summit. Enlargement will be a key focus of this trip.

Allies have agreed that the question of "who" should be invited should not be addressed until after the May ministerial at Reykjavik. Instead, we are seeking to keep aspirant countries focused on meeting their reform goals through the Membership Action Plan and avoid early and conflicting commitments among Allies. The Baltic states have made impressive progress in their preparations for membership, and we have urged them to intensify these efforts to ensure their candidacies are as strong as they can be when decisions are made on new members next fall.

CYPRUS

Question. Last year, you told the Foreign Minister of Cyprus that the United States will also "remain engaged in efforts to facilitate a just and lasting settlement of the Cyprus issue." Other than supporting the U.N. talks, how are we remaining engaged on this critical human rights issue? What are the prospects?

Answer. We strongly believe that the current direct talks between the leaders on the island, which began on January 16 under the auspices of the U.N., are the best chance in a long time to reach a solution to the Cyprus problem. The prospects for success depend primarily upon the efforts of the two parties. Achieving a just and comprehensive settlement is the only way to resolve this longstanding issue, and therefore, we are focussed on providing diplomatic support to the direct talks on a number of fronts.

First, we have strongly supported the U.N. Secretary General's Good Offices Mission, and its efforts to achieve a comprehensive settlement, through numerous U.N. Security Council (UNSC) resolutions and press statements.

Second, through our Ambassador on the island, Donald K. Bandler, we are reiterating directly to the leaders and their delegations to the talks our support of the talks, and the importance of seizing this opportunity to reach a settlement.

Third, through our Special Cyprus Coordinator Thomas G. Weston, we are reinforcing with the leaders on the island and the Governments of Greece and Turkey our interest in the success of the ongoing negotiations.

Fourth, and also through our Special Cyprus Coordinator, we are working with the European Union and its member states to ensure that Cyprus's EU accession continues to be an incentive to a comprehensive settlement.

Should a settlement be achieved, we would work with USAID to ensure that program activities funded by $15 million in fiscal year 2002 Economic Support Funds support implementation of a settlement.

EMBASSY SECURITY

Question. The Department of State has stepped up security in our embassies and received security supplemental funds for security last year. This year's request includes $1.3 billion for fiscal year 2003 embassy security measures.

How will the State Department use these funds to ensure that we protect our men and women serving our country at embassies and consulates around the world?

Answer. The key objectives of the original 1999–2000 Emergency Security Appropriation (ESA) were to quickly improve the security of our threatened embassies and consulates and to begin the longer-term objective of replacing those facilities that cannot be made adequately secure.

The Department's fiscal year 2003 request of $1.3 billion includes $755.0 million in the Embassy Security Construction and Maintenance (ESCM) appropriation and $553.0 million in the Diplomatic and Consular Programs (D&CP) appropriation.

The ESCM request includes $608.6 million in capital security funding for the design and/or construction of the next tranche of the most urgent, security-driven projects. The fiscal year 2003 projects will be chosen from among a list of potential projects that include: Astana, Kazakhstan (dependent on Congressional support to open a diplomatic office); Athens, Greece; Bamako, Mali; Beijing, China; Bridgetown, Barbados; Frankfurt, Germany; Harare, Zimbabwe; Kingston, Jamaica; Moscow, Russia; and Tirana, Albania. The $608.6 million also includes funding to acquire additional sites for which design and/or construction will begin in the outyears.

The ESCM request also includes $146.5 million for compound security upgrades that include the construction of critical perimeter security projects and the installation of forced entry/ballistic resistant roof hatches, vault doors, and power-assisted vehicle barriers.

While specific security measures vary by post, the $553.0 million in the D&CP appropriation will be used to continue activities designed to:

—Enhance physical security at U.S. Missions with additional barriers and reinforced perimeter walls;
—Install closed circuit TV cameras and video recording equipment;
—Provide bomb detection equipment, armored vehicles, walk through metal detectors, and x-ray equipment;
—Fund access card control systems and shatter resistant window film;
—Install additional alarm and public address systems to alert personnel to impending emergency situations;
—Facilitate mandatory inspections of all vehicles entering U.S. diplomatic facilities;
—Increase host government security presence and support to our facilities worldwide;
—Field aggressive surveillance detection programs at almost all of our diplomatic posts;
—Expand training in the areas of Anti-Terrorism Assistance; Diplomatic Security Special Agents and Regional Security Officers; and crisis management;
—Continue a chemical biological weapons countermeasures program based upon education, training, and equipment;
—Strengthen our working relationship with the intelligence community;
—Fund, hire, and train new Diplomatic Security special agents, security engineers, security technicians, diplomatic couriers, security officers, and civil servants.

Fiscal year 2003 is the third year of the Department's multi-year plan to complete technical and physical security upgrades for stronger perimeter and compound security at our embassies and consulates worldwide. Additionally, armored vehicles, technical surveillance, and countermeasures equipment, which were sent out to the field following the East Africa bombings, need maintenance and eventual replacement.

The U.S. Agency for International Development is requesting $82 million in its fiscal year 2003 budget request for construction of collocated USAID facilities. Their request is contained in the fiscal year 2003 Foreign Operations budget request.

COMPENSATION TO VICTIMS OF INTERNATIONAL TERRORISM

Question. Victims of the September 11 attacks on America—at the World Trade Center, at the Pentagon, and on the flight which went down in Pennsylvania—will receive compensation allocated by a Special Master under legislation passed last year.

Do you believe the American victims of the Embassy bombings in Dar Es Salaam, Tanzania and Nairobi, Kenya—victims of the same terrorist group, most of whom were serving their country—deserve similar treatment?

Answer. The Administration is looking very closely at the entire issue of terrorism victims' compensation. Consistent with section 626 of the fiscal year 2002 Commerce Justice, State Appropriations Act, the State Department has developed a draft legislative proposal to compensate all U.S. victims of international terrorism, including those who were killed or injured in the East Africa bombings. This draft proposal was submitted in November to the Office of Management and Budget for inter-agency review and clearance. Department representatives have had several discussions with OMB and the White House concerning the proposal. We are hopeful that the inter-agency review will be completed shortly and that the Administration will submit a legislative proposal to the Congress this session.

CENTER FOR ANTITERRORISM AND SECURITY TRAINING (CAST) AT ABERDEEN PROVING GROUND (APG)

Question. What are the benefits of establishing CAST for the training of Diplomatic Security officers and for the Antiterrorism Training Assistance (ATA) programs?

Could you explain to the Committee the advantages of the Aberdeen Proving Ground site selected for the establishment of CAST?

Would it contribute to our efforts to secure international cooperation against terrorism if the establishment of CAST at Aberdeen Proving Ground could be accelerated?

Answer. Antiterrorism and security training is conducted at seven separate training locations nationwide, often using ad-hoc arrangements. The CAST would greatly help meet the demands for facilities to train additional foreign security officials required to counter the increased terrorist threat. Currently, some training courses are delayed for months because of a shortage of appropriate facilities. Additionally, the concept maximizes resource use by alternate scheduling of antiterrorism training and agent training at the same facility. The proximity to Washington, D.C. will permit use of presenters from multiple agencies and disciplines and trainee access to multiple resources in the area, which will pay additional dividends.

The CAST will provide a state-of-the art facility, replacing inadequate or antiquated facilities; for example, it will include all weather small arms ranges; "long gun" ranges, tactical urban mock-up training facilities for counter-assault training; commercial aircraft/mock airport facilities; defensive/protective driving tracks; explosives demolition ranges; maritime security training, and chem-bio training facilities.

The events of September 11 further expanded the focus of Antiterrorism Training Assistance (ATA) outreach to newly identified frontline nations and added course offerings in specific areas dealing with countering and responding to terrorist incidents. Presently ATA trains about 3,000 foreign law enforcement professionals annually. When fully operational, the CAST will accommodate as many as 7,000 foreign counterparts. The Department is making every effort to accelerate the CAST to contribute to our effort in preparing and securing international cooperation against terrorism.

CAST will require a variety of dedicated training facilities, including as an example, munitions disposal training, large caliber weapons training, and defensive driving. Life-safety issues, as well as community residents' concerns, preclude such training being conducted near residential areas. The Aberdeen Proving Ground provides an environment and a footprint which will accommodate each of the program's requirements. Further, the APG has an existing infrastructure that would help bring CAST on line more quickly, as the Department moves to meet requests for training.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

COLOMBIA: HUMAN RIGHTS CERTIFICATION

Question. Can you assure me that you will personally satisfy yourself that these conditions—the intent of our law—have been met, and that these human rights problems are being addressed far more effectively than they have been to date?

Answer. Yes. As the legislation requires, I will personally review the conditions for certification. I have not yet made the certification that the Colombian Armed Forces have met the human rights conditions set forth in Section 567(a) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115) (FOAA).

The Department of State is now evaluating the information it has received on this subject, including data from human rights organizations which have been consulted by both the Department and our Embassy in Bogota, in order to provide a recommendation in the near future to me for my determination. The importance with which we view the question of human rights in Colombia is reflected in the recent travel to Colombia of Deputy Assistant Secretary Struble of the Western Hemisphere Affairs Bureau and Deputy Assistant Secretary Carpenter of the Bureau of Democracy, Human Rights and Labor for seeking additional information and discussing our concerns with senior leaders of the Colombian government and military.

If I determine and report to Congress that the conditions established in the legislation have been met, based on the information presently under review, that report will also provide the background and justification upon which we would base such a determination.

Human rights are and will remain central to our bilateral relations with Colombia. We will continue to engage the Government of Colombia on concrete measures it should take to improve its human rights performance, particularly the human rights record of the Colombian Armed Forces.

MIDDLE EAST

Question. At a hearing in the Foreign Operations Subcommittee last week, I asked Assistant Secretary Lorne Craner about Israel's use of U.S. military equipment.

According to the State Department's human rights report, Israeli and Palestinian security forces have committed "numerous serious human rights abuses."

I sent several letters to our Embassy in Israel asking if they had determined if these types of incidents involved units of security forces that received aid from the United States. I also asked the Embassy what steps have been taken to ensure that our aid is used consistent with the Leahy human rights law.

Other than one reply that essentially said "we're looking into it and we'll get back to you", I have not received an answer to my letters. Since then, the situation has become far worse. I would appreciate your help in getting a response to my inquiries.

It is my understanding that we do not provide any aid to the Palestinian Authority. Are you confident that the Leahy law is applied properly with respect to our military aid to Israel?

Answer. President Bush and I have publicly criticized certain actions of the Israeli security forces. The 2001 Country Reports on Human Rights Practices notes "numerous serious human rights abuses" perpetuated by Israeli security forces during the year.

We share the goal of the Leahy Amendment to hold foreign security forces and governments accountable to international human rights standards. Our goal is to carry out security and other foreign assistance programs in a manner consistent with human rights standards. Embassy Tel Aviv has been operating under standing instructions to monitor possible human rights violations by Israelis and Palestinians and to report back daily to the State Department. For preparation of the annual human rights reports, the Embassy also reports information on alleged violations of human rights to the Department.

In writing, the Department instructs posts worldwide on procedures to ensure appropriate compliance with the Leahy Amendment. We currently are in the process of updating and reviewing this standing guidance on implementation of the Leahy Amendment for posts worldwide, including ensuring that the procedures used serve the goals of transparency and accountability with respect to U.S. assistance to foreign security forces. Updated guidance will be sent to posts worldwide, including Embassy Tel Aviv, upon completion of the update and review process. The Department would be willing to brief you or your staff on these procedures once they are in place.

SERBIA

Question. March 31st is the deadline for Serbia to meet conditions in our law on compliance with the War Crimes Tribunal.

Last year at this time, they arrested Milosevic. Since then, very little has happened. According to the Hague prosecutor, they are falling short in just about every respect. I know you care about this, but I don't want anyone to be surprised. We are not going to support continued aid to Serbia if they do not turn over these indicted war criminals and give the prosecutors access to documents and other evidence.

A couple of weeks ago Senator McConnell and I sent Prime Minister Djindjic and President Kostunica a letter, spelling out what we believe to be the minimum that

needs to happen to comply with our law. You should have a copy, and if you have not seen it I will get one to you. I hope you will used every bit of leverage and influence you have to impress upon these two leaders what needs to be done. Can you comment on where this stands?

Answer. Although there has been progress over the past year in each of the areas required for certification, I have not yet made a decision on whether or not to certify Serbia under section 584. We have repeatedly made clear to Yugoslav and Serbian authorities that they have an international obligation to fully cooperate with ICTY and that the USG expects actions to meet those obligations.

We will continue to press for full cooperation and to urge our European allies to look closely at the FRY's continuing record on these issues, including ICTY cooperation, as they consider Council of Europe membership, as well as Partnerships for Peace (PfP) membership.

QUESTIONS SUBMITTED BY SENATOR JUDD GREGG

GENERAL STATE ISSUES

Question. Mr. Secretary, with all the advance in technology—particularly in the area of communications—have you considered whether certain core State functions could be brought back to Washington from our embassies abroad?

Answer. The Department of State relies heavily on centralizing a variety of administrative, consular, and some policy functions (e.g., Labor Attachés, science hubs) in the United States. Technology plays a critical role in this effort.

We have the following U.S. regional centers:

—The Fort Lauderdale Regional Center provides support services to U.S. posts throughout the Western Hemisphere.

—The National Visa Center in Portsmouth, New Hampshire and the Kentucky Consular Center in Williamsburg, Kentucky both perform a variety of consular work traditionally carried out at individual posts.

—The Charleston Financial Service Center is in the process of assuming functions for European and African posts formerly carried out at our Financial Service Center in Paris.

—The Department will also begin in early April to shift routine passport production from overseas posts to U.S. domestic passport agencies in order to take advantage of the high security passport photodigitization process installed here in the United States.

When relocation to the United States is not feasible, USG agencies (including State) use many embassies and consulates, such as Frankfurt and Hong Kong, as regional platforms for their activities.

Even with advances in technology, there is still no substitute for face-to-face interaction with host governments and publics. State continues to support the principle of universality, under which the U.S. Government maintains an on the-ground presence in virtually all nations with which we have diplomatic relations.

Question. The fiscal year 2003 budget contains an estimated $3.3 billion for "substantive" foreign affairs activities such as policy formulation, diplomatic relations, public diplomacy, consular relations, and support of multilateral diplomacy. Approximately $4.4 billion is for such things as embassy construction, diplomatic security, IT infrastructure, travel, and rent—all of which support the Department's foreign affairs mission. Secretary Powell, how do you justify spending more for the support of our foreign affairs activities than we do on the actual conduct of foreign policy?

Once you have achieved your goals for improving State's infrastructure (facilities, IT, etc.) do you expect the numbers to flip back?

Answer. The funding identified is only part of the total budget used to conduct the nation's foreign policy. The total fiscal year 2003 International Affairs budget request is $25.4 billion, including over $16 billion for the Foreign Operations appropriations. To effectively carry out its foreign policy mission, the Department must have adequate staffing, technology, and secure facilities, as well as adequate foreign assistance funding. Building an embassy in a foreign country, for example, is as much a part of the conduct of foreign policy as is concluding a treaty, negotiating a peace agreement, or providing humanitarian aid. In fact, our overseas presence is at the very heart of our foreign policy, from ensuring the safety and security of American citizens overseas to carrying out the daily routine of diplomacy. The operations, maintenance, and security costs of our overseas presence is difficult to predict; for example, who could have forecast in 1987 the fall of the Soviet Union and the sudden rush onto the world scene of "new" countries with which the United

States needed to establish diplomatic relations. At OBO, however, we have developed for the first time a master plan for embassy construction that will help us manage those particular costs. I cannot assure you that the current total of funds we need for our daily operations and for supporting the conduct of our foreign policy will decrease over time. I can assure you, however, that we will be wise stewards of the dollars entrusted to us by the American people.

EMBASSY CONSTRUCTION

Question. What impact has 9/11 had on the way the Office of Overseas Buildings Operations approaches designing and building embassies abroad?

Answer. Following the Africa bombings in 1998, the Department, in concert with other Foreign Affairs Agencies, embarked on an intense, successful, and continuing effort to review and revise overseas security standards and determine what new standards might be needed, including preventive measures for chemical or biological attacks. The tragedy of 9/11 confirmed that we were already going in the right direction regarding strengthening and/or relocating our facilities to provide the best security that is reasonably possible for our employees at posts abroad. We are making a determined effort to accelerate these processes in light of 9/11 and other recent events.

Question. Do you think the lessons of 9/11 were that we need to build more heavily fortified embassies? Or do you believe that 9/11 demonstrated that we simply cannot build buildings that are 100 percent secure and must therefore look to mitigate the threat in other ways (such as better deterrence and prevention)?

Answer. While neither the World Trade Center nor the Pentagon was designed to the same physical security standards as our embassies abroad, they were designed to withstand what was considered a reasonable expectation of survivability following significant structural damage. The stresses upon these buildings on 9/11 were greater than they could withstand. The U.S. Government's efforts should continue to focus on better deterrence and prevention, as well as improved-design and construction technologies, to reduce the impact of terrorist events. The most urgent need is simply to get our people out of buildings that do not come close to meeting any reasonable safety and security standards. Using best practices, Standard Embassy Designs, and business case analyses, the Department's Bureau of Overseas Buildings operations is accelerating its mission to provide safe, secure, and functional facilities for our diplomatic and consular posts around the world. Use of these initiatives reduces the time that our employees would otherwise be in less secure facilities. The Department's short and medium-term implementation of physical and technical security enhancements, as well as our long-term capital building design and construction efforts, significantly improve the security and safety of our employees abroad.

DIPLOMATIC HIRING INITIATIVE

Question. Mr. Secretary, last year this Committee provided the Department $107 million to hire 360 new employees above attrition. This year you have requested another $100 million to hire 399 more people. Next year you will ask for another 399 new employees.

Could you please give us an update on how this process is going? How many people have been hired so far? How will new employees be allocated among the different bureaus and sections? Has 9/11 altered decisions concerning where these new employees will be placed?

Will the right-sizing of our posts abroad continue despite this surge in hiring? Do these two processes (Diplomatic Readiness Hiring Initiatives and Right-Sizing) conflict with one another?

Answer.

Recruitment Progress:

Our recruitment and hiring effort thus far has been very successful.

—We had 13,000 takers of the Foreign Service Written Exam in September—a sixty-three percent increase over last year.

—For fiscal year 2002, we have already signed-up 344 new junior officers out of our target of 483, which includes Diplomatic Readiness hiring and attrition hiring.

—We have reduced the average time to enter the Foreign Service from 22 months to 10 months.

—We are taking a hard look at our Civil Service hiring process to make it more efficient.

—We are using targeted hiring programs in the Civil Service to meet anticipated skill needs effectively, including hiring employees in groups so they can be available more quickly and hiring into training programs that will grow talent from within.

Position Allocation:

As we allocate new positions, we are directing them in the first instance to our overseas needs—to meet requirements now being neglected due to lack of adequate staffing. We are also creating new training positions so that we can build our capacity, ensuring our employees have the needed training, to meet the challenges of 21st century diplomacy.

The majority of the 360 new positions for fiscal year 2002 were used to begin to address overseas staffing deficiencies documented in our Overseas Staffing Model (OSM) and to meet Foreign Service training needs.

For fiscal year 2003, the request for 399 new positions will allow the Department to continue to close training and staffing gaps and bring us another step closer to the full staffing required to meet the nation's diplomatic requirements. These new positions will be in Foreign Service Generalist, Foreign Service Specialist, and Civil Service categories, as determined by our planning models and foreign policy requirements.

To determine specific allocation of those new positions by bureau and post, we assessed their human resource requests during our annual planning and budgeting process. This process culminates in a review by the Deputy Secretary and Under Secretary for Management who then set priorities and approve allocations.

Because those policy priorities can change, we do adjust throughout the year. Post 9/11, we did revise our plans and direct more resources to counter-terrorism and border security.

Right-Sizing:

With regard to rightsizing the USG presence, the State Department is only part of the equation. As you know, the U.S. Government's entire overseas presence includes staff from over 30 agencies. As part of the planning process, each mission's review of its functions and staff takes into account all agencies at the mission.

The Office of Management and Budget is currently undertaking a comprehensive government-wide rightsizing study, and we are working with them.

As we determine the optimum allocation of our human resources, we use models, such as the Overseas Staffing Model, to develop baseline staffing levels. We are also developing a domestic staffing model.

We use these and other workforce planning tools as part of our overall strategic planning and resource review process to determine staffing. In this regard, we can "rightsize" the Department's staffing.

The Diplomatic Readiness Initiative was the result of that review process. It is a three-year plan to increase staffing levels in light of the assessed need. Therefore, the Diplomatic Readiness Initiative is in fact part of our effort to ensure we have the right staffing overseas to meet our mission.

BORDER SECURITY/CONSULAR AFFAIRS

Question. Mr. Secretary, how has the Consular Affairs Mission changed since the events of 9/11? Would you agree that the mission your consular officers perform is vital to our national security? What are the pros and cons of the Department's policy of requiring new Foreign Service Officers to serve their first tour in Consular Affairs? Do you think this policy has contributed to creating a culture at State where CA officers are second class citizens? Do you agree that Consular Affairs is a sufficiently important component of the Department's mission that it should be staffed by career FSOs, rather than by novices?

Answer. The Bureau of Consular Affairs (CA) has been guided before and after the tragic events of 9/11 by two complementary goals: ensuring the security of our borders, while at the same time developing and implementing state-of-the-art technology to facilitate travel. Consular officers in the field are the outermost ring of the U.S. border security system. We have been continually engaged in efforts to design, deploy, and improve the systems and tools they need to help flag terrorists and criminals among visa applicants. Our Consular Mission has not changed and, in fact, September 11 has served to emphasize the importance of our core Consular functions to ensuring national security.

The Department does not have a policy that new Foreign Service Officers (FSOs) must serve their first tour in a consular position. Rather, it is the policy of the Bureau of Human Resources in the State Department that all FSOs, regardless of career track, perform a minimum of one year of consular service during their first two

assignments as junior officers. Some do this on their first assignment and some on their second.

This policy enables the Department to meet its worldwide statutory responsibilities, while at the same time giving these untenured officers a diversity of experiences and the opportunity to demonstrate their skills in a variety of State Department functions. While serving in a consular capacity and under the mentorship of seasoned consuls and senior FSOs throughout our Missions, these officers have an opportunity to interface with large numbers of the host country population, make decisions quickly, manage staffs of host country national employees, work on a team within an Embassy or Consulate, hone language skills, master immigration and citizenship law, protect the security of the United States by selective visa issuance, and protect U.S. citizens abroad.

A consular assignment provides all officers, regardless of career track, a foundation for understanding the consular function and its role in meeting core U.S. responsibilities abroad. Such service is extremely useful to all officers, as they assume greater responsibilities in their careers as Foreign Service officers. Accordingly, I do not agree that our assignment policy has contributed to a Department culture wherein consular officers are considered second class citizens. To the contrary, as the vast majority of the FSO corps has served in a consular position at some point in their careers, there is a greater understanding across the Foreign Service of the consular role in foreign policy.

Question. Can we do a better job of screening student visa applications without causing significant delays—delays which may lead foreign students to choose not to study in the United States?

Answer. The U.S. government can do a better job of screening students.

The Immigration and Naturalization Service (INS) is currently working on the development and deployment of SEVIS (Student and Exchange Visitor System). I am optimistic that SEVIS will assist the Federal government in strengthening the current process for issuing student and exchange visas. We are actively participating with our colleagues from the Immigration and Naturalization Service, as well as the academic community, in the design and development of SEVIS, designed to convert what was largely a manual, paper-process to a modern automated system.

I believe that the Department's process for adjudicating student visa applications is appropriate and expeditious. Consular officers evaluate student visa applications according to the criteria established by U.S. immigration law. The most pertinent elements are the credibility of applicants' plans to study in the United States and whether they have adequate financial means. As further required under U.S. law, the officer also determines whether a student visa applicant has a residence abroad which he or she has no intention of abandoning, and intends to depart from the United States upon completion of the course of study.

All visa cases, including student and exchange visas, are processed using automated systems, which prompt a name check through the Department of State's centralized lookout system (CLASS). A consular officer must review all hits before a case can be approved for printing, and there is no override to this feature. In addition, the Department has in place special headquarters clearance procedures for visa applicants, including students from countries of concern, such as those on the state sponsors of terrorism list, as well as applicants whose planned travel raises concerns about unauthorized access to sensitive technologies. In these cases, clearance from Washington is required before the visa may be issued.

In the vast majority of cases, i.e. those applicants whose names are not in our lookout system and whose academic or research interests raise no technology transfer or other security concerns, this name check procedure causes virtually no delay in the adjudication of visa applications. We issued approximately 560,000 student and exchange visas in fiscal year 2001; there is no indication that our adjudication requirements inhibited the number of student visa applicants.

DEPARTMENT'S LONG-RANGE IT PLAN

Question. Mr. Secretary, your progress in upgrading your IT systems is impressive. Now that two major projects are well underway, what is your long-range plan for State in the area of Information Technology?

Answer. Our Classified Connectivity Program (CCP) and OpenNet Plus are underway—on schedule and on budget. We are on the eve of piloting a program in India and Mexico to improve collaboration among agencies. We are also working on a proposal to replace a potpourri of messaging systems, including replacing a legacy cable system of WWII vintage with a single integrated messaging system that will substantially improve the way we communicate.

We are not satisfied with catching up to others in this high-tech world. Our goal is to move ahead, reconfirming State's position as the lead Foreign Affairs agency, setting an example for the rest of government, indeed, setting the standard for the international community in its conduct of diplomacy.

The technology we are deploying must satisfy three standards: smart, simple, and secure. Our vision is a single computer at every desk and mobile connectivity for every contingency—with full access to all information required for the effective conduct of diplomacy.

Our new tools of diplomacy will allow full engagement in the networked world of the 21st century and full recognition that the fundamental requirements of diplomacy, one of which is that the best people be supported by the most reliable technology, will not change.

PEACEKEEPING—GENERAL

Question. The fiscal year 1997 State Department Appropriations bill required the Secretary to notify Congress 15 days before the United States voted to establish or expand a peacekeeping operation. Mr. Secretary, do you believe Congress should have a more formal role in the decisions leading up to Security Council votes that pertain to peacekeeping? Wouldn't this lessen the need for "holds" in order to effect positive change in these missions?

Answer. The Department of State continues to comply with the requirements of 22 USCA 287b(e)(5)(A) to notify Congress 15 days before the United States votes in the Security Council to establish a new U.N. peacekeeping mission, expand the authorized force strength of an existing mission, or add significant additional or significantly different functions to a U.N. peacekeeping operation.

Well in advance of this formal notification, which includes a critical review of major aspects of such operations, the Department engages in an extensive process of consultation with Congress on U.N. peacekeeping, including monthly "Round-the-World" briefings for this and other Congressional committees and quarterly and annual reports on U.S. contributions to U.N. peacekeeping operations. The monthly briefings, in particular, provide a unique opportunity for the Department to indicate early developments and trends and for Congress to comment at an early stage.

Question. Secretary Powell, it is estimated that our campaign to liberate Afghanistan cost $2 billion, with continuing costs of $200 million per month. Britain is to be commended for its role in both the military campaign and the ensuing Security Assistance Force. Do you agree, however, that the peacekeeping function should be left largely to our allies, particularly our other European allies?

Answer. We should commend all the members of the coalition for their commitment and their contribution to the military, diplomatic, and economic facets of the Global War on Terrorism. There are compelling reasons why the United States has chosen not to participate directly in the International Security Assistance Force (ISAF) peacekeeping mission in Afghanistan. Chief among these, obviously, is that it has allowed us to focus on the war against the Taliban and al Qaida, as well as on potential threats in other locations related to the Global War on Terrorism. Our allies understand and support this focus, as demonstrated by the many generous offers of assistance, which enable us to maintain that focus. The direct participation of allied military forces in ISAF has helped to promote stability in Afghanistan and to solidify allied public support for coalition efforts. Another reason for supporting our allies' prominent role in ISAF is the unique qualifications that many of them bring to peacekeeping. All the current ISAF participants are nations that have taken part—and in most cases are still taking part—in the multiple Balkans peacekeeping missions of the last ten years. Several ISAF troop contributors have peacekeeping experience that stretches back several decades and are putting that experience to good use in helping to secure a brighter future for Afghanistan.

U.N. PEACEKEEPING MISSION IN THE CONGO

Question. Former United States-U.N. Ambassador Richard Holbrooke set preconditions for U.S. support of U.N. intervention in the Congo. These included withdrawal of combatants to the lines established in the Lusaka accord, absolute cessation of hostilities, and free access to all areas for U.N. observers. Is this still U.S. policy? If so, will the United States apply these conditions to the eventual vote by the Security Council to raise the troop level from its current level of 5,500? If the preconditions are not met, will the United States vote against raising the troop level?

Answer. The conditions set by former Ambassador Holbrooke for U.S. support of the U.N. Organization Mission in the Democratic Republic of the Congo (MONUC) have been generally met: the combatants have withdrawn to the agreed disengage-

ment lines; the cease-fire has held, with a few exceptions, since early 2001; and Lusaka Agreement signatories have permitted MONUC access to areas under their control. The United States has made it clear that its support of MONUC's operations in the Congo will require the continued observance of the cease-fire by all parties and free access to all areas for U.N. observers. In addition, before we could support an increase in MONUC's troop level, we would have to be convinced that this would further U.S. goals that include achieving the Lusaka Agreement's objective of withdrawal of foreign forces and the disarmament and demobilization of the armed groups.

Question. Should the Organization of African Unity or some other honest broker host an international conference with the express purpose of redrawing colonial borders in Central Africa to create smaller but more militarily, politically, economically, and socially viable States? Lacking any real history of, or meaningful prerequisites for, representative government, what makes you believe that a country as large, diverse, and underdeveloped as the Congo can ever achieve democratic self-governance? What other than partition can free the Congolese people from the twin plagues of rebel warlords and resource-hungry neighbors?

Answer. The Organization of African Unity (OAU) supports the principle of inviolability of colonial borders throughout the African continent. It would be up to the people of the Congo, working as they see fit with their neighbors and the OAU, to consider whether redrawing their boundaries can be an effective way to address their problems.

I firmly believe that the Congolese people can achieve democratic self-governance within the present boundaries of the Congo. To expect less would be to grossly underestimate their love for their country and their desire for freedom.

Question. Why aren't we pursuing controls on the export of "col-tan" (short for columbite-tantalite, an ore rich in the element tantalum) when it is known that coltan is bankrolling the Rwandan-backed Rally for Congolese Democracy (RCD)? Is this the next Conflict Diamonds?

Answer. Last December, the U.N. Security Council discussed the November 13 Addendum to the Report of the Panel of Experts on the Illegal Exploitation of the Natural Resources of the Democratic Republic of the Congo. We did not support the panel's recommendation for a moratorium on the purchase of specific commodities in the Congo, including col-tan. We believe such a moratorium would be unenforceable and thus would weaken the credibility of the U.N. Security Council's efforts to end the illegal exploitation of the Congo's resources.

We supported the continuation of the panel for up to six months to provide for a follow-up to the report, including ways to address the exploitation of col-tan in the Congo. We urged all governments to cooperate fully with the panel.

U.N.-CAPITAL MASTER PLAN

Question. Mr. Secretary, what in your view is the purpose of having a task force oversee U.S. participation in the U.N. renovation?

Have you heard some of the U.N. ideas about how they might fund this project, and do they alarm you?

How can we guarantee that the renovation of the U.N. building, and thus the creation of more "desk space," will not quickly be followed by requests to enlarge the U.N. bureaucracy?

Answer. The task force would bring together personnel from the Department of State and other U.S. government agencies, with the necessary expertise in construction and financial management, to ensure that U.S. interests are met. We believe such oversight is essential in a project of the potential magnitude of the U.N.'s Capital Master Plan.

The U.N. currently is preparing updated proposals regarding all aspects of the Capital Master Plan, including funding options. As the proposals have not yet been issued, it is premature to speculate on what these may contain. Moreover, all proposals will be subject to negotiation among the U.N. member states. The funding issue will be key in this process. We expect all factors will be considered, including private sector and voluntary funding.

The U.S. remains committed to budget discipline in the U.N. We will continue to adhere to this approach, irrespective of the current initiative to renovate the aging U.N. headquarters complex and bring it up to modern standard in terms of safety, security, and energy efficiency. As noted previously by the General Accounting Office, the buildings comprising the U.N. headquarters complex have exceeded their economic life expectancy. They are energy inefficient and no longer conform to current safety, fire and building codes, or to requirements regarding U.N. security.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

INTERNATIONAL LAW ENFORCEMENT

Question. While these International Law Enforcement Academies have been recognized as a useful tool in the war against drugs, don't these organizations also lend themselves to the war against terrorism as the United States secures its borders and seeks members of terrorist organizations in other countries?

Answer. The ILEAs play a significant role in combating not only crime, but also terrorism and those who often use criminal enterprises to accomplish their goals. Many of the advanced investigative skills foreign law enforcement officials learn at the ILEAs are also applicable to conducting effective counter-terrorism investigations and operations. In light of the events of September 11 and the connection between terrorism and drug trafficking articulated by the President, the Department's Bureau of International Narcotics and Law Enforcement Affairs and Coordinator for Counterterrorism, as well as other U.S. Government agencies represented on the ILEA Steering Group, will be developing ways to include additional antiterrorism courses in the ILEA curriculum.

Question. I was concerned to see that the overall budget for the International Narcotics Control and Law Enforcement activity, excluding appropriations from the Emergency Response Fund, is reduced from a net $217 million in fiscal year 2002 to $198 million in the fiscal year 2003 budget request. This represents a reduction of $19 million, or 8.8 percent. What is the rationale for reducing this type of bilateral assistance that has the potential to further contribute to our war against terrorism?

Answer. We agree that our counternarcotics and anticrime programs have been very successful in combating drug trafficking and other transnational crimes, and we expect them to continue to be successful. While the initial fiscal year 2002 appropriation for International Narcotics Control and Law Enforcement (INCLE) was $217 million, we have made the difficult choice to transfer $20 million to the Andean Counterdrug Initiative, as authorized by Congress, to provide sufficient funding for our programs in that very important region (the actual ACI appropriation was $105 million less than our request, a 14 percent reduction). That transfer brings the actual fiscal year 2002 program level for INCLE to $197 million, a $28 million increase over the comparable fiscal year 2001 level. Therefore, our fiscal year 2003 request is a straight line from fiscal year 2002. At this level, there is sufficient funding to carry out our programs.

Question. Are the existing ILEAs, including the most recently established ILEA in Roswell, New Mexico, supported at their existing funding levels in the fiscal year 2003 budget request?

Answer. Yes. The funding will remain constant.

Question. Is it not true that funding for the ILEA in Budapest came in part from funding for two initiatives that is now drying up? Is the Department making up for those funding resources in its crime control budget, or is the program essentially being asked to absorb these costs?

Answer. ILEA Budapest has been financed by FREEDOM Support Act (FSA) and Support to East European Democracy (SEED) funds. The FSA and SEED funding may eventually be reduced in fiscal year 2003 or beyond, but any shortfalls will be made up from the International Narcotics Control and Law Enforcement (INCLE) Crime account.

CENTER FOR ANTI-TERRORISM AND SECURITY TRAINING (CAST)

Question. How does the proposed new Center for Anti-Terrorism and Security Training relate to the current State Department Anti-Terrorism Assistance [ATA] program?

Answer. Over the last 17 years, the Department's ATA program, managed by the Bureau of Diplomatic Security, has provided antiterrorism training to over 28,000 foreign law enforcement personnel. The events of September 11 underscored the need to increase such training for those who partner with us to protect American interests overseas. The attacks have also resulted in a mandate to increase both the amount of training and the topics addressed. In the current environment, the capacity to provide enhanced training on a larger scale is limited by existing facilities and technology, often relying on ad-hoc arrangements with other organizations which have their own increased training needs. CAST provides a remedy for both by providing a forward leaning approach and state-of-the art facility.

The Department's role in countering terrorism abroad requires that the Anti-Terrorism Training Assistance (ATA) program add further course offerings in specific areas dealing with countering and responding to terrorist incidents. These skills are

an integral part of the total package required for foreign law enforcement personnel to effectively prevent and respond to terrorist incidents. Additional training capacity would also reduce the risks for Americans working or visiting abroad.

Question. Does the Department intend to fully utilize its current training partners to carry out the expanded ATAP [ATA] program?

Answer. Yes, the existing training facilities are at full capacity and will not allow for expansion of the Anti-Terrorism Assistance (ATA) program. Therefore, the continued use of specialized facilities, which provide unique training environments such as desert and maritime training, remains critical to the training mission. The desert border patrol training will continue to utilize the facility in Socorro, New Mexico. The pipeline security training and certain maritime training will continue to utilize facilities connected with the Louisiana State Police Academy in Baton Rouge, Louisiana. As evolving training demands are recognized, additional partnering needs will be identified and integrated.

Question. How will the Anti-Terrorism Assistance [ATA] program be integrated with the new Center for Anti-Terrorism and Security Training?

Answer. The Anti-Terrorism Assistance (ATA) program consists of a number of related activities, the majority of which involve U.S.-based training, consultation, and program reviews for foreign law enforcement personnel. While substantially improving our ability to train Diplomatic Security agents, CAST will also help meet increased training mandates and improve functional law enforcement related training for mid-level and senior-level foreign officials. The concept and planning model will allow for a seamless integration of that training, while accommodating significantly increased requests for training by front line nations. ATA now trains about 3,000 foreign law enforcement professionals annually. The CAST facility, when fully operational, will accommodate as many as 7,000 foreign trainees per year.

INTERNATIONAL MONETARY FUND (IMF)

Question. International Monetary Fund bailouts and Clinton Administration foreign policy aims arguably distorted financial crises affecting East Asia and Russia.

Mr. Secretary, can you tell us what role you and the Department are playing, in consultation with the Treasury Department, in reviewing United States policy with regard to the role of the IMF in countries with chronic fiscal problem, such as those we've seen and continue to grapple with in Argentina?

Answer. This Administration has worked to make the IMF more consistently associated with success. The IMF is making progress in narrowing the focus of its work. New country programs reflect sharper concentration on key areas and a prioritization of measures necessary for reforms to succeed. This is a welcome change. A broader review of the conditions attached to IMF lending continues. As part of this review, the United States is emphasizing the need for the IMF to be selective in providing financial support. The IMF needs, in short, to demonstrate a greater willingness to focus its support on countries doing the most to help themselves, and to decline to finance cases in which a country is not prepared to take the steps required to achieve credible reforms and a sustainable growth path. We convey the same message to those countries seeking IMF assistance.

Question. What do you expect will be the outcome of the IMF quota review that, according to the IMF"s Articles of Agreement, must be completed by January 2003?

Answer. The United States believes the liquidity position of the IMF is sufficiently strong at this time. Therefore, we do not expect the current review to result in any quota increase.

MANAGEMENT CHALLENGES

Question. As you know, the President's 2003 budget emphasized performance-based budgeting—the first time this has been done. As part of his management agenda, the Office of Management and Budget identified five government-wide initiatives and ranked each department. Unfortunately, the State Department failed to receive a passing grade. What is your plan to meet the high standards set by the President?

Answer. I am personally and professionally committed to moving the Department from a "red" score (meaning failure) to "green" (meaning success) on all five elements of the President's Management Agenda (PMA). We have completed and begun to implement credible plans for two of those five elements (Financial Management and E-Government). As a result, our current score of the "work in progress" on those elements has moved from "red" to "yellow". We take the President's Management Agenda very seriously, and all of my senior managers at the Department share my commitment to getting to "green" in the most effective way possible.

Question. In previous years, the State Department has been unable to clearly state the relationship between some key outcomes and strategies and indicators in its annual performance report. The Department has been unable to establish connections between its actions and the success or failure of key outcomes. Given that the nature of the State Department's mission makes it difficult to avoid either having very broad key outcomes that are not addressed sufficiently by the indicators; what role should the Department's annual performance report, as mandated under GPRA, serve in helping the Congress determine if the State Department is meeting its goals?

Answer. Because of the complex, long-term nature of the goals of the Department of State, and because the environment is unpredictable and subject to sudden change, we believe that a clear focus on results, and what it takes to achieve them, is critical to our success.

The Department's 2001 Performance Report reflects the progress we are making in communicating the relevance of our goals and how they address critical strategic issues facing the country. Much credit goes to an improved process that introduced a goal team for each of the Department's strategic goals.

By strengthening the linkage between goals and resources, we believe that our plans, reports, and results will be enhanced. To accomplish this, we intend to have our goal teams identify interdependencies among goals and define specific intermediate outcomes that will lead to progress toward positive long-term outcomes. Senior Policy and Management reviews chaired by the Deputy Secretary of State are also designed to improve the Bureau and Mission Performance Plan processes.

Such measures will provide both the Department and the Congress a clearer understanding of the relationship between funding and results.

Given the size of our plan and report documents at this time, we will strongly encourage our goal teams' use of summaries and graphics to better communicate the core logic to external stakeholders and the public.

Question. If Congress passed the President's Management Agenda, how would operations of the State Department improve?

Answer. At this time, the Administration has no plans to introduce legislation incorporating the President's Management Agenda (PMA). The Administration believes that the best way to implement this agenda is within the Executive branch and under the guidance of the Office of Management and Budget. Consequently, we can make adjustments as necessary between the general, over-arching goals of the PMA and the particular policies, programs and activities of each individual agency.

FOREIGN AID

Question. I understand that OMB will be sending us a supplemental request in the near future and that it will include additional aid for Afghanistan, Colombia, and the Central Asian Republics.

(1) Is that correct? If so, how much of the supplemental will be for the 150 function?

(2) Which 150 programs will be affected?

(3) Will it include any additional countries or 150 items?

Answer. We are working with OMB to put together an emergency supplemental package to support the war on terrorism and the front-line states.

No final decisions have been made on requirements and funding levels.

We will provide further details as soon as the request has been developed.

FUNDING FOR AFGHANISTAN

Question. As you know, the annual budget cycle is not always well-equipped to deal with long-term needs. Each year's immediate priorities tend to overshadow continuing problems that require sustained reforms. What can be done to ensure that funding for Afghanistan for the out-years is secured now, before Afghanistan slips from the headlines?

Answer. We know that there will be substantial requirements for reconstruction and redevelopment in Afghanistan. We will use supplemental funding to address Afghanistan's immediate needs.

Our annual budget requests for the out-years will respond to future requirements and reflect the commitment of the United States to assist Afghanistan.

As the President has said, we will not walk away from that commitment.

BIENNIAL BUDGETING

Question. How do you think biennial budgeting would affect the State Department and the spending and operations of the foreign affairs apparatus?

Answer. The concept of biennial budgets is worth thinking about. On the plus side, we would gain a better sense of how much money would be available over a longer period for managing the Department and our posts abroad. Our planning would benefit.

However, this idea would not remove the need for periodic supplementals in order to respond to unanticipated contingencies. Supplemental requests and budget amendments have become a fact of life in the international affairs area, where we have very little contingency funding to respond to emerging opportunities and threats.

This idea will not work unless we seek and are appropriated adequate and realistic funding levels for the work we know we must do.

I am open to discussing further any proposal you may have that will provide us the resources we need to support the conduct of diplomatic relations and U.S. foreign policy.

CAPITALISM AND THE DEVELOPING WORLD

Question. In the aftermath of the Asian Financial Crisis, the Economic Report of the President indicated that net private sectors capital flows to the emerging markets declined more than 90 percent between 1997 and 2000. Since then countries like Argentina and Indonesia have been mired in recession and political discord. Perhaps understandably, the citizens of these countries view American style capitalism with skepticism.

What can be done to improve our nation's image among the citizens of the developing world and how can we better promote the idea that free markets improve standards of living and strengthen democratic institutions?

Answer. The United States, led by the Department of Treasury, has strongly supported International Monetary Fund initiatives to strengthen surveillance and crisis prevention measures. With U.S. government support, the IMF and World Bank initiated the Financial Sector Assessment Program in 1999 to assess members' financial systems and the regulatory and legal framework underlying their operation. The results are incorporated into the IMF's reviews of national economies.

Spearheaded by the Asian financial crisis, the IMF's standards and codes initiative promotes the development and dissemination of codes of good practice in the financial sector. Reports on the Observance of Standards and Codes (ROSCs) summarize the extent to which countries observe international norms in a number of areas crucial to the health of financial systems. Reports are used for official discussions, as well as for risk management by rating agencies and the private sector.

The United States has supported efforts to improve dialogue among market participants, the International Financial Institutions, and sovereign governments. In June, 2001, the IMF created an International Capital Markets Department as part of an initiative to strengthen the international financial architecture. The Department serves as a liaison with the private sector and enables the IMF to conduct more effective surveillance.

At the urging of the United States and its G–7 partners, the Financial Stability Forum (FSF) was established in 1999 to improve cooperation in financial surveillance and supervision. The FSF is comprised of finance ministry and regulatory official, as well as International Financial Institution and international banking representatives. The FSF encourages implementation of measures to improve the health of financial systems, including improved disclosure practices, deposit insurance programs, accounting standards, and improving counter-party risk management.

The Basel Committee on Banking Supervision is playing a fundamental role in strengthening the safety and soundness of the international banking system. Chaired by New York Federal Reserve President William McDonough, the Committee is revising the Basel Capital Accord to redefine minimum capital requirements, improve supervisory review standards of internal bank assessment processes, and ensure effective disclosure standards to encourage sound banking practices.

The Committee on Banking Supervision and the Bank for International Settlements jointly created the Financial Stability Institute in 1999 to help bank supervisors improve financial systems worldwide. The Institute organizes seminars, regional workshops, and informational programs on bank supervision issues. Upcoming seminars in Muscat, Khartoum, Lusaka, Bangkok, and Vilnius are indicative of the worldwide scope of its efforts to improve banking standards.

Finally, the United States is working on a bilateral basis, where appropriate, to address areas of concern. The Department of Treasury's technical assistance team and USAID's banking and capital market reform team have worked with govern-

ments in Asia, Eastern Europe, South America, Africa, and the Middle East on a wide range of bank reform issues.

An appropriate financial policy framework facilitates the mobilization of capital and is a critical condition for economic growth. As the United States works with its partners to promote the spread of market-based economies, efforts to strengthen the financial and banking sectors will remain a priority.

VISA PROCEDURES

Question. The State Department has a very considerable role in the war on terrorism in its role of issuing visas throughout the world thereby enabling foreign nationals to come to our country. Since 9/11 has there been any significant change in the number of visas issued or any review or change in the procedures for issuing visas?

Answer. In the immediate aftermath of September 11, nonimmigrant visa activity declined by as much as 25 percent, compared to the same period the year before, although actual rates varied from one part of the world to another.

While the overall procedure employed for issuing visas remains basically the same, we are working continually to enhance the information available to consular officers when they adjudicate a visa application. In January, in cooperation with law enforcement and intelligence agencies, we implemented a supplemental nonimmigrant visa application form designed to elicit information that would prompt a more intense review of certain applications for national security reasons. The Bureau of Consular Affairs continues to push hard for increased data-sharing with other agencies that may possess derogatory information on potential visa applicants, so that information is included in our worldwide CLASS visa lookout system and thus available to our consular officers as they consider applications. Our robust visa system is only as good as the information entered into it. Thus, it is absolutely essential that the law enforcement and intelligence community provide us with the necessary information. In addition, the review process for potentially problematic visa applications has lengthened as we attempt to obtain relevant input from any and all interested agencies in specific cases.

VISA AND PASSPORT FRAUD

Question. One of the most important ways in which the State Department contributes to the war on terrorism is through its role as issuer of visas and passports, which of course, takes place on a global basis. It is my understanding the State Department issues approximately 7 million passports and between 7 and 8 million visas each year. It is also my understanding that there are only 215 domestically based agents in the Criminal Investigations Division of the Bureau of Diplomatic Security who investigate visa and passport fraud. These 215 agents spend a small fraction of their time (perhaps one-third) on visa and passport fraud investigations since they also must respond to the needs of VIP's and other security matters. Overseas there are approximately 405 agents who deal with security and in case of these agents even more demands are placed on their time, leaving maybe 10 percent of their time to investigate visa and passport fraud. Thus, by my calculations we have only 90 people across the globe working full-time on visa and passport fraud. Now I realize that Diplomatic Security intends to recruit, train, clear and set-up approximately an additional 186 Diplomatic Security agents. Still do you believe that the State Department's efforts in going after visa and passport fraud are adequate?

Answer. The Department continues to make the best possible use of available resources for this purpose. Passport and visa fraud investigations are a critical component of our national security. The Bureaus of Diplomatic Security (DS) and Consular Affairs (CA) take this responsibility seriously and work together domestically and abroad to protect our borders. Let me explain their complementary roles in border security.

All consular and passport officers conduct limited investigations to detect and prevent fraud in the regular course of their work. Passport agencies and consular sections also have a designated Fraud Prevention Manager, who is responsible for training line officers and investigating potential fraud cases. Passport agencies and many embassies have full-time, mid-level officers in these jobs. Overseas Consular Sections with lower levels of fraud have part-time officers. Consular Sections also have locally hired staff with full-time fraud investigation responsibilities.

Passport and Visa fraud investigations are typically begun by the adjudicating officers, who note any anomalies in the cases they receive, and refer them to the Fraud Prevention Manager (FPM) at the overseas post or at the passport agency. FPMs often conduct preliminary investigations to determine whether there is fraud involved in the case. Fraudulent U.S. passport applications are passed by CA to DS

for criminal investigation. Visa fraud that appears to involve sophisticated or organized fraud, or falsification of foreign passports or other government documents, are passed to DS for criminal investigation and coordination with foreign police as appropriate. DS also investigates many allegations of passport and visa fraud received from outside sources. A large majority of all DS agents worldwide are engaged in criminal investigations to some extent, although few are committed full time to this mission.

DS and CA work to satisfy different but complimentary interests, while increasing the number of staff to pursue the mission of border security. For example, DS is aggressively expanding the number of agents committed to passport and visa fraud investigations globally. In partnership with Consular Affairs, we are fully committed to increasing our critical contribution to U.S. border security. The additional special agent positions authorized by Congress under the Emergency Response Fund (ERF) following September 11, coupled with additional agent positions approved by the Congress in fiscal year 2002, will allow DS to better address its visa and passport fraud workload. DS is also adopting new methodologies relating to the investigative program, in order to ensure that we are maximizing existing investigative resources.

Question. If additional resources had been provided to hire and train additional agents to investigate visa and passport fraud, would 9/11 have happened?

Answer. Any impact that additional agents may have had on the events of September 11 is at best speculative. Those events served to validate the need for a variety of enhancements and the retooling of others. Aggressive visa and passport investigative efforts add to the ability to protect American interests, both domestically and abroad. The key to preventing future attacks includes, but is not limited to, additional resources, exploiting technology, information sharing, and improved interagency cooperation. The Department requires accurate and timely intelligence-sharing throughout the intelligence and law enforcement communities to expand and improve the ability to prevent violations, as well as to respond to criminal activity. It is important to remember that the ability to impact the problem depends on cross-cutting efforts by multiple agencies.

Question. Can you explain to me the jurisdiction of the State Department as opposed to the Department of Justice and the FBI with respect to the investigation of visa and passport fraud? Is there overlap or duplication? Is there adequate coordination between these departments?

Answer. The Department's Bureau of Diplomatic Security (DS) jurisdiction, under Title 22 USC, Sections 2709 and 4802, is specific to illegal passport or visa issuance or use. DS is not a border interdiction agency. Its primary focus is supporting the integrity of the U.S. passport and visa documents and issuance processes. The Bureau of Diplomatic Security also investigates the fraudulent use of foreign passports to enter the United States if the circumstances indicate that terrorism or other significant criminal activity may be involved.

Passport fraud usually is not an end in itself, but rather a facilitating or predicate crime committed by those seeking to carry out other criminal acts. When other criminal activity is indicated, DS coordinates with the appropriate Federal, state, or local U.S. law enforcement agency with primary statutory jurisdiction for the offense(s). DS investigative efforts, targeting the passport or visa fraud, are of significant value in the investigation of the other underlying criminal activity. Thus, these investigations are often multi-agency efforts.

While interagency cooperation regarding fraud investigations exists, there is a continuing need for greater information sharing between the law enforcement community and the Department of State, in order to expand and improve our efforts to prevent and respond to fraud.

DS' primary focus in passport and visa fraud is on individual cases supporting the integrity of U.S. passport and visa documents:

—Fraudulent applications;
—Misuse and sale; alterations and counterfeiting (normally document vendor rings rather than individuals);
—Visa "fixers" operating near missions overseas. Vendors of feeder documents for U.S. passports within the United States;
—Employee malfeasance (U.S. or foreign national employees).

Cases identified as possibly involving threats to U.S. national security interests are treated as highest priority and are immediately coordinated with the U.S. agency with the lead for those crimes. In those circumstances, DS continues its investigation of the passport and visa fraud as part of a joint, multi-agency investigation and in strict coordination with the other agency having the lead for the underlying criminal activity.

DOJ/INS Role.—Although this is not an all-inclusive listing of INS responsibilities, the Department interacts closely with INS in the following capacities con-

cerning passport and visa fraud: Border control/interdiction; control of Alien Arrival and Departure from United States; alien smuggling in general; visa fraud based on fraudulent petitions filed from within the United States; immigrant visas.

DS often conducts visa fraud investigations in close coordination with INS and has taken the lead role in some major cases. For example, DS led a multi-agency investigation centered in Los Angeles that targeted visa and passport fraud activities of the Iranian terrorist organization MEK. That case led to numerous arrests in several states and overseas, dismantled a network that was funneling illicit funds to the terrorist organization, and resulted in the first U.S. conviction of an individual for providing material support to a terrorist organization. There is potential for some overlap in domestic portions of these investigations, but we have not found this to be a significant problem, either in volume of cases or determining which agency should have the lead. It should be noted that some redundancies provide a safety net, helping to ensure that cases are not missed.

FBI Role.—The FBI normally focuses on the underlying criminal activity, rather than the passport or visa fraud. Obviously, FBI is the lead agency in investigation of terrorism, organized crime, money laundering, and other serious criminal activity that often involves the use of fraudulent international travel documents. DS often works jointly with the FBI in cases that also involve passport and visa fraud, conducting those parts of the investigations and also conducting other substantial leads on behalf of the FBI in other countries where the FBI is not present. DS agents assigned to the various Joint Terrorism Task Forces (JTTFs) have the lead role for passport and visa fraud investigations associated with terrorist activity and work closely with the FBI and the cognizant U.S. attorney's office.

YOUTH IN DEVELOPING COUNTRIES

Question. Could you share with us your vision of how U.S. foreign policy can address the challenges and opportunities facing youth in developing countries?

Answer. Even before the urgency pressed upon us by September 11th, the Department has been working to offer hope to youth in developing countries. Our development efforts have been focused on improving education, economic opportunity, and political security for the rapidly expanding young population in developing countries. On March 14, President Bush outlined a major new vision for development and announced the United States would increase its core economic development assistance to 50 percent above current levels over three years, reaching a $5 billion increase over projected levels in fiscal year 2006 and beyond. This new "Compact for Development," which proposes creating a separate development assistance account called the Millennium Challenge Account, supports countries that are willing to commit to sound policies and to fight poverty effectively. We know that a major source of tension and discontent in many countries stems from the growing ranks of educated youth without the corresponding opportunities for gainful employment. Our economic development programs therefore must have job generation as a major objective. At the same time, our public diplomacy efforts—especially educational and cultural exchanges—have been reaching out to youth through programs that engage both teachers and students. With new programs focused on educating youth in Muslim majority countries, we heighten international social and cultural understanding and enhance long-term international problem solving. Combined, these new efforts will help build the trust, confidence and international cooperation necessary to sustain and advance the full range of our interests.

U.N. REFORMS

Question. What reforms still need to be instituted at the U.N.?

Answer. The U.N. already has implemented virtually all of the Helms-Biden Tranche Three reform requirements, e.g., the United States has a seat on the Advisory Committee on Administrative and Budgetary Questions (ACABQ); the U.N. has implemented a personnel evaluation system; it has instituted an appropriate code of conduct, etc. We are working closely with the U.N. to ensure that they meet the remaining conditions, such as GAO access to U.N. financial data, and expect to reach a satisfactory conclusion very soon. Assuming that the State Department Authorization bill is passed with the requested amendments to the Helms-Biden legislation, we believe we will be in a position this summer to recommend that the Secretary certify that all the U.N. reforms requirements have been met.

Question. How close is the State Department to certifying the reforms in U.N. agencies that are preconditions for payment of the last installment of U.S. funds?

Answer. All of the relevant agencies (U.N., World Health Organization, International Labor Organization, and Food and Agriculture Organization) have made significant progress toward fully implementing the required reforms outlined in the

"Helms-Biden" legislation, and we continue to work closely with them. We hope that, if the pending State Department Authorization bill is passed with the requested amendments to the Helms-Biden legislation, we will be in a position to certify this summer that the agencies have met the conditions for payment of the last installment (Tranche III).

QUESTIONS SUBMITTED BY SENATOR BEN NIGHTHORSE CAMPBELL

CORRUPTION/INTERNATIONAL CRIME

Question. Over the past several years the Helsinki Commission, which I chair, has paid increasing attention to the multidimensional threats posed by corruption and international crime. There is an obvious nexus between corruption, international crime and terrorism. I have proposed that a special meeting of Ministers of Justice be convened to explore ways to enhance cooperation among the 55 countries of the Organization for Security and Cooperation in Europe (OSCE).

Would you support such an initiative and what are some areas that should be given priority attention?

Answer. The United States is a strong advocate of OSCE efforts to combat corruption. Corruption distorts the operation of free markets, impairs economic stability and growth, jeopardizes privatization and economic restructuring, impedes foreign investment, and undermines free and fair competition. Corruption is an impediment to development and democracy. Although we do not see a need for a Justice of Ministers meeting at this time, we will keep your suggestion under review and be prepared to reconsider it if circumstances warrant.

Combating corruption and the international crime it facilitates in the OSCE region remains a top priority for the United States. The OSCE has implemented several programs aimed at combating corruption and supporting good governance. For example, in December 2001, the OSCE and Department of State Funded ABA/CEELI (American Bar Association Central and Eastern European Law Initiative) worked together to support Montenegro's Anti-Corruption Commission to draft a public official conflicts of interest law. OSCE and ABA/CEELI also worked with the Commission to initiate a public forum process to engage civil society in the development of this law. We continue to look for new opportunities to expand these good governance programs throughout the region. We support the OSCE's current arrangement to combat crime and corruption and encourage rapid implementation of OSCE efforts against terrorism.

SOUTHEAST EUROPEAN COOPERATIVE INITIATIVE

Question. The Southeast European Cooperative Initiative—SECI—was conceived and promoted by the United States in an effort to foster regional cooperation, among twelve countries from the Balkan region, through task forces on narcotics, human trafficking, commercial fraud and other criminal activities affecting American interests. I understand that the United States is providing important leadership in the SECI initiative.

Please describe some of the Department's ongoing work within the SECI framework and the potential benefits derived from U.S. participation.

Answer. The Department of State has provided diplomatic and material support (through the SEED program) for the formation of the SECI Center to Combat Transnational Crime in Bucharest, Romania. In the wake of September 11, the SECI Center established a working group on anti-terrorism.

We very much support the efforts of the countries of Southeast Europe to work together to combat criminal activity and believe that the Center, in its first full year of activity, has made important contributions to combating criminal activity across national borders. U.S. assistance to the Center began with assistance for the drafting of administrative and legal protocols necessary to the establishment of the Center. The United States provided computers and technical advisors from the FBI, DEA, USCS, and the INS to work with the Center in the creation of national task forces coordinating with the SECI Regional Center in Bucharest. These task forces target specific criminal networks, including those that smuggle cigarettes, which cause a significant loss of revenue for the countries of the region. For the past several months, the Department has supported these task forces by having U.S. officers provide on-site advice and guidance in Albania, Macedonia, Bulgaria, Bosnia, Serbia, and Romania.

The SECI Center to Combat Transnational Crime has initially concentrated its work in three areas: customs fraud, trafficking in human beings, and narcotics smuggling. Due to information exchanges through the Center and coordination on

cases through its task forces, there have been recent seizures of over one-half million cartons of counterfeit cigarettes by the commercial fraud task force; the narcotics task force has not only seized thousands of pounds of narcotics, but there have been successful cross-border prosecutions and several arrests and charges filed against businessmen and government officials. The human trafficking effort has created awareness of the problem in each of the SECI countries, which has resulted in numerous arrests of significant organized crime figures and government officials engaged in the sale of humans for sexual and labor exploitation.

HUMAN RIGHTS IN CENTRAL ASIA

Question. Some observers have suggested that the human rights situation in some countries, such as Turkmenistan is so bad that they should be suspended from the OSCE, the way Yugoslavia was in 1992.

Is there a point where the OSCE no longer plays a constructive role and, on the contrary, inadvertently lends a veneer of legitimacy to a brutal regime?

How do you plan to address the deteriorating respect for human rights in Central Asia, especially in light of the reluctance of the Central Asian governments to cooperate with the OSCE on these issues?

Answer. The OSCE has not relaxed its human rights expectations for the Central Asian republics; through its missions in Central Asia and the Permanent Council in Vienna, the OSCE continues to raise the issue of ongoing human rights abuses and lack of democratic institutions in the region. It is therefore important for the OSCE to continue to engage these countries. The process of having OSCE member states remind each other of their commitments, complemented by recommendations for improvements, is essential to building a more democratic, prosperous, and secure future for the region.

In the case of Turkmenistan and several other Central Asian states, the OSCE is able, through engagement in the region, to improve faltering human rights and foster democratic development, while at the same time addressing urgent security, environmental and economic needs. Serious human rights abuses exist in Turkmenistan; however, they are not the kind of gross abuses (including widespread torture and genocide) that prompted the removal of Serbia from the OSCE. Our human rights and religious freedom reports provide a detailed picture of the situation in Turkmenistan. The OSCE continues to be an important forum to discuss human rights issues and promote steps toward democracy in Central Asia.

We do believe that suspending participation in the OSCE should always remain an option should a government commit egregious human rights violations such as those of the former regime in Yugoslavia. However, this option should be weighed carefully against the opportunity costs of disengaging a country from the OSCE process.

The deepened United States-Central Asia security relationship does not mean that we will cease our efforts to impress upon the governments of these countries that Central Asia's long-term stability and security depends on economic and political reform, particularly in the areas of combating corruption and respecting the rule of law and basic human rights. Rather, it offers opportunities for a deeper, more effective dialogue. Even modest reforms in these areas can build the foundation for more significant change in the long run. We continue to raise human rights issues at the highest levels of these governments and are in the process of expanding programming that promotes the basic elements of democracy and a vibrant civil society.

RUSSIA: OSCE

Question. Russia, along with a small number of other former Soviet states, have complained that the OSCE is "unbalanced," placing too great an emphasis on the human dimension. These countries have also complained that there is too much attention focused on formerly communist countries.

Do you think there is any merit to this concern?

Is the United States working to encourage Moscow to seek a political solution to the conflict in Chechnya?

Answer. Respect for human rights, democracy, and the rule of law is an integral element of the OSCE and is fundamental to establishing enduring security across the OSCE region. We will not weaken support for human dimension matters, but we also will not neglect the economic and political military dimensions that are part of OSCE's comprehensive approach to security. We strongly support the OSCE, and we have discussed Russian concerns about the organization. However, we do not want to impinge on OSCE's flexibility, its consensus-based approach, its commitment to human rights, or other principles laid out in the Founding Document. We

will continue to engage with the Russian Federation on the importance of all dimensions to ensuring stability and countering trans-border threats to security. U.S. Ambassador to the OSCE Minikes will meet with senior Russian officials in Moscow on March 14–15 to discuss how we can cooperate more effectively. We will follow up on these discussions in Vienna.

Regarding the conflict in Chechnya, our objectives have not changed since September 11. We continue to encourage Moscow to seek a political settlement, provide accountability for human rights violations and atrocities, and allow access for humanitarian assistance groups. We, in the Department, along with other senior U.S. officials, regularly engage the leaders of the Russian Government on these issues. While we appreciate Russian assistance in the campaign against terrorism and have noted some elements in Chechnya that have ties to international terrorist organizations, we have urged the Russian Government to take the necessary steps to address the situation in Chechnya and bring about an end to the conflict.

TRAFFICKING IN HUMAN BEINGS

Question. Is the Department incorporating special programs on trafficking into its international law enforcement training?

Answer. We are finalizing a new anti-trafficking in persons curriculum that will be targeted at mid-level police officers. We currently support a specific course on trafficking in women and children targeted at prosecutors and investigators. Trafficking in persons is also incorporated into our violence against women and children, and immigration training programs for mid-level law enforcement officers, prosecutors, and immigration officials. These various programs are implemented by the Department of Justice, Federal Bureau of Investigations, U.S. Immigration and Naturalization Service, and U.S. Customs Service.

Question. Does the Department have the resources needed to combat this growing phenomenon that targets women and children, including the estimated 50,000 who have been trafficked into the United States?

Answer. We appreciate continued congressional support to ensure that we are able to combat effectively trafficking in persons at the international level. The Office to Monitor and Combat Trafficking in Persons recently established a process with the regional and functional bureaus to review all anti-trafficking in persons proposals submitted to the State Department. We are currently reviewing these proposals to determine whether we have sufficient resources to fund those requests identified for further consideration.

POLICING

Question. Is the Department considering supporting efforts to expand OSCE police training to other OSCE countries?

Answer. The United States has supported OSCE's efforts to expand police training to other OSCE countries, on a case-by-case basis. The Kosovo Police Service School is proving to be an exportable model for efforts to train new ethnic minority, primarily ethnic Albanian, police recruits in Southern Serbia and Macedonia. The Framework Agreement, signed on August 13, 2001 in Macedonia, committed the parties to ensuring that the police services will generally reflect the composition and distribution of the population of Macedonia by 2004. The Framework Agreement called for the hiring and training of 1,000 new minority police officers by July 2003. To this end, the OSCE, the European Union, and the United States were invited by the parties to increase training and assistance programs for police. As of March 2002, 107 minority recruits have graduated training. Under a similar model in Southern Serbia, OSCE has trained Serb, Roma, and Albanian police cadets in southern Serbia to deploy in the villages in the Presevo Valley region.

SUBCOMMITTEE RECESS

Senator HOLLINGS. The subcommittee will be in recess until 10:30 tomorrow morning with the Secretary of Commerce.

[Whereupon, at 11:49 a.m., Tuesday, March 12, the subcommittee was recessed, to reconvene at 10:30 a.m., Wednesday, March 13.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

WEDNESDAY, MARCH 13, 2002

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:28 a.m., in room SD–116, Dirksen Senate Office Building, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Leahy, Kohl, Murray, Reed, Gregg, Stevens, and Domenici.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

STATEMENT OF HON. DONALD L. EVANS, SECRETARY OF COMMERCE

PREPARED STATEMENT

Senator HOLLINGS. We welcome you. The committee will please come to order. We welcome Secretary Evans and we have your statement in its entirety. It is made a part of the record and you can highlight it as you wish.

[The statement follows:]

PREPARED STATEMENT OF DONALD L. EVANS

Thank you for the opportunity to appear before you to present the Department of Commerce's fiscal year 2003 budget request. Our focus, first and foremost, is funding the core mission of the Department and its bureaus, but as you all know, the tragic events of September 11th forever changed our Nation. The Administration faces even greater challenges now than when I came before you to present the fiscal year 2002 budget. The President is committed to fighting and winning the war on terrorism, while at the same time harnessing the resources of the federal government to protect the lives and safety of all Americans. I hope to fully utilize the resources of the Department of Commerce to not only provide for the physical security of the Nation, but also to work with other agencies and the private sector to promote economic security. The President's budget request proposes increases only in those areas that are critical to strengthening the core services and products provided by the Department of Commerce.

Our fiscal year 2003 budget request focuses on themes outlined by the President in his State of the Union address. Our total request of $5.3 billion represents a $107 million increase over fiscal year 2002. In addition to adjustments-to-base, our request supports the Administration's homeland security and economic revitalization priorities and continues our commitment to fund important work of the Department

to provide infrastructure for technological innovation and to observe and manage the Nation's oceanic and atmospheric environment.

HOMELAND SECURITY

The fiscal year 2003 President's Budget includes more than $50 million in increases for new homeland defense activities in the Department of Commerce. Included in this increase is $20 million for homeland security and critical infrastructure protection activities at the Bureau of Export Administration (BXA). BXA seeks to advance U.S. national security and foreign policy interests by regulating exports of critical goods and technologies that could be used to damage those interests, while furthering the growth of legitimate U.S. exporters to maintain our economic leadership. Budget increases in fiscal year 2003 strengthen BXA activities that thwart the global spread of dual-use goods and technologies that can be used in biological, chemical, and nuclear weapons of mass destruction. To reduce the risk of proliferation, beginning in fiscal year 2003, BXA will devote $5.4 million of this amount to post attaches in several countries abroad (including China, Russia, the United Arab Emirates, and Egypt); send additional export enforcement agents overseas on temporary assignments; and open two new field offices in the critical port cities of Seattle and Houston.

Homeland security investments will also be made in the National Oceanic and Atmospheric Administration (NOAA), the Technology Administration (TA), and in central departmental management offices. NOAA's request includes a $23.1 million increase to enhance response capabilities and improve internal safety and preparedness by addressing vulnerabilities in weather and satellite systems and provide important hydrographic survey data around key ports in the Gulf of Mexico. The National Institute of Standards and Technology (NIST), part of TA, will continue to devote base resources to fund scientific research on chemical, biological, radiological, nuclear, and explosive threat detection and remediation; information security; air transport safety; and the safety of building structures and occupants. An increase of $5 million will support the critical and urgent needs in structural fire protection and operational guidance for first responders and provide advanced measurements and standards to accelerate critical technologies that enhance the effective detection, prevention, response, and recovery management of natural and manmade disasters. A $2 million increase is requested for the Department Chief Information Officer to insure the protection of our nation's critical economic and environmental information systems.

ECONOMIC INFORMATION AND FRAMEWORK

The Commerce budget proposes to strengthen core economic activities in areas such as statistical programs and international trade compliance. The Bureau of Economic Analysis (BEA) supplies the nation's key economic statistics, including gross domestic product (GDP), which are crucial ingredients for business and government decision making. A program increase of $11 million will enable BEA to improve the statistical processing systems for its economic data, accelerate the release of major economic estimates, and incorporate new international economic data classification systems. Also, the Department has begun providing new quarterly estimates for the tourism industry and more accurate GDP estimates for "new economy" products such as local area networks.

This budget includes a $247 million increase for the Bureau of the Census to significantly improve the breadth and quality of the information it collects and provides to the country by producing better measures of trade statistics, improved measurement of services in the new economy, and a new measurement of the impact of electronic business on the economy. The Department will also undertake an effort to significantly reengineer the 2010 Census. As a major part of this work, Census will launch the American Community Survey, which will provide detailed demographic data on an annual basis, rather than just every ten years. During fiscal year 2003, an increase of $33.7 million will fully fund data collection for two other cyclical censuses, the Economic Census and the Census of Governments.

The International Trade Administration (ITA) is responsible for assisting the growth of export businesses, enforcing U.S. trade laws and agreements, and improving access to overseas markets by identifying and pressing for the removal of trade barriers. Among other program changes, the fiscal year 2003 budget proposes a program increase of $13 million for trade compliance efforts in the areas of antidumping and countervailing duty activities, multilateral trade negotiations, and foreign trade barrier analysis. This increase includes $2.3 million to organize a domestic education campaign for U.S. firms on compliance issues and to place additional staff overseas in major markets with compliance problems. The President's Request

also seeks an additional $2.6 million to open new offices in Senegal, Botswana, Tanzania, Mozambique, and Cameroon; reopen the Algeria office; and increase staffing in Ghana.

A reduction of $16 million for the Economic Development Administration (EDA) will bring resources in line with congressionally authorized levels and program needs. EDA helps communities across the nation create economic opportunity by promoting a favorable business environment to attract private capital investments and high-wage jobs, principally through infrastructure investments and capacity building. While the fiscal year 2003 budget streamlines EDA programs, an increase of $2.5 million is requested for Trade Adjustment Assistance to firms, which provide technical assistance to U.S. manufacturers injured by increased imports. The Administration wants to ensure that sufficient funds are available through the Trade Adjustment Assistance program to help businesses that have been adversely affected by international trade.

The Minority Business Development Administration (MBDA) is transitioning from an administrative agency to an entrepreneurial organization. MBDA is reorganizing, re-training current employees, and hiring expertise driven by entrepreneurship and innovation. MBDA's Reorganization Plan will reduce the number of supervisory layers, the time it takes to make decisions, and the distance between decision-makers and citizens. MBDA will provide minority business development services, through its Minority Business Information Portal and local Business Development Centers.

PROVIDING INFRASTRUCTURE FOR TECHNOLOGICAL INNOVATION

The fiscal year 2003 budget strengthens key Commerce programs that provide the infrastructure that enables U.S. businesses to maintain their technological edge in world markets. Increased funding is requested for the laboratories of TA/NIST to work with industry to develop and promote measurement standards that support technological innovation. TA/NIST laboratories specialize in electronics, manufacturing engineering, chemical science, physics, materials science, building and fire research, and information technology. The fiscal year 2003 budget proposes an increase of $50 million to allow the Advanced Measurement Laboratory, a new facility designed to meet state-of-the-art research requirements, to become fully operational and fund relocation expenses. The budget also includes an increase of $17 million for critically needed structural improvements at TA/NIST's Boulder, Colorado, facilities.

Consistent with the Administration's emphasis on shifting resources to reflect changing needs, the fiscal year 2003 budget also proposes to significantly reduce federal funding for the Manufacturing Extension Partnership (MEP) program. MEP's original legislative design called for a phase-out of federal funds to each center after six years, with the goal of making each center self-sufficient. The fiscal year 2003 budget would return the program to its original design. The budget also proposes funding the Advanced Technology Program (ATP) at $107 million and proposes reforms designed to improve the program. These reforms would increase university participation, limit large companies' participation, and institute a cost recoupment element.

The budget strengthens the spectrum management capabilities of the National Telecommunications and Information Administration by proposing $3.3 million to begin the process of spectrum management reform and to upgrade its radio quiet zone test facility in Colorado. The budget also proposes to terminate the Technology Opportunities Program. With the expansion of the Internet and related technologies into all sectors of society, the Administration believes federal subsidies are no longer justified to prove the usefulness of such technologies.

The fiscal year 2003 budget proposes an increase of $237 million for the U.S. Patent and Trademark Office (USPTO) to address the agency's growing workload in the area of intellectual property. This budget increase represents a 21 percent change from last year's level and will allow the USPTO to initiate a five-year plan to enhance the quality of products and services and improve timeliness of patent application processing.

OBSERVING AND MANAGING THE NATION'S OCEANIC AND ATMOSPHERIC ENVIRONMENT

And, finally the President's budget proposes a total budget request of $3.2 billion to strengthen key programs of the Department's largest and most diverse bureau, the National Oceanic and Atmospheric Administration (NOAA). This includes an addition of $84.3 million to improve extreme weather warnings and forecasts. The continuity of NOAA's satellites and severe weather forecasts is critical to meeting our 21st Century mission, and increases are proposed for satellite data and systems, weather research and supercomputing, and improved flood and river forecasts. An

increase of $36.2 million is requested to improve NOAA's climate services, of which $18 million is for the Administration's Climate Change Research Initiative (CCRI), a multi-agency effort to study areas of scientific uncertainty and to identify priority areas where investments can make a difference. The increase will allow NOAA to advance climate-modeling capabilities at the Geophysical Fluid Dynamics Laboratory; to develop a climate observing system; and to create partnerships to measure pollutant emissions, aerosols, and ozone.

An increase of $90.9 million is requested to modernize NOAA's fisheries management to improve fisheries management in areas such as stock assessments, to procure a second Fisheries Research Vessel, to build a national fishery observer program, to better fulfill statutory and regulatory authorities, and to implement the National Environmental Policy Act (NEPA). As part of the Administration's energy policy initiative for fiscal year 2003, NOAA requests an increase of $8.7 million for an energy initiative; of which $6.1 million is for an energy pilot program to provide more accurate temperature and precipitation forecasts and additional river forecast products to help the energy sector improve electrical load forecasting and hydropower management. Based on industry estimates, this investment will result in savings of $10 to $30 million annually in the pilot region after the second year of the demonstration. Expanding the pilot nation-wide could generate savings of over $1 billion per year. Funding for the energy initiative will help to establish and implement a streamlined energy permit review process (executed by the National Marine Fisheries Service) and institute energy costs savings measures at NOAA facilities.

The Administration also proposes to transfer the National Sea Grant College program from NOAA to the National Science Foundation (NSF) in fiscal year 2003. Funding of $57 million is requested by NSF for this program. However, NOAA's budget continues to have primary responsibility for key ocean and coastal programs, including funding for ocean exploration, coastal zone management, coral reef, and marine sanctuaries programs.

NOAH also requests an increase of $52.9 million to invest in its people and infrastructure. Investments in scientific and technical capacity, as well as facilities and equipment, are essential for NOAA to have a well-functioning agency. The budget request includes funding for essential facilities upgrades, maintenance of aircraft and ships, recruitment and training of NOAA Corps officers, and security of information technology systems.

As I previously stated, this budget request for the Department of Commerce has been carefully crafted to focus on the core functions the American people rely on from this agency. We will focus on promoting innovation, entrepreneurship and exports, while spreading opportunity to all Americans and ensuring responsible stewardship of our natural resources.

OPENING REMARKS BY SECRETARY EVANS

Secretary EVANS. Thank you, Mr. Chairman. Are you ready for me to proceed?

Senator HOLLINGS. Please do.

Secretary EVANS. I will be happy to. Let me just highlight my written statement, and I would like to do that by saying to you, Mr. Chairman and Senator Gregg and other members of the committee that I am pleased to be here to present the President's fiscal year 2003 budget request for my Department, the Department of Commerce. This budget was carefully crafted and it reflects the core assumptions of the Commerce Department. These include promoting innovation, entrepreneurship and exports, and increasing knowledge and good stewardship of the natural environment.

It also reflects the urgent needs of these challenging times. It targets the diverse components of the Department toward three great national goals: Winning the war on terrorism, protecting our homeland, and strengthening our economic security.

For example, additional funds are requested for the Bureau of Export Administration to help halt the spread of weapons of mass destruction and combat terrorism. We are also proposing an increase for the National Institute of Standards and Technology. These world-class labs have more than 75 projects underway that

support law enforcement, military operations, emergency service personnel, information security, and homeland security. NIST also will continue to research new ways to detect potential threats posed by chemical, biological, radiological, nuclear and explosive agents.

On the economic security front, we are asking for more funds for the U.S. Patent and Trademark Office. America's competitiveness depends on innovation. We need to be able to process patent applications more quickly. To continue improving tracking our Nation's key economic statistics, including the gross domestic product, we are also asking for additional funds for the Bureau of Economic Analysis.

As you know, business and Government decision makers need accurate and timely information, and America's exporters need to know they have a level playing field, so we are proposing an increase for our International Trade Administration to strengthen trade compliance efforts.

To help communities, businesses, and workers transition to the 21st century economy, our 2003 budget also reflects streamlined Economic Development Administration programs, including additional monies for trade adjustment assistance.

Our NOAA budget also demonstrates the Department's commitment to homeland and economic security. Predicting the weather and managing our ocean resources are critical services that further public safety and support economic activity. We are requesting additional funds for several important projects, including fixing vulnerabilities in weather and satellite systems so we can always depend on them; a research vessel to enable us to do a better job of monitoring fish stocks; survey data to enhance the safety of mariners, passengers, and the national economy. About 95 percent of America's non-NAFTA trade moves through the marine transportation system. Any disruption in the flow of goods would immediately effect our economy. And also, modernizing NOAA's fisheries to rebuild stocks and protect endangered species. Finally, climate change research to identify areas where can make a difference.

And finally, let me say this Commerce budget reflects a careful, professional analysis of all Department programs and sets priorities for our resources in a post-9/11 world. I look forward to hearing your comments, Mr. Chairman and others, and I will be pleased to answer any questions that you might have, Mr. Chairman.

ADVANCED TECHNOLOGY PROGRAM

Senator HOLLINGS. Very good. You talked about increasing the National Institute of Standards and Technology and yet you literally choke off, so to speak, the Advanced Technology Program. We had the funding level for this program at one time up to over $110 million. It has been a political difference. The distinguished former chairman and I compromised at $60 million, but you are not even expending the $60 million. What gets me is that is sort of benign neglect. That is what Moynihan used to say about the black population when he was working for Nixon.

In other words, if you do not even ask for and solicit during the first and second quarters, like has occurred already this fiscal year,

we are into the third quarter and no solicitation at all for the grants, if you do not solicit in the first and second quarters, obviously, you are not going to be prepared to award in the third and fourth. What do you have to say about that?

Secretary EVANS. Well, Mr. Chairman, I have to say we were behind and we should catch up. I would like to think that we have demonstrated our commitment to this important program and the 2003 budget by requesting an amount of $108 million in our 2003 budget as opposed to our request in our 2002 budget of $13 million.

Senator HOLLINGS. Yes.

Secretary EVANS. As I have mentioned before, I have felt like there were important reforms we should at least offer or recommend. Those reforms deal with letting universities lead these important projects. That had not been provided before. I think a good part of these projects belong on university campuses led by universities and so we have offered that reform. We are also offering the reform that the largest corporations will not lead these projects. It will restrict them to being partners with smaller firms.

And then finally, there are other pieces of the reforms. I think the other one of significance is, in fact, a specific project is indeed a success, that the American people should share in some of that success being delivered back to the United States Government in the form of a royalty or whatever it might be called, but that is only in the instance of a success. We could say that the taxpayers' money went to invest in a project that turned out to be successful, a commercial success, and if it is a commercial success, I believe that the American taxpayer at least ought to have the opportunity to share in part of that.

In a way, quite frankly, Mr. Chairman, I thought it could well be a way to fund the program on a long-term basis, but that would take some time. It is not going to happen in year one or year two, but if you have a system like that where part of the successes went back to the program it would fund the program over a long period of time.

So, yes, we are behind in our awards of 2002. We should do everything we can to catch up and accelerate that and I think the 2003 budget demonstrates a good faith effort on our part to continue to look for ways to strengthen the program and maintain funding.

Senator HOLLINGS. One more time, by way of emphasis, this started almost 20 years ago down in your native Texas, in Houston, and has developed the superconductor. I think there were three of them there at Houston that won the Nobel Prizes, but the Japanese won the profits. They have correlated some 21 entities and started producing it. We looked and said, wait a minute. All of this research, we begged, begged, begged the Government for research and still are, and fortunately so. However, we do not commercialize it, we do not realize in the globalization. I am a lot like Al Gore. I invented globalization.

Secretary EVANS. Congratulations.

Senator HOLLINGS. I tried my best and got in a plane back in 1960 and we went to all the countries in Latin America, all the ones in Europe. I have got 118 German industries now.

But on that particular score, we really wanted to try to be helpful and immediately the charge was, that this was going to be pork and you all are just trying to give that money to industry and get some votes and what have you. Senator Danforth, then chairman, and I reconciled all of this and the one particular requirement of reconciliation was that I could not call up and get grants. The Secretary could not get the grants. The President could not get them. It was on a competitive basis after being vetted by the National Academy of Engineering.

Now, I understand Deputy Secretary Bodman is leaning towards trying to make those awards himself. Have you understood this to be the case?

Secretary EVANS. No, I have not, Mr. Chairman.

MANUFACTURING EXTENSION PARTNERSHIP PROGRAM

Senator HOLLINGS. Well, watch him. We have got the Manufacturing Extension Partnership Program. Now, we worry about that. You eliminate $95 million and that really revitalizes the economy and helps small business and everything else like that. They cannot buy the consultants. All big industry, even big government now, has consultants.

I will never forget sometime back, I went down to one lumber company and they had not only rearranged their entire flow of materials to come in for increased productivity, but their ISO, their International Standards Organization. You and I talk exports, exports, exports, make them comply with exports, and now we cut out the $95 million. What about that?

Secretary EVANS. Well, Mr. Chairman, it is a period of very difficult choices, I would say that to you.

Senator HOLLINGS. This is the easy one, but we've got some difficult ones.

Secretary EVANS. Right.

Senator HOLLINGS. Have you ever heard of abortion? I have been debating that for 35 years. We still have it, and I can go on and on. I can give you some real hard choices, but this one works.

Secretary EVANS. Well——

Senator HOLLINGS. And everybody is happy with it except maybe Mr. Daniels at OMB, from what I understand.

Secretary EVANS. No. I guess what I would say, Mr. Chairman, is that I know when the program was founded in 1988, the plan was to allow this Federal support to be some seed money to help start up these centers across America. The initial plan was for the Federal funding to match State and local and private funding to get these centers up and going. After a 6-year period, then the centers, if they are successful centers, would move forward on their own without Federal support.

So we think that is a reasonable model. I have looked at the program and have seen the many successes across America and do believe that there is a Federal role to play in helping start these centers across America. I think if they show the success and they are delivering the product, the results and the performance, that after a period of time, then they ought to be able to stand on their own through local support, State support, private support, and collection of fees, and maybe even again just a concept of you do not pay

anything on the front end, but yes, indeed, if you see some efficiencies from the process or some results from this process, maybe there is a fee that you return back to the program after you receive the service.

We do have underway an effort to look at just that concept. Is there a way to privatize this or to bring more private funding into it?

So you are right. We have cut it back to some $13 million. That is continuing funding of a couple of these centers that have not yet been in business for 6 years and to fund central administration and coordination of the program and the development and dissemination of products and services to MEP centers. The budget proposes that we would eliminate funding of those programs that have been underway and are successful for more than 6 years.

Senator HOLLINGS. Well, if the proof of the pudding is in the eating, we have proven the success of it. Sometimes we verbalize it that way. Sometimes we say it is a pilot program to see whether it works, but it is working and still very, very much needed, and those who are working ought really to be supported because the States are literally strapped. We are $190 billion in the red. No State can get even $190,000 in the red, extending ports and slap you down and then you cannot finance your highways, your schools, and all of the States are way behind. They are into the technical training and everything else of that kind in order to attract the industry and develop it.

They are into really a vigorous competition. When the Mercedes went down to Alabama, we had almost a $100 million package with different things that the State was willing to do, but Alabama put in $300 and some million. Mercedes required the purchase of some 1,000, 2,000 Mercedes school buses and that kind of thing.

My point is that the States are in there and really sort of playing catch up where we can at the Federal level and really helping, and this is one program that really works.

I love the attendance here. Let me ask just a couple of other questions. You emphasized the university participation, Mr. Secretary. On NOAA's Sea Grant program, they want to put it in the National Science Foundation with no State matching grants. There will be no university or extension program or outreach. There will be no university partnerships. You cannot go in two different directions at the same time. Get whoever who made the sea grant decision and give him weekend leave or, give him the part, the letter. You know what I mean; get somebody else.

I want them to follow the Evans policy.

Secretary EVANS. Well, as you look across big government, you are always looking for ways that make it more efficient and more effective and the decision was made that the program would be more effective and the National Science Foundation could more effectively deliver this program. So let us take a number of the science programs that are across Government and consolidate them into the National Science Foundation. The Sea Grant program was one of those that they decided to move over where it is. NOAA's research is primarily applied research.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Senator HOLLINGS. NTIA, National Telecommunications and Information Administration, Larry Irving—I do not know who is over there now—did an outstanding job with small communities, bringing them up to speed. They do not have the wherewithal to get their health care, communications, and their education, public safety, social services, and everything out of a moderate $16 million, and the program is eliminated. It is working and if we do not help those rural areas, I know our Vice President one day went over, got enthused about it, and said that the Internet was, what did he call it, a civil right? Yes, a civil right. I told him I was still trying to get toilets in South Carolina, much less the Internet.

Toilets would be a civil right if that is the way it was. We could not finance it. He had the program up to $45, $50 million, but this is just a modest $16 million. What is your comment on this?

Secretary EVANS. Well, I agree with you, chairman, it is a modest $16 million. It does not mean we really could get the job done and will not get the job done and you need to get the job done. It is too important not to. That is why in the President's budget he put $700 million in the education budget that is specifically focused on this very issue. It is why he put some $600 million in the Department of Justice budget focused on this very issue, to get the kinds of technology to these various law enforcement agencies and fire departments, et cetera, in small communities across this country.

Sixteen million dollars or $20 million, which has kind of been the average funding at TOPs for the last 10 years, will not get it done. It was started at a time when very few people were on the Internet. Computers were not in very many schools yet across the country. In the last 10 years, there has been an explosion of computers in schools, of computers in homes of Americans. We released a report called "A Nation Online," and it shows that 54 percent of the people in America now are connected to the Internet. It shows that 94 percent of the children 5 to 17 years old have access to computers.

So it is happening in a big way out there and I would say the TOPs program just does not do the job. It did the job in the beginning. The initial purpose was to bring awareness to communities as to what technology could do for them in developing their communities and providing information, and now it is just a much, much bigger issue than that.

I know in the President's budget, also, there is $100 million in the agriculture budget that is directed at getting technology, computers, Internet, to rural America, which is critically important. Listen, this is a huge issue and TOPs was a good program in the early 1990s to begin to make these small communities more aware of it, but we have moved way past TOPs. This is a serious issue that requires serious commitment and I think the President's budget clearly demonstrates that serious commitment of over $1.5 billion that is focused on this issue.

The other thing I would add, chairman, is that in the last 4 or 5 years, the private sector has moved into this in a big, big way. There are all kinds of private foundations now set up all across America that have centers that focus on this issue. I went to one

myself called Oaktech, which is in a little Boys and Girls Club here in Washington, DC, where you have the children coming into the Boys and Girls Club and learning the computers and how they work and that is happening all across America.

So while the TOPs, I thought probably did serve a good purpose in the beginning, I think we have moved way, way past TOP.

Senator HOLLINGS. Senator Gregg.

ADVANCED TECHNOLOGY PROGRAM

Senator GREGG. Thank you, Mr. Chairman. We have been through the ATP discussion so many times. Let me simply say that I think we got a little too generous in the accounts for ATP, but we have had that discussion before.

SEA GRANT

A couple questions. I want to join with the chairman's concern about Sea Grant. I have talked to you privately about this. I think this is one of those ideas that comes from somebody who knows nothing about what NOAA does, maybe a little bit about what NSF does, but does not appreciate the significance of sea grant to the NOAA program. NOAA may be applied, but the fact that they have sea grant gives them the access to this basic research.

I used to be on the committee that had jurisdiction over NSF—in fact, I still am, I guess, on the authorizing side—but the NSF does not even have a directorate for oceans. NOAA's name contains the word oceans. The mood over there is to move departments around with nothing more than, I think, academic reasons, not substantive reasons. So I would hope that this would be put in Circular 86 at some point. Certainly, this committee will strongly oppose this effort.

I have a couple of questions in addition to the chairman's. We have heard that those who tried to get access to the material from the World Trade Center site in order to conduct structural assignments encountered resistance from FEMA. NIST has the primary responsibility in this area. FEMA basically refused to grant access to the material, and even though they pleaded aggressively, they were not able to get it.

I am interested to know what the status of that unfortunate turf war is and how NIST is going to pursue the structural review it has been tasked with.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Secretary EVANS. Well, Senator, I continue to be briefed on this and I cannot tell you that I know the absolute answer to that question yet, but I do know that, unfortunately, much of this steel has been recycled and is not available. We have been very disappointed in the number of samples so far that we have been able to actually get our hands on.

I am not sure of the details of how the materials were handled and who is responsible but we do certainly have some steel samples that are available to NIST. The available samples should be very helpful in an investigation.

Senator GREGG. Only a systematic failure could allow this to happen, in the consequence management area, which this committee has spent a lot of time focusing on. It would seem that there should be in place a structure which allows an agency like NIST, which has a legitimate role in reviewing the issue of how these buildings came down so that we could put out specs for architectural design and avoid this in the future, that they should have been incorporated. They certainly should not have been excluded by one of the other agencies that had primary jurisdiction over consequence management.

I am wondering, one, how systematically this broke down, and two, what is the system that is being put in place so that it hopefully will never happen again, I mean, a structure to resolve this——

Secretary EVANS. Right. Senator, I am going to have to get back to you with the specific answer, and indeed I will, of course, as to exactly when it broke down and why it broke down and also respond to your request, which is the right one, which is what are we going to do to make sure it does not happen again. I am not aware of, right now, exactly what the time line was.

We may have been denied access, or if, in fact, we even were, we may have requested late and that is just something that I am going to have to take a hard look at and I will certainly get back to you.

[The information follows:]

NIST ACTIVITIES SINCE SEPTEMBER 11TH

FEMA and the American Society of Civil Engineers made trips to New York City in October 2001, and made arrangements to set aside some of the steel for the investigation. Although some of it was subsequently misplaced, most of the marked samples have now been sent to the NIST site in Gaithersburg, Maryland. NIST and FEMA are currently working together to find a way to initiate the investigation.

Of the steel that was marked for transport to NIST, most was later brought to NIST. However, some of it did not make it here and is believed to have been included with the steel sent for recycling by mistake.

NIST and FEMA signed a Memorandum of Understanding (MOU) on March 29, 2002, that establishes a framework for NIST to serve as a research resource for FEMA in the areas of fire, disaster prevention, and homeland security. As part of this MOU, FEMA and NIST will establish a quick deployment mechanism that may be activated when both the Administrator of FEMA and the Director of NIST determine a need for a NIST response to extreme events.

NIST has been working since the events of September 11 as part of the FEMA-funded Building Performance Assessment Team (BPAT) study. NIST was not denied access to the site and/or relevant information and was not late in making requests to be involved. As a result of the recently-signed MOU between FEMA and NIST described above, a framework of cooperation has now been established for any future disasters.

BUREAU OF EXPORT ADMINISTRATION

Senator GREGG. Another issue that involves preparation for terrorism, the Bureau of Export Administration, they are asking for additional attachés overseas.

Secretary EVANS. Correct.

Senator GREGG. I think this committee, or at least I, was under the impression that the State Department Bureau of Verification—I think that is the title of it—had responsibility for reviewing whether or not these dual-use products ended were being used for inappropriate activity. I guess my question is, who is doing what

here? I mean, does State have a role here? Are your roles overlapped? Is there——

Secretary EVANS. We certainly——

Senator GREGG [continuing]. Some understanding as to who is doing what?

Secretary EVANS. There is certainly coordination between our two Departments, but we certainly feel a strong responsibility for regulating the export of dual-purpose products, the export of legitimate products, and the high-tech products that might be used around the world. So there is coordination between the two, but I would say to you, we feel that the responsibility of providing the licenses for these dual-export products, and for making sure that we do not have illegal transshipments around the world, are two of the central reasons for opening up offices, as you have mentioned, around the world. We have opened up in Beijing and China and Singapore and India and UAE and Egypt, I think are the main ones.

Senator GREGG. Should we expect that the State Department will tell us that their Bureau of Verification is no longer undertaking this effort?

Secretary EVANS. I am not sure what they will tell you. I feel a pretty good sense of our responsibility for licensing products that might be considered dual-use kind of products around the world.

Senator GREGG. Is it possible that we could get from Commerce and from State a memorandum of understanding as to how these two agencies are going to interact?

Secretary EVANS. Sure. You bet.

Senator GREGG. We have to know that there is not going to be duplication.

Secretary EVANS. Sure. I would be happy to, Senator.

Senator GREGG. Thank you. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you.

Senator Kohl had questions about the Manufacturing Extension Partnership Program and he had another commitment and had to leave, so we will leave the record open for his and any other Senator's questions.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. I would like to put my statement in the record, and I have some additional questions.

Senator HOLLINGS. It will be included.

[The statement follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. Chairman, thank you for calling this hearing today on the Department of Commerce budget request for fiscal year 2003. I would like to thank Secretary Evans for coming before this Subcommittee to discuss the President's request.

President Bush has sent Congress a $2.13 trillion budget that would provide billions of dollars in new spending for two top priorities—the war on terrorism and homeland security—but would squeeze much of the budget for domestic programs. While he has properly emphasized the need to combat terrorism, the President's domestic agenda is riddled with many opportunistic cuts, motivated by ideology and special interests, that will hurt America's economic recovery. I am very concerned that we will no longer be able to adequately support essential economic investment programs in this country if Congress accepts the President's budget request. His severe under-funding of many worthwhile small business and economic development programs is a glaring example.

The Manufacturing Extension Partnership (MEP) program was authorized in 1989 to help manufacturers, especially the nation's small manufacturers, adopt new technologies, processes and business practices to be more competitive on the worldwide market. The MEP network now consists of over 2,000 professionals, working out of more than 400 offices in all 50 states to provide direct advice and assistance to manufacturers. While Congress appropriated $106.5 million for the MEP program last year, the President has requested only $13 million for the program in the coming year, a drastic cut that would essentially mean the end of the program.

MEP is one of the most successful federal-state partnerships in government. It is a cost-effective, private-public partnership that helps American manufacturers modernize to compete in the demanding global marketplace. It has helped thousands of small manufacturers—who employ 11.5 million people, or two-thirds of all manufacturing employment in the United States—increase sales and earnings and decrease materials and costs. Since these small manufacturers are the major suppliers for larger manufacturers, they are a major component of the national economy. We must do all we can to ensure their long-term survival and health.

If MEP were to end, the Vermont Manufacturing Extension Center, and other centers all around the country, would be crippled in their ability to serve the ever-increasing needs of small- and medium-size manufacturers. During these uneasy economic times, we should be expanding our efforts to help businesses stay afloat instead of cutting them. I support full funding for the MEP program at the authorized level of $110 million and hope Congress will do the right thing and properly invest this and other economic development programs this year.

The President repeatedly called for an economic stimulus package to jumpstart the economy. And Congress heeded that called last week by a bipartisan stimulus plan by overwhelming margins. We all know the need is out there to forge ahead with our economic growth. Now is certainly not the time to cut these businesses off and tell them to sink or swim on their own.

Thank you again, Mr. Chairman, for holding this important hearing. I look forward to working with you and Secretary Evans to ensure that the needs of our nation's businesses are met in next year's Department of Commerce budget.

Senator LEAHY. Mr. Secretary, it is good to see you again.

Secretary EVANS. Thank you, Senator.

MANUFACTURING EXTENSION PARTNERSHIP PROGRAM

Senator LEAHY. We appreciate you coming over to the Internet Caucus event we had the other day and appreciate your kind note afterward. It is something that we will continue to work on.

You and I have discussed it a couple of times already and obviously you know my concern about rural areas. That can be rural areas of Texas or rural areas of Vermont. I often joke that I sit up at my farmhouse in Vermont, out there on a dirt road and I have got my computer and I am in my jeans and my sweatshirt, and if I could have two things, broadband there and the ability to vote by phone, I do not think I would ever leave.

I do not have either, but at least give me one of those. For one, we would have to probably change the Constitution, but for the other one, we could do.

I look at the budget, the $2.13 trillion budget, which is amazing because I remember the debate when I first came here about a $300 billion budget, but we have some major problems, the war on terrorism, and the President has been very supportive on that, and homeland security. I do not, however, categorize security as our only domestic priority.

I look at the Manufacturing Extension Partnership Program. We authorized it 11 or 12 years ago, Mr. Chairman—I think it was 1988—to help manufacturers, especially small manufacturers, develop new technologies and processes and business practices so they could be competitive worldwide doing the things that they

might not be able to do in their own small business, but with this help, they can.

We appropriate $106 million, actually $106.5 million, for the program last year. MEP now has 2,000 professionals in all 50 States. But after we appropriated that $106.5 million, the President cut it in his budget to $13 million this year.

I find that matter somewhat troubling, Mr. Secretary. We have all kinds of businesses in our State of Vermont. We have IBM with 6,000 employees that makes the fastest, most advanced chip in the world. We have a lot of very small businesses, small manufacturers developing advanced products and everything else, but they are small. A private partnership like this, that the business community supports it, workers support it, the State supports it, why cut it so much?

Secretary EVANS. Senator, I go back to what I said earlier. I think it is just the philosophical position that the Federal Government had an important role to play in getting these programs started. As was stated in its initial mission statement, the core purpose was to provide funding for a 6-year period to give these centers time to get up and running, and beyond that period should be self-sustainable through private funding, State funding, local funding, or fees, and fees could be on the front end or the back end. If someone goes and receives a service that they deem to be helpful or useful and, in fact, increases the profits of that small business or that small manufacturer, it seems reasonable that maybe you might share some of that back with the center that helped you increase your profits.

I think it is just the philosophical position of the original stated purpose of the MEP program was a sound one and it was an appropriate role for the Federal Government to play and that the ongoing funding that we have proposed in the 2003 budget reflects that.

Senator LEAHY. Mr. Secretary, if I might——

Secretary EVANS. Sure.

Senator LEAHY [continuing]. I would be able to accept that if we are talking about these companies that have benefitted by it just competing within their States, such as the companies that are in Texas are just competing within Texas or Vermont is competing within Vermont. But more and more, these companies are part of our worldwide economy. U.S. security, it is not just our military, it is also our economy. We have a large balance of payment deficit. We have got to export more, and a lot of these small companies are the ones that develop the ability to export.

I would hope, and we are going to be debating it within this committee, of course, but I wish the administration would go back and look at that again because I really think that there is a national interest involved here, one that helps us as a Nation. Not just my State of Vermont, not just New Hampshire or South Carolina or Washington State or Rhode Island, but the country as a whole benefits from the ability to become more efficient, the ability to produce and innovate, and the ability to export. Our economic ability to face the rest of the world is extremely important.

For the same reason, I would hope that you look again at cutting the National Telecommunications and Information Administration. If we do not do something to close the digital divide—and I know

there has been some discussion here—if you do not, then rural America is going to be cut out.

I will try to state this very carefully, but in a discussion recently within the administration, there was some discussion about a particular program that is in Vermont and doing great because it has a national security implication. Now, fortunately it was in Vermont and dispersed from other aspects of the program. I realize that is terribly vague, but you will hopefully understand what I am talking about. But this Vermont company is crippled by the fact that they are in an area where they do not have broadband. In order to track the engineers, they need faster Internet connections to create something that is vital to our national security.

There are a lot of things that could be in a lot of rural areas. We can disperse a lot of our abilities throughout the Nation, which has a security aspect to it.

Also, more importantly, we cannot tell our children, if you are in a rural school, then you do not have the advantages you might have in an urban center as we go into the digital age.

INFORMATION INFRASTRUCTURE GRANTS

Secretary EVANS. I agree with you, Senator. I think we are headed in the same direction. I do not think there is any issue that is more important. There are many as important, but the deployment of broadband across America, for national security reasons, economic security reasons, homeland security reasons, health reasons, I mean, this country should be headed in that direction and we are. Again, you refer to the TOPs program. I agree that we need to close the digital divide as fast as we can and I would say to you that $20 million in the TOPs program just does not even begin to scratch the surface. What you need is big commitments like have been presented in the budget, $700 million in the Department of Education and $600 million—and we have already gone through the numbers.

I think we are headed in the same direction. I am as anxious as you are to make sure that every American is connected.

Senator LEAHY. We may keep in touch on that, Mr. Secretary——

Secretary EVANS. Sure.

Senator LEAHY [continuing]. And take a look at my statement.

Secretary EVANS. I sure will. I sure will, absolutely.

Senator LEAHY. Thank you, Mr. Chairman.

Senator HOLLINGS. Senator Domenici.

Senator DOMENICI. Thank you very much, Mr. Chairman.

Mr. Secretary, it is good to be with you.

Secretary EVANS. Thank you, sir.

BUREAU OF ECONOMIC ANALYSIS

Senator DOMENICI. I want to just share quickly an experience with the committee and with you and then I want to ask you a couple of questions about the Bureau of Economic Analysis and the control you have over entities that collect data on which we act here.

Mr. Chairman, I was up in northern New Mexico, at an isolated little town named Mora, went to church and then had a meeting

there at the little restaurant with maybe 30 people. This was about 3 years ago. I then sat down and asked, "what do you want to talk about?" Would you believe that if you would have asked me to write down the six issues that might have been discussed in Mora, I would have been wrong because what they really wanted to know way up there was when will we be able to have computers in our homes for our kids? Now, this is about an 80 percent Hispanic part of New Mexico.

I want to tell you, since that time, we have spent almost 3 years working with the State of New Mexico to try to find out how well or how not so well rural areas were serviced by things like the underground lines, fiber optics and the like, that make rural areas as capable of handling computers and high-tech kinds of businesses as a large city or town. That is what is going to make rural America have more paychecks, is when companies recognize that for the computer age, they can be in a little town and do their business. You can have an engineering firm that does all its business via the computer. They could be situated in a little town of 8,000 people if they like it there.

So I think whatever programs you have that move in a direction of helping rural America get the basic infrastructure that is needed to lift the small community into the area of having the capacity to handle the modern day computer-type activities is probably as important a job as you can do. These are the highways of the future, not the paved highways. The highways are how much computer capacity do you have in little towns, big towns.

Having said that, I came today to congratulate you and your Department and the President on something that is in the budget and that was prompted because I read, and now I have been told that it is correct, that as we came out of this recession, mild as it was, that in the first quarter coming out of the recession, the productivity of the United States was measured as an increase of 5.5 percent. Did you see that?

Secretary EVANS. I did.

Senator DOMENICI. Now, that is unheard of. Most of the time, when you are coming out of a recession, Mr. Chairman, your productivity is zero or negative. The fact that it is 5.5 percent permits some people to say that something very different is at work in this American economy. Nobody yet says what it is, but I concur. Something very different is happening.

Or, we do not know how to measure productivity and we are measuring it improperly. I have a hunch that we do not know how to measure productivity properly, but I do not have a hunch that the 5.5 percent is wrong. I do not know that much. But sometimes we forget to put money into your budget for you to handle the various analytical functions that are yours.

I understand that with reference to the Bureau of Economic Analysis and the Bureau of the Census, you are asking for more money for each one of those, and I want to say as one Member of the Senate, I want to help you with the maximum amount you need for the professional work of this kind of fact finding for the United States. I understand that you may have a new e-mail program that you want to add. Do I understand that correctly? Could you share that with us?

Secretary EVANS. Senator, I am not sure that I know the e-mail program that you are referring to. We are continuing to pour a lot of money into our information technology within the Department of Commerce. You highlight a very important part of our budget, which is it is hard to make good decisions if you do not have good information and good facts, and so we have added a substantial amount to the Bureau of Economic Analysis as well as the Bureau of the Census——

Senator DOMENICI. You do not have a new approach to BEA's understanding and measurement of e-business?

Secretary EVANS. Oh, e-business.

Senator DOMENICI. E-business.

Secretary EVANS. I am sorry. E-business, yes, absolutely, we do.

Senator DOMENICI. What is it?

Secretary EVANS. We are going to measure e-business in this economy and we are going to also measure the service component of this economy. In the past, Senator, when you look at the GDP numbers, we look at the manufacturing sector, we look at the mining sector, but not the service sector. We all know what a large part of this economy the service sector is now. So we are also committing funds to measure that very important segment of the economy.

But yes, on e-business, we think it is vitally important that we have good, accurate information as to how much information——

Senator DOMENICI. Do you have money to do this program?

Secretary EVANS. Yes, sir.

Senator DOMENICI. It was within your base——

Secretary EVANS. Yes, sir.

Senator DOMENICI. Mr. Chairman, thank you very much for recognizing me, and I might say to you in all the work that you do in the Commerce Committee and Budget Committee, I think you share with me how important it is that productivity be measured correctly.

Senator HOLLINGS. Exactly.

Senator DOMENICI. It is actually the force that drove us for the 10 years in a recovery and will drive us again, and something is different out there. It may be new kinds of businesses that are changing productivity. Surely, productivity was very, very high throughout the entire 10 years of the recovery, and now it is almost in a booming stage which means people do not lose money in their paychecks during the recession. Paychecks may still go up——

Secretary EVANS. Right.

Senator DOMENICI [continuing]. Even when you are having a recession. It is very interesting.

Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you very much.

Senator Murray.

Senator MURRAY. Thank you very much, Mr. Chairman. Mr. Secretary, welcome. It is good to have you here again.

Secretary EVANS. Thank you.

INFORMATION INFRASTRUCTURE GRANTS

Senator MURRAY. We appreciate your being here. Obviously, all of us are concerned about homeland security and the war on ter-

rorism, but we are particularly concerned about your budget, what you do on investment in our economy. My home State of Washington has an unemployment rate that is still over 8 percent and we are hurting very badly right now. We are second only to Oregon in terms of unemployment rates and the adjustments that you have are extremely important to us as we try to come out of this recession. I am glad to hear the rest of the country has, but we are really hurting.

I wanted to just second what the chairman and Senator Leahy said about the TOPs program, the Technology Opportunities Program. I know that you think it is a small amount of money, but it has made a tremendous difference and needs to continue to make a tremendous difference in our rural communities who are the hardest to reach. They are the ones that everybody else gets taken care of, then we cut the programs and then our most rural communities, furthest, hardest to reach, are left out in the cold, and I do think that program makes a difference, Mr. Chairman. I hope to work with you to restore the funds for that.

I also want to echo the chairman's concerns about the Sea Grant program. It is a very important program in my home State of Washington. It has been at the University of Washington under the Office of Marine Environmental Resource program since 1968. It does an awful lot of really good work, and we are concerned changing who administers it will change some of the functions and important things that are going on in terms of research at the University of Washington, so Mr. Chairman, we will continue on that, too.

I do have a couple questions for you today. One of them has to do with your proposal to create a new Bureau of Export Administration field office in Seattle. Can you talk about that? I think you have an increase in the Bureau of Export Administration's budget that includes an office in Seattle. Could you talk a little bit about what you see with that?

Secretary EVANS. Well, only that we are adding two offices domestically. One is Seattle. One is Houston. Again, part of our homeland security, national security initiative is to make sure that we are doing everything we can to work at the ports and deal with the issues of products, goods that may be moving out of this country for the wrong kind of reason.

We had a recent case in the Port of New York where we found some individuals trying to ship some night vision equipment to the Hezbollah, and so it is clear that our ports are areas where these products may tend to leave our country and we thought it was important to make sure we had the facilities in place, the resources in place to watch that and enforce our ports.

Senator MURRAY. How do you see that impacting the flow of trade between Washington State and other countries?

Secretary EVANS. I do not see it impacting it at all. I just see it as an enforcement office. It is there to make sure we are enforcing our laws. But I do not see it impacting the flow negatively or positively.

Senator MURRAY. Okay. Can you give me a quick update on where we are with the softwood lumber dispute with Canada? I

know it is a really complex issue, but can you just tell us where you see it right now?

Secretary EVANS. Sure, just ongoing dialogue on the theories that both sides are sitting down in good faith to talk through some very, very difficult issues. I think, one, it is safe to say that the discussion has progressed farther than ever before in terms of dealing with this decades-old issue. Everybody is facing a March 21 final determination date, and so that is kind of a hard date that everybody is working against. I am going to remain optimistic.

Senator MURRAY. There are a lot of issues involved in this, and I know you know them. I just wanted to bring to your attention the plight of one business in my State. It is Lindall Cedar Homes. They manufacture pre-fabricated homes and they are the only pre-fabricated home manufacturer that may be subject to duties imposed on Canadian lumber. That would put them at a huge disadvantage in the Nation and I hope that we can work with you to see if we can get an exclusion for them. It will have an impact on several hundred people, businesses, an important one for the region. As I said, we have an unemployment problem now. We do not need to add to it. It is a good business and we want to keep them, so I would like to work with you as you reach that date to see if we can get an exclusion for them.

Secretary EVANS. Very good, Senator.

Senator MURRAY. Thank you.

Senator HOLLINGS. Thank you.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman, and welcome, Mr. Secretary.

Secretary EVANS. Thank you, Senator.

NORTHEAST ECONOMIC DEVELOPMENT REPRESENTATIVE

Senator REED. Thank you for being here this morning.

The Economic Development Agency is a vital player up in New England. They have been very helpful in my home State of Rhode Island and adjoining States. We have worked with them in very innovative and very successful programs.

I understand that there is no EDA New England office director appointed yet and that all of the business is being forwarded to Philadelphia, the super-regional office. Is that type of some reorganization or policy change?

Secretary EVANS. Senator, I am not sure, to tell you the truth. I will have to get back with your office or with you and I will certainly do that.

Senator REED. Thank you, sir.

[The information follows:]

NORTHEAST ECONOMIC DEVELOPMENT REPRESENTATIVE

The Economic Development Administration does not have office directors for individual states or regions. EDA does have economic development representatives located around the country that act as the agency's primary point of contact. EDA is committed to providing the highest level of service to all of its customers and stakeholders. While EDA has a long history of outstanding service to its customers, we strive to continuously improve operations to leverage our limited resources to the greatest extent possible.

Toward this end, EDA is undertaking a number of initiatives to transform itself into a results-oriented agency. These management improvement efforts will align

the workforce with organizational goals, eliminate redundancy and confusion, align competencies with activities, and will deploy resources to best serve the needs of communities.

EDA has six regional offices located in Philadelphia, PA, Atlanta, GA, Chicago, IL, Austin, TX, Denver, CO and Seattle, WA. EDA also has a limited number of staff members, Economic Development Representatives who report to the Regional Office Director, and usually, although not always, work in one-man offices located in a number of different locales throughout the country. As management improvement efforts progress, EDA will continue to manage its human resources by assessing the competing needs of the agency and making decisions that fit within the constraints of its budget.

EDA understands the importance of an effective EDA presence in New England and places a high degree of importance on maintaining the level of service and technical assistance this region has historically received. EDA is committed to taking the appropriate measures to continue its excellent level of service and assistance in the New England area.

EDA PROGRAM REDUCTION

Senator REED. I will also note that the EDA's budget is being streamlined by $16 million, which in a creative way is the change. Can you talk about the reduction in EDA, the proposed reduction, because it is a very valuable agency.

Secretary EVANS. Oh, it is. Again, Senator, it is priorities. There are a lot of tough choices to make. We are at war, and so we are doing the best we think we can to optimize the allocation of the resources that we have. When it comes to EDA, I think we have a terrific team of people. We still have a substantial amount of money in the budget, $350 million, and what I would say is that I think the focus of EDA has been changing over the last few years. Where there was a serious focus on base closures for a relatively long period of time that required a substantial amount of effort and a substantial amount of funding, the need is not there, as we saw in the 1990s.

I think we are moving much more toward community rebuilding, trade adjustment assistance. We have added $2.5 million within the EDA budget to trade adjustment assistance. So the focus is starting to move away from base closure, rebuilding, and economic development to community development, community infrastructure, communities particularly that have been impacted by opening up trade around the world. We all know some of the industries that are dealing with a difficult period because of trade and so this program will be part of helping that, the transitioning economy by supporting and helping local communities.

So there is still a substantial amount of money in the budget. There is a stronger focus toward trade adjustment assistance and communities that are dealing with trade-related issues.

TRADE ADJUSTMENT ASSISTANCE

Senator REED. Thank you, Mr. Secretary. You have actually anticipated my next question, which is the trade adjustment assistance budget, and as you know, it is an increase of $2.5 million. I understand, however, that the Department's original request was for $5 million. I appreciate the increase, but I think it goes also to the issue of free trade and also the issue of fast track authority.

We all recognize, and we take different positions on this, but I think we all recognize that any major change in our trade policy forces disruptions in local communities. In the long run, we might

be better off, but in the short run, there are a lot of people who are disadvantaged. It very well may be that, as we go forward, we may need even more than $2.5 million in the trade adjustment account, and I would hope that you would be sensitive to that.

In my part of the country, we have a lot of industries, manufacturing particularly, that are holding on against stiff competition, and when we change the trade laws, the competition gets even fiercer. So this trade adjustment is very important. It has been increased, but I would suggest it might even go up even further.

Secretary EVANS. Thank you, Senator. We will be sensitive to it. It is a big issue. I am not sure that the programs of the 20th century fit the programs of the 21st century, and we are certainly looking very hard at this whole trade adjustment assistance area.

Senator REED. Let me conclude by adding my comments in support of the Technology Opportunities Program that has been highlighted by many of my colleagues. It is an important program and your efforts in this regard will be appreciated, also. Thank you, Mr. Secretary.

Secretary EVANS. Thank you, Senator. I appreciate it.

INTERNATIONAL TRADE ADMINISTRATION

Senator HOLLINGS. Mr. Secretary, Senator Stevens left momentarily but will be right back.

When you are talking about EDA, my understanding is now that there is an emphasis in the administration, in your administration, of higher profile projects rather than community needs. We just got where highways 301 and Interstate 26 intersected and we extended the sewer line. We saved about a dozen businesses out there and we saved over 100 and some jobs. Greenville is a higher profile area and they have got industries after industries and you can always assist in getting those industries. But you go higher profile in the little rural areas with economic development. The administration wants economic development, not higher profile. Look at that from the——

Secretary EVANS. I sure will, Mr. Chairman.

Senator HOLLINGS. Another thing. When Senator Domenici was asking about the productivity, you have got to have an industry to produce in order to measure productivity. We have lost 50,900 textile jobs alone. Do you think that you could come down there for a meeting, that you could then get President Bush to campaign for me like he did for Senator Domenici?

Secretary EVANS. Mr. Chairman, I always love coming to your State. I have been down there a few times and I look forward to coming back to your State and talking to the fine people of South Carolina.

Senator HOLLINGS. We have got to do something on that productivity. I mean, there is no question. Trying to bring us into the reality of what trade is doing, because we are in the hands of the Philistines. These producing ones are now moving their production from the free trade United States to the protected trade of Malaysia or Mexico or China. We can go right on down, but you move them all into protectionism and then they shout at me, free trade creates jobs, but it creates jobs in China, not in the United States. I am losing them faster than I can possibly produce them.

On that particular score, see if you cannot do statistical studies to find out exactly the consumption of America represented in imports. We had, back in the 1970s, we had testimony that the figure was about 41 percent. I know it is over 50 percent.

I am looking, and the clothing in this room, a good two-thirds is imported of the clothing. The shoes on the floor in this room, 86 percent of the shoes are imported. So we can get by without shoes and clothing. What else do you expect them to make?

My trouble is, they are making the shoes, the clothing, the airplanes, the computers, everything. Now, that is the kind of competition, and you have got to have a manufacturing capacity in order to have a strong economy. See if we can get that measured. Do you remember one hearing we had originally last year and you said you were going to work on that for us?

Secretary EVANS. Yes. I know the import statistic number is we import about 13 percent of our gross domestic pre-product. I know that number, and we continue to do what we can to do a better job of delivering more accurate information, more timely information. This is one area where we have specific focus because I have been troubled that it takes so long to release the information on imports. I have always wondered why we have to wait some 60 to 75 days after the end of the quarter before we can release the information, the data.

So it is something we continue to put a lot of emphasis on, Mr. Chairman. The last time I looked at the import number, though, it reflected about 13 percent of our GDP.

Senator HOLLINGS. On this, and I will yield to Senator Stevens, you have got a tremendous resource. People do not realize what they have over there in the old Bureau of Standards. One of the best defense projects was a RAMP, Rapid Acquisition of Manufactured Parts. We are in the gulf and a 23-year-old destroyer breaks down on a part. They do not make it anymore and have not made it for the last 15 years or whatever, and then it just languishes there in the gulf 1 month, 2 months, whatever it is before they can finally wire back, get it measured up, everything else like that.

Now what we do is we computerize. That came out of the Department of Commerce, not DOFA. Senator Stevens is heading up DOFA all the time, and I work with him. Now, they computerize the actual parts for all defense, the aircraft and the Navy. We are trying to get the Army into it. It has not worked. But if that part breaks down now, we can just go to the computerized thing, punch it out on this thing, and you have got it within 3 or 4 days.

Election reform standards, all these machines and chads and everything else like that, I can tell you from being in the game for years, we have got to get some kind of standard that is acceptable, and NIST, your Department would be extremely helpful. I do not believe it was provided in the election reform bill, but can you please work on that and see if you cannot get the Department working to use some of its monies to try to get us an election machine standard or something, because if we are going to mandate nationally, then there ought to be an accepted machine, because these fellows come around and sell to local entities on any kind of little gadget and then the thing is broken and election day is over with. Can you help us?

Secretary EVANS. Sure. Absolutely. We will be glad to take a look at that, Mr. Chairman, and see what it would take to bring a recommendation to you.

Senator HOLLINGS. Senator Stevens.

Senator STEVENS. Thank you. Mr. Secretary, it is nice to see you.

Secretary EVANS. Chairman, it is nice to see you.

MARINE RESEARCH

Senator STEVENS. I am full of good news for you this morning. Our State has the highest unemployment rate. It is not quite the highest, but if you count the people who have left the State to go somewhere else to find a job because they cannot live on unemployment we have the highest. I think your people are doing some good things for us, trying to create long-term jobs, the Ketchikan shipyards, the operation from EDA is very good, and we are making major investments in marine research.

I thought maybe I might invite you up for a little part of the first class fishing 101 this summer.

Secretary EVANS. I need it.

Senator STEVENS. I will show you some of the things that you are doing that far away, so that would be a good time. The chairman can tell you about that.

VESSEL MONITORING SYSTEM

We would like to have you come up and see what you are doing, and particularly in the marine research, and I am very serious. The money that we made available for research on stellar sea lions is the most that any country has ever spent on really developing science, real science, on what is causing the decline of one of the great creatures of the sea. We are very pleased with how your people are handling that. It may not produce all the results I would like to see, but I think they are going after true scientific research in a way that will demonstrate that we may find a way to protect some of those mammals without destroying our basic industry.

Half of the people in our State who have income derive a substantial portion of that income from fishing. It is one of the mainstays of our economy. In a period when we do not have oil and gas exploration, the mines are closed down, the timber operation is down, the one thing that is really sustaining our State today is fishing. Again, I think what EPA is looking at are long-term activities.

I have just three real questions, if I may. We are concerned about the implementation of the vessel monitoring system and the ground fish fleet. We would like to know what you might be able to do to help us defray the cost for small fishing vessels to comply with the requirements for vessel monitoring systems.

Secretary EVANS. Well, we will take a look at it, Senator. I do not know what the cost is exactly per vessel. I do not know what we have in our budget, if anything, for that, but we will take a hard look at it. I know the cost pressure that that whole industry is under there and so one thing we do not want to do is be adding additional burdens to them.

Senator STEVENS. Compliance is so essential to the safety of other vessels, we think actually you ought to give them to people who cannot afford them, and I hope you will look at that.

Secretary EVANS. Okay, we will.

Senator STEVENS. Another question, the people in Fairbanks are concerned about the Gilmore Creek tracking station. This station may not proceed, or may not survive, I take it, in the new satellite tracking concept, particularly one that is being developed in Norway. It is my feeling that we should have at least one active station on American soil. We ought not to be dependent totally on foreign information to track our own satellites.

Secretary EVANS. I agree with that, Senator. I am not aware of an effort to shut it down. I agree with you. I think we ought to have one on American soil.

Senator STEVENS. It is the last one, and if we get a chance, if you come up, I would like to have you take a look at that.

Secretary EVANS. I sure will.

STELLAR SEA LION

Senator STEVENS. It is very interesting.

Again, and lastly on still this stellar sea lion problem, do you have a problem producing another biological opinion this summer? I am not sure that the science will be ready for that, but I do hope that we can keep a close watch on that process and if some mechanism to extend the time until we all have the answers that that research will bring us will help, I think we ought to ask Congress to consider that. That is a court ordered deadline, as I understand it, for the biological opinion, and the time frame is too tight, I think, to finish the research that we funded. We funded a total of $80 million on that study.

Secretary EVANS. Right.

Senator STEVENS. I think it would be a travesty to have the burden on the Department to prepare the opinion before the results are in from the study. I would urge you to just watch that for us, because I think if the last biological opinion had been implemented, it would have shut down half the fishing fleet.

Secretary EVANS. We will keep a close watch on it. I was briefed on it about 1 week ago and people have been encouraged with the progress and the facts that have been collected, but obviously they did not feel like we are ready yet, and so we will continue to watch it very closely.

Senator STEVENS. Just one last comment. I got a report the other day, we have several of them down at Seward, where people are watching them. We now have television out on the rocks where they rest and rear their young pups. They are actually getting to the point where they are so familiar with these sea lions that they are giving them names. We are actually now going to start tagging some. One of them, a young pup, was tagged in Seward, and within 1 year, it ended up out in Kiska Island at the end of the chain. That is 1,200 miles in the first year of life.

Secretary EVANS. The first year? Wow.

Senator STEVENS. It is great science. It really is.

Senator HOLLINGS. Is that one named Ted?

Senator STEVENS. I will give the one that survives the name of Ted.

Senator HOLLINGS. We have got a name for one of Alaska's sea lions here in Washington. Thank you.

Senator STEVENS. Thank you.

BUREAU OF CENSUS

Senator HOLLINGS. Finally, on the census, we had a GAO study, Ted, on this one, and you think they cut out a little $10 billion here and a little $5 billion there and ruin all the rural programs and everything else and then come with a census budget of $5 billion more. You all have gotten to be like tax-and-spend Democrats. I mean, how do you justify $5 billion more for a census in 2010? The one in 2000 was $6.4 billion, I think.

Secretary EVANS. Right. Correct.

Senator HOLLINGS [continuing]. And now you have got $11.4 billion requested?

Secretary EVANS. Right.

Senator HOLLINGS. And GAO talks about your accounting divisions there in the Bureau of the Census?

Secretary EVANS. Right. Senator, obviously, we are focused on the planning, the work that is going to be necessary to develop the most accurate possible census that we can deliver to this country in the year 2010. We learned a lot from 2000, and 2000 happened to wind up being the most accurate census ever by far, but can we do better? Yes, we can do better.

One of the ways we feel like we can do better is by implementing some programs like the American Community Survey that will provide to this country census-type data every year, not every 10 years, but every year, and what that can do for local municipalities and counties and States can be fairly dramatic, because when you are able to provide census-related data every year, then States and local governments and communities can do a better job in distributing the resources that they distribute to the population.

It may be flu shots. It may be polio vaccine. It may be dollars. I am not sure what it might be. But you will have not just a 2010 census, but this will provide important information every year so we can do a more effective job across America of allocating again the scarce resources that we have.

Senator HOLLINGS. But $5 billion more?

Secretary EVANS. Of course, some of it, Mr. Chairman, is inflation. I do not know how much of that is inflation, but a big chunk of it is inflation, I can assure you of that. Over a 10-year period, it does not take much inflation to double the cost of something in nominal terms.

Senator HOLLINGS. Well, look at that GAO report——

Secretary EVANS. We will.

Senator HOLLINGS [continuing]. On the finding they have had on the accounting over there.

Secretary EVANS. We sure will, Chairman.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We thank you very, very much for your appearance here today.

Secretary EVANS. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

ADVANCED TECHNOLOGY PROGRAM

Question. The Advanced Technology Program (ATP) is an industry-led, competitive, and cost-shared program to help the United States develop the next generation of breakthrough technologies in advance of its foreign competitors. For fiscal year 2002, the Department of Commerce has $60.7 million available for new ATP grants. The Department has not yet issued a solicitation for new ATP grant applications.

When do you anticipate that you will issue the solicitation asking companies to apply for fiscal year 2002 ATP grants?

Answer. A Federal Register Notice was issued on April 18, 2002, soliciting grant applications.

Question. According to fiscal year 2003 Budget proposal, the Department of Commerce intends to carry over $34 million in ATP funds from fiscal year 2002 to fiscal year 2003.

Why is this? Do you have a plan in place to spend the entire $60.7 million that Congress has given you for new ATP grants in fiscal year 2002? If not, do you intend to send up a reprogramming for the $35 million you intend to carry over?

Answer. The President's budget request for the ATP will allow the program to meet all its current obligations in funding on-going work, and also will allow the program to fund approximately 35 new projects in fiscal year 2002 and fiscal year 2003.

Question. As you and I have discussed, Secretary Evans, the ATP selection process has always been merit based. No Senator, or Secretary, or Deputy Secretary has picked which projects will be funded and which will not. Instead, the final decision has been removed from politics and left with a career official.

Can you assure me that this process will remain merit-based and will not be influenced by your Department's political appointees?

Answer. ATP has and will continue to comply with the selection process stipulated in its regulations (15 CFR part 295) as it has in the past. ATP has a rigorous competitive peer-review process that removes any potential bias. Potential projects are evaluated on both technical and business merits. ATP will ensure that this rigorous review process is continued when it selects future awards.

MANUFACTURING EXTENSION PARTNERSHIP PROGRAM

Question. Manufacturing creates growth for our nation: wealth in the form of economic growth, increased jobs, and robust trade. The United States' manufacturing strength is built on the backbone of more than 350,000 small manufacturers that account for over one-half of the value of total U.S. production. These firms employ 11.4 million Americans—more than two-thirds of the manufacturing workforce. Yet, despite the critical role that small manufacturers play in U.S. economy, the productivity gap between small manufacturers and their larger counterparts continues to grow. This disparity causes concern because expertise in technology will only become a bigger factor in the success of small companies.

One of the President's stated priorities for the fiscal year 2003 budget is to "revitalize the economy and create jobs." Yet, your fiscal year 2003 budget sunsets the Federal share of MEP centers which assist our nation's vital small and medium sized manufacturers to stay competitive. In 2000, small manufacturers reported $1.3 billion of new or retained sales and more than 14,000 jobs saved as a result of the MEP.

How does cutting the funding for MEP support the President's priority of revitalizing the economy and saving jobs? Isn't this move counterproductive when the nation is in a recession that threatens high-paying manufacturing jobs?

Answer. MEP has been a successful program and demand for its services continues to increase. However, given that this Nation is fighting a war against terrorism, difficult choices have to be made in terms of priorities within the Federal budget. We believe that many MEP centers will continue to exist in the absence of Federal funding. As a result, small businesses will continue to receive the expertise and assistance from the centers. This continued assistance will help small manufacturers remain competitive and continue their crucial role in the Nation's economy. To offset the loss of Federal funding, centers could increase fee receipts. Given the

centers' success in improving productivity and efficiency, assessing fees for service should be the direction in which the program heads. The benefits to small firms seeking MEP assistance, such as improved productivity and efficiency, should outweigh the cost of the fees. Also, large manufacturers that depend on smaller companies may also wish to provide support to MEP centers to ensure the continuing success of their smaller suppliers.

ELECTION REFORM STANDARDS

Question. The House-passed election reform bill and the Senate version of election reform both call for NIST to have a role in assisting to develop election machine standards.

Have you prepared a request for such funding? What is such an effort likely to cost?

Answer. In the House version (H.R. 3295, Ney-Hoyer bill), NIST estimates the cost to support the functions as described in the bill to be between $7.5 and $10 million per year. In the Senate version (S. 565), the costs have not been determined. In S. 565, NIST would be a consultant to the Office of Election Administration of the Federal Election Commission. The level of assistance by NIST to the Office of Election Administration is not detailed in S. 565. Under the House bill, NIST would play an integral role vis-a-vis the Office of Election Administration. NIST costs could be much less than the House version but the Conference bill will determine NIST's role.

WORLD TRADE CENTER INVESTIGATION

Question. It is my understanding that NIST will have a significant role in examining the collapse of the World Trade Centers.

Have you identified funding for this effort? Should we expect a supplemental request in this regard?

Answer. NIST is planning to conduct an independent, comprehensive, NIST-led technical investigation of the building construction, integrity of the materials used, and all the technical conditions that combined to cause the World Trade Center (WTC) collapses. This technical investigation will be funded by a reimbursable agreement with the Federal Emergency Management Agency (FEMA), using funding requested by FEMA in the fiscal year 2002 supplemental.

COST OF 2010 DECENNIAL CENSUS

Question. Please explain why we are faced with a 2010 Decennial Census that will cost approximately $5 billion more than the 2000 Decennial Census.

Answer. Some of this increase is attributable to inflation, but there are other factors as well. The population is expected to increase by approximately 10 percent. In addition, we have observed over several decades that for a number of reasons it becomes more difficult to enumerate the population during each decennial census:

—The population is becoming increasingly diverse.

—Households are more complex.

—It is increasingly difficult to develop a workforce with the skills necessary to conduct the enumeration.

—People are more reluctant to cooperate with the government, and with the enumerators asking for interviews.

Consequently, each decennial census becomes more expensive and more difficult to implement. If we do not make fundamental changes in our methodology, our current best estimate is that the cost of the 2010 Census will increase by $5 billion broken down as follows:

—$2,833 million—Due to inflation (as estimated by the fiscal year 2001 President's budget for "Federal Civilian Pay" index and GDP inflator for procurements).

—$994 million—Because we expect that enumerators will process fewer cases per hour. As noted above, this process has been a steady trend for several decades.

—$532 million—Due to enumerator pay increases needed to hire temporary employees in a tight labor market. We anticipate, based on research and experience related to Census 2000, needing to pay our field staff 90 percent of the prevailing wage rate in the areas where they work.

—$320 million—Increase in Field workload—Housing units will increase by 10 percent, Group Quarters by 12 percent, and we will need 51 additional local census offices.

—$148 million—Due to inflation in information technology contract costs, which are estimated to be 2 percent above the federal inflation rate.

—$40 Million—Due to an increase in the data capture workload of 10 percent due to population growth.

Even at this great cost, repeating the old design would be extremely risky and would result in inferior data to that collected by the reengineered design. Opportunities do exist to reduce risk, reduce full cycle costs, and improve accuracy for the 2010 Census by fundamentally reengineering the process. The advantages and savings associated with reengineering have been presented in the *Potential Life Cycle Savings for the 2010 Census* document provided to the Congress in April of 2001. The President's fiscal year 2003 budget request reflects the intent to reengineer the decennial census process.

CENSUS BUREAU FINANCIAL ACCOUNTING SYSTEMS

Question. A recent GAO report pointed to significant flaws in the financial accounting system at the Bureau of the Census. What can this Committee do to assure that such problems are alleviated?

Answer. Several of the management recommendations in the GAO report ("2000 Census: Analysis of Fiscal Year 2000 Budget and Internal Control Weaknesses at the U.S. Census Bureau"—GAO–02–30) address improvements to the Bureau's financial accounting systems. We are currently acting on these recommendations. This answer addresses all but three of those recommendations. The three not addressed by this answer dealt with current financial activities, rather than financial accounting systems.

Recommendation #3: Instruct accounting personnel to follow the written policy for establishing accruals and proper cutoff for goods and services received at year end.

The Finance Division and Accenture contractors conducted staff training on September 13, 2001, on the estimated accrual process to ensure proper recordation of accrual transactions at year-end. As changes to accounting personnel occur, the Finance Division will continue to educate new personnel and provide refresher training to existing personnel, as needed.

The Finance Division also has set up an internal audit review process to review the following:

—Year-end accrual policies and procedures.
—Year-end Estimated Accrual forms submitted from divisions.
—Match subsequent disbursements with year-end accruals.
—Actual vendor invoices to determine period of performance.

The Census Bureau considers this recommendation closed.

Recommendation #4: Post accounting adjustments to subsidiary records in a timely manner.

We have implemented our new Commerce Administrative Management System (CAMS) closing program, which gives us the needed ability to track year-end adjustments in multiple periods. It has the capability to distinguish our year-end adjustments from the adjustments entered after the initial FACTS II submission and audit adjustments, which has caused discrepancies between Treasury and Office of Management and Budget records. All year-end adjustments have been entered into the financial system for fiscal year 2001. We have completed the validation of the year-end trial balance and closing entries. The final close process, which sets all financial system modules for fiscal year 2001 to close, establish ending balances, and carry-forward balances, was completed on March 29, 2002. This new closing program will enable the Census Bureau to close our financial records on schedule.

Implementation date: March 29, 2002—Completed.

Recommendation #5: Complete efforts to modify the Bureau's financial systems to produce usable accounts payable and undelivered orders subsidiary reports by vendor, close out thousands of completed transactions with small balances, and archive all completed transactions.

The data clean-up is a continuing effort for all Undelivered Orders and Accounts Payable accounts to purge all remaining unmatched transactions, which were converted from our legacy system to CAMS. The data clean-up converts unmatched transactions by determining related transactions and populating the fields used in document matching with common matching values. These transactions have no impact on our financial balances. The Census Bureau plans to complete this data clean-up effort by July 2002.

Targeted completion date: July 31, 2002.

However, Census is working in conjunction with the Department is reviewing the existing archiving capability in CAMS, and to provide additional requirements for a comprehensive, JFMIP compliant approach to provide archiving and retrieval ca-

pability. The requirements documentation should be completed this fiscal year, with implementation targeted for fiscal year 2003.

Recommendation #6: Amend policies and procedures, which will require supervisors to closely review employees time charges and project codes to ensure more accurate project costs for salaries and benefits.

As part of the census planning process for the 2004 Census Test, the Census Bureau is reviewing policies and procedures related to the completion of payroll documents and supervisory review and approval of those documents and will amend them as appropriate. We know that with a large, short-term intermittent staff, it is difficult to train them adequately in proper charging of hours and other expenses. We will look for ways to improve training and to stress the use of proper task codes and project numbers for the various field operations. We also will work on supervisors' training and procedures for the review and approval of payroll documents to improve the accuracy of reporting. We will develop supervisory checklists, which can be used during the review of payroll forms to simply make more accurate that proper task codes and project numbers are being used for the various operations.

Another aspect of our procedures that we feel impacts the accuracy of costs is the appointing of field staff into the proper position. In Census 2000, we created the Crew Leader Assistant, that was established late in the census process and was paid at the same rate as the enumerator. We know that in many offices, people that worked as Crew Leader Assistants were originally hired as enumerators and were not officially converted into the Crew Leader Assistant position. This resulted in their hours and expenses being reported as enumerators and had an adverse impact on cost reports and productivity. We plan to establish all positions in a more timely manner in the future and to develop procedures that ensure staff is hired into the proper position. It is extremely important that hours and expenses for production and nonproduction staff are reported accurately. Policies and procedures to ensure this occurs will be instituted when hiring is initiated for the 2004 Test.

Target Implementation Date: Procedures will be revised and amended as appropriate and will be implemented when hiring and training are initiated for the 2004 Test, which should be in the summer of 2003.

2010 DECENNIAL CENSUS—COST SAVINGS

Question. Is there any cost savings to the 2010 Census associated with conducting the American Community Survey?

Answer. Yes. Repeating the design used for Census 2000 would be costly, extremely risky and would result in inferior data to that collected by the reengineered design. Fundamentally reengineering the process would reduce risk, reduce full cycle costs, and improve accuracy for the 2010 Census. The American Community Survey (ACS) is a critical component to successfully reengineering the design.

The advantages and savings associated with reengineering the decennial census process have been presented in the *Potential Life Cycle Savings for the 2010 Census* document provided to the Congress in April of 2001. The President's fiscal year 2003 budget request reflects the intent to reengineer the decennial census process.

The reengineered 2010 Census, including ACS as a critical component, consists of three highly integrated activities designed to meet the following four goals: Improve the relevance and timeliness of census long form data, reduce operational risk, improve the accuracy of census coverage, and Contain costs.

The ACS is fundamental to this strategy. It sits alongside the other two components of our plan to reengineer the decennial census: (1) improving the inventory of all known living quarters and ensuring that they are accurately located on our census maps (MAF/TIGER enhancement), and (2) our program of early planning, development and testing designed to completely restructure the management and conduct of a short form only census in 2010.

ACS will provide more timely and relevant data to communities throughout the decade. Moreover, the cost of conducting a short form only census will be reduced later in the decade because the elimination of the long form from the decennial census, coupled with MAF/TIGER enhancements, will dramatically reduce the workload for enumerators in the field. Field staff will be working with more accurate maps and address lists. There will be fewer households to visit because a short form only census will have a higher response rate. We anticipate a higher response rate because ever since the inception of the short form, we have consistently experienced a higher response rate on short form questionnaires than on long form questionnaires. For example, in census 2000 the response rate for the short form questionnaires was 66.4 percent while the corresponding response rate for the long form questionnaires was 53.9 percent. We also expect savings because enumerators will not be required to follow up on unanswered long form questionnaires—a process

that is time consuming and costly. Finally, staffing also will be reduced at headquarters because we will not be required to conduct the following operations for the development of the long form since they will be carried out by the ACS program:
—Content testing and development
—Questionnaire design
—Data collection methods—development and implementation
—Edit, coding and imputation—development and implementation
—Sample design
—Estimation and variance development and computation
—Product development
—Data tabulation and review
—Data dissemination

The results of this work will mean that the overall cost of conducting the 2010 Census, including MAF/TIGER enhancements, ACS, and early planning and development for 2010, will be reduced. In addition, the persistent problem of a huge spike in the funding needs for the census occurring in the census year will be dramatically reduced. However, making these changes in Census 2010 will require an increased investment earlier in the decade as compared with the Census 2000 cycle. Additional resources are needed in the early years because decennial census operations must be completely restructured to take full advantage of ACS and MAF/TIGER enhancements. But this increase is more than offset by the significant reductions later in the decade described above.

COST OF MAF/TIGER

Question. What is the total projected cost to the 2010 Census for the MAF/TIGER geographic database system?

Answer. The full cycle cost (through 2012) for enhancing the MAF/TIGER database is $535 million. An improved MAF/TIGER database allows us to adopt the technology necessary to fully utilize GPS equipped hand held mobile computing devices to find, interview, and update data on people and their housing units for the short form only census. This innovation alone means that we can dramatically reduce field infrastructure costs because we can substantially reduce the use of paper maps and virtually eliminate the use of paper assignment sheets, along with the staff and space required to handle that paper. In addition, the enhanced system will utilize commercial off-the-shelf software allowing for an open, flexible, and integrated system that makes it easier to update maps and address lists. This will allow us to take advantage of geographic partnership programs in which address and map update information from state, local, and tribal governments can be used more effectively. The result will be a substantial increase in the accuracy of our address list and maps. Consequently, the cost of MAF/TIGER enhancement will be more than offset by savings and efficiencies in 2010 Census operations.

Repeating the design used for Census 2000 would be costly, extremely risky and would result in inferior data to that collected by the reengineered design. Fundamentally reengineering the process would reduce risk, reduce full cycle costs, and improve accuracy for the 2010 Census. The MAF/TIGER enhancement program is a critical component to successfully reengineering the design. The advantages and savings associated with reengineering the decennial census process have been presented in the *Potential Life Cycle Savings for the 2010 Census* document provided to the Congress in April of 2001. The President's fiscal year 2003 budget request reflects the intent to reengineer the decennial census process.

EDA INVESTMENT CRITERIA

Question. Pursuant to the Public Works and Economic Development Act of 1965, as amended by the Economic Development Administration Reform Act of 1998, EDA provides grants to "alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions." In the last year, the Economic Development Administration has altered its grant-making strategy by awarding infrastructure and business development grants for projects that are high profile and create lucrative jobs that pay wages higher than the average county rate.

In April of 1999, prior to this change in policy, EDA provided a grant ($1.5 million) to the City and County of Orangeburg, South Carolina for a sewer project to serve seven commercial businesses at the intersection of Interstate 26 and Highway 301. The project saved 65 jobs and created 42 new jobs. Since the time of the award, a 400 acre industrial park has been attracted to the area. Approximately 100 jobs have been created in the park and that number is anticipated to reach over 700 jobs when the park reaches its capacity. In addition, tens of millions of dollars in private

investment have been funneled in the area. Under the current criteria a similar project would not be funded by EDA.

Has EDA recently switched its grant-making focus from distressed communities to so-called "higher profile" projects?

Under what authority does EDA propose to shift the focus of its infrastructure and business development grants?

Can you provide the Committee with a list of "high priority" projects that have or are proposed to receive funding?

Answer. Based on the project described, it is not accurate to assume that such an investment would not be made by EDA today. In fact, the project you described is the type of project that can fundamentally change the economic fortunes of a region, and the type of investment that results in substantial higher wage, higher skill jobs and private sector investments that are consistent with EDA's mission.

EDA has not changed its focus from distressed communities to "higher profile" projects. Consequently, EDA does not compile a list of "high priority" projects. EDA remains committed to its core mission, articulated in its authorizing legislation, which states in part that "the goal of Federal economic development activities should be to work in partnership with local, regional, and State public and private organizations to support the development of private sector businesses and jobs in distressed communities."

EDA is not shifting the focus of its infrastructure and business development grants. EDA's Investment Policy Guidelines are merely a clarification of the evaluation criteria in EDA's longstanding regulations. The guidelines promote investment decisions based on outcomes such as value-added employment and private sector investment; however, application of the guidelines is relative to each proposal since every project is different in how it addresses the unique needs of the area it benefits. The investment policy guidelines will lead to investments that are proactive in nature, look beyond the immediate economic horizon, anticipate economic change, and enhance regional competitiveness in distressed communities, both rural and urban. The Investment Policy Guidelines help ensure that distressed communities receive the most impact from EDA investments and that taxpayers' funds are spent in a thoughtful manner with long lasting impact.

NOAA'S SEA GRANT PROGRAM

Question. I see little sense in moving Sea Grant from the Department of Commerce to the National Science Foundation. Please explain the rationale behind this proposal.

Answer. The proposal is a result of a review of Federal science programs that the Office of Management and Budget (OMB) conducted and is consistent with the President's Management Agenda. Under the proposal, the Sea Grant program would be administered as an NSF/NOAA partnership. The transfer is part of a wider Administration effort to promote competitive funding of scientific research and to capitalize on the demonstrated excellence of the NSF and its program management.

ITA TEXTILE AND MANUFACTURING JOBS

Question. Since NAFTA, the textile and apparel industry in the United States and in South Carolina, we have seen a massive decline in jobs. In South Carolina, we have lost approximately 50,900 jobs. Nationally, we have lost nearly 700,000 jobs.

What is the Administration doing to halt this decline and to create textile and apparel jobs in this country?

Answer. The economic crisis in the textile industry is of great concern to this Administration. I and other senior Commerce Department officials, including Under Secretary Aldonas and Assistant Secretary Lash have traveled to major textile producing states to learn first hand about the industry's problems and to consult with the industry on formulating solutions.

We are taking steps to ensure that our textile industry can compete in global markets. We place a high priority on enforcing our existing trade agreements on textiles and apparel and will closely monitor foreign textile trade barriers.

We are committed to leveling the playing field for the textile industry internationally. To accomplish this, the President and I established a high level interagency Textiles Working Group. At the direction of the President and I, the Working Group has begun to address such issues as:

—aggressively pursuing the opening of foreign markets to U.S. textile and apparel products in any future trade agreement;

—ensuring compliance with existing agreements on textiles and apparel and closely monitoring foreign textile trade barriers;

—implementing the WTO Agreement on Textiles and Clothing, including maintaining the current schedule for, not accelerating, the elimination of existing quotas;
—strengthening U.S. enforcement efforts to combat illegal textile transshipment;
—facilitating utilization of trade preference programs with the Caribbean Basin and Africa, in order to expand exports of U.S. fiber, yarn and fabric to these regions;
—achieving re-authorization of improved trade adjustment assistance programs;
—ensuring full access to trade remedy laws for the textile industry, consistent with international rights and obligations; and
—examining the prospects for economic diversification in the textile sector.
—Additionally, the Working Group has established a Subgroup on Compliance and Enforcement that is reaching out to domestic industry to identify and address market access and compliance problems.
—Members of the Subgroup are meeting regularly with other U.S. Government agencies and representatives of U.S. industry to support work on textiles market access and compliance issues.
—As a result of our compliance efforts, we are examining several issues including marking and labeling requirements, new prohibitive tariffs exceeding WTO bound rates, copying of textile designs, fee and taxes assessed in addition to customs duties, among other issues.
—We will pursue these issues vigorously and will continue our efforts in the future. We will be equally vigilant regarding access to overseas markets when textile restraints under the WTO expire in 2005.

MANUFACTURING JOBS

Question. Job loss in the manufacturing sector over the last year has been extraordinary. Since the end of 2000, the United States has lost over 1.5 million of these jobs.

Are creating manufacturing jobs a priority of the Administration? What will you do to assist in the creation of these sorts of jobs?

Answer. Job creation in all sectors is a priority of this Administration. The economy's weak performance since mid-2000 has contributed to an increase in the unemployment rate to 5½ percent from a low of about 4 percent. Real GDP advanced a small 0.5 percent during 2001 (fourth quarter to fourth quarter), despite growing 1.7 percent at an annual rate in the fourth quarter. The 2001 performance reflected a downshift in the growth rate of consumer spending, a sharp downturn in business fixed investment, the liquidation of business inventories, weak economic growth in many foreign economies, and the economic impact of September 11th terrorist attacks. Businesses achieved strong productivity growth in 2001 by cutting back employment. Recent data including consumer spending, industrial production, and shipments of nondefense capital goods in February suggest that the economy is emerging from its mild recession.

Continued momentum in consumer spending and a recovery in investment spending are key to a sustained recovery and to employment growth. Total employment rose 66,000 in February, after declining 1.4 million between March and January. With demand improving, employment should continue to rise. Contributing to improving economic conditions has been the Administration's tax cut and the Federal Reserve's reductions in short term interest rates. Lower taxes and lower interest rates supported consumer spending and housing activity in the second half of last year and early 2002. These policies helped to make this recession the mildest on record, and helped to contain the losses in employment.

PATENT AND TRADEMARK OFFICE

Question. Is the 5-year operating plan for PTO that was submitted as part of the President's fiscal year 2003 Budget Request the final version of the 5-year operating plan, which PTO was tasked to write under the fiscal year 2002 CJS Appropriations Act Conference Report?

Answer. The five-year Business Plan that was drafted last year and submitted in our fiscal year 2003 budget request is in response to the fiscal year 2002 CJS Appropriations Act Conference Report. As presented, it is a traditional response to attack increasing pendency, and it would stem the dangerous tide of rising pendency that began in the early 1990s. However, like any business seeking dynamic ways to improve, the business plan submitted is not set in stone.

As you may be aware, newly installed USPTO Director Jim Rogan was not a party to the drafting of the submitted plan, although he assures me that it represents an important first step toward achieving quality and timeliness improve-

ments. He has also begun an aggressive review of the USPTO to identify innovative and possibly nontraditional ways to improve quality and reduce pendency. This process includes a thorough top-to-bottom review of USPTO spending to ensure that resources are fully devoted to mission critical tasks and a comprehensive analysis of how the USPTO and applicants conduct business.

Question. Has a compelling link ever been drawn between reduced patent pendency and increased numbers of FTE at the PTO?

Answer. Yes, there is a demonstrated and verified link between reduced patent pendency and increased numbers of patent examiner FTEs. While increased hiring is not the only solution to the USPTO pendency challenges, increasing the number of patent examiners is vital to addressing the growing numbers of applications filed and the inventory of pending applications. Patent pendency is primarily a function of the number of applications filed, the number of patent examiner staff available, and the ever-increasing complexity of the applications. Pendency rises when the rate of application filings grows faster than the rate and the ability of staffing levels to absorb them.

Looking back in history, the USPTO faced nearly identical challenges in the 1980's. The USPTO, at that time, implemented an aggressive plan to reduce overall pendency to 18 months by increasing its examining staff. In the years 1980 to 1990, filings grew by 56 percent. During that same period, examiner staff grew by 107 percent and pendency was lowered from 22.6 months to 18.3 months. In addition to bringing pendency down, a backlog of more than 80,000 applications that had built up prior to the increased hiring was cleared.

Conversely in the 1990's, filings grew at a greater rate than staff and pendency increased. In the years 1990 through 2000, filings grew by 79 percent. Examining staff grew by 71 percent and pendency increased from 18.3 months to 25 months. Also during this period, there was a dramatic increase in the filing of biotechnology and electrical arts applications—some of the most complex applications handled by the USPTO. This increase in the complexity of applications resulted in a significant increase in the time spent per application. In addition to the dramatic increase in pendency during the 1990's, the office has accumulated a backlog of nearly 332,000 applications. This backlog will negatively affect pendency both today and in the future.

NTIA'S TECHNOLOGY OPPORTUNITIES PROGRAM

Question. Mr. Secretary, your Department seems to be at odds over whether or not the Technology Opportunities Program (TOP) has fulfilled its mission. According to the Departments' own "Budget in Brief", the TOP grants have demonstrated the use of advanced telecommunications technologies to enhance the delivery of social services, such as education, health care, and public safety. Surely these missions have not been accomplished. Could you explain the rationale behind the decision to eliminate the TOP grants?

Answer. The TOP program, established in 1994, has been a valuable program for generating awareness of how advanced telecommunication technologies can enhance the delivery of social services. But, in light of higher priorities, this awareness-generating program did not make the cut in this year's budget.

The Administration does view that government has an important role to play in fostering the use of advanced telecommunication technologies to provide important social benefits. However, rather than funding a limited, general awareness program, the Administration has proposed funding specific, proven uses of advanced telecommunication technologies in amounts designed to make a difference. For example:

—Within the Department of Education, $700 million was appropriated in fiscal year 2002 for Educational Technology State Grants and continues in the President's Budget request for fiscal year 2003 at $700 million. It is targeted toward high poverty school districts to better integrate technology into the classroom for improved student achievement.

—The Department of Agriculture Distance Learning and Telemedicine Program (DLT) is requesting $27 million for grants and the authority to make $130 million in loans. The Broadband and Pilot Program within the DLT Program will finance the installation of broadband transmission capacity (i.e. the necessary fiber optic cable capacity needed in order to provide enhanced services such as Internet or high-speed modems) to and through rural communities. The DLT Program finances equipment for schools, libraries and hospitals to connect to the Internet.

—The Justice Department is requesting $50 million for the Law Enforcement Technology grant program for State and local law enforcement; $60 million for states and localities to computerize and interconnect their crime and court

records; as well as $800 million for the Justice Assistance Grant Program, a significant portion of which will go towards the acquisition of communications and information technology for law enforcement.

—Housing and Urban Development is requesting $20 million for the Neighborhood Networks Program. It supports the establishment and operation of computer centers that bring job training and life long learning to residents of public housing.

The Administration believes that these Federal programs, combined with the tremendous work being done in the private sector by corporate and private foundations, are a more effective mechanism for extending the benefits of advanced telecommunication technologies to all Americans.

QUESTIONS SUBMITTED BY SENATOR HERB KOHL

MANUFACTURING EXTENSION PARTNERSHIP PROGRAM

Question. I was disappointed to see that the Administration's proposed budget would cut the Manufacturing Extension Partnership Program by $93 million, from $106 million to $13 million. This is a dramatic cut for a program which is unique in that it targets small manufacturers. Although the original model for this program was that licensing technology from federal labs would pay for the assistance the program provides to small manufacturers, this has not happened. The reality is that small manufacturers are not in the position to use the latest technology from federal labs. Rather, this program provides significant training assistance to small manufacturers across the nation, and in my state of Wisconsin, by helping level the playing field as they compete with low-cost foreign suppliers.

There have been many studies of the Manufacturing Extension Partnership Program over the years. One that has special importance, I believe, is the 2001 study by Nexus Associates which indicates that a conservative estimate of the return on investment of MEP Program dollars is at least 4 to 1. Did the Commerce Department look at this study before you made your decision to cut the MEP Program?

Answer. There have been numerous studies that point to the fact that MEP is a successful program. However, given that this Nation is fighting a war against terrorism, difficult choices have to be made in terms of priorities within the Federal budget. Unfortunately, every program cannot be funded. In the fiscal year 2003 President's budget request, MEP was funded at $12.9 million to fund two centers that are less than six years old and to administer the program and develop products and services for centers.

Question. Many large U.S. manufacturers are under tremendous pressure to purchase from low-cost foreign suppliers that have low labor costs or governmental support to capture business or both. As we have seen in Wisconsin, the Manufacturing Extension Partnership Program is one program that has been successful in giving these large companies a reason to keep purchasing from small U.S. manufacturers because it has helped make their suppliers more competitive.

If the Manufacturing Extension Partnership Program were to go away, and I fear that it will if the cut you are proposing holds, what does the Administration propose to do to help U.S. suppliers keep business and jobs in this country?

Answer. Since approximately two-thirds of their funding comes from state and local organizations and from fees for service, we believe that many MEP centers will continue to operate without Federal funding. As a result, small businesses will continue to receive the expertise and assistance from the centers, which will keep them competitive. MEP has been a successful program and demand for its services continues to increase. To offset the loss of Federal funding, centers could increase fees receipts. Given the centers' success in improving productivity and efficiency, assessing fees for service should be the direction in which the program heads. The benefits to small firms seeking MEP assistance, such as improved productivity and efficiency, should outweigh the cost of the fees. Large manufacturers that depend on smaller companies may also wish to provide support to MEP centers to ensure the continuing success of their smaller suppliers.

Question. What do you believe is the appropriate role for government in helping small businesses compete?

Answer. The Federal government should ensure that small businesses have the resources needed to be competitive. In the case of MEP, the Federal government's role was to help start these MEP centers across the United States with the goal of helping small manufacturers improve their competitiveness. MEP's initial mission was to provide start-up funding to centers for a six year period with the assumption

that after six years the centers would be up and running and could operate using funds from sources such as private funding, state funding, local funding and fees.

QUESTIONS SUBMITTED BY SENATOR JUDD GREGG

COMMERCE ADMINISTRATIVE MANAGEMENT SYSTEM (CAMS)

Question. Mr. Secretary, have you reviewed the status of the Commerce Administrative Management System (CAMS)? Are you satisfied with the progress that has been made on this project? What are you doing to assure that CAMS will be delivered on time, within budget and to specifications?

Answer. I am aware of the status of CAMS and the schedule for its full implementation throughout the Department. I am also aware of the statutory requirements in the Chief Financial Officers (CFO) Act of 1990 for integrated financial systems, as well as the need to provide managers within the Department timely, accurate financial data. Implementation of CAMS is critical to meeting both of these requirements. Separate reviews conducted within the last three years by Booz Allen Hamilton and the Department of Commerce's Inspector General agree that the Department would not gain by switching to another software package. In addition, while OMB gave the Department a "red" on the President's Management Scorecard for financial management because of our lack of an integrated financial system, we received a "green" in the same category on its planning/progress scorecard. This is based on the progress we are making to achieve that goal.

As far as our level of satisfaction where progress has been made, I do not believe any manager should be satisfied with the progress of a project that has been underway for seven years, and is still not completed. However, I do believe that we now have a sound plan for completing this project, and the support of the senior managers in our bureaus to achieve that goal. And, with the Congress' support, that goal will be met in fiscal year 2003. In spite of a $3 million reduction in its CAMS budget, NOAA is working closely with the Department to complete their implementation this fiscal year, giving us control over federal funds not possible in the current 30-year-old system. NIST has begun their conversion and will be the final component to bring CAMS online in fiscal year 2003, assuming the Congress appropriates the funds necessary to finish this project.

There have been a number of lessons learned in this project which we are utilizing to successfully complete the project and better manage our financial information. We have also examined other financial systems implementations throughout the government to learn from their experiences, as well. Unfortunately, we have found our experience is not unique. Virtually every department or agency that has integrated multiple legacy systems in their component organizations into a single system of record has encountered significant delays and cost overruns. In the Department of Commerce, there were 36 separate major interfaces to address, and countless "cuff systems."

One of the major reasons we believe CAMS is now on target is the close coordination between the bureaus and the Department's team managing the overall implementation. The initial approach was very decentralized and resulted in little oversight of the bureaus' implementation budgets and, too often, customized software to meet bureau requirements. Every bureau budget for CAMS is reviewed by the Department CFO's office, which has responsibility for ensuring our schedule is maintained and the product delivered meets all external and management requirements. In addition, finance officers from throughout the Department determine a standard approach to financial processes such as year-end closing and reporting, which is then implemented.

The CAMS Executive Board, consisting of the CFOs from the bureaus using or implementing CAMS, recommends overall policy to the CFO and reviews any major software changes. The only major bureaus scheduled to implement CAMS who are not already on the system are NOAA and NIST. The Deputy CFO and his staff meet with NOAA management at least biweekly to discuss programmatic and budget issues. The technical staffs meet weekly, to ensure the schedule is met. The $3 million reduction in NOAA's appropriation for CAMS will impede our ability to provide the systems capability to eliminate some manual activity this year, but we are confident we will complete the system and comply with OMB Circular A–127 on schedule.

A similar approach to completing the final bureau implementation at NIST is being utilized. Our completion of this project and CAMS overall is contingent on Congressional approval of the Department's appropriation for CAMS.

Question. Your budget request includes $41.93 for CAMS in fiscal year 2003. Does the budget include funding for separate information technology systems at the EDA, the MBDA, the BXA, and the ESA? If so, why are these systems not tied into CAMS? What other information technology systems within the Department of Commerce are not tied to CAMS and what is their status?

Answer. The bureaus you identify do not maintain their own financial management systems. They are all cross-serviced by other bureaus utilizing, or implementing, CAMS. All but BXA are supported by NIST, which converted to CAMS for those bureaus it cross-serviced in fiscal year 2001, though NIST itself is scheduled to implement CAMS in fiscal year 2003. BXA is supported by NOAA, which will complete its implementation of CAMS in fiscal year 2002. The $41.93 million does include the costs for support provided to those bureaus.

The budgets for the bureaus listed, along with all the Commerce bureaus, include funding for separate information technology systems, most of which, since they are not directly linked to the financial systems, are not tied to CAMS. The Department has an Information Technology Investment Review Board whose purpose is to: review the business case for any enterprise system development initiative in the Department; determine if an adequate capital asset plan is in place; evaluate the soundness of the technical design and implementation strategy; review the acquisition plan; and ensure that the appropriate ties to the CAMS financial system have been considered and planned. In the case of CSTARS, the Department's acquisition management system, the Board reviewed and approved the business case for CSTARS after they were presented with a plan for integrating CSTARS with CAMS. In fact, the Office of Financial Management and the Office of Acquisition Management have successfully collaborated on the design of an interface between the two systems. Any other enterprise system in the Department that generates data with a financial impact is required to go through this same process with the Investment Review Board.

The majority of the information technology systems in Commerce are not directly linked to the financial system. These include infrastructure and mission or program-specific systems that do not have a financial component and therefore do not have to tie to CAMS. These other information technology systems support the wide range of programs in the Department, including the following:

—Census and Surveys
—Advanced Short Term Warning and Forecast Services
—Implement Seasonal to Interannual Climate Forecast
—Predict and Access to Decadal to Centennial Change
—Promote Safe Navigation
—Build Sustainable Fisheries and Recover Protected Species
—Sustain Healthy Coasts
—Enforce U.S. Trade Laws
—BEA Statistical Estimation
—Export Control
—Measurement and Standards Laboratories
—Advanced Technology Program
—Manufacturing Extension Partnership
—Radio Spectrum Assignments
—Digital Department
—Grant Processing and Management
—IT Infrastructure and Office Automation Support to all program areas.

HOMELAND SECURITY

Question. Mr. Secretary, could you discuss the evaluative process the Bureau of Export Administration undertook to determine why and where attachés were needed?

Answer. In its evaluative process, the Bureau of Export Administration (BXA) focused on placing attachés in countries where the Bureau had the greatest concerns of illegal diversions of dual-use items to weapons of mass destruction (WMD) programs or for WMD capabilities. The countries identified were China, Russia, the United Arab Emirates (UAE), India, Singapore, and Egypt:

—The attaché in Beijing would be responsible for conducting end-use checks on U.S. commodities and technologies exported to North and Central China. Ensuring that these items are not diverted to unauthorized military or other end uses is particularly critical in this region, which is the major production area for the People's Liberation Army (PLA) and China's military-industrial complex.

—The attaché in Shanghai would focus on performing end-use checks in South and West China. With significant commercial centers and transportation hubs, this large region poses significant risks of diversion.
—Russia's physical proximity to and close commercial relationships with countries of proliferation concern such as Iran, Iraq, and India make Russia a critical country in which to post an attaché.
—The UAE is a major transshipment point for U.S. products going to Iran, Iraq, and Pakistan. Front companies are set up in the UAE specifically to move advanced technology to the WMD projects of those countries. An attaché on the ground is important to monitor developments, gather information, and perform end-use visits.
—The attaché in India would monitor WMD programs in the South Asia region and, through end-use visits, seek to prevent diversions to those programs.
—The attaché in Singapore would monitor transshipments through Singapore, which is the largest port in the world, and would work within Southeast Asia to halt the transfer of strategic products to WMD programs or uses.
—Egypt's physical proximity and close commercial relationships with the Sudan and Libya make it a transshipment risk. The attaché in Egypt would more closely monitor possible transshipments to these countries. The attaché also would perform end-use checks in Malta and Cyprus, which are other key transshipment ports in the region.

Question. Prior to this year, who was responsible for conducting export monitoring and enforcement in Russia, the United Arab Emirates, India, and Singapore?

Answer. In March 2001, BXA placed an export control attaché in Moscow. This attaché is responsible for conducting end-use checks, advising the embassy on dual-use export control issues, and working with the Russian government and local industry on export control issues. The Department of Commerce's Foreign Commercial Service officers, supplemented by special agents from BXA's Office of Export Enforcement (OEE) who travel overseas as part of the OEE Safeguards Program, are responsible for conducting export monitoring for the UAE, India, and Singapore.

Question. Why is this receiving attention only now?

Answer. Since, BXA has been conducting its statutorily-mandated mission of seeking to prevent illegal diversion of controlled items in or through these countries for many years. BXA efforts have intensified as the likelihood that dual-use commodities and technologies could be illegally diverted to weapons of mass destruction projects has increased and because of the growing importance of the countries identified above as transfer points for sensitive Commerce-licensed goods. BXA increased its Safeguards visits (composed of OEE special agents) to these countries and received temporary funding for our attaché in Moscow from the State Department.

Question. Does BXA's mission for export enforcement overlap with the mission of the Department of State's Bureau of Verification and Compliance? If so, in what way do they overlap and how do you expect to resolve this jurisdictional issue?

Answer. There are only two agencies with statutorily-mandated responsibilities for verifying the end use of U.S. exports—the State Department and the Commerce Department. The State Department and Commerce Department have clearly delineated roles in the export control process. State licenses and verifies the end-use of munitions articles, while Commerce licenses and verifies the end-use of dual-use items (i.e., items having both a military and a commercial use).

The Commerce Department established an end-use verification program in the early 1970s to conduct end-use verifications on certain products exported under Commerce-issued licenses or licence exceptions provided for in the Export Administration Regulations. These end-use checks are carried out by the Commerce Department's Foreign Commercial Service officer posted at the U.S. embassy in the destination country, or by Safeguards teams comprised of special agents from BXA's Office of Export Enforcement.

The State Department has established the Blue Lantern program, based on the Commerce program, to conduct end-use verifications on munitions exports. Those munitions are licensed for export by the State Department, and the Customs Service has exclusive enforcement authority for any related violations. This program is carried out by designated State Department or Treasury Department employees assigned to the U.S. embassy in the destination country. Each embassy must designate a Blue Lantern coordinator each year. Embassies typically choose either an economics officer, political officer, or the Customs Service attaché for this position.

Accordingly, there is no overlap in the end-use verification programs conducted by the Departments of Commerce and State. Transactions are regulated either by Commerce or State. The nature of the items regulated by each differs fundamentally.

Question. What criteria are used to evaluate CIAO and how regularly is this office evaluated?

Answer. The Critical Infrastructure Assurance Office (CIAO) is reviewed annually on the basis of two performance goals. The first performance goal involves engendering awareness among the owners and operators of the nation's critical infrastructures (both private sector and state/local governments) on the need to secure their assets, systems, and networks against deliberate physical and cyber attacks. The CIAO is evaluated on the basis of how well it carries out its responsibilities for promoting national outreach, education, and awareness, and for coordinating the preparation of an integrated national strategy for critical infrastructure assurance.

—*National Outreach, Education, and Awareness*.—The challenge of a national outreach and awareness effort is to present a compelling business case for corporate action. The primary focus of the CIAO's effort is on the nation's critical infrastructure industries (e.g., information and communications, banking and finance, transportation, energy, and water supply), and particularly the corporate boards and chief executive officers who ultimately are responsible for setting company policy and allocating company resources. The basic message conveyed is that critical infrastructure assurance is a matter of sound corporate governance and prudent risk management. Senior management is responsible for securing corporate assets—including information and information systems. Corporate boards are accountable, as part of their fiduciary duties, to provide effective oversight of the development and implementation of appropriate infrastructure security policies and best practices.

In addition to infrastructure owners and operators, the CIAO's awareness and outreach efforts target other influential stakeholders in the economy. The risk management community—including the audit and insurance professions—is particularly effective in raising matters of corporate governance and accountability with corporate boards and senior management. In addition, the investment community is increasingly interested in how information security practices affect shareholder value—a concern of vital interest to corporate boards and management.

—*National Strategy*.—A national strategy for critical infrastructure assurance developed jointly between government and industry is essential to developing a consensus about respective roles and responsibilities. A national strategy also will help to establish a basis for proposing legislative and public policy reforms where such reforms are needed to advance national policy on critical infrastructure assurance.

The development of a national strategy will not be an end in itself, but part of an ongoing process in which government and industry will continue to modify and refine their efforts at critical infrastructure assurance, adjust to new circumstances, and update the national strategy as appropriate. A particular focus of this strategy will be on cyberspace security. The White House has assigned the task of coordinating the development and final integration of this strategy to the CIAO. The Administration's strategy will be completed during 2002, with updates and revisions expected during 2003.

The second performance goal for the CIAO involves assisting civilian federal departments and agencies in analyzing their dependencies on critical infrastructures to assure the delivery of federal government services that are essential to the nation's security, economy, or the health and safety of its citizens. To carry out this mission, the CIAO developed "Project Matrix," a program designed to identify and characterize accurately the assets and associated infrastructure dependencies and interdependencies that the U.S. Government requires to fulfill its most critical responsibilities to the nation. These are deemed "critical" because their incapacitation could jeopardize the nation's security, seriously disrupt the functioning of the national economy, or adversely affect the health or safety of large segments of the American public. Project Matrix involves a three-step process in which each civilian federal department and agency identifies: (i) its critical assets; (ii) other federal government assets, systems, and networks on which those critical assets depend; and (iii) all associated dependencies on privately owned and operated critical infrastructures.

Question. What function does CIAO perform that no other agency does?

Answer. The CIAO performs a number of essential, non-duplicative functions in connection with the Administration's overall critical infrastructure protection efforts. Under Executive Order 13231 (the Order), issued on October 18, 2001 and entitled "Critical Infrastructure Protection in the Information Age," the CIAO supports the newly created President's Critical Infrastructure Protection Board (the Board).

The Board was created to coordinate federal efforts and programs relating to the protection of information systems and networks essential to the operation of the nation's critical infrastructures. In carrying out its responsibilities, the Board fully coordinates its efforts and programs with the Assistant to the President for Homeland Security.

Under the Order, the CIAO also supports the activities of the National Infrastructure Advisory Council (NIAC). The NIAC will be composed of thirty senior executives from private industry, academia, and state and local governments who will advise the President on matters relating to the security of information systems for critical infrastructures that support other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services.

The CIAO also will administer a new program—the Homeland Security Information Technology and Evaluation Program—to assess federal information systems and methods of acquiring and distributing information to improve data sharing among federal agencies for emergency response, law enforcement, intelligence, border security, and immigration. The program office established in CIAO will propose methods to improve information sharing among federal agencies and state and local governments. The CIAO will work closely with and take direct guidance from the Office of Homeland Security and the Office of Management and the Budget to ensure consistency with the Administration's overall homeland security policy.

In addition to these responsibilities, the CIAO will continue to perform its national outreach and awareness efforts, its coordination of the national strategy for critical infrastructure assurance, and its efforts to assess federal agency dependencies via Project Matrix as set forth in detail above. These functions remain essential to carrying out the Administration's policy for homeland security and critical infrastructure protection and are not performed by any other agency.

Question. Does CIAO's work overlap with the FBI's National Infrastructure Protection Center or any other Federal agencies or offices?

Answer. No. The CIAO and the National Infrastructure Protection Center (NIPC) do very different things. While both organizations engage in industry outreach, their efforts are complementary rather than duplicative. The CIAO focuses on raising national awareness of critical infrastructure assurance issues across industry sectors, influencing corporate information assurance policy, promoting market solutions for greater cyber security, and addressing legislative and legal issues that potentially undermine business incentives to maximize voluntary efforts at securing critical infrastructures. NIPC seeks to encourage private industry to share information about cyber vulnerabilities and incidents so that it can assist companies in preventing specific types of attacks and investigating such attacks when they occur. Both efforts are required elements of overall critical infrastructure assurance policy.

Question. Since it was established in fiscal year 1999, we have appropriated a total of $20.5 million for CIAO. What is the argument for continuing—and this year expanding—CIAO?

Answer. The argument for continuing the CIAO is that the office continues to play an essential role in advancing the Administration's critical infrastructure protection efforts. The specific roles and functions that justify the office's continued operation—including promoting national awareness and outreach on critical infrastructure assurance issues, coordinating the development of the national strategy for critical infrastructure protection, analyzing federal asset dependencies through Project Matrix, supporting the work of the President's Critical Infrastructure Protection Board and the National Infrastructure Advisory Council, and administering the Homeland Security Information Technology and Evaluation Program—are described in detail above.

Question. As I understand it, CIAO's original purpose was to liaise with the private sector to ensure that inattention to critical infrastructure protection did not provide opportunities to those who seek to cause damage to our Nation's physical or economic security. Now, CIAO has become a policy-making office with responsibility, according to the fiscal year 2003 budget request, for coordinating with the Office of Homeland Security, conducting a study of other agencies' information systems, and developing models for improved information-sharing among agencies. From whence does CIAO derive its authority to undertake these initiatives, many of which will require intimate involvement with our Nation's law enforcement agencies? Is this not an example of mission creep at its worst?

Answer. The CIAO always has served as an interagency policy-coordinating office; it has never been nor seeks to be a policy-making office. As discussed above, the CIAO serves a number of functions in addition to promoting national public-private awareness and outreach. The CIAO will administer the Homeland Security Information Technology and Evaluation program, working closely with the Office of Home-

land Security and the Office of Management and the Budget. Assigning this program to the CIAO is not an example of mission creep. Three particular attributes made the CIAO a good choice for this program. First, the CIAO is an interagency office that already has demonstrated effectiveness in crossing agency boundaries to achieve broad program goals and recommend actions to policy officials for improved program performance within the agencies. Second, the CIAO has extensive experience in analyzing critical federal government functions and systems under the highly successful Project Matrix program. The CIAO knows how to manage and leverage expertise within the federal government and from the private sector to achieve specific programmatic outcomes. Third, and perhaps most important, Commerce and the CIAO have no vested interest in the outcome of any decisions on implementation of recommendations. Implementation of any recommendations proposed by the program office within the CIAO will fall on the relevant lead agencies. Locating the program office in the CIAO was one way to ensure institutional neutrality in the development and evaluation of various policy options. Housing this program office in the CIAO will not result in the program office becoming "operational." Any recommendations that are made by the program office will be reviewed by an interagency Information Integration Management Review Board, led by a Deputy National Security Advisor, and will be carried out by the relevant department or agency.

Question. Mr. Secretary, are you aware of the important work the Dartmouth Institute for Security and Technology Studies in this area (critical infrastructure protection)? Two years ago, I helped get this program off the ground. Its mission is to study and develop technologies addressing counter-terrorism, especially counter-cyber terrorism. Its core research program studies threats to electronic information infrastructure systems and technologies, and seeks appropriate and effective technological preparedness, response and recovery actions, as well as training and information needs. This program has enormous potential—Dartmouth has the ability to draw upon some of the best minds in the country. I would ask you to look at how the Department of Commerce (specifically CIAO and NIST) can integrate and coordinate its efforts with the work being done at ISTS.

Answer. The Dartmouth Institute for Security and Technology Studies (ISTS) is the Executive Agent for the Institute for Information Infrastructure Protection (I^3P), funded through the National Institute of Standards and Technology (NIST). The CIAO has been involved with that initiative to develop a national R&D agenda. At the request of the Special Advisor to the President for Cyberspace Security, the first scheduled I^3P meeting will be in the Washington, D.C. area on April 15–16, 2002, to allow for coordination between I^3P and the President's Critical Infrastructure Protection Board. The Director of the CIAO will participate in that meeting.

The CIAO also has been working closely with the ISTS through the National Institute of Justice (NIJ). Recently, NIJ has reviewed and approved a proposal from ISTS for investigative research for infrastructure assurance. CIAO is represented on the NIJ review board and has been fully engaged in the ISTS review and approval process. (NIST is also represented on the review board.)

Mr. Vatis (Director, Dartmouth ISTS) has invited CIAO officials to New Hampshire for a visit of the ISTS facility and that visit should take place in the next several months. The purpose of the visit is two fold: (1) to see the facilities and capabilities first-hand; and (2) to discuss how we may partner in the future on many of these important issues.

With regards to NIST, NIST has met with ISTS representatives on a number of occasions to discuss our mutual programs so as to both avoid duplication and also to explore areas of mutual cooperation. NIST has, in fact, been invited by the National Institute of Justice to review on-going and proposed ISTS work items. We intend to continue to do so.

NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY (NIST)

HOMELAND SECURITY

Question. How is NIST currently supporting Federal efforts to combat terrorism?

Answer. NIST has for many years provided measurements, standards, data, and technical advice to help Federal, state, and local agencies and the private sector protect U.S. citizens from terrorist and military threats, natural disasters, and other types of security threats. NIST's broad expertise in measurement science and technology supports current and future homeland security applications and research. For example, NIST provides standards to ensure accurate forensic DNA analysis, develops computer security standards with the private sector, provides tools to analyze building fires and collapses, develops measurements and standards to support chemical, biological, radiological, nuclear and explosive (CBRNE) threat detection,

and provides a broad range of support for many other security activities. NIST's Office of Law Enforcement Standards (OLES) works with Federal agencies to develop standards, test methods, and procedures for evaluation technologies used by the public safety and criminal justice communities, which includes law enforcement, corrections, forensic science, the fire service, and emergency responders. OLES work focuses on the areas of public safety communications standards, detection and inspection systems, chemical detection, forensic sciences, weapons and personal protective systems, and critical incident technologies.

Since immediately following the September 11 attacks, NIST experts have been working with Federal, state, and local government agencies and the private sector to help mitigate the effects of the attack and learn how to prepare against possible future attacks. For example, NIST building and fire experts have worked on teams probing the causes of the collapse of the World Trade Center towers and the damage to the Pentagon. NIST scientists provided expert advice on DNA analysis to identify remains of terrorist victims. Following the anthrax attacks, NIST experts have worked with the U.S. Postal Service and other Federal agencies to ensure that commercial radiation facilities can be used to sanitize mail potentially contaminated with anthrax and/or other biological bacteria. NIST scientists have also worked with Federal officials to model the transport of anthrax bacteria through the Hart Senate Office Building to better understand how to best decontaminate that facility.

NIST is conducting more that 75 ongoing and newly initiated research and standards development projects to support law enforcement, military operations, emergency services, airport and building security, cyber security, and research into future security technologies. Because much of NIST's work builds general measurement and standards capabilities that are applicable to a wide range of applications in addition to homeland security, it is difficult to accurately report the resources devoted to homeland security. NIST estimates at least a $40 million current investment in measurements and standards work directly or indirectly related to homeland security.

Question. Mr. Secretary, with regard to NIST's investigation into the collapse of the World Trade Center towers, it has been brought to my attention that the engineers who were on-site in the first days following the attack pleaded with FEMA to save some key pieces of the destroyed structure for research purposes. Their requests were ignored, and much of the wreckage is no longer available for study. So, my question for you is: What is NIST going to study? Is any field research going to be done, or is this largely going to be a theoretical study using computer models?

Answer. The primary objectives of the independent and comprehensive NIST-led technical investigation of the WTC disaster are to:

—Determine technically, why and how the World Trade Center buildings collapsed following the airplane impacts.

—Determine why the injuries and fatalities were so high or low depending on location, including all technical aspects of fire protection, response, evacuation, and occupant behavior and emergency response.

—Determine whether or not state-of-the-art procedures and practices were used in the design, construction, operation, and maintenance of the World Trade Center buildings.

—Determine whether there are new technologies or procedures that should be employed in the future to reduce the potential risks of such a collapse.

—Identify building and fire codes, standards, and practices that warrant revision.

NIST will ensure a totally independent technical investigation both in planning and conducting the investigation and in publishing its findings and recommendations. The technical issues are highly complex, unique, and subtle. The focus of the investigation will be on creating new technical and/or scientific knowledge. The technical work will be thorough, deliberate and rigorous. The results will be objective and unbiased. NIST will provide timely and open public disclosure within legal bounds on the progress of the investigation. NIST will make no findings of fault or responsibility. It will make no determination as to behavior or negligence of any individual or organization.

The technical approach of the NIST investigation will include the following phases:

—Data Collection: inputs from the Port Authority of New York and New Jersey (PANYNJ) and local authorities; building and fire protection design, plans, and specifications; construction, maintenance, operation records, building renovations and upgrades; video and photographic data; field data; interviews; emergency response records including audio communications; and other records.

—Analysis and Comparison of Building and Fire Codes: analysis and comparisons of codes and standards then and now, and specifications used for WTC buildings.

—Identification of Technical Issues and Major Hypotheses Requiring Investigation: opportunity for public input (e.g., open forum; website; Federal Register notice); convene expert panels to solicit input (experts in structural and fire protection engineering; experts in construction, maintenance, operation and emergency response procedures of tall buildings); findings and recommendations of FEMA-funded study; analyze inputs and establish priorities; review and approval by independent Technical Review Panel.
—Collection and Analysis of Forensic Evidence: structural steel, material specimens and other forensic evidence to the extent they have been collect or are otherwise available; metallurgical and mechanical analysis.
—Modeling, Simulation, and Scenario Analysis: aircraft impact on structures and estimate damages to interior and core structure and residual capacities; role of jet fuel and building contents in resulting fire; fire dynamics and smoke movement; thermal effect on structures and the effect of fireproofing; structural response under fire and the effect of connections, flooring system, core and exterior columns, and the overall structural system; occupant behavior and response including influence of communications and barriers to egress; evacuation issues including egress, analysis of control/fire panels, emergency response, and communications; analysis of fire protection system design and vulnerability; and analysis of structural collapse mechanisms including evaluation of system vulnerability to progressive collapse and fires, scenario analysis to test hypothesis and address technical issues, and establishing bounds for probably technical causes.
—Testing to Demonstrate Scenarios and Failure Mechanisms: small and some real-scale re-creation tests to provide additional data and verify simulation predictions, especially effect of fires (e.g., use and adequacy of standard fire ratings, behavior of connections and assemblies).
—Preparation of Interim and Final Reports: review and approval by specially appointed and independent Technical Review Panel; dissemination via published reports, web, and media.
—Presentation of Findings and Technical Recommendations: building and fire safety communities and including appropriate codes and standards and professional practice organizations, and the media.

WORLD TRADE CENTER TOWERS

Question. Mr. Secretary, with regard to NIST's investigation into the collapse of the World Trade Center towers, it has been brought to my attention that the engineers who were on-site in the first days following the attack pleaded with FEMA to save some key pieces of the destroyed structure for research purposes. Their requests were ignored, and much of the wreckage is no longer available for study. So, my question for you is: What is NIST going to study? Is any field research going to be done, or is this largely going to be a theoretical study using computer models?

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—Determine technically, why and how the World Trade Center buildings collapsed following the airplane impacts.
—Determine why the injuries and fatalities were so high or low depending on location, including all technical aspects of fire protection, response, evacuation, and occupant behavior and emergency response.
—Determine whether or not state-of-the-art procedures and practices were used in the design, construction, operation, and maintenance of the World Trade Center buildings.
—Determine whether there are new technologies or procedures that should be employed in the future to reduce the potential risks of such a collapse.
—Identify building and fire codes, standards, and practices that warrant revision NIST will ensure a totally independent technical investigation both in planning and conducting the investigation and in publishing its findings and recommendations. The technical issues are highly complex, unique, and subtle. The focus of the investigation will be on creating new technical and/or scientific knowledge. The technical work will be thorough, deliberate and rigorous. The results will be objective and unbiased. NIST will provide timely and open public disclosure within legal bounds on the progress of the investigation. NIST will make no findings of fault or responsibility. It will make no determination as to behavior or negligence of any individual or organization.

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—Analysis and Comparison of Building and Fire Codes: analysis and comparisons of codes and standards then and now, and specifications used for WTC buildings.
—Identification of Technical Issues and Major Hypotheses Requiring Investigation: opportunity for public input (e.g., open forum; website; Federal Register notice); convene expert panels to solicit input (experts in structural and fire protection engineering; experts in construction, maintenance, operation and emergency response procedures of tall buildings); findings and recommendations of FEMA-funded study; analyze inputs and establish priorities; review and approval by independent Technical Review Panel.
—Collection and Analysis of Forensic Evidence: structural steel, material specimens and other forensic evidence to the extent they have been collect or are otherwise available; metallurgical and mechanical analysis. By testing the material samples that are available, we believe we can make limited determinations on the quality of steel and the maximum temperatures reached by the steel. These determinations would be valid for the samples actually tested and to the extent that those samples are representative of steel used elsewhere in the buildings. In addition, the field observations already made by the ASCE team have enabled them to draw useful inferences on the possible mechanisms of structural failure.
—Modeling, Simulation, and Scenario Analysis: aircraft impact on structures and estimate damages to interior and core structure and residual capacities; role of jet fuel and building contents in resulting fire; fire dynamics and smoke movement; thermal effect on structures and the effect of fireproofing; structural response under fire and the effect of connections, flooring system, core and exterior columns, and the overall structural system; occupant behavior and response including influence of communications and barriers to egress; evacuation issues including egress, analysis of control/fire panels, emergency response, and communications; analysis of fire protection system design and vulnerability; and analysis of structural collapse mechanisms including evaluation of system vulnerability to progressive collapse and fires, scenario analysis to test hypothesis and address technical issues, and establishing bounds for probably technical causes.
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—Presentation of Findings and Technical Recommendations: building and fire safety communities and including appropriate codes and standards and professional practice organizations, and the media.

PATENT AND TRADEMARK OFFICE (PTO)

Question. How is a 21 percent increase for the Patent and Trademark Office justified? What evidence do you have that higher funding levels will necessarily lead to improved turnaround rates on pending patents and trademarks?

Answer. As the importance of intellectual property assets has increased in society, so too has the USPTO's workload. In fiscal year 2001, patent filings increased 11.2 percent above fiscal year 2000's level. Since 1996, patent filings are up over 70 percent and these levels of growth are expected to continue for the next several years. Trademark filings in fiscal year 2001, while down 21 percent, were still the second highest level ever and follow two consecutive years of 27 percent increases. In recent years, the USPTO budget has not been increased relative to this dramatic growth in its workload.

Without adequate and sustained funding, we cannot reduce pendency in the short term or invest in business process changes that will allow us to better manage workloads in the future. Patent and trademark processing and pendency times are highly dependent on the number of applications filed, existing pending inventories, and staffing levels specific skills. Successive years of insufficient funding relative to

workloads have contributed to staffing levels that were woefully inadequate to keep up with new filings. As a result, pendency increased well beyond established goals.

Trademark pendency to first office action dropped below our goal of three months and reached its lowest level in thirteen years in 2001. This accomplishment was achieved as a result of declining application filings, a greater reliance on electronic communications and systems, and a larger and more productive examination staff. Our request for 2003, to complete the process redesign of the trademark operation by delivering a fully electronic workflow, represents the final investment in our successful integration of automated systems and processes that will allow us to manage more filings with fewer staff by relying on electronic filing and communications. Trademarks will use $18.1 million of the 21 percent increase to complete its process redesign and deliver a fully electronic trademark workflow by 2004. This e-Government initiative represents an investment in the future ability of the USPTO to create a process that will enable us to handle fluctuations in trademark filings with more predictable results and reduce our dependence on ever increasing budget requests and staffing relative to workloads.

The Patent Business has been experiencing double-digit growth rates as high as 12 percent annually for a number of years. Patent applications are estimated to increase by 10 percent from fiscal year 2003 through fiscal year 2007. The majority of these applications are in the high technology fields. Patents must have the flexibility to hire additional examiners who have the industry specific knowledge to examine these complex applications. The Patent Business is also fully aware of customer concerns about increasing pendency. To address this problem, the Patent Business plans on hiring 950 patent examiners in fiscal year 2003 and for several years thereafter. Hiring these examiners will allow us to begin turning the corner on pendency in fiscal year 2004. Without sufficient and sustained funding to hire additional examiner staff, the USPTO will be unable to maintain a pendency level that is acceptable to our customers.

Question. In the fiscal year 2002 Commerce appropriations bill, the PTO was directed to develop a five-year plan. We understand that this plan was debuted in the PTO's fiscal year 2003 budget request. How heavily were you involved in the preparation of this plan? What is your opinion of it?

Answer. The five-year Business Plan that was submitted as the fiscal year 2003 budget request is in response to the fiscal year 2002 CJS Appropriations Act Conference Report. The plan establishes goals for timeliness and quality for patent and trademark processing. The USPTO kept both the Deputy Secretary and myself informed of their planning process. While I believe the Business Plan represents a start toward achieving quality and timeliness improvements, I support USPTO Director Jim Rogan's efforts to seek innovative ways to achieve even greater pendency and quality improvements than those identified in the Business Plan.

Question. What progress has PTO made towards a paperless patent application process? Is this a priority for you?

Answer. Implementing paperless patent application processing at the USPTO is of the highest priority. We have recently initiated an automation initiative, called Tools for Electronic Application Management (TEAM), that will establish the infrastructure required to support the electronic processing of patent applications while retaining the essential legal and business processes that protect the intellectual property rights of the applicants. The TEAM program will support the entire patent application process beginning with application authoring, through the Electronic Filing System (EFS), and proceeding through to electronic publishing and records archival.

The TEAM program will also integrate individual automated information systems, both existing and to be developed, to achieve the appropriate legal replication of the current paper-based patent business process. The electronic patent application process must support statutory regulations promulgated by Congress, as codified under Title 35 of the United States Code (35 U.S.C.), both as they presently exist and as they may become enacted in the future. Additionally, the electronic patent application process must be commensurate with USPTO's rules and interpretations of the statutory regulations, as published within Title 37 of the Code of Federal Regulations (37 C.F.R.). TEAM will be implemented in phased releases with full implementation scheduled for September 2006.

To accomplish the goal of patent application electronic filing, the USPTO plans to gradually transfer the responsibility of developing and maintaining electronic application authoring and submission tools to the private sector. To this end, the USPTO has issued a Request For Agreement (RFA) to private sector vendors, reviewed responses, and is the final stages of solidifying contractual arrangements. It is envisioned that working with these vendors will allow the USPTO to take advantage of their established customer base, marketing techniques, and current tools,

which they plan to adapt to promote electronic filing. These are clearly important advantages to reach the electronic filing rate needed to support the Return On Investment (ROI) for both the EFS and TEAM programs. The use of products developed by multiple RFA vendors provides additional adaptability and flexibility that is believed to be essential to achieving that goal.

The USPTO is also continuing to explore a number of creative approaches to further encourage electronic filing. However, serious review of current policies and laws affecting USPTO business practices must be conducted in order to provide incentives to USPTO customers to file electronically and enable the internal end-to-end electronic processing of patent applications.

FUNDAMENTAL CHANGE AT BUREAU OF THE CENSUS

Question. Mr. Secretary, would you agree that fundamental change is needed at the Bureau of the Census?

Answer. Even though we just completed the most successful decennial census ever undertaken by the Census Bureau, we believe the process of conducting the decennial census needs to be fundamentally changed for 2010. Census 2000 was an operational and data quality success: all operations were completed on time and within overall budget; overall coverage was improved; and differential coverage was improved for all minority groups and children. However, Census 2000 was conducted with high cost and at great risk. In 2010 the job will be more complex. We project that to repeat the Census 2000 design in 2010 would cost about $11.7 billion. Even at this great cost, repeating the old design would be extremely risky and would result in inferior data to that collected by the reengineered design.

Opportunities exist to reduce risk, reduce full cycle costs, and improve accuracy for the 2010 Census. To take advantage of these activities, the Census Bureau must have adequate resources in place early in the decade for 2010 planning, development and testing. The strategy for re-engineered 2010 census features three key components that allow for improved testing, simplified data collection, and better information at less cost.

—To increase enumerator efficiency, facilitate identification of duplicate addresses and reduce field work, the Census Bureau will enhance the geographic database and associated address list (referred to as MAF/TIGER) by replacing the internally developed system with one that uses Global Positioning Technology and satellite mapping imagery or aerial photography to update and improved the address information gathered for Census 2000.

—The American Community Survey which has been designed to sample 3 million households per year by county nationwide is expected to provide more timely accurate data by replacing the decennial system.

—Early and comprehensive planning, development, and testing that allows the Census Bureau to more efficiently reengineer the process for taking the 2010 Census, particularly in the area of field data collection, by taking advantage of the opportunities afforded by an enhanced geographic system, and only short-form data collection activities.

These components are heavily integrated and interdependent. They can be thought of in the same way one envisions a 3-legged stool. They build on Census 2000 data collection efforts, as well as build on and complement one another.

Savings in the overall cost and gains in accuracy for Census 2010 can be realized only if there is adequate funding early in the decade to examine, develop, and test these opportunities.

COST EFFECTIVENESS OF 2010 DECENNIAL CENSUS

Question. How can we ensure that the next census is done in the most cost-effective way possible?

Answer. The reengineered 2010 Census is based on a strategy designed to meet the following four goals: Improve the relevance and timeliness of census long form data, reduce operational risk, improve the accuracy of census coverage, and contain costs.

To achieve each of these, including our goal to conduct the most cost-effective census possible, we have developed a three-pronged approach based on the following components:

—The American Community Survey—which will provide more timely and relevant data to communities throughout the decade and allow us to conduct a short-form only census in 2010.

—MAF/TIGER enhancement—which will improve our inventory of all known living quarters, ensure that they are accurately located on our census maps, and utilize commercial off-the-shelf software allowing for an open, flexible, and inte-

grated system that makes it easier to update maps and address lists. Commercial software will greatly facilitate our work with geographic partnership programs as we incorporate address and map update information from state, local, and tribal governments.

—2010 planning—A program of early planning, development and testing designed to take advantage of these innovations and completely restructure the management and conduct of a short form only census in 2010. This will result in a 2010 Census that will realize savings in excess of the additional costs associated with conducting the ACS, implementing the MAF/TIGER enhancements program, and early planning, development and testing for the 2010 Census. Specifically,

—The workload for enumerators in the field will be reduced because they will be working with more accurate maps and address lists, there will be fewer households to visit because a short form only census will have a higher response rate, and they will not be required to follow up on unanswered long form questionnaires—a process that has been time consuming and costly.

—Staffing will be reduced at headquarters because we will not be required to design, test and implement operations to disseminate long form questionnaires and capture long form data.

—MAF/TIGER enhancements will enable us to fully utilize GPS equipped hand held mobile computing devices to find, interview, and update data on people and their housing units for the short-form only census. This innovation alone means that we can dramatically reduce field infrastructure costs because we can substantially reduce the use of paper maps and virtually eliminate the use of paper assignment sheets, along with a portion of the staff and space required to handle that paper. While the costs for these MAF/TIGER enhancements would offset some of these savings, the overall savings would exceed the MAF/TIGER costs. Our full cycle analysis looks at the total costs for ACS, MAF/TIGER and early planning for the 2010 Census. The total costs for full implementation are less than the total costs for repeating Census 2000 in 2010. These net savings would be realized even after paying for the full ACS, MAF/TIGER, and early planning, testing and development programs.

—Planning, development and testing for 2010 operations also includes a number of cost-saving initiatives, including targeting a 2nd mailing of the questionnaires, which will increase the response rate, taking advantage of electronic communications such as the internet and telephone to deliver questionnaires and capture data, and targeting our address list update operations to improve the address list in the areas that need it most.

The results of this work will mean that the overall cost of conducing the 2010 Census, including MAF/TIGER enhancements, ACS, and early planning and development for 2010, will be reduced. In addition, the persistent problem of a huge spike in the funding needs for the census occurring in the census year will be dramatically reduced. However, making these changes in Census 2010 will require an increased investment earlier in the decade as compared with the Census 2000 cycle. Additional resources are needed in the early years because decennial census operations must be completely restructured to take full advantage of ACS and MAF/TIGER enhancements. But this increase is more than offset by the significant reductions later in the decade described above.

CENSUS BUREAU'S INTERNAL OPERATING SYSTEM

Question. What is being done to rehabilitate the Census Bureau's internal operating system?

Answer. Several of the management recommendations in the GAO report ("2000 Census: Analysis of Fiscal Year 2000 Budget and Internal Control Weaknesses at the U.S. Census Bureau"—GAO–02–30) address improvements to the Bureau's financial accounting systems. We are currently acting on these recommendations. This answer addresses all but three of those recommendations. The three not addressed by this answer dealt with current financial activities, rather than financial accounting systems.

Recommendation #3: Instruct accounting personnel to follow the written policy for establishing accruals and proper cutoff for goods and services received at year end.

The Finance Division and Accenture contractors conducted staff training on September 13, 2001, on the estimated accrual process to ensure proper recordation of accrual transactions at year-end. As changes to accounting personnel occur, the Finance Division will continue to educate new personnel and provide refresher training to existing personnel, as needed.

The Finance Division also has set up an internal audit review process to review the following:

—Year-end accrual policies and procedures.
—Year-end Estimated Accrual forms submitted from divisions.
—Match subsequent disbursements with year-end accruals.
—Actual vendor invoices to determine period of performance.
The Census Bureau considers this recommendation closed.

Recommendation #4: Post accounting adjustments to subsidiary records in a timely manner.

We have implemented our new Commerce Administrative Management System (CAMS) closing program, which gives us the needed ability to track year-end adjustments in multiple periods. It has the capability to distinguish our year-end adjustments from the adjustments entered after the initial FACTS II submission and audit adjustments, which has caused discrepancies between Treasury and Office of Management and Budget records. All year-end adjustments have been entered into the financial system for fiscal year 2001. We have completed the validation of the year-end trial balance and closing entries. The final close process, which sets all financial system modules for fiscal year 2001 to close, establish ending balances, and carry-forward balances, was completed on March 29, 2002. This new closing program will enable the Census Bureau to close our financial records on schedule.

Implementation date: March 29, 2002—Completed.

Recommendation #5: Complete efforts to modify the Bureau's financial systems to produce usable accounts payable and undelivered orders subsidiary reports by vendor, close out thousands of completed transactions with small balances, and archive all completed transactions.

The data clean-up is a continuing effort for all Undelivered Orders and Accounts Payable accounts to purge all remaining unmatched transactions, which were converted from our legacy system to CAMS. The data clean-up converts unmatched transactions by determining related transactions and populating the fields used in document matching with common matching values. These transactions have no impact on our financial balances. The Census Bureau plans to complete this data clean-up effort by July 2002.

Targeted completion date: July 31, 2002.

However, Census is working in conjunction with the Department is reviewing the existing archiving capability in CAMS, and to provide additional requirements for a comprehensive, JFMIP compliant approach to provide archiving and retrieval capability. The requirements documentation should be completed this fiscal year, with implementation targeted for fiscal year 2003.

Recommendation #6: Amend policies and procedures, which will require supervisors to closely review employees time charges and project codes to ensure more accurate project costs for salaries and benefits.

As part of the census planning process for the 2004 Census Test, the Census Bureau is reviewing policies and procedures related to the completion of payroll documents and supervisory review and approval of those documents and will amend them as appropriate. We know that with a large, short-term intermittent staff, it is difficult to train them adequately in proper charging of hours and other expenses. We will look for ways to improve training and to stress the use of proper task codes and project numbers for the various field operations. We also will work on supervisors' training and procedures for the review and approval of payroll documents in hopes that accuracy of reporting can be improved. We also will develop supervisory checklists, which can be used during the review of payroll forms to ensure that proper task codes and project numbers are being used for the various operations.

Another aspect of our procedures that we feel impacts the accuracy of costs is the appointing of field staff into the proper position. In Census 2000, we created a new position, the Crew Leader Assistant, that was established late in the census process and was paid at the same rate as the enumerator. We know that in many offices, people that worked as Crew Leader Assistants were originally hired as enumerators and were not officially converted into the Crew Leader Assistant position. This resulted in their hours and expenses being reported as enumerators and had an adverse impact on cost reports and productivity. We plan to establish all positions in a more timely manner in the future and to develop procedures that ensure staff is hired into the proper position. It is extremely important that hours and expenses for production and nonproduction staff are reported accurately. Policies and procedures to ensure this occurs will be instituted when hiring is initiated for the 2004 Test.

Target Implementation Date: Procedures will be revised and amended as appropriate and will be implemented when hiring and training are initiated for the 2004 Test, which should be in the summer of 2003.

SOFTWOOD LUMBER

Question. Mr. Secretary are you aware of the softwood lumber issue, and can you give us a status report on the countervailing and antidumping investigation?

Answer. As you may know, on Friday, March 22, 2002, the Department announced our findings in these investigations. We found that Canada was subsidizing their lumber at 19.34 percent. We also found that Canadian companies sold their product below market value at an average of about 10 percent. We will, nonetheless, continue to pursue a lasting solution to the softwood lumber issue—one that encourages market-based reforms of provincial forestry practices in Canada.

Question. Are you aware of the particular problem that some loggers and landowners in New England have had, which is that a dumping tax was, in effect, imposed on U.S. lumber that is shipped to Canada for processing?

Answer. I am very much aware of this situation and understand the hardship that these duties can have on our loggers and landowners in New England and other U.S. states. For this and other reasons, we have excluded 20 Canadian companies from the duties; a number of which were Quebec border mills based on our findings that these Canadian companies were not subsidized.

Question. Is there going to be any opportunity for these companies [logger and landowners in New England] to present their case and thus rectify this situation?

Answer. We are looking into all administrative procedures under the law that will allow us to address this issue. My staff will continue to work closely with your staff and those from Senators Snowe and Collins' office, as well as the U.S. industry, to find ways to make sure that the timber suppliers in the United States have the opportunity to be heard and have their concerns addressed.

NOAA—TRANSFER OF NATIONAL SEA GRANT PROGRAM

Question. Mr. Secretary, do you support the transfer of Sea Grant to the National Science Foundation?

Answer. I support the President's Budget Request that proposes to transfer Sea Grant to the National Science Foundation. The proposal is a result of a review of Federal science programs that the Office of Management and Budget (OMB) conducted and is consistent with the President's Management Agenda. Under the proposal, the Sea Grant program would be administered as an NSF/NOAA partnership. The transfer is part of a wider Administration effort to promote competitive funding of scientific research and to capitalize on the demonstrated excellence of the NSF and its program management.

Question. If we keep this program at Commerce, will you continue to execute it as you have in the past?

Answer. At this time, we have not considered any changes to the program. Should the program remain within the Department of Commerce, we will work with Congress and the Administration to make any changes that may be appropriate.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

BUREAU OF ECONOMIC ANALYSIS

Question. Mr. Secretary, it is crucial that policymakers have the most accurate economic data possible. This is particularly the case for budgeting. We use BEA data for constructing our baseline, and it is a foundation for most fiscal policy making by the Administration and the Congress.

I am pleased to see the President request additional funding to improve our economic statistics through both the Bureau of the Census for which $23.6 million is requested, and through the BEA for which $10.7 million is requested.

I am especially concerned that BEA's data responsibilities are becoming even more difficult, in light of ongoing changes in our new economy. I understand that you have proposed an initiative to enhance BEA's understanding and measurement of e-business. Could you explain to the Subcommittee why this initiative is so important?

Answer. The rapid change in the U.S. economy has challenged BEA to keep its statistics as accurate and reliable as possible. Until recently, BEA was unable to implement a number of initiatives that sought to incorporate these significant changes in our economy. Recent budget increases, including President Bush's request for fiscal year 2003, were important in getting BEA statistics back on track. Measuring e-business and the new economy has been part of these recent improvements.

Why is measuring e-business important? Measuring the impact of e-business and other high-tech sectors of the economy is critical to reducing the size of the revisions of GDP and the national accounts which contributed to large corrections in budget forecasts. The Congressional Budget Office (CBO), in *The Budget and Economic Outlook, Fiscal Years 2001–2012*, estimated that roughly 40 percent of the change in the budget outlook over the next ten years, or $1.6 trillion, was due to changes in economic and technical assumptions. A major contributor to the changes in CBO assumptions were BEA's revisions in the level and trend growth of GDP, incomes, and productivity. A large share of the GDP revisions were related to inadequacies in the data available to BEA on key products such as software and other high-tech sectors. Funding to develop more adequate source data will help reduce these revisions and the resulting corrections in budget forecasts.

Question. Previous administrations and the Congress have been working toward the goal of better economic estimates since the Boskin initiative in the 1980's. Could you provide the Subcommittee with information on what funding has been provided over the past ten years for these initiatives and a brief statement on what has been accomplished thus far?

Answer. BEA made a number of important changes to improve economic statistics as a result of the Boskin Commission recommendations of 1990–1991. Chain indexes were introduced into the national accounts; improved measures of productivity, output and prices were incorporated; estimates of GDP by industry were dramatically improved; and better measures of foreign and U.S. investments were developed. Funding levels for the early 1990s are shown in the attached tables from the General Accounting Office's July 1995 report *Economic Statistics: Status Report on the Initiative to Improve Economic Statistics.*

BEA's efforts to fully implement most of the Boskin Commission recommendations were hampered by budget shortfalls in the second half of the 1990's. From fiscal year 1994-fiscal year 2000, BEA received no funding increases to provide for data improvement initiatives. Today, BEA again is able to address some of the issues raised by Chairman Boskin in the early 1990s. Budget increases in fiscal year 2001 and fiscal year 2002 have allowed BEA to develop measures of the new economy and close important gaps in coverage of GDP. President Bush's budget request for fiscal year 2003 also allows BEA to address specific recommendations made by the Boskin Commission such as improving the timeliness of important economic indicators such as international trade and GDP by Industry. Fiscal year 2003 initiatives at the Census Bureau to improve coverage of the service sectors and better measure e-business and high-technology sectors are critical to further improvements to the GDP. Despite current budget increases, a number of recommendations still remain to be address. (See Attachment A)

Question. Should Congress provide the requested funding in fiscal year 2003, what is the outlook for additional enhancements in the next two to three years?

Answer. Funding for fiscal year 2003 will help BEA achieve the challenges put forth by Secretary Evans to generate more timely economic statistics and meet international statistical obligations. Working closely with its data users, BEA developed a Five-Year Strategic Plan which calls for a number of important improvements over the next five years to a broad range of economic measures. The summary table below lays out highlights of the Plan for the next two to three years.

BEA Accounts	Future Strategic Plan Priorities
National	Utilize ''real-time'' data in estimates to more quickly and accurately measure price changes
	Improve timeliness of GDP and NIPA release
	Reduce GDP revisions by developing improved source data for under measured sectors such as software and biomedicine
International	Develop better measures for financial transactions and holdings that now bypass international capital reporting systems
	Conduct research on alternative methods of measuring U.S. balance of payments
Industry	Improve timeliness and accuracy of capital flow data to allow users to determine where industries invest (i.e., high tech investments)
	Develop employment tables to measure employment impacts by industry
	Provide increased industry detail in input-output tables
Regional	Improve accuracy and timeliness of state, local, metropolitan and regional estimates
	Develop state-level estimates of public and private investment flows
	Develop regional price indices to measure across-region price differences

BEA Accounts	Future Strategic Plan Priorities
Management Agenda	Develop strategies to hire and retain staff and plan for the anticipated wave of senior manager retirements Increase usability and data content of BEA website Expand electronic data collection systems

MANUFACTURING EXTENSION PARTNERSHIP PROGRAM

Question. Secretary Evans, I know that the Administration has to make tough decisions in its budget deliberations. In some years, budget proposals have gone so far as to do away with the entire Department of Commerce, and yet it is still here. I am concerned, however, about the Administration's proposal to essentially eliminate funding for the Manufacturing Extension Partnership program within the National Institute of Standards and Technology (NIST). The Manufacturing Extension Partnership Program is currently funded at $106.5 million, and the 2003 request is for $12.9 million to phase out the program.

Mr. Secretary, I have to tell you that the Manufacturing Extension Partnership Program has done extremely good work in New Mexico, and I have heard from dozens of my constituents in favor of continuing funding for the program at $110 million in 2003.

What has the Manufacturing Extension Partnership Program achieved during the past six years of funding? Has it met the purpose for which it was established—to assist small businesses and manufacturers gain access to technologies, resources, and technical expertise that they might not have in-house and make them more competitive?

Answer. MEP has been a successful program and demand for its services continues to grow. Over the last six years MEP has had a significant impact on small manufacturers performance. MEP has provided direct assistance to small manufacturers for their business operations, including process improvement, implementing quality management systems, implementing business systems, marketing development, plant layout, environmental studies, electronic commerce, and other areas of best practices to improve productivity and competitiveness. In fiscal year 2000, MEP clients surveyed reported that MEP services resulted in: Over 25,000 jobs created or retained; $2.3 billion in sales impact; cost savings of over $480 million; and increased investments of over $870 million.

Question. I know that this program works through a nationwide network of manufacturing extension centers, which are linked to state, university, and private sources of technical expertise. It is somewhat modeled on the extremely successful agriculture extension model. How much does the Manufacturing Extension Partnership Program leverage in terms of non-federal investments annually?

Answer. Typically, centers receive one-third of their funding from the Federal government. From fiscal year 1989 through fiscal year 2002 (estimated), the Federal investment in MEP centers is approximately $806 million. One-third of the remaining two-thirds of center support comes from state and local organizations, and the other third comes from fees for services.

Question. With this kind of success and broad support in the private sector, what is the Administration's rationale for phasing out this program?

Answer. We are a nation at war against terrorism and difficult choices have to be made in terms of priorities within the Federal budget. Unfortunately, every program cannot be funded. MEP has been a successful program and demand for its services continues to increase. We believe that many MEP centers will continue to exist in the absence of Federal funding, and as a result, small businesses will continue to receive the expertise and assistance from the centers. To offset the loss of Federal funding, centers could increase fees receipts. Given the centers' success in improving productivity and efficiency, assessing fees for service should be the direction in which the program heads. The benefits to small firms seeking MEP assistance, such as improved productivity and efficiency, should outweigh the cost of the fees. Also, large manufacturers that depend on smaller companies may also wish to provide support to MEP centers to ensure the continuing success of their smaller suppliers.

PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Question. Secretary Evans, I am pleased to see that the Administration's fiscal year 2003 budget continues to support the Public Telecommunications Facilities Program (PTFP), which provides grants to public radio and TV stations for equipment. The PTFP program has had its ups and downs over the year, and has even

been proposed for termination. From $15.25 million in fiscal year 1997, and over the past several years, this Subcommittee has elevated funding to the current $51.7 million in fiscal year 2002—$43.5 million plus a supplemental of $8.25 million.

Mr. Secretary, I have been a longtime supporter of the Public Telecommunications Facilities Program because it is an important source of funding to rural states like New Mexico. PTFP grants enable local broadcasting stations to provide quality programming to populations that are generally under served.

The budget includes $43.6 million for PTFP for fiscal year 2003, essentially level funding minus the supplemental. My local broadcasters have been in to request significant additional federal support as the statutory deadline for converting to digital equipment approaches in 2003. The broadcasters' funding request is $110 million for fiscal year 2003. How much of the $43.6 million requested does the Administration envision going toward assisting broadcasters with the purchase of digital equipment as we approach the 2003 conversion date?

Answer. During the recent fiscal year 2001 grant round, NTIA awarded almost $35 million for digital conversion grants out of a total of $42 million awarded through the program. We expect to award approximately this level of funding for digital television conversion projects from the $43.6 million requested in fiscal year 2003.

Question. For the past several years, Congress has worked to augment the PTFP budgets to support the conversion to digital equipment. How much has the PTFP program provided for this purpose? Could you provide the Subcommittee with a breakdown of the amounts provided and the grantees funded for this purpose for the past five years?

Answer. Over the past four years (fiscal year 1998–2001) that NTIA has funded the digital conversion of public television facilities, the program has awarded over $60 million for digital conversion projects to grantees in 42 states. These Federal funds have been matched by the recipients with almost $95 million in non-Federal funds. Attached is a breakdown of the grant awards (Attachment B). Grants for fiscal year 2002 will be announced in September.

Question. The Congress has provided some digital conversion funding through the Corporation for Public Broadcasting (CPB), and in fact, the private and public sectors will be providing two-thirds of the total cost of digital conversion, and the federal government one-third of the cost. Do the Department and the PTFP program work closely with the Corporation of Public Broadcasting as this conversion project proceeds? How is this effort being coordinated?

Answer. NTIA is working closely with CPB. The two grant programs have coordinated their grant timetables and plan to stagger funding decisions. To ensure that NTIA and CPB do not duplicate funding for stations, the programs will exchange equipment lists of applicants and meet as necessary to review funding decisions.

ATTACHMENT A.—APPENDIX II—ECONOMICS STATISTICS INITIATIVE RECOMMENDATIONS

[Dollars in Thousands]

GAO's 7 Areas	38 ESI Recommendations	1990 Recommendations [1]	1991 Recommendations [2]	Responsible agency [3]	Funding for fiscal year 1990–94	
					Requested	Received
National Income and Product Accounts statistics recommendations.	Indirect estimation methods	Explore alternative methods for estimating constant dollar output.	Use indirect estimation methods to close data gaps; methods include price measurement of high-tech goods, measurement of certain services, and improved deflation of purchases by state and local governments.	BEA	[4] $3,200	[4] 1,700
	Input-output tables	Expedite the compilation of input-output data.	Reduce by 2 years the lag in benchmark and annual input-output tables.	BEA	([4])	([4])
	Construction-methodology	Complete ongoing methodological and data collection improvements and incorporate these in the 1990 GNP.		BEA	([4])	([4])
	System of national accounts	Revise the U.S. national income and product accounts to be consistent with the major components of the United Nations system of national accounts, which are used by most of the major industrialized nations of the world.	Develop modernized and extended national economic accounts that follow the United Nations revised system of national accounts. Features are to include (1) an integrated set of current and capital accounts that include both financial and nonfinancial transactions and (2) satellite accounts.	BEA	5,700	1,200
	Inflation adjustments	Add supplementary series to the national income and product accounts that separate the real and inflation components of the return to capital. Currently this is done only with the corporate profits series.		BEA	0	0
	Purchased services	Accelerate and rearrange timetable for service sector improvements.	Provide data for improved assessment of the sources of economic growth and structural change by industry.	Census	3,492	0
	Corporate financial data	Accelerate and rearrange timetable for service sector improvements.	Provide greater precision in estimates by industry and more comprehensive data by asset size.	Census	4,970	0

Price measurement statistics recommendations.	Service prices	Accelerate the BLS programs to expand and improve producer, consumer, and international price indexes to measure service prices more accurately.	Conduct research to develop measures of output for the service sector.	BLS	7,241	5,685
	Separation of quality and inflation changes.	.....	Separate quality and inflation changes in price data.	BLS	3,479	2,309
Labor market statistics recommendations.	Employment cost index	Expand and seasonally adjust the employment cost index.	.....	BLS	1,700	1,700
	Coverage of payroll employment estimates.	Continue BLS and Census efforts to improve and modernize the current population survey and the current employment statistics program.	Add 110 service producing industries to the payroll survey.	BLS	8,948	7,458
	Accuracy of payroll employment estimates.	Continue BLS and Census efforts to improve and modernize the current population survey and the current employment statistics program.	Improve accuracy of estimates of payroll employment.	BLS	13,294	13,794
	Business establishment data—Census and BEA.	Explore ways for Census to share its establishment data with BEA, for use in improving the national accounts.	.....	Census BEA	400 0	0 0
	Construction-coverage	.....	Improve coverage and accuracy of construction statistics.	Census	3,900	.....
	Investment and saving	Accelerate work to improve measures of investment and saving and to the extent possible reconcile differences between the various measures of saving.	.....	Federal Reserve BEA Census	(5) 0 900	(5) 0 638
	Flow of funds	Improve the collection, coverage, and processing procedures for the financial flow data in the Federal Reserve Board flow of funds accounts.	.....	Federal Reserve	(5)	(5)
	Annual investment survey	Undertake the proposed annual investment survey at the Census Bureau.	.....	Census	2,000	2,000
	Data gaps	.....	Use administrative records, support new surveys, support extensions to existing surveys, and conduct research to close data gaps.	BEA	4,700	0

ATTACHMENT A.—APPENDIX II—ECONOMICS STATISTICS INITIATIVE RECOMMENDATIONS—Continued

[Dollars in Thousands]

GAO's 7 Areas	38 ESI Recommendations	1990 Recommendations [1]	1991 Recommendations [2]	Responsible agency [3]	Funding for fiscal year 1990–94	
					Requested	Received
Service sector statistics recommendations.	Service sector surveys	Accelerate and rearrange timetable for service sector improvements.	Increase detail and coverage of service sector in Census' annual survey of services and periodic census of service industries.	Census	7,116	1,400
	Automated data collection for current population survey.	Continue BLS and Census efforts to improve and modernize the current population survey and the current employment statistics program.	Incorporate automated data collection techniques to improve the current population survey.	BLS	5,000	3,510
	Reconciliation of employment estimates	Continue BLS efforts to reconcile and reduce discrepancies between the employment series arising from the household and the establishment surveys.		BLS	0	0
Income and poverty statistics recommendations.	Poverty thresholds	Begin research on developing a new benchmark estimate of poverty appropriate to prices, consumption patterns, and family composition in the 1990s.		Census	0	0
	Experimental estimates of income and poverty.	Continue publication of the experimental estimates of real family income and poverty.		Census	0	0
International transactions statistics recommendations.	Trade in services	Accelerate improvements in estimates of trade in services.	Undertake surveys of bank and nonbank financial institutions' noninterest service income and improve BEA's survey of international trade in other services.	BEA	[6] 7,600	[6] 3,100
	International investment and capital flows.	Estimate direct investment using market values or replacement cost rather than historical cost and address problems with the measurement of international portfolio investment and other capital flows.	Improve coverage of capital flows and investment income and reduce the large statistical discrepancy in the international payments accounts.	BEA	([6])	([6])

	Reconciliation of import and export data.	Extend efforts to reconcile import and export data to Mexico, the European Community, South Korea, and Japan.	.....	Census	[7] 1,400	[7] 0
	Automation of export and import data	Continue work to increase automation of export and import data collection.	.....	Census	([7])	([7])
	Merchandise exports model	.....	Develop a model to adjust for understatements of exports and other improvements in the measurement of exports.	Census	([7])	([7])
	Access to trade data	Increase the ease of access to trade data.	.....	Census	([7])	([7])
	International guidelines for economic accounts.	.....	Develop modernized and extended international economic accounts that follow the International Monetary Fund guidelines. Features are to include (1) an integrated set of current and capital accounts, including balance sheets and (2) new detail in several significant areas.	BEA	1,000	0
Systemwide statistics recommendations.	Survey of Income and Program Participation.	Explore the possibility of carefully linking the data from the Survey of Income and Program Participation to administrative records, while taking great care to safeguard confidentiality.	.....	Census	0	0
	Standard industrial classification	.....	Ensure that the standard industrial classification system can keep track of emerging industries and develop methods to keep up with rapid changes occurring across all industries.	BEA	0	0
				Census	100	100
	Farm lists	.....	Develop a more complete and accurate farm list for the 1992 Census of Agriculture.	NASS	4,800	2,250
	Business establishment lists—Census and BLS.	.....	Improve business establishment lists by reconciling BLS and Census lists of business establishments.	BLS	1,900	500
				Census	0	0
	Cooperation	Increase cooperation between the statistical establishment and academic researchers.	.....	BEA	0	0
				BLS	0	0
				Census	0	0

ATTACHMENT A.—APPENDIX II—ECONOMICS STATISTICS INITIATIVE RECOMMENDATIONS—Continued

[Dollars in Thousands]

GAO's 7 Areas	38 ESI Recommendations	1990 Recommendations [1]	1991 Recommendations [2]	Responsible agency [3]	Funding for fiscal year 1990–94	
					Requested	Received
	Mandatory v. voluntary surveys	Consider the efficacy of mandatory versus voluntary surveys.		Census	0	0
	Data duplication	Continue work toward the goal of eliminating unnecessary duplication, but avoid the loss of unique and important alternative data.	Prepare legislation to provide a standardized mechanism for limited sharing of confidential information solely for statistical purposes.	OMB	0	0
	Center for survey methods		Create a center for survey methods to improve the talents and skills of the existing federal statistical workforce and attract highly qualified entrants.	NSF	2,100	2,100
Total					[8] 94,940	49,444

[1] The 1990 recommendations are quoted directly from a prepared statement for Michael J. Boskin, Chairperson of the Council of Economic Advisers at a hearing before the Joint Economic Committee, U.S. Congress, March 1, 1990.
[2] The 1991 recommendations are paraphrased by GAO from a February 14, 1991, Council of Economic Advisers announcement.
[3] Information is recorded for each responsible agency for recommendations with multiple responsible agencies.
[4] BEA combined these three recommendations into one budget request to increase funding to stop the deterioration in the quality of the national economic accounts.
[5] Federal Reserve funds are not included here since it does not receive appropriated funds from Congress.
[6] BEA combined these two recommendations into one budget request to improve balance of payments and international investment data.
[7] Census combined these four recommendations into one budget request to improve foreign trade statistics.
[8] Total request includes $14,047,000 in reinstated requests, which means an agency requested funding more than once when the funding was not received in prior years.

Note: GAO's 7 areas and the 38 ESI recommendations are our categorizations of the Economics Statistics Initiative recommendations that were in the 1990 and 1991 CEA releases.

ATTACHMENT B.—PTFP DIGITAL TELEVISION CONVERSION GRANTS 1998–2001

Grantee	City/State	Federal Award	Total Project Cost	Year
Alaska Public Telecommunications	Anchorage, AK	$701,073	$1,046,378	2001
Alabama ETV Commission	Birmingham, AL	1,070,884	2,677,210	2001
Alabama ETV Commission	Birmingham, AL	870,800	2,177,000	2000
Alabama ETV Commission	Birmingham, AL	810,667	1,621,334	1999
Alabama ETV Commission	Birmingham, AL	374,701	749,403	1998
Arizona State University	Tempe, AZ	1,028,450	2,056,900	1999
The University of Arizona	Tucson, AZ	671,962	1,679,905	2001
Redwood Empire Public TV, Inc	Eureka, CA	494,769	743,025	2001
Valley Public Television, Inc	Fresno, CA	193,884	484,712	2001
Community TV of Southern California	Los Angeles, CA	861,607	1,723,215	1999
KVIE, Inc	Sacramento, CA	711,780	1,779,451	2001
San Diego State Univ. Foundation	San Diego, CA	610,111	1,220,222	1999
San Diego State Univ. Foundation	San Diego, CA	475,152	950,305	1998
KQED, Inc	San Francisco, CA	850,176	1,700,352	1998
Front Range Educ. Media Corp	Denver, CO	379,374	758,748	2001
Connecticut Public Broadcasting, Inc	Hartford, CT	317,524	793,812	2001
Connecticut Public Broadcasting, Inc	Hartford, CT	552,282	1,380,705	2000
Coastal Educational Broadcasters	Daytona Beach, FL	807,687	3,230,750	2001
Pensacola Junior College	Pensacola, FL	675,000	1,250,585	1999
Florida W. Coast Pub. Brdcstg., Inc	Tampa, FL	121,600	304,000	2001
Florida W. Coast Pub. Brdcstg., Inc	Tampa, FL	704,691	1,761,726	2000
Georgia Pub. Telecom. Commission	Atlanta, GA	933,539	3,734,155	2001
Georgia Pub. Telecom. Commission	Atlanta, GA	222,500	890,000	2000
Hawaii Public Television Found	Honolulu, HI	746,792	2,075,000	2001
Iowa Public Broadcasting Board	Johnston, IA	350,237	1,400,950	2000
Idaho Public Television	Boise, ID	881,031	3,524,123	2001
Idaho Public Television	Boise, ID	473,402	1,893,610	2000
Idaho Public Television	Boise, ID	668,574	891,433	1998
Southern Illinois University	Carbondale, IL	599,437	2,397,750	2001
Window to the World Communications	Chicago, IL	909,574	1,819,148	2000
Washburn University of Topeka	Topeka, KS	522,376	1,305,940	2001
Washburn University of Topeka	Topeka, KS	125,000	250,000	1999
Kentucky Authority for ETV	Lexington, KY	365,807	1,877,727	2001
Louisiana ETV Authority	Baton Rouge, LA	434,007	1,736,030	2001
Louisiana ETV Authority	Baton Rouge, LA	548,755	2,195,020	2000
Educational Brdcstg. Found., Inc	New Orleans, LA	863,120	2,157,800	2001
Maine Public Broadcasting Corp	Bangor, ME	681,375	2,725,500	2001
Maine Public Broadcasting Corp	Bangor, ME	256,250	1,025,000	2000
Detroit ETV Foundation	Detroit, MI	486,257	972,515	1999
University of Michigan	Flint, MI	683,236	1,708,090	2001
Central Michigan University	Mt. Pleasant, MI	530,200	1,325,500	2001
Delta College	University Center, MI	349,067	520,995	2001
Delta College	University Center, MI	636,500	950,000	2000
Northern Minnesota PTV, Inc	Bemidji, MN	934,611	1,394,942	2001
Twin Cities Public Television, Inc	St. Paul, MN	679,278	1,358,557	1999
Public Television 19, Inc	Kansas City, MO	291,488	728,722	2000
Southwest Missouri State Univ	Springfield, MO	613,587	1,227,174	2001
St. Louis Regional E&PTV Comm	St. Louis, MO	299,164	1,196,656	2000
Central Missouri State University	Warrensburg, MO	775,540	3,401,495	2001
Mississippi Authority for ETV	Jackson, MS	1,800,000	4,537,400	2001
Montana State University	Bozeman, MT	723,860	965,147	2001
Prairie Public Broadcasting, Inc	Fargo, ND	359,587	536,698	2001
Prairie Public Broadcasting, Inc	Fargo, ND	916,696	1,368,203	2001
Prairie Public Broadcasting, Inc	Fargo, ND	1,141,302	1,521,736	2000
Prairie Public Broadcasting, Inc	Fargo, ND	939,635	1,252,847	1999
Nebraska Educ. Telecom. Comm	Lincoln, NE	1,500,000	3,840,122	2001
Nebraska Educ. Telecom. Comm	Lincoln, NE	1,200,000	3,186,060	2000
New Jersey Pub. Brdcstg. Authority	Trenton, NJ	622,575	2,490,300	2001
New Jersey Pub. Brdcstg. Authority	Trenton, NJ	608,262	1,216,525	1999
University of New Mexico	Albuquerque, NM	871,799	1,644,905	2001
University of New Mexico	Albuquerque, NM	1,200,000	2,274,974	2000
Clark County School District	Las Vegas, NV	429,405	1,073,514	2000
Channel 5 Public Broadcasting, Inc	Reno, NV	392,562	1,570,248	2001

ATTACHMENT B.—PTFP DIGITAL TELEVISION CONVERSION GRANTS 1998–2001—Continued

Grantee	City/State	Federal Award	Total Project Cost	Year
WSKG Public Telecom. Council	Vestal, NY	663,576	1,658,940	2001
Greater Dayton PTV, Inc	Dayton, OH	705,542	1,763,856	2001
Northeastern ETV of Ohio, Inc	Kent, OH	210,113	525,284	2000
Oklahoma ETV Authority	Oklahoma City, OK	241,111	482,222	1998
Oklahoma ETV Authority	Oklahoma City, OK	1,110,702	4,442,807	2001
Oregon Public Broadcasting	Portland, OR	501,416	1,253,540	2001
Oregon Public Broadcasting	Portland, OR	642,020	1,605,050	2000
WHYY, Inc	Philadelphia, PA	221,661	554,154	2001
Pennsylvania State University	University Park, PA	586,357	1,465,893	2001
Pennsylvania State University	University Park, PA	1,246,422	3,116,057	2000
South Carolina ETV Commission	Columbia, SC	1,499,551	5,998,206	2001
South Dakota Educ. Telecom	Vermillion, SD	996,453	1,660,755	2001
East Tennessee Pub. Telecom. Corp	Knoxville, TN	178,656	446,640	2001
Mid-South Pub. Comm. Found	Memphis, TN	766,635	1,916,587	2001
Nashville Public Television	Nashville, TN	184,640	461,600	2001
WDCN Public Television Corporation	Nashville, TN	154,110	385,275	2000
North Texas Public Brdcstg., Inc	Dallas, TX	500,000	1,175,580	1999
North Texas Public Brdcstg., Inc	Dallas, TX	475,487	950,974	1998
El Paso PTV Foundation, Inc,	El Paso, TX	203,325	271,100	2001
University of Utah	Salt Lake City, UT	384,775	1,539,100	2000
Public Broadcasting Service	Alexandria, VA	981,420	2,453,550	2001
Greater Wash. Educ. Telcom. Assoc	Arlington, VA	156,250	312,500	1998
Shenandoah Valley ETV Corp	Harrisonburg, VA	427,078	1,067,697	2001
Shenandoah Valley ETV Corp	Harrisonburg, VA	464,948	1,162,369	2000
Hampton Roads Ed.Telecom. Assoc	Norfolk, VA	472,191	1,180,477	2000
Vermont ETV, Inc	Colchester, VT	636,388	1,590,971	2001
Washington State University	Pullman, WA	312,420	781,051	2001
KCTS Television	Seattle, WA	967,400	1,934,801	1998
Spokane School District #81	Spokane, WA	539,138	1,347,844	2001
Wisconsin Educ. Comm. Board	Madison, WI	1,048,841	4,195,258	2001
University of Wisconsin System	Madison, WI	473,831	1,895,326	2000
West Virginia Educ. Brdcstg. Authority	Charleston, WV	574,654	1,436,636	2001
TOTAL		60,377,645	155,284,349	

SUBCOMMITTEE RECESS

Senator HOLLINGS. We will meet next on Tuesday, March 19, to hear NOAA, the Small Business Administration, and the Federal Trade Commission.

Secretary EVANS. Wonderful. We are looking forward to that. Thank you, chairman.

Senator HOLLINGS. The subcommittee will be in recess.

[Whereupon, at 11:40 a.m., Wednesday, March 13, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, March 19.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

TUESDAY, MARCH 19, 2002

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Reed, Gregg, Stevens, and Domenici.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF CONRAD C. LAUTENBACHER, JR., VICE ADMIRAL, U.S. NAVY (Ret.), UNDER SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE

PREPARED STATEMENT

Senator HOLLINGS. The committee will come to order. We welcome Admiral Lautenbacher, the Administrator of the National Oceanic and Atmospheric Administration. Admiral, we appreciate your appearance here. We have your statement. It will be included in its entirety in the record and you can summarize it or deliver it as you wish.

[The statement follows:]

PREPARED STATEMENT OF CONRAD C. LAUTENBACHER, JR.

Thank you, Mr. Chairman, and members of the Committee, for this opportunity to testify on the President's fiscal year 2003 Budget Request for the National Oceanic and Atmospheric Administration (NOAA).

Let me begin by saying that this budget supports and enhances the goals of the President and the Department of Commerce. NOAA has established itself as one of the world's premier scientific and environmental agencies. We are an agency that deals with environmental change. We are an agency whose products form a critical part of the daily decisions made by Americans across the Nation and have economic impacts which affect our Nation's Gross Domestic Product. From our climate predictions that impact farming and financial decisions, to our hydrological products that affect public utilities and energy consumption, NOAA is a critical part of our Nation's economic security.

We are experts in climate, with its cooling and warming trends. We are an agency that manages fluctuating fisheries and marine mammal populations. We observe, forecast and warn the public about the rapidly changing atmosphere and especially severe weather. We monitor currents and tides, and beach erosion. We survey the ocean bottom and provide mariners with products to maintain safe navigation. We

operate the Nation's most important constellation of earth—observing satellites. Lastly, we provide all this knowledge and exploration to citizens everywhere, especially to schools and young people across our Nation through our website www.noaa.gov. We provide this as a result of our mission to advance environmental assessment, environmental prediction, and natural resource stewardship for our great Nation.

This budget supports products that are essential for decision makers in every part of our economy. NOAA's budget will continue to fund products that assist in protecting the health and safety of this Nation's citizens from both routine and severe environmental changes. This budget supports our research, science and services from the local weather forecast offices around the Nation to our Fisheries Research Vessels that ensure sustainable stocks of our Nation's fisheries. It provides for technology infusion and critical infrastructure protection to reduce single points of failure for our satellite and weather prediction programs; continues our special partnerships with universities, states, and local governments around the Nation; and invests in education and human resources. This budget also supports our vast infrastructure, which will allow NOAA to continue its mission in years to come.

In a period of strongly competing Presidential priorities for our national defense, and economic security, the President's fiscal year 2003 Budget Request for NOAA is $3,330.5 million in total budget authority, and represents a decrease of $45.4 million below the fiscal year 2002 enacted level. Within this funding level, NOAA proposes essential realignments that allow for a total of $148.8 million in program increases, and $129.0 million in base adjustments. NOAA's request highlights critical areas such as People and Infrastructure, Improving Extreme Weather Warnings and Forecasts, Climate Services, Modernization of NOAA Fisheries, and other key NOAA programs such as Energy, Homeland Security, Ocean Exploration, and Coastal Conservation.

PEOPLE AND INFRASTRUCTURE: $129.0 MILLION ADJUSTMENT-TO-BASE

NOAA's people and infrastructure are at the heart of what NOAA is and does. From our hurricane research center in Miami, FL to NOAA's weather service office in Barrow, AK, these are the underlying and interconnecting threads that hold NOAA and its programs together. Investments in NOAA's scientific and technical workforce as well as NOAA's facilities and equipment is essential for us to carry out our mission into the 21st Century. "People and Infrastructure" is about investing in the future, and about maintaining NOAA's infrastructure that has been built over the last thirty-one years.

IMPROVING EXTREME WEATHER WARNINGS AND FORECASTS

Critical to meeting our 21st Century mission is the continuity of NOAA's Satellites and Severe Weather Forecasts. There are few things that the Federal Government does that are as critical as issuing severe storm warnings and protecting the life and safety of Americans. Listed below is NOAA's request for this $84.3 million endeavor.

Tornado Severe Storm Research.—NOAA requests a total of $1.0 million to develop new technologies for forecasting and detecting tornadoes and other forms of severe weather, and to disseminate this information to emergency managers, the media, and the general public for appropriate action. This new technology has the potential to significantly extend lead times for tornadoes and other forms of severe and hazardous weather. Coupled with advanced decision support systems, tornado lead times may double from 10 to 22 minutes using this technology. The bottom line is that this investment will help save lives.

U.S. Weather Research Program (USWRP).—NOAA requests an increase of $1.0 million for a total of $3.8 million to transition research and development into operations in order to reach a USWRP goal of improving forecasts of inland heavy precipitation associated with hurricane landfalls. This increase will be used to address the improvement of the forecasts of heavy and frequent, flood-producing rains associated with hurricanes and tropical storms as they move inland.

Weather & Air Quality Research Laboratories.—NOAA requests an increase of $4.2 million for a total of $48.1 million to recapitalize the laboratories that conduct weather and air quality research, which includes funding for ongoing operational scientific activities to continue operation of the Wind Profiler Network and NOAA's Space Weather Program.

Advanced Hydrological Prediction Service (AHPS).—NOAA requests an increase of $4.7 million for a total of $6.2 million to accelerate nationwide implementation of improved flood and river forecasts services in the Northeast, Middle Atlantic, and Southeast regions of the United States, including the states of: New Hampshire,

Vermont, Virginia, North Carolina, and South Carolina. As implemented, AHPS will: (1) produce new information with better predictions of river height and flood potential to reduce loss of life and property; (2) deliver high resolution, visually oriented products to provide partners and customers with valuable information for life decisions; (3) refresh aging hydrologic forecasting infrastructure to support rapid infusion of scientific advances; and (4) leverage NOAA's investments in observational systems and atmospheric models to enhance accuracy and resolution of river forecasts.

Weather & Climate Supercomputing.—NOAA requests an increase of $6.2 million for a total of $21.2 million to continue operations and maintenance of the current National Weather Service (NWS) supercomputer, and to transition the next generation weather and climate supercomputing system into operations. The NWS supercomputer is the foundation for all NWS weather and climate forecasts. Operational transition of the next generation supercomputer will enable the NWS to improve the resolution and forecast accuracy of the prediction models.

Radiosonde Replacement.—NOAA requests an increase of $2.0 million for a total of $7.0 million to continue replacing and modernizing the upper air radiosonde network. The radiosonde network provides critical upper air observations which are a vital component of all weather forecast models. The current network is obsolete and nearing collapse, risking widespread loss of data within the next two to three years.

Aviation Weather.—NOAA requests a total of $2.5 million to initiate a 7-year plan to help improve U.S. aviation safety and economic efficiencies by providing state-of-the-art weather observation and forecast products responsive to aviation user needs. Weather accounts for over 70 percent of all air traffic delays, which results in greater expenditures by both airline customers and the airlines. In addition, an average of 200 general aviation pilot fatalities per year are caused by weather-related accidents across the United States. This initiative will provide a means for the NWS to improve its aviation weather forecast services through 3 major components which include: (1) increasing the number and quality of aviation weather observations; (2) transitioning successful applied research efforts to operational products; and (3) developing and implementing new training programs for forecasters, pilots, and controllers. This initiative has the goal of a 10 percent reduction in National Airspace System weather-related air traffic delays, which would save $600 million annually in potential economic losses, and reduce general aviation weather related fatalities by 25 percent, or 50 lives annually.

Huntsville, AL Weather Forecast Office.—NOAA requests a total of $1.4 million to pay for recurring operations and maintenance costs at the new Huntsville, Alabama Weather Forecast Office (WFO). The Huntsville WFO was established in fiscal year 2002 at the University of Alabama at Huntsville. The $1.4 million requested will provide for NWS employee salaries, facilities rent and maintenance, and operational equipment and supplies to operate and maintain weather forecast and warning services in the Huntsville area.

Polar Orbiting Systems.—NOAA requests a net increase of $64.3 million for Polar Orbiting Systems, which are comprised of NOAA Polar K-N and the National Polar Operational Earth Satellite System. The net increase requested is described as follows:

—*NOAA Polar K-N'*.—NOAA requests a decrease of $15.6 million for a total of $122.9 million for the NOAA Polar K-N'. The Polar K-N program is completing major procurement items and therefore does not need to continue the funding levels of previous years.

—*National Polar-orbiting Operational Environmental Satellite System (NPOESS)*.—NOAA requests an increase of $79.9 million for a total request of $237.3 million for the continuation of the tri-agency NPOESS program that will replace the NOAA POES program after completion of the current NOAA K-N' series of satellites. This request represents NOAA's share of the converged NOAA/DOD/NASA program. In fiscal year 2003, funds will be required to continue the development and production of the NPOESS instruments, including the Visible Infrared Image Radiometer, the Conical Microwave Imager Sounder, the Cross-track Infrared Sounder, the Ozone, Mapping and Profiler Suite, the Global Positioning System Occultation Sensor, and the Space Environmental Sensing Suite. The continued development of these instruments is critical for their timely and cost effective delivery to replace both the Defense Meteorological Satellite Program (DMSP) and the NOAA POES spacecraft when needed.

—*Geostationary Operational Environmental Satellite (GOES)*.—NOAA requests a decrease of $35.1 million for a total request of $227.4 million to support continued post launch requirements for GOES I-M; the continued procurement of the GOES-N series satellites, instruments, ground systems, and systems support necessary to maintain continuity of Geostationary operations; and planning and

development for the GOES-R series of satellites and instruments. This decrease represents a program change resulting from the successful launch of GOES M, and the continued success of the GOES I-M series.

Earth Observing System Data Archive & Access System Enhancement.—NOAA requests a total of $3.0 million to ensure that NOAA can fully utilize the vast amounts of new satellite-based environmental data becoming available, process and distribute that data in a variety of formats, provide stewardship for the data, and make the data accessible to users in a variety of economic, research, government, and public sectors.

Joint Center for Data Assimilation.—NOAA requests an increase of $2.6 million for a total of $3.4 million for the Joint Center for Satellite Data Assimilation. NWS, the Office of Atmospheric Research (OAR), and NASA also provide funding as partners in this coordinated national effort to more fully realize the potential of the vast quantities of new satellite data that are becoming available.

Coastal Ocean Remote Sensing.—NOAA requests a total of $6.0 million to develop and deploy a prototype high-resolution imaging sensor to meet long-standing NOAA requirements. This initiative will allow NOAA to work with NASA to develop conceptual design and capabilities of this instrument, which will continuously monitor coastal ocean areas for harmful algae blooms, coral reef deterioration, pollution changes, fisheries management, and navigation. This instrument will provide continuous, high resolution monitoring in unprecedented detail of terrestrial features such as vegetation changes, flooding, wild fires, volcanic eruptions, and ash cloud transport.

Satellite Command & Data Acquisition (CDA) Facility.—NOAA requests an increase of $1.0 million for a total of $4.6 million to continue the Satellite CDA Infrastructure program. Improved facilities reduce the risk of outages and service disruptions caused by failure of the supporting buildings, facilities, and infrastructure. This program minimizes the risk of spacecraft loss and data loss and allows NOAA to continue supporting worldwide requirements for critical operational satellite data and services.

Satellite Command and Control.—NOAA requests an increase of $4.4 million for a total of $34.8 million for satellite command and control. This investment supports the operations of the NOAA satellite systems, the ingesting and processing of satellite data, and the development of new product applications required for continuity of operations. NOAA provides satellite command and control services on a 24 hours per day, 365 days per year schedule. Two critical components of this initiative are:

—*Protecting Critical Satellite Control Facilities*.—NOAA requests $0.3 million to enhance security at the satellite Command and Data Acquisition ground stations by upgrading and expanding security lighting.

—*Satellite Command and Data Acquisition Station Operations*.—NOAA requests $2.2 million for the operation of the polar Satellite Command and Data Acquisition (CDA) ground station. NOAA will use these funds to obtain the appropriate technical, management, and administrative contractor support to operate and maintain the acquisition and throughput of data from NOAA and DOD polar-orbiting satellites to NOAA's Satellite Operations Control Center, and to National Weather Centers.

Product Processing and Distribution.—NOAA requests an increase of $6.7 million for a total of $27.7 million to process and analyze data from NOAA, DOD, and other Earth-observing satellites; supply data, interpretations, and consulting services to users; and operate and maintain the Search and Rescue mission control center. This includes supplying satellite data that makes up approximately 85 percent of the data used in NWS numerical weather prediction models. NOAA will use the requested program increase to support the following two mission critical functions:

—*Reducing the Risk to Continuity of Critical Operations*.—NOAA requests a program increase of $3.1 million to expand on-site maintenance and staffing levels to ensure that all critical functions are performed. This ensures vital and timely information to customers and staff during times of peak workload.

—*Improved Support for Weather and Hazards*.—NOAA requests a program increase of $2.0 million to automate wild fire detection algorithms to speed up the delivery of information to customers, to integrate the information into geographic information systems for detailed location information, and to integrate new fire detection sensors from non-NOAA satellites.

G-IV Instrumentation.—NOAA requests a total of $8.4 million to begin upgrading instrumentation aboard the G-IV aircraft. Improvements in NOAA's Gulfstream IV aircraft's remote-sensing systems will enhance NOAA's hurricane-reconnaissance capability. New technology will use remote sensors to develop 3-dimensional profiles of hurricanes from 45,000 feet down to the surface and would provide forecasters with unprecedented real-time information on size and intensity. In addition, radar-

composite maps will provide critical rainfall information that is crucial to forecasters and to the emergency management community for preparedness and evacuations.

CLIMATE SERVICES

NOAA maintains a balanced program of focused research, large-scale observational programs, modeling on seasonal-centennial time scales, and data management. In addition to its responsibilities in weather prediction, NOAA has pioneered in the research and operational prediction of climate variability associated with the El Niño Southern Oscillation (ENSO). With agency and international partners, NOAA has also been a leader in the assessments of climate change, stratospheric ozone depletion, and the global carbon cycle. Our confidence in our recent El Niño prediction is based upon a suite of robust observing systems that are a critical component in any forecast.

The agency-wide Climate Services activity represents a partnership that allows NOAA to facilitate the transition of research observing and data systems, and knowledge into operational systems and products. During recent years, there has been a growing demand from emergency managers, the private sector, the research community, and decision-makers in the United States and international governmental agencies for timely data and information about climate variability, climate change, and trends in extreme weather events. The economic and social need for continuous, reliable climate data and longer-range climate forecasts has been clearly demonstrated. NOAA's Climate Services Initiative responds to these needs. The following efforts will be supported by this initiative:

Climate Change Research Initiative.—On February 14, 2002, President Bush announced the Clear Skies and Global Climate Change initiatives. The Clear Skies plan aims to cut power plant emissions of three pollutants (nitrogen oxides, sulfur dioxide, and mercury) by 70 percent. The new Global Climate Change initiative seeks to reduce greenhouse gas intensity by 18 percent over the next decade. The President's proposal supports vital climate change research and ensures that America's workers and citizens of the developing world are not unfairly penalized. NOAA's expertise will be extremely important in the area of climate research. NOAA, along with NASA, Department of Energy, National Science Foundation, and the Department of Agriculture will implement a multi-agency Climate Change Research Initiative totaling $40 million. The following sections detail NOAA's $18.0 million request to address key priorities of the CCRI.

—*Climate Modeling Center*.—NOAA requests $5.0 million to establish a climate modeling center at Princeton, New Jersey. This center will focus on model product generation for research, assessment and policy applications. NOAA has played a central role in climate research, pioneering stratospheric modeling, seasonal forecasting, ocean modeling and data assimilation, and hurricane modeling. This core research capability will be enhanced to enable product generation and policy related research.

—*Global Climate Atmospheric Observing System*.—NOAA requests $4.0 million to work with other countries to reestablish the benchmark upper-air network. NOAA will emphasize data sparse areas, and place new Global Atmosphere Watch stations in priority sites to measure pollutant emissions, aerosols, and ozone, in specific regions.

—*Global Ocean Observing System*.—NOAA requests $4.0 million to work towards the establishment of an ocean observing system that can accurately document climate scale changes in ocean heat, carbon, and sea level changes.

—*Aerosols-Climate Interactions*.—NOAA requests $2.0 million to contribute to the interagency National Aerosol-Climate Interactions Program (joint partnership with NASA, DOE, NSF) currently under development. Specifically, NOAA will establish new and augment existing in-situ monitoring sites and conduct focused field campaigns to establish aerosol chemical and radiative properties.

—*Carbon Monitoring*.—NOAA requests $2.0 million to augment carbon monitoring capabilities in North America as well as observations of globally relevant parameters in key under-sampled oceanic and continental regions around the globe.

—*Regional Integrated Science Assessments Program*.—NOAA requests $1.0 million for the Regional Integrated Science Assessments Program (RISA). Working with the National Science Foundation (NSF), NOAA will augment its research capability in assessing climate change impacts vulnerability by utilizing the research on "Decision Making in the Face of Uncertainties" in the framework of the RISA programs, e.g. Pacific Northwest.

Arctic Research.—NOAA requests a total of $2.0 million in support of the Study of Environmental Arctic Change (SEARCH) to improve monitoring of the elements

of the Arctic environment. NOAA's SEARCH activities are part of a coordinated interagency and international program, begun in response to evidence of an alarming rate of environmental change occurring in the Arctic. The SEARCH initiative will substantially increase understanding of long-term trends in temperature, precipitation and storminess across the United States, with potential improvements in forecasting and planning for energy needs, growth seasons, hazardous storm seasons and water resources.

University-National Oceanographic Laboratory System (UNOLS).—NOAA requests a total of $2.5 million to outsource with UNOLS and other sources for ships in the Pacific to support long-time series research for Fisheries-Oceanographic Coordination Investigations (FOCI), VENTS, Oregon/Washington Groundfish Habitat and maintenance of the Tsunami moorings in the Gulf of Alaska and Pacific Ocean. The increase will enable NOAA to continue to meet research requirements in the Pacific Ocean, Gulf of Alaska, and Bering Sea utilizing time aboard UNOLS and other vessels.

Climate Monitoring and Ocean Observations.—NOAA requests an increase of $5.4 million for a total of $54.6 million to recapitalize the laboratories that conduct climate research, which includes $0.6 million for purchasing equipment and improving the scientific activities that contribute to the long-term observing systems that directly support the President's CCRI initiative. These observing systems are the Global Ocean Observing System (GOOS); the Global Air Sampling Network and a gas network at four baseline observatories, and at Niwot Ridge, CO; and the Tropical Atmosphere Ocean (TAO) array which is the cornerstone of the El Niño/Southern Oscillation (ENSO) Observing System and other ocean observing systems.

NOAA requests an increase of $8.3 million for a total of $36.6 million for the Archive, Access, and Assessment programs working in Climate Services. This continued investment will be used for the following activities:

—*Regional Climate Services & Assessments*.—To develop an improved climate data and information delivery service. This will allow NOAA to improve national, regional and state linkages and make national, regional, state, and local weather and climate observing systems and data bases more accessible.

—*Next Generation Environmental Information*.—To develop a new generation of World Wide Web accessible climate information and statistics for primary use by the energy sector of our economy. This funding will allow NOAA to overhaul the current methods and procedures for computing climate information such as heating and cooling degree days, heat indices, wind chills, freezing degree days, and other related statistics with the goal of making this information more appropriate and timely for business decision-making and strategic planning purposes.

—*World Ocean Database*.—This investment will be used to update the World Ocean Database to include new sources of data and to put in place the analytical and data management infrastructure needed to transition this activity from the current research mode to a sustained, operational service mode.

—*Extending America's Climate Record*.—NOAA will use the funds to gather key paleoclimatic records to fill gaps; reconstruct climate records during pre-instrumental periods; and produce blended data sets that integrate instrumental, historical, and paleoclimatic data into a holistic climate record.

—*Solar X-ray Imager Archive*.—NOAA will use the SXI archive to derive new products to help reduce the effects of extreme space weather events on telecommunications satellites, electrical power services, and health risks to astronauts.

MODERNIZATION OF NOAA FISHERIES

The fiscal year 2003 President's Budget Request for NOAA, invests in core programs needed for our National Marine Fisheries Service (NMFS) to meet its mission to manage fisheries, rebuild stocks, and protect endangered species such as sea turtles and whales. NMFS modernization funds will be allocated to ensure that existing statutory and regulatory requirements are met for fisheries and protected species management programs (including the Magnuson-Stevens Act, National Environmental Protection Act, Endangered Species Act, Marine Mammal Protection Act, and other statutory requirements). This budget request continues NOAA's effort to modernize NOAA's Fisheries. The Modernization of NMFS encompasses a long-term commitment to improve the NMFS structure, processes, and business approaches. In addition to this budget request, the Administration will propose that any reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act include authority for fishing quota systems within regional fisheries, including transferable quotas, where appropriate. This initiative focuses on improving NMFS'

science, management, and enforcement programs and begins to rebuild its aging infrastructure. These improvements will result in measurable progress in the biological and economic sustainability of fisheries and protected resources. To continue this modernization program, NOAA's fiscal year 2003 President's Budget Request includes the following program investments in Science, Management, and Enforcement.

Science: $74.8 Million Increase

Fisheries Research Vessel.—NOAA requests an increase of $45.5 million for a total of $50.9 million for NOAA's second Fisheries Research Vessel (FRV2). This vessel will replace the 39-year old ALBATROSS IV in the North Atlantic. Costs of maintaining the aging ALBATROSS IV for the five years needed to construct the replacement FRV and to allow side-by-side missions for calibration purposes are escalating. Moreover, replacing the aging fleet is required to provide research platforms capable of meeting increasingly sophisticated data requirements for marine resource management.

Modernize Annual Stock Assessments.—NOAA requests an increase of $9.9 million to modernize annual stock assessments. Funding will allow NMFS to conform to new national stock assessment standards of data quality, assessment frequency, and advanced modeling. An increase of $5.1 million is requested to provide for the recruitment and training of stock assessment biologists and supporting staff to produce annual stock assessments that meet the new standard for Federally managed stocks. This request would also add an increment of 260 Fisheries vessel/charter days at sea toward the balance of 3,000 days identified in the NOAA Fisheries Data Acquisition Plan at a cost of $2.4 million. The initiative includes $0.9 million for advanced sampling technologies. This element targets improvements and innovative uses of existing technologies, including the application of new and advanced sampling systems and approaches. Also, included in this request is $1.5 million to enhance fisheries oceanography studies, principally, the Fisheries and the Environment program (FATE).

Endangered Species Act Sea Turtle Research.—NOAA requests an increase of $2.0 million for a total of $6.5 million to continue the recovery of highly endangered sea turtles. Of the $2.0 million increase, $1.4 million is to provide the necessary research to recover highly endangered marine turtles. This program is designed to help us collect information on biology and habitats and share that information with other range countries. The remaining $0.6 million is requested to implement management strategies to reverse population declines, implementation of multi-lateral international agreements, and building capacity through domestic and international educational and outreach programs.

Columbia River Biological Opinion (BiOp) Implementation.—NOAA requests an increase of $12.0 million to provide for the research, monitoring, and evaluation (RM&E) necessary to continue implementation of measures included in the Columbia River Biological Opinion. The RM&E program will provide the scientific information necessary to assess whether BiOp performance measures are being achieved at 2003, 2005, and 2008 check-ins. This funding also provides for the research needed to address key uncertainties identified in the BiOp in the areas of estuary and near-shore ocean survival, delayed effects related to dam passage, and the effects of hatchery programs on the productivity of naturally spawning fish.

Recovery of Endangered Large Whales.—NOAA requests an increase of $1.0 million to provide resources to scientifically determine whether two key endangered whales—humpbacks and bowheads—have recovered and are candidates for delisting. This information will enable NOAA to detect changes in the status of large whales and prevent any long-term irreversible damage to these populations.

Socioeconomics.—NOAA requests an increase of $1.5 million for a total of $4.0 million to support the on-going development of a multi-year comprehensive social sciences program to support NMFS policy decisions. The approach is 3-tiered, augmenting the integral components of a successful social sciences program that includes staffing ($0.6 million and 7 FTE); data collection ($0.5 million); and research activities ($0.4 million). In combination, the funding will be used to continue addressing shortcomings in economic and social assessments of policy alternatives by improving the economic and social science staff capability, and initiation of data and applied research programs.

National Observer Program.—NOAA requests an increase of $2.9 million for a total of $17.0 million for the National Observer Program. Funding will be used to expand the collection of high quality fisheries and environmental data from commercial and recreational fishing vessels to assess impacts on marine resources and fishing communities and to monitor compliance with marine resource laws and regula-

tions. This request will primarily provide for approximately 4,000 observer sea days spread over 11 fisheries, most of which are currently unobserved.

Management: $6.4 Million Increase

NMFS National Environmental Policy Act (NEPA) Implementation.—NOAA requests an increase of $3.0 million for a total of $8.0 million to continue striving to enhance its management of the NEPA process. This funding will provide NMFS with the necessary resources to continue to support agency-wide NEPA activities and will allow NMFS to strengthen its decision-making and documentation process to more fully take advantage of the decision making tools provided by NEPA.

Regional Fishery Management Councils.—NOAA requests an increase of $1.9 million for a total of $16.0 million for the Regional Fishery Management Councils. This request will provide needed resources for the Councils to respond to increased workload in developing, implementing, and supporting management measures to eliminate overfishing and rebuild overfished stocks; identify and protect essential fish habitats; reduce fisheries' bycatch to the maximum extent practicable; minimize the impacts of fishing regulations on fishing communities; and to implement programs that result from the next reauthorization of the Sustainable Fisheries Act. These results will be achieved through the development of amendments to and creation of new Fishery Management Plans and regulations and corresponding and supporting international management measures to control fishing activities.

Statutory and Regulatory Requirements.—NOAA requests an increase of $1.5 million to provide for thorough, complete, and timely environmental and economic analyses to NOAA customers and for its recovery programs. Funds will support personnel in all NMFS regions, science centers and headquarters to conduct required data gathering, analysis, and document preparation to assess the impacts of human activities that affect protected species. These include the range of Federal actions, including management of marine fisheries. This funding will also support assessments of the environmental and socioeconomic impacts, costs and benefits of implementing conservation programs for protected species.

Enforcement: $9.7 Million Increase

Enforcement and Surveillance.—NOAA requests an increase of $4.3 million for a total of $39.3 million to expand and modernize NMFS' fisheries and protected species enforcement programs. These programs include Alaska and west coast groundfish enforcement, protected species enforcement, state and local partnerships, specialized Magnuson-Stevens investigatory functions, community oriented policing and problem solving, and swordfish/Patagonian toothfish import investigations.

Vessel Management System (VMS).—NOAA requests an increase of $5.4 million for a total of $7.4 million for additional support and continued modernization and expansion of the vessel management system (VMS) program. These resources will create a program which will monitor approximately 1,500 vessels and is readily expandible. VMS technology is an invaluable tool for modern fisheries management. It provides outstanding compliance without intrusive at-sea boardings, enhances safety at sea, and provides new tools to managers for real time catch reporting.

OTHER KEY NOAA PROGRAMS

NOAA is constantly pursuing areas where the expertise of our researchers, scientists, and staff can contribute to solving problems. Therefore, NOAA has other key programs that respond to these challenges. They are Energy, Homeland Security, Ocean Exploration, and Coastal Conservation.

ENERGY

Energy Initiative.—NOAA requests a total of $6.1 million to implement a pilot program that will provide more accurate temperature and precipitation forecasts, and additional river forecast products to help the energy industry improve electrical load forecasting and hydropower facility management. Based on industry estimates, this investment will result in savings of $10 to $30 million annually in the pilot region after the second year of the demonstration. Expanding the pilot nation-wide could generate savings of over $1 billion per year.

Energy Permit Rapid Response.—NOAA requests a total of $2.0 million to support the establishment and implementation of a streamlined energy permit review process. This proposal responds to an Executive Order directing Federal agencies to expedite permits and coordinate Federal, state, and local actions needed for energy-related project approvals on a national basis and in an environmentally sound manner. The goal of this request is to reduce, by 25 percent, the time required to adjust the permits of licensed energy projects/facilities. Currently, re-licensing of existing facilities takes 6–10 years. It is anticipated that the combination of regular re-li-

censing and permit adjustments to implement the new National Energy Policy will result in thousands of new actions for NOAA nationally.

Energy Management.—NOAA requests a total of $0.6 million for Energy Management. The requested funds will be used to reduce NOAA's facility operating costs through actively pursuing energy commodities at competitive prices, identifying and implementing energy savings opportunities and applying renewable energy technologies and sustainable designs at NOAA-managed facilities. Many of the equipment retrofits that are a part of energy management have enabled facilities to recover their costs in less than five years.

HOMELAND SECURITY

On September 11, 2001, the Nation experienced an unprecedented attack on the World Trade Center and the Pentagon. NOAA immediately implemented its agency-wide Incident Response Plan, and was able to rapidly deploy critical assets, capabilities, and expertise to support response and recovery efforts. NOAA personnel in weather offices, satellite and remote sensing teams, hazardous materials units, marine transportation and geodesy offices, and fisheries enforcement teams provided a wide range of products and services.

NOAA's response to the September 11 attacks was rapid and focused. However, the attack fundamentally altered the context of NOAA's incident response planning. The threats resulting from attacks on the nation may be different in nature, and larger in scale and scope. Thus, NOAA's Homeland Security efforts are focused on enhancing its response capabilities and improving internal safety and preparedness. NOAA is working quickly to improve its ability to coordinate emergency response, to evaluate its existing capabilities, and to identify products and services that will meet the challenge of new response realities. NOAA's Homeland Security activities are dedicated to advancing the coordinated efforts within the Department of Commerce, the Office of Homeland Security and assisting NOAA's many federal, state, and local partners.

In fiscal year 2003, funding is requested to address the most immediately recognized areas of programmatic vulnerabilities to ensure the continuity of the most critical of NOAA's services and information products in the event of natural or man-made emergencies.

Vessel Lease/Time Charter.—NOAA requests an increase of $9.9 million for a Vessel Lease/Time Charter. In fiscal year 2003, NOAA will continue assisting DOD in mapping and charting key port areas. NOAA will initiate a vessel time charter to expand its hydrographic surveying capacity. While having the capability to operate throughout America's Exclusive Economic Zone (EEZ), initial emphasis during fiscal year 2003 will be in the Gulf of Mexico. Ninety-five percent of America's non-NAFTA economic trade moves through the marine transportation system. Any interruption in the flow of goods through our nation's marine transport system yields immediate and dire impact to the national economy. Four of the top seven port areas are found on the Gulf of Mexico, including: (1) New Orleans and South Louisiana, (2) Houston/Galveston, (3) Port Arthur, TX and Lake Charles, LA; and (4) Corpus Christi, TX. The combination of high traffic, hazardous cargos and vessels operating close to the ocean bottom make waterways and ports particularly vulnerable to terrorist activities including those utilizing low technology mines. Requested funding provides critical survey data to directly enhance safety of mariners, passengers, and the national economy from threats both natural or human in origin.

NESDIS Single Point of Failure.—NOAA requests a total increase of $2.8 million to provide backup capability for all critical satellite products and services. This effort supports the continuity of critical operational satellite products and services during a catastrophic outage. In fiscal year 2003, NOAA will begin the first phase of hardware, software, and telecommunications purchases; and perform initial testing of all capabilities for this backup system. The requested funding also supports installing additional communications links to connect the backup location to the NOAA Science Center in Camp Springs, Maryland.

Satellite Facilities Security.—NOAA requests a total of $2.3 million, an increase of $0.3 million, to maintain enhanced security at the satellite Command and Data Acquisition ground stations. NOAA requires these funds to enhance the systems that protect these stations, reducing the risk to satellites and ground systems due to breaches in security. These satellite stations represent the backbone of the ground systems that support NOAA spacecraft programs-commanding, controlling, and acquiring data from on orbit satellites with an estimated value of $4.5 billion.

NWS Gateway Critical Infrastructure Protection.—NOAA requests a total of $3.0 million for the National Weather Service Telecommunications Gateway Backup (NWSTG). During fiscal year 2003, this funding will enable the NWS to complete

the establishment of the NWSTG facility. After scheduled deployment in early fiscal year 2004, the continued funding level of $3.0 million will cover recurring costs for NWSTG backup communications, system software licenses, systems operations and maintenance support, facility rent, and cyclical technology refreshment. This will ensure uninterrupted delivery of critical meteorological data necessary for the protection of life and property, and the economic well being of the Nation.

Weather & Climate Supercomputing Backup.—NOAA requests a total of $7.2 million to implement an operational backup system for the NWS weather and climate supercomputer. The NWS weather and climate supercomputer is a critical component of NOAA's mission and is currently a single point of failure as the entire system is located in a single facility. Many of the data, products and services provided by and through the Central Computer System (CCS) directly contribute to the issuance of life saving NWS watches and warnings to the public. The NWS weather and climate supercomputing backup system is a critical part of DOC's Homeland Security Initiative and NOAA's comprehensive business continuity plan, designed to support uninterrupted data and product delivery to NOAA customers. The National Center for Environmental Prediction's (NCEP) CCS is currently the only computer system within NOAA capable of running highly complicated forecasting models in the required operational (regimented) mode. During fiscal year 2003 the NWS will acquire the necessary backup system hardware capability, conduct site selection, and begin installation.

Commercial Remote Sensing Licensing.—NOAA requests a total of $1.2 million for the Commercial Remote Sensing Licensing and Enforcement Program to ensure the timely review and processing of satellite license applications. This NOAA investment will support staff engaged in the review of commercial remote sensing licensing applications. NOAA will also support monitoring and compliance activities, which include the review of licensee quarterly reports, on-site inspections, audits, and license violation enforcement. The funds requested in fiscal year 2003 will also support implementation of shutter control over commercial systems to ensure that our Nation can respond to commercial remote sensing security issues in national security and foreign policy crisis situations.

OCEAN AND COASTAL PROGRAMS

NOAA requests a total of $14.2 million for Ocean Exploration, this includes a small amount for adjustments-to-base. This program seeks to increase our national understanding of ocean systems and processes through partnerships in nine major voyages of discovery in fiscal year 2003. Ocean Exploration is investment in undersea exploration, research, and technology in both the deep ocean and areas of special concern, such as the U.S. Exclusive Economic Zone (EEZ), and National Marine Sanctuaries (NMS).

NOAA's coastal conservation activities total $348.5 million, and are central to accomplishing the mission of environmental monitoring, and underscore a commitment to coastal, estuarine, and marine ecosystems. NOAA's activities include Coastal Zone Management; Marine Sanctuaries, Estuarine Research Reserves, and Marine Protected Areas; Coral Reefs, Habitat, and Other Coastal Conservation & Restoration Programs; and Pacific Salmon recovery Fund and Treaty. Many of these programs receive adjustments-to-base, and there is an increase for Cooperative Conservation and Recovery with States. NOAA requests a total of $1.0 million for Cooperative Conservation and Recovery with States to provide funds to state partners under the Endangered Species Act Section 6 cooperative conservation program. These agreements will provide the means for states and local communities to undertake local initiatives in the management and recovery of ESA-listed and candidate species by providing the legal authority to make the decisions about how best to protect species at risk of extinction. The agreements would provide funding on a matching basis to accomplish conservation activities. Funding provided to the states would support local researchers, non-governmental organizations and volunteers to accomplish monitoring, restoration, science and conservation activities.

FINANCIAL MANAGEMENT IN NOAA

NOAA will continue to improve its core financial management responsibilities in order to meet the future needs of NOAA and its stakeholders. NOAA has placed a high priority on the proper execution and accounting of its resources. Key budgetary and financial management improvements are centered around three key areas: (1) Improved Funds Control and Execution through Automation; (2) Improved Budget Structure; and (3) Improved Outreach and Communications.

Improved Funds Control and Execution through Automation

Included in the fiscal year 2003 request is $16.1 million for NOAA's share of the Commerce Administrative Management System (CAMS). CAMS will contribute to improved financial management in a number of significant ways, primarily by accounting for NOAA's expenditures and maintaining NOAA's clean audit opinion. While NOAA has made significant efforts to retain its clean audit opinion for a third consecutive year, it has done so with inefficient manual, error-prone business processes that are labor-intensive. Without significant amounts of overtime and creative manual resource tracking, NOAA's accounting details would be non-existent. CAMS will provide financial managers with on-line, real-time, and accurate financial information and will enable NOAA and DOC to meet statutory obligations under the Federal Managers' Financial Integrity Act (FMFIA) and the Chief Financial Officers Act (CFO Act).

Improved Budget Structure

In the fiscal year 2003 budget, legislation is requested to establish a Business Management Fund (BMF) for corporate centralized services in NOAA. For decades, NOAA has managed its centralized services through a funding mechanism supported in its current financial management system, FIMA, known as indirect costs. The process by which funds were collected and distributed to support centralized services was convoluted at best, and fraught with inconsistencies. Three years ago, NOAA began a comprehensive effort to review its corporate funding methodologies and work toward moving its headquarters management fund into a business-like environment. A number of improvements have been realized already, including stability in corporate charges for three years in a row, returning unspent corporate costs, and reporting to customers the status of funds mid-year and at year-end. However, to complete this effort of truly realizing a business fund operation, NOAA requires legislation. No current legislation exists for NOAA to operate this fund, particularly after FIMA is replaced by CAMS. Once legislation is secured, NOAA will begin to develop budgetary documentation with the same rigor and reporting as required with appropriated funds. Already underway, in support of this effort is NOAA's initiative to implement Activity Based Costing (ABC) across all of the Office of Finance and Administration's key business lines. ABC studies are being completed to compute costs for services such as human resources, grants, and eventually all other support services. The end result of these studies will be the ability to charge customers a fee for services, based on actual and estimated usage, and by the specific services required. This will replace the flat rate, off-the-top methodology employed today and will allow charges to be tailored to line offices' specific requirements. NOAA is committed to bringing its corporate services up to 21st century standards, and the flexibility of a business management fund is a cornerstone of our plan.

Over the past several years, NOAA has been working to respond to Congressional concerns regarding its budget structure. NOAA, in conjunction with both Congressional and Administration assistance, recently restructured the budget during the fiscal year 2002 Appropriations process. However, this effort is just a beginning, and NOAA will continue to work with Congress to ensure that our budget is adapted to Congressional reporting needs and concerns. For example, in the fiscal year 2003 budget, NOAA has added additional specialty tables that will allow Congress to track budgetary initiatives that cross multiple programs and/or NOAA Line Offices, and NOAA has enhanced its base narratives to be more descriptive. Also, in support of flexible budgetary reporting, NOAA is developing a budget database that moves its tracking tables from the current lotus driven environment to a database environment. This will allow for more accurate tracking, quicker response to inquires, and allow for greater flexibility in preparing budgetary charts in response to Congressional and Administrative inquires. In conjunction with OMB, NOAA has developed a simplified tracking table that clearly indicates NOAA's primary mission areas.

Finally, NOAA began an effort to conduct a position and FTE management review. This effort began in fiscal year 2002 and was adopted during the fiscal year 2002 appropriations process. The fiscal year 2002 efforts focused developing an accurate baseline of FTEs based on actual usage. The baseline was completed and has been implemented. In fiscal year 2003, NOAA's efforts will focus on ensuring that the positions associated with this new baseline are aligned properly with program requirements.

SEA GRANT

I would also like to explain the Administration's proposal to transfer funding for the Sea Grant College Program to the National Science Foundation (NSF). The Sea

Grant program plays an important role in marine and coastal research and is a cost-effective way to address new problems in marine research management. Under the Administration's proposal, the current Sea Grant structure would be replaced with a university-based coastal and ocean program modeled after the NSF centers, with input from researchers, educators and practitioners, through workshops. NSF will retain the Sea Grant College designation for qualified centers. The program will be open to all public and private institutions of higher education through a fully competitive process. NSF also has a lower matching requirement, so state and local funds will be freed up to address outreach and extension needs of local communities. NOAA will have a strong role in setting research objectives for the program. To ensure the program transfer does not adversely affect current awardees, NSF will transfer funds to NOAA to support the current award commitments through the duration of their grant period.

Several studies of the Sea Grant Program have noted its effectiveness, as well as its problems. In 1994, the National Research Council (NRC) found that NOAA's Sea Grant Program has played a significant role in U.S. marine science, education, and outreach. The review's recommendations included better defining the roles of the National Sea Grant Office, the Sea Grant College programs, and the Sea Grant Review Panel, and streamlining the proposal review and program evaluation processes. Many of the recommendations of the NRC report have been adopted by the program and were also incorporated in the 1998 Amendments to the National Sea Grant College Program Act. In a November 2000 study, entitled "A Mandate to Engage Coastal Users," a committee led by Dr. John Byrne of Oregon State University and the Kellogg Commission indicated Sea Grant has been effective in facilitating the Nation's sustainable development of coastal resources by helping citizens make better informed and wiser decisions. Twenty-two of the 30 state Sea Grant Programs have undergone performance evaluations by teams of outside reviewers and Sea Grant peers. Sixteen were graded "excellent" in achieving significant results. A program was graded "excellent" if it produced significant results, connected Sea Grant with users, and was not found to need improvement in areas such as long-range planning and management. Sea Grant's 1999 Hammer Award-winning program in seafood safety training and the national marina management effort are examples of other successful national programs. Through the years, a number of successful partnerships have been established between NOAA and the National Science Foundation (NSF), such as the Teacher-at-Sea Program, our partnerships with NSF on the U.S. Global Change Research Program and the U.S. Weather Research Program, as well as the Study of Environmental Arctic Change (SEARCH) program. And, NSF supports some applied research programs, such as the Small Business Innovation Research and Technology Transfer programs.

CONCLUSION

NOAA's fiscal year 2003 Budget request invests in people, climate, energy, homeland security, infrastructure, and high priority research, science, and services. This budget maintains NOAA on its course to realize its full potential as this nation's premier environmental science agency. NOAA is also doing its part to exercise fiscal responsibility as stewards of the Nation's trust as well as America's coastal and ocean resources. And, in the same way that NOAA is responsible for assessing the Nation's climate, we are responsible for assessing and improving our management capabilities. NOAA will continue to respond to key customers and stakeholders, and will continue to leverage its programs and investments by developing those associations that most efficiently and economically leverage resources and talent, and that most effectively provide the means for successfully meeting mission requirements. Thank you for the opportunity to present NOAA's fiscal year 2003 budget.

OPENING STATEMENT BY VICE ADMIRAL LAUTENBACHER

Admiral LAUTENBACHER. Thank you, Senator Hollings. It is a great pleasure and privilege to be here with you this morning. I appreciate the opportunity to answer questions and to support our budget request for fiscal year 2003. If I could just take 2 or 3 minutes to summarize the highlights, I will be very brief, sir.

I want to thank the committee for their support of NOAA over the years. This support has been very important to our country and to our organization and we appreciate that and we look forward to

working with you during this budget cycle as we have in previous years.

The budget this year is a total of $3.3 billion that we are requesting. This is roughly level with last year's request. It is a budget that maintains the services and critical products and support that NOAA provides for our country. There are several high-priority items that I would like to emphasize.

First of all, it is our emphasis and request for people. We are asking for the funds to ensure that pay raises and maintenance of our corps of scientists and experts in all areas, from weather to fisheries management to ecosystem development, that that base of people be maintained in their current condition. We believe that that is very important for the country and our organization. That is our number one priority, sir.

We also have a number of small initiatives in this budget which I think are very important to us, small in a sense in terms of the larger budget picture, but I wanted to mention several of them. It is the continuation and the development of our NPOESS satellite system. This is a joint program with the Department of Defense. It is on track and on schedule. There is an extra $63 million in that line, in our satellite line, which allows for the normal development of this program. The NPOESS satellite will replace our polar orbiting satellite system starting in 2008.

We have also requested funds for a second fisheries research and survey vessel. Recapitalization of our survey fleet, in fact, our entire fleet, is a very important issue. We believe this is deserving of your support, sir.

We also have money in there for increasing our fisheries surveys, to improve our management of sustainable fisheries. We believe that increase is important to maintain our knowledge, increase our knowledge, and for prudent management of our fisheries.

We also have an increase of about $9 million for enforcement issues regarding fisheries. We think that moving to technology innovations like vessel monitoring system on our vessels will provide high-tech solutions and will help our observer problem. This will ensure fair enforcement across the board and will go a long way toward improving our management.

We have also taken steps to improve our internal management of NOAA budgets. We are asking for a business management fund authority this year which will allow us to use activity-based costing, be much more aware and cognizant of the types of internal costs it takes for providing central services, such as HR and human resource management and budget management.

We also have organized our budget in accordance with directives of Congress, hopefully to make it easier for everybody to understand and to help us as we deliberate for the future.

Again, thank you very much to all the members of this committee for their support and help for our great organization and I look forward to answering your questions, sir. Thank you.

Senator HOLLINGS. Admiral, we appreciate it very much and we are all working for the good of the order.

Just one observation, that somehow, somewhere, sometime, this administration might sober up and settle down. For one, they seem to act like the administration is not the execution of the laws and

policies of the Congress, but what they think ought to be done. Wonderful. We have had many administrations come up and request of us, why do we not change this, do this, do that, and everything else of that kind. And we do it, three readings in the House, three in the Senate.

Now, we just had the Attorney General testify. He came with a wild idea to take COPS on the beat, law enforcement at the local level, which has got a stellar record now for the past 10 years, since we put in this community policing, and send it over to FEMA where they do not know anything about law enforcement and are not supposed to know anything about law enforcement.

You read in the morning paper where they want to take Customs, which is working good, and put it over in the Border Patrol and INS and Justice told me it would be vice-versa. There is no reason to jumble it up. Border Patrol is working. Customs is working. Parts of the INS are working. It is just you have got to get somebody in there to tell the congressional callers to bug off. What happens is where you have got local enforcement with respect to the immigration, a Congressman will call and tell the head of the INS that their agents are out of hand and everything else because they are enforcing the law that Congress passed. Let us get with the program and understand what has been happening. These industries are flying in from Guatemala and elsewhere illegals to do the work, and so when we go to enforce it.

TRANSFER OF SEA GRANT COLLEGE PROGRAM

Now, we start with your Department. Out of the blue, to the National Science Foundation gets the sea grant program. Nobody heard about it. I have been here for a few years, since its initiation in the very beginning of NOAA. If you move sea grant, you lose your State extension programs, you lose your student educational programs at the universities and everything else of that kind, just send it over to the National Science Foundation. Was that your suggestion?

Admiral LAUTENBACHER. No, sir. This occurred before I came into my current position.

Senator HOLLINGS. Did you——

Admiral LAUTENBACHER. I am a strong supporter of the sea grant program and I believe the administration wants to see the sea grant program continue, as well, sir.

Senator HOLLINGS. But where do they want it, because they have eliminated the $62 million for the sea grant program. That is why I am asking the question.

Admiral LAUTENBACHER. Yes, sir. There are a number of pros and cons on the management of the sea grant program. The administration looked at it this year and looked at the heavy component that it has in common with research management and felt that our four-star research organization, NSF, could do a better job in terms of managing the bulk of that program. That is one pro which was looked upon as a very positive effort for this program. The decision was made, along with several other programs that had significant research components, to move them into NSF. It was part of a larger package, Senator.

Senator HOLLINGS. Well, I understand that is about as good of an answer as you can give, but the ocean exploration initiative by our ranking member and myself, has now been recognized by the administration. The only trouble is, it is unfunded at the level of $14 million. You have got space at $14 billion. The ocean is seven-tenths of the Earth's surface, 95 percent unexplored, and $14 million. That will handle one research project in one part of this seven-tenths of the Earth's surface. So let us see if we cannot do even better on that.

NMFS LITIGATION CASE BACKLOG

On the other hand, let us look more particularly at your fisheries. We had, long before your coming, some cases and we noticed in the middle of the 1990s we only had 15 cases, but then it got up to 100, and we put some money into it and now they have got 150 active cases there in the fisheries. The National Marine Fisheries is asking for an additional 115 positions, but none of it going to the litigation problems. Why?

Admiral LAUTENBACHER. We have about $3 million for improvements in the NEPA process and another $1.5 million in regulatory increases. Our NEPA program is essentially handled by all of the various parts of the NMFS organization that deal with these types of cases.

We are putting more resources into it. I am also conducting an internal review of all of NOAA management processes right now. I am hoping that at the end of this, that we will find better ways of managing our business. I am not a fan of having all of these court cases, as you know, sir, and I am looking for ways to improve that, as well.

We do have a modest down payment for improvements in our NEPA process in this budget and I look forward to doing more in the future.

Senator HOLLINGS. Admiral, the year before last, a fisheries case held up the entire Government. We could not finalize our budget. We could not finalize and adjourn for Christmas until that fishery case was disposed of, and the distinguished member of the panel up here is more familiar with it than myself, but these fisheries cases, let us get on top of them and get them out of the way.

Admiral LAUTENBACHER. Yes, sir.

Senator HOLLINGS. Senator Gregg.

Senator GREGG. Thank you, Mr. Chairman.

NATIONAL SEA GRANT COLLEGE PROGRAM

I want to associate myself with your concerns about the sea grant program. It is my view that NOAA is the proper agency to continue to manage the sea grant program. NOAA is the leading oceanographic research entity, it is the most advanced agency in the world as far as ocean issues are concerned, and although sea grant is theoretically basic research, NOAA does a great deal of basic research as well as applied research and it makes no sense at all to move it over to NSF. I would hope that the chairman would accept an amendment from myself, or maybe the chairman or the ranking member of the full committee, which would make

it clear that sea grant is a NOAA operation when we get to mark-up.

FISHING RESTRICTIONS IN NORTHEAST

On another issue, the fish issue, in New England, we have a very serious situation. We just had a ruling by a Federal judge here in Washington which potentially not only shuts down our fisheries for commercial fishermen, but ironically shuts it down for pleasure fishermen and charter boats, which makes virtually no sense at all. We recognize the fish stock is a huge question and a huge problem for us on the Grand Banks and in the Gulf of Maine, and I am sure my friend from Rhode Island appreciates this problem as much as I do, but this appears to be an overreaching, especially when it applies to private fishing that is of a recreational nature and to charter boats, which are popular things for people to do with their kids and for school groups to take, to go out and learn about the ocean, if nothing else.

So I am interested in getting your thoughts on where this is going to go and where we are going to end up.

Admiral LAUTENBACHER. Well, we are in a difficult position because the courts have taken the case. We are in a position of being accused of not doing enough to support the laws of the land in sustainable fisheries. We are still working to mediate with the parties involved to see if we cannot reach a more acceptable solution that balances the needs of both the environmental community and economic interests.

The matter is not finished yet, by a long shot. I understand your concerns. I am keeping myself involved with this. Bill Hogarth has been personally involved with this continuously for the last couple of months now. We will continue to work to try to balance these interests. It is a very difficult issue. We are not done yet. So I am hoping that we can reach a better solution than we have right now.

Senator GREGG. Are you in active negotiations with different parties, including the Conservation Law Foundation in Boston, which is the basic energizer of the position that you did not go far enough in your original proposals?

Admiral LAUTENBACHER. I have not had an update in the last couple of days on the negotiations, but we have been in contact with them over the past several weeks, let me say that, and I will get you a better update and up-to-the-minute accounting for that, Senator.

[The information follows:]

STATUS OF NEGOTIATIONS WITH CONSERVATION LAW FOUNDATION

A number of the parties involved in the New England Groundfish case have reached a settlement agreement. Parties involved in the agreement are: the Conservation Law Foundation, NOAA/NMFS, the State of Maine, the Commonwealth of Massachusetts, the State of New Hampshire, the State of Rhode Island, the Associated Fisheries of Maine, the City of Portland, the City of New Bedford, the Trawlers Survival Fund, Paul Parker, Craig Pendleton, the Northwest Atlantic Marine Alliance, the Stonington Fisheries Alliance, the Saco Bay Alliance, and the Cape Cod Commercial Hook Fishermen's Association. The court was notified of this settlement agreement on Monday, April 15, 2002. Any parties that have not agreed to the settlement had until noon on Friday, April 19, 2002 to respond to the settlement. NOAA is now waiting to hear from the Judge if the settlement agreement is accepted by the Court.

Senator GREGG. Well, it is a huge issue for us in New England and how we resolve it is going to have a major impact on a lot of families and, really, a lot of fisherman and just the character of the region. I do not know if you ever read the little book called "Cod." It is worth reading, though. It is about how the cod basically founded America.

That was the theme of the book.

Senator HOLLINGS. Before Al Gore?

Senator GREGG. Yes, it is an incredible little book. It may overstate the case, but it definitely makes the case that the culture of New England is tied to the cod.

I also want to thank Deputy Administrator Gudes for coming to New Hampshire yesterday. I am glad he got out before the snowstorm. We appreciate his support and his attention to the concerns of our university and to the exciting things that are happening up there with NOAA, so thank you very much.

Senator HOLLINGS. Senator Stevens.

Senator STEVENS. Thank you very much. Good morning, Admiral.

Admiral LAUTENBACHER. Good morning.

ADDRESSING GLOBAL CLIMATE CHANGE

Senator STEVENS. As you know, I have spoken often about the changes that are taking place in Alaska because of the impact of global climate change. I am not sure I am an advocate of global warming because Antarctica is getting colder and the Arctic is getting warmer, but in any event, our forests definitely are moving further north. Permafrost is melting. We have several villages along the Arctic coast that have been inundated in the summertime because of high water. In four of them, the only means of access or egress is by the air and their strips were underwater for about 1 month last summer.

The National Science Foundation committed $30 million for the SEARCH program, it is called the Study of Environmental Arctic Change, to study climate change. You have $149 million for climate change research. Can you tell me, how does that fit in with what the NSF is doing? Are you going to be involved at all in the Arctic research to determine what is going on or how we can understand what is going on in the Arctic?

Admiral LAUTENBACHER. We have put in an increment. I admit it is a very small one, but it is an increment for $2.5 million to join with NSF in the SEARCH program that you just talked about. We also are looking at plans for our ocean observing system, to include, obviously, observing posts and sensors that would include the Arctic and the Antarctic. The poles are obviously bellwethers of what is happening in the atmosphere and our whole environment in terms of climate.

It is very important to me personally to learn more about it and to get better observations and better models. I am hoping that we will be able to put more effort into this in the future, but I think it is recognized within NOAA. We are adding money in this year's budget to help with this research.

Senator STEVENS. For $2.5 million, you get about a couple of weeks' computer time, Admiral.

Admiral LAUTENBACHER. Yes, sir.

Senator STEVENS. I really hope that you can find some way to pick up that pace. When I was chairman of the committee, we went down to Antarctica to look at the change down there and I will never forget walking down into the American station, and as I walked down, about 40 feet down a slope, I asked the person in charge why they had decided to build the Antarctic station under the ice and he said, "You do not understand. This was the surface of the ice when we came here." They have got a buildup, a tremendous buildup of ice down there. The continent may well break up because of the pressure of it, and we are losing the ice.

I do not think $2.5 million will cut it, Admiral. I hope that you will find some way to join in a robust study with the National Science Foundation to try and tell us if there is any indication that that change is brought about by any activity of man. If it is not, then we had better get ready for a real change in the globe if it proceeds at the rate it is going right now.

NOAA SOLE SOURCING

On another subject, last week, I was pleased to see that the Commerce Department pulled back a grant, $97,000, approved by the Marine Sanctuary Office of NOAA. It was sole-sourced to an entity, as a matter of fact, I call it a radical environmental entity, to study marine sanctuaries.

I have two questions for you. How come NOAA is sole-sourcing money for purposes such as that, and why is it that we even need to go outside of Government to get people to study the marine sanctuaries? I thought you had an ample number of employees that NOAA could have done that job. Can you tell us why?

In addition to that, I might tell you that there is a provision in the 1980 Alaska National Interest Lands Act that prohibits additional withdrawals in Alaska. That covers the oceans as well as the land, because of the battle we had at that time. I am sure you know that Glacier Bay has lands that the Federal Government claims, notwithstanding the Tidelands Act, in the 3-mile limit off our shore. Outside of those areas where Congress created such a sanctuary, however, you have no authority in the 3-mile limit to create sanctuaries without State approval, and yet this contract, as I understand it, was to study additional areas off our State, having this environmental organization make those studies. Can you tell me why?

Admiral LAUTENBACHER. Well, first of all, I was unaware that this contract was in place, having only been here a couple of months. As soon as I found out about it, it was no longer in place. I am not a big fan of sole source and I think any sole-source contracts need to be reviewed at a much higher level than this one was reviewed at, so we have taken care of that problem.

Now, why did that happen? I have been informed that the folks that were doing this felt that the technical ability of the people involved in this organization were of sufficient value in terms of being able to mediate and bring people together to a table and to discuss issues, they had a success which was considered a bellwether in that type of work and they were trying to capitalize on it. So it was not done with any, I think, negative purposes. But be

that as it may, it is not in place any longer and we will not do business that way within NOAA, sir.

Senator STEVENS. Well, I have a problem with the Government contracting with an advocacy group, that is known as an advocacy group, to make scientific studies.

Admiral LAUTENBACHER. I have trouble with that, too, Senator.

NATIONAL SEA GRANT COLLEGE PROGRAM

Senator STEVENS. Let me go back to what the chairman and Senator Gregg said about sea grant. We are constantly besieged in this committee by the administration and others saying that we are appropriating monies for items that were not authorized by law. NOAA is authorized by law to conduct the sea grant program. It is a specific law.

Could you tell me, did you have any attorneys or your general counsel's opinion that you have the authority not to ask for money for sea grant? If sea grant is going to get money, it should be according to the law that authorized it, which makes the sea grant a portion of your agency and of your Department. Yet I am told that the request shifts sea grant over to NSF. That amounts to a reorganization of the Government by budget request.

Admiral LAUTENBACHER. The budget request reflects the administration's decision to consolidate the national sea grant college program and the research programs into the National Science Foundation.

Senator STEVENS. We are having too many fights around here about prerogatives, but there is one prerogative. That is a law that was signed. The distinguished chairman and I helped to create the sea grant program and we know where it should be and where the money should be requested to go, and yet now it is over at NSF. We support NSF entirely, but that was not the understanding of who was going to run the sea grant program and the law says it is NOAA. I would urge you to go back and ask your general counsel about that before we go any further, because I think this is going to end up in your Department, notwithstanding the budget.

Admiral LAUTENBACHER. I understand, Senator. Thank you.

Senator STEVENS. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you very much, Senator Stevens.

Senator Reed.

Senator REED. Thank you, Mr. Chairman, and thank you, Admiral. Let me, too, underscore what my colleagues have said about the proposed transfer of sea grant functions from NOAA to NSF. The University of Rhode Island is a major participant in the sea grant program and it has been a very effective and a very, I think, productive relationship with NOAA and I would hate to see that cease, so you can add me to the list.

GROUNDFISHING IN NORTHEAST

Let me also touch upon an issue that Senator Gregg raised and that is the issue of groundfishing in the Northeast. The National Marine Fisheries Service, as you know, has been attempting to balance the demands of restocking groundfish with the need to allow fishermen to fish and it is a very difficult issue. Now, it is involved in court proceedings. But let me ask one aspect of this situation.

There are proposals to buy out some of the groundfishing licenses and operations. The concern I have, and I wonder if you might address it, is that that could force fishing activity to other species. In Rhode Island, we have been way ahead of the curve in going after underutilized species and become somewhat successful. So I wonder if you are gauging the impact of buying out the groundfish permits, the impact on other species. Could you comment, Admiral?

Admiral LAUTENBACHER. Yes. We have had a number of attempts at the buy-out process over the years. My understanding, after looking at the history, is that we have not done very well in terms of setting up a program which makes sense. You end up taking care of one small piece and then you end up creating problems somewhere else.

Everyone that works for me is aware of that, and as we are looking at the potential of how to do this, that will be taken into account because we do not want to exacerbate the issue with other species or other parts of the New England regional or any part of our country, for that matter. So I am well aware of it and I will not support any buy-out program that does damage or has the potential to do damage in other parts of our fisheries.

Senator REED. Thank you, Admiral.

One other issue. When I talk to the fishing operators in Rhode Island, and we have an extensive fleet at Galilee and other parts of Naragansett Bay, they complain that a lot of policy is being made with scanty information, that the type of information that is necessary for sound policy of following fish populations, projecting fish populations, is not there.

NMFS ANNUAL STOCK ASSESSMENTS

Last year, the administration requested $15 million for the National Marine Fisheries Service to expand annual stock assessments. I think the need, as I understand it, is close to probably $25 million. Your request this year is $12 million. The committee has responded in the past, but probably not aggressively enough. Can you comment about the resources for information gathering, stock assessment, et cetera?

Admiral LAUTENBACHER. The resources for stock assessments are still inadequate. We have an increase in this year's budget, based on the total levels of resources that we had and priorities to meet. We added money to this area. I would like to improve the validity and the extent of our information on fishery stocks. We are not to the levels we need to be. We have come a long way, however, and I think some of the data that we are taking is really very good, but it needs to be expanded. We have a number of stocks that are not covered as well as they should be.

Senator REED. It strikes me, too, that sometimes the litigation problems might result, in some respect, from this poor information, that decisions are made and then later easily questioned because the intervenors, the petitioners can point to poor analysis. That at least gets them past the summary judgment.

So I think your comment would be appreciated, that this might in the longer run help you make decisions that are less likely to be challenged in court, is that your sense?

Admiral LAUTENBACHER. Yes, sir, I believe that. I think another big part of our problem is process. We do not follow our processes very well in NEPA, which was brought up by Senator Hollings. So we have those two issues to deal with, yes, sir.

Senator REED. Thank you, Admiral. Thank you, Mr. Chairman.

Senator HOLLINGS. Admiral, two things in thanking you. On that climate change initiative, I think, overall, with respect to the Government, we appropriate some $4.5 billion. In NOAA, you have only $110 million of the $4.5 million, and I am looking and finding a majority of that money is over there in Energy, and it is just political appointments over there and they use it politically. They were into the CAFE standards adversely just recently on last week's debate and everything else. It is sort of frustrating that you are given the responsibility and you are limited in money, and then politics holds you so that you cannot develop a good policy in global climate change protocols.

Remember when you get a chance at the higher levels of Government mentioning this so that we start straightening that out, and otherwise, watch that Kennedy fund.

Admiral LAUTENBACHER. Yes, sir.

Senator HOLLINGS. We only get $4.5 million and one big $5 million grant was given to a good colleague of ours to get a vote with respect to trade promotion authority. Let us bring back—you are of high integrity, so let us get some integrity back into the Kennedy program.

Are there any further questions?

[No response.]

Senator HOLLINGS. We thank you very, very much for what you are doing over there. We are lucky to get you.

Senator GREGG. Let me just echo that. We are very appreciative of your taking this job on. It is a superb agency and we look forward to continuing to strongly support it.

ADDITIONAL COMMITTEE QUESTIONS

Admiral LAUTENBACHER. Senator Hollings, thank you and the distinguished members of the committee very much. It has been a pleasure to be here today. I look forward to working with you. Thank you, gentlemen.

Senator HOLLINGS. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR JUDD GREGG

NOAA ORGANIZATION AND ADMINISTRATION

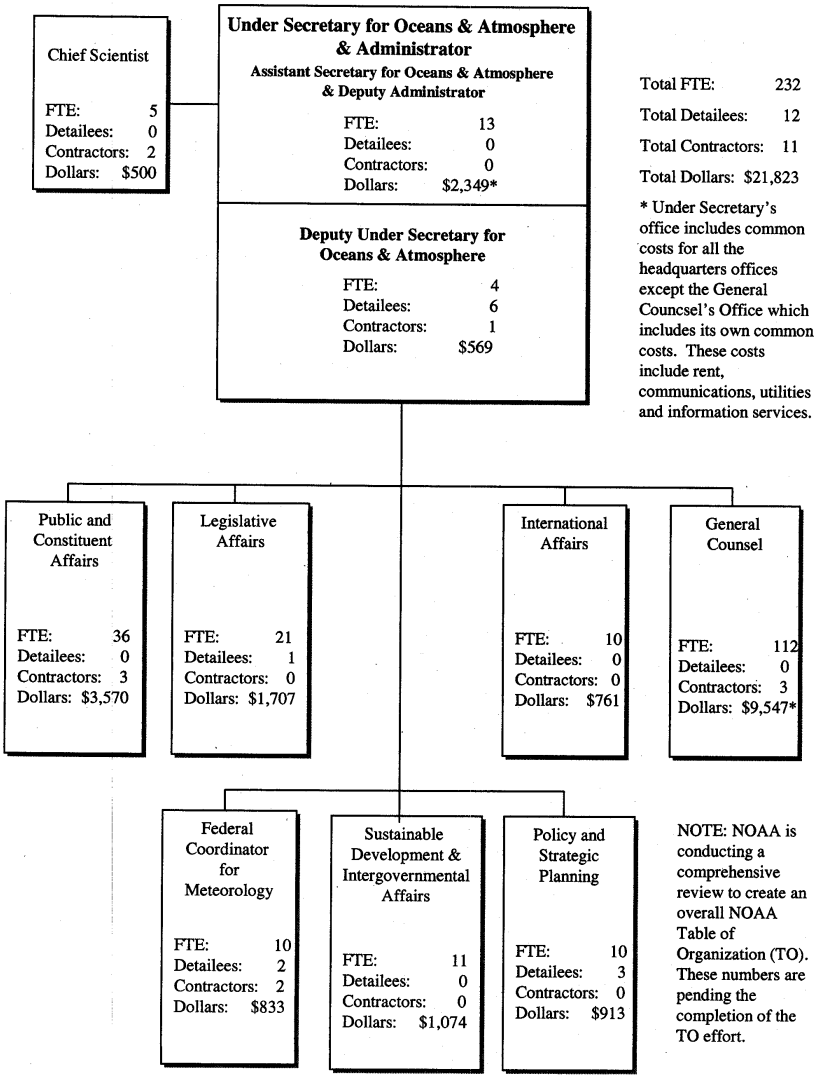
Question. Admiral, is the National Oceanic and Atmospheric Administration (NOAA) organized appropriately to successfully fulfill its mission? Do you think NOAA headquarters is organized and staffed appropriately to analyze and transfer information up and down the chain of command accurately and efficiently? If not, how would you change things?

Answer. As I have only been on board at NOAA for a few months, I haven't determined if NOAA is organized appropriately to successfully fulfill its mission. As I mentioned during the hearing, I am conducting an internal review of all of NOAA management processes. I hope that at the end of this review, I will be able to better assess NOAA's organizational structure and implement changes if necessary.

Question. Please provide an organizational chart of NOAA headquarters broken out to the lowest level of organization. For each box include the office's budget in fiscal year 2002 dollars, and the number and description of the various positions (include all positions: FTE, detail, contractor, fellow, or otherwise). Additionally, in a table format please provide the same information for years fiscal year 1998 through fiscal year 2003. (Use the President's budget for 2003.)

Answer. See attached organizational chart and Attachment A for the NOAA headquarters breakouts for fiscal years 1998–2003.

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION
(Dollars in Thousands)



NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION UNDER SECERTARY AND ASSOCIATED OFFICES HISTORICAL FTE, DETAILEES, CONTRACTORS AND BUDGETS, FISCAL YEAR 1998–2003

	Fiscal Year 1998 Actual				Fiscal Year 1999 Actual				Fiscal Year 2000 Actual			
	FTE	Detail	Cont	Dollars	FTE	Detail	Cont	Dollars	FTE	Detail	Cont	Dollars
Undersecertary's Office	13	.....	.....	3,265	14	.....	.....	3,439	10	.....	.....	2,381
Dep. Undersecertary's Office	5	6	.....	294	5	6	.....	255	7	6	.....	418
Chief Scientist	4	.....	.....	1,197	4	.....	.....	1,092	4	1	.....	722
Public & Constitutient Affairs	37	.....	.....	3,897	37	.....	.....	3,575	35	6	.....	4,530
Policy & Strategic Planning	10	.....	.....	1,004	16	.....	.....	1,018	10	5	.....	1,008
Sustainable Dev. & Intergov. Affairs	9	.....	.....	1,368	10	.....	.....	1,574	11	.....	.....	1,472
Legislative Afairs	20	.....	.....	1,561	21	.....	.....	1,649	21	.....	.....	1,724
International Affairs	8	.....	.....	906	9	.....	.....	752	8	.....	.....	856
General Counsel	103	.....	.....	7,625	110	.....	.....	7,765	110	.....	.....	8,555
Federal Coordinator for Meteorology	.....	.....	.....	.....	13	.....	.....	.....	10	.....	.....	.....
Military Affairs	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	209	6	.....	21,117	239	6	.....	21,119	226	18	.....	21,666

	Fiscal Year 2001 Actual				Fiscal Year 2002 Enacted				Fiscal Year 2003 President's Budget			
	FTE	Detail	Cont	Dollars	FTE	Detail	Cont	Dollars	FTE	Detail	Cont	Dollars
Undersecertary's Office	12	.....	.....	2,392	13	.....	.....	2,349	13	.....	.....	3,076
Dep. Undersecertary's Office	8	8	1	750	4	6	1	569	4	6	.....	703
Chief Scientist	4	.....	.....	578	5	.....	2	500	5	.....	2	639
Public & Constitutient Affairs	36	5	.....	3,560	36	.....	3	3,570	36	.....	3	4,209
Policy & Strategic Planning	10	.....	.....	916	10	3	.....	913	10	3	.....	1,080
Sustainable Dev. & Intergov. Affairs	10	.....	.....	1,031	11	.....	.....	1,074	11	.....	.....	1,328
Legislative Afairs	21	.....	.....	1,711	21	1	.....	1,707	21	1	.....	1,875
International Affairs	9	.....	.....	718	10	.....	.....	761	10	.....	.....	846
General Counsel	110	.....	.....	9,275	112	.....	3	9,547	112	.....	3	10,734
Federal Coordinator for Meteorology	11	.....	.....	.....	10	2	2	833	10	2	2	902
Military Affairs	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	231	13	1	20,931	232	12	11	21,823	232	12	10	25,392

Note: NOAA doesn't maintain historical records of contract employees as they are hired on an as needed basis.

NOAA ENERGY INITIATIVE

Question. In your House Hearing, you claimed that the energy initiative in the Northeast was "not logical". Please explain. Additionally, please explain why it makes sense to initiate a pilot program in one region and terminate that program before it is taken operational, in order to initiate a similar operational program in another region. Have the two energy programs initiated in fiscal year 2002 been well-received by the community? Are these programs successful? What level of funding would be required to take the two energy programs in the northeast operational? Which NOAA programs would be most appropriate to receive these funds to make these programs operational?

Answer. NOAA responds to the energy needs of society by pursuing research, development and implementation of programs that will lead to better weather and climate forecasts, safer and more efficient energy transportation and expedite energy permitting. The Northeast pilot program begun in fiscal year 2002 was a research program designed to evaluate the potential use of air quality and improved temperature forecasts to increase the efficiency of energy, production, dispatching, and distribution. The funding will support research and development of an innovative temperature and air quality forecast systems during fiscal year 2002. An external economic evaluation of the program will produce a final report in fiscal year 2003, and will be the basis for further studies of the use of environmental information in the energy sector in the Northeast.

The Energy Security Program requested in fiscal year 2003 is an operational program that will be used to improve the accuracy and reliability of forecast models of hydrology (e.g., precipitation and water flow), weather and climate conditions. Improvements in the forecast models will be used to increase the efficiency of energy production, dispatching and distribution. The focus of this program is the Southeastern United States where unlike the Northeast, there is greater reliance on hydropower and an opportunity to test and evaluate potential improvements in river flow forecasts that will improve the efficiency of water management and hydropower generation. Air Quality forecasting studies will not be conducted in this program. The preliminary results of the fiscal year 2002 pilot program will help determine the appropriate implementation of the observing network in the Southeast.

Additionally, the southeast was identified through NOAA's internal process as the target region. The decision was based on both need and opportunity as expressed by industry stakeholders nationwide who were consulted in the development of the pilot program. The information gained from conducting the fiscal year 2002 pilot program will benefit the fiscal year 2003 program and is applicable to all regions of the country. The long-term goal is to expand the program nationwide.

The programs for fiscal year 2002 have been well-received by the research community. However, it is too early to determine the level of success of the programs because the operating plan was finalized recently and research has just begun.

An evaluation of the funding levels required to take the fiscal year 2002 pilot program operational has not been completed. The results of this evaluation will help us determine the scope of future costs required to make the pilot operational and to expand the program beyond the pilot region. NOAA's Energy Security Program is a collaborative effort between Office of Atmospheric Research (OAR) and National Weather Service (NWS). This program is coordinated by OAR, and NOAA's fiscal year 2003 President's Budget requests funding in the amount of $6.1 million in fiscal year 2003 for OAR to coordinate this program.

NEW ENGLAND GROUNDFISH LAWSUIT

Question. As you know, a lawsuit filed by the Conservation Law Foundation and others found that the Department of Commerce and the National Oceanic and Atmospheric Administration violated federal laws when they failed to prevent overfishing and bycatch in the New England groundfish fisheries. The U.S. District Court is currently reviewing options for a remedy. Did you include an analysis of the social and economic consequences of the remedy you provided to the court? Why or why not? Is it true that if your proposed remedy is accepted, the average income of New Hampshire's fisherman could be cut by almost 45 percent? If your remedy or a more aggressive remedy is ordered by the court, what will you do to ensure that the fishing industry remains a vital industry in New Hampshire?

Answer. On March 1, 2002, the National Marine Fisheries Service (NMFS) proposed to the Court, on behalf of the Secretary, to bring the Northeast Multispecies Fishery Management Plan (FMP) into full compliance with the Sustainable Fisheries Act, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and all other applicable law as quickly as possible by way of three separate actions: a Secretarial interim action under authority of section 305(c)

of the Magnuson-Stevens Act, to be implemented by May 1, 2002, which would be effective for 180 days; a Secretarial amendment to the FMP, under authority of section 304(e) of the Magnuson-Stevens Act, to be implemented before the Secretarial interim action expires in October 2002; and Amendment 13 to the Northeast Multispecies FMP, to be completed by NMFS and the New England Fishery Management Council and implemented by August 2003.

The Secretarial interim action, the first part of this approach, will put in place important measures to reduce overfishing on major groundfish stocks in the Northeast, particularly for Gulf of Maine (GOM) cod, and will monitor and assess bycatch. NMFS has prepared an Environmental Assessment for this action, as required by the National Environmental Policy Act (NEPA), which analyzes the expected biological, social, and economic impacts of a range of alternatives. The remedy proposed to the Court on March 1, 2002, did not contain the analysis in the Environmental Assessment, because the Environmental Assessment was still under revision. A summary of the economic and social impacts of the interim action was provided to the Court in a Declaration by Pat Kurkul filed on April 1, 2002.

The analysis indicates that for the preferred alternative, the relative distribution of impacts is greatest for New Hampshire vessels, with 50 percent of all New Hampshire vessels having an estimated loss in gross fishing income of 21.4 percent or greater. One-quarter of all New Hampshire vessels would lose at least one-third of vessel income, and 10 percent of vessels would lose 43.6 percent of their May-October fishing income. The estimated adverse impacts on Maine and Massachusetts vessels were comparatively lower than they were for New Hampshire vessels, but they are significant just the same, especially considering the fact that there are twice as many Maine vessels than New Hampshire vessels, and Massachusetts vessels outnumber New Hampshire vessels by more than 8:1. Thus, while New Hampshire vessels fare relatively worse than Maine and Massachusetts vessels, the overall impact on the state of New Hampshire is likely to be less than that on Maine and Massachusetts. Across all of these states, 84 vessels will have an estimated loss in May-October income of at least 30 percent or greater. Under the Non-Preferred Alternative, which relies on expanded area closures in the GOM to achieve the necessary mortality objectives for GOM cod, New Hampshire vessels would be more adversely affected at all percentiles (except the 90th) than they would be under the Preferred Alternative.

Depending on what the Court orders for May 1, 2002, the Agency will, provided the Court allows, develop and analyze a range of alternatives, as has been done for the interim action, to determine what alternative meets the goals and objectives of the Court Order and that has the least social and economic impacts to the fishing industry. Given the outcome of this lawsuit, it is likely that the adverse short-term impacts will be felt broadly across the Northeast and across all industry sectors. We will do everything possible to spread the impacts fairly and to ensure that the benefits that accrue from rebuilt stocks will also be shared equitably.

Question. The National Oceanic and Atmospheric Administration submitted the agency's proposed remedy for the New England groundfish violations to the court in early March. Weeks later, the agency announced new scientific findings regarding the fisheries in question. Why didn't the agency conclude its scientific investigation and announce its findings prior to the submission of their remedy to the court? Will these new scientific conclusions undermine the credibility of the agency's proposed remedy? Does the public announcement of these new findings on the day all comments are due to the court, undermine the ability of the intervening parties to consider the best available science when submitting their comments to the court?

Answer. The reevaluation of the biological reference points (biomass at maximum sustainable yield (Bmsy), fishing mortality at maximum sustainable yield (Fmsy)) for all of the groundfish stocks regulated under Amendment 9 was deemed necessary to provide information to the New England Fishery Management Council (Council) for preparation of Amendment 13 to the Fishery Management Plan. It was based on a reevaluation of biological reference points for the GOM cod stock, completed in the spring and summer of 2001. In re-evaluating the Bmsy and Fmsy values for that stock (33rd Stock Assessment Workshop (SAW), September 2001), the peer review scientific panel noted that the biological reference points for the GOM cod stock contained in Amendment 9 were inappropriately estimated, using incorrect models. The 33rd SAW proposed new revised values of Bmsy and Fmsy based on models deemed to be more scientifically valid. The revised values of Bmsy and Fmsy reported by the 33rd SAW for GOM cod are essentially the same as those proposed in a final report entitled the "Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish", prepared by a scientific working group in which NMFS' scientists met with outside scientists on February 12–14, 2002.

Since many of the stocks regulated under Amendment 9 suffered from the use of inappropriately estimated biological reference points calculated by the age-aggregated biomass dynamics model, when age-structured models were more scientifically valid, scientists undertook a thorough but expedited reassessment of reference points in order to provide the Council with needed information so it could expedite the development of Amendment 13. Biological reference points are routinely updated in stock assessments of various fisheries, and the Sustainable Fisheries Act permits the revised values of Bmsy and Fmsy to be substituted, when appropriate, without requiring revised Fishery Management Plan amendments.

Because the revised values of Bmsy and Fmsy reported by the 33rd SAW for GOM cod are essentially the same as those proposed in the final report on the re-evaluation of biological reference points produced by the scientific working group, the interim action and the Secretarial amendment, the first and second part of the three-part remedy proposed to the Court, incorporate these new scientific findings for GOM cod and, thus, propose to implement measures to move rebuilding of this stock in the right direction.

Unfortunately, it was impossible to provide the public with the final report of the revised biological reference points for the remaining groundfish stocks well in advance of March 1 due to the time-consuming task of updating this science, developing the final report and allowing scientists outside the Northeast region an opportunity to review and comment on the report. However, a summary of the report was presented to the Council at its March 19–21, 2002, meeting, at which the public was present.

ROLE OF SCIENCE

Question. What is the future of science within the National Oceanic and Atmospheric Administration? Should the science be consolidated or distributed throughout the agency? Currently, the science supporting the National Weather Service and the National Environmental Satellite, Data and Information Service is based in the Office of Oceanic and Atmospheric Research, while the science supporting the National Ocean Service and the National Marine Fisheries Service is based within those line offices. Does this make sense? What is the rationalization for this structure?

Answer. The current distribution of scientific functions within NOAA is based on a series of historical decisions made over many years. NOAA is currently conducting a rigorous internal program review to determine if NOAA, as currently organized, is best positioned to accomplish its missions successfully and efficiently now, and in the future. The role and distribution of science activities is an important part of this review, and while it is still ongoing, it would be premature to speculate on the future direction of science within NOAA. Results of this review will be available at the end of May 2002.

NATIONAL SEA GRANT COLLEGE PROGRAM

Question. Why did the Administration transfer Sea Grant to the National Science Foundation?

Answer. This proposal is a result of a review of Federal science programs that the Office of Management and Budget (OMB) conducted and is consistent with the President's Management Agenda. The transfer is part of a wider Administration effort to promote competitive funding of scientific research and to capitalize on the demonstrated excellence of the NSF and its program management.

Question. What will happen to the state Sea Grant programs if the transfer is allowed?

Answer. Should the transfer occur, the states will have to determine and set their individual priorities and determine how much funding to provide to their Sea Grant programs. The Administration is not capable of determining whether each state would choose to continue funding Sea Grant programs if the transfer occurs.

Question. Is the National Science Foundation equipped to carry out the outreach and extension mission of the Sea Grant program?

Answer. If the transfer occurs, it would be NSF's decision as to how to allocate the $57 million proposed for Sea Grant in the President's budget. NOAA and NSF will coordinate in identifying research priorities. If the transfer occurs, the NSF program will not be designed to support the Sea Grant Marine Advisory Service functions, as it is currently operated. However, it will support outreach activities for K–12, graduate, and undergraduate education.

Question. Under what authority is the Department of Commerce allowed to transfer the Sea Grant program to the National Science Foundation?

Answer. The Administration has requested the transfer through the fiscal year 2003 budget request, and recognizes that Congress must approve the transfer for

it to occur. The Administrations' position is that NSF needs no additional statutory authority to manage a new Marine Science Program.

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

NOAA'S NATIONAL SEA GRANT PROGRAM

Question. The $62 million Sea Grant program is slated for termination under NOAA and reconstitution under the National Science Foundation. Under the National Science Foundation (NSF), Sea Grant would lose its university partnerships and its extension program. Why are you proposing to eliminate the successful Sea Grant College Program?

Answer. The proposal is a result of a review of Federal science programs that the Administration conducted and is consistent with the President's Management Agenda. Under the proposal, the Sea Grant program would be administered as an NSF/NOAA partnership. The transfer is part of a wider Administration effort to promote competitive funding of scientific research and to capitalize on the demonstrated excellence of the NSF and its program management.

NMFS LAWSUITS

Question. Litigation against the National Marine Fisheries Service (NMFS) has increased steeply to the point where there are 150 active cases this year. To improve NMFS's ability to manage its regulatory cases the Committee has provided $42 million in the past two years. NMFS has only one person responsible for administering this program. In its fiscal year 2003 budget request, NMFS asks for an additional 115 positions, none of which are to work on the litigation problems.

Clarification: As of May 3, 2002, the NMFS has 103 open cases—a number of those cases are old cases, where the court has ruled but still retains jurisdiction, so we keep them on our litigation database (they are open cases in the legal sense but not necessarily active cases). Also included in the list of 103 are cases where the court has ruled, but the time for appeal has not expired.

What is NOAA doing with the National Environmental Policy Act funding that the Committee has provided?

Answer. Of the fiscal year 2001 and 2002 appropriated NEPA funds totaling $42.0 million, approximately $26.0 million were grants. The amount for grants included $5.7 million divided among the eight Regional Fishery Management Councils. Of the remaining amount, $11.9 million was provided for in-house research and management activities and $4.1 million were contracts. Please see the following table for distribution of the $42.0 million.

NEPA—Funding by Programs, Projects, Activities	In-house	Contracts	Grants	Total
Alaska—Impact on Ocean Climate Shifts—Steller Sea Lion:				
Fiscal year 2001	.....	.....	$6,000	$6,000
Fiscal year 2002	.....	.....	$6,000	$6,000
Subtotal	.....	.....	$12,000	$12,000
Alaska—Predator/Prey Relationships—Steller Sea Lion:				
Fiscal year 2001	.....	.....	$2,000	$2,000
Fiscal year 2002	.....	.....	$2,000	$2,000
Subtotal	.....	.....	$4,000	$4,000
Alaska—Steller Sea Lion/Pollock Research—N. Pacific Council:				
Fiscal year 2001	.....	.....	$2,000	$2,000
Fiscal year 2002	.....	.....	$2,000	$2,000
Subtotal	.....	.....	$4,000	$4,000
NEPA—NMFS:				
Fiscal year 2001	$1,809	$1,999	$4,192	$8,000
Fiscal year 2002	$3,480	.....	$1,520	$5,000
Subtotal	$5,289	$1,999	$5,712	$13,000

NEPA—Funding by Programs, Projects, Activities	In-house	Contracts	Grants	Total
NEPA—Hawaiian sea turtles:				
Fiscal year 2001	$0	$0	$0	$0
Fiscal year 2002	$2,605	$225	$170	$3,000
Subtotal	$2,605	$225	$170	$3,000
Hawaii Sea Turtle Research—Data Collection:				
Fiscal year 2001	$2,017	$932	$50	$3,000
Fiscal year 2002	$2,018	$933	$50	$3,000
Subtotal	$4,035	$1,865	$100	$6,000
Total—NEPA Funding	$11,929	$4,089	$25,982	$42,000

Funding for NMFS–NEPA ($13 million total for fiscal year 2001 and fiscal year 2002) to support the following activities:

—Preparation of priority Environmental Impact Statements (EIS) that were outdated or insufficiently comprehensive, including essential fish habitat concerns. Many of these were the subject of litigation.

—Data and analytical support for those efforts both in the regional offices and at the Councils to support NEPA compliance.

—Implement our regulatory streamlining project (regulatory process), an initiative to improve the efficiency and effectiveness of NMFS' regulatory process. Regulatory streamlining plan has multiple components including placing NEPA coordinators in regional offices and HQ, providing support to councils for data and staff for NEPA, development of national training programs, enhancing the use of electronic systems for permitting and rule making.

Fiscal year 2001—$8.0 million (In-house/contract/grants [1])

Overall, this funding was used to address the following NEPA related issues:

—Environmental Impact Study (EIS) on the groundfish fisheries off Alaska and for programmatic EISs on the crab, scallop, and salmon FMPs inclusive of essential fish habitat (EFH) alternatives.

—Comprehensive programmatic EIS on west coast groundfish fisheries inclusive of EFH.

EISs on Fishery Management Plans were:

—Western Pacific Regional Fishery Management Council (RFMC): pelagic, coral reef ecosystem, bottomfish.

—Caribbean RFMC: EIS will be written to support an EFH amendment to the FMPs for Spiny Lobster, Coral Reef Resources, Queen Conch, and Reef, to supplement the EISs for the Spiny Lobster and Reef Fish FMPs.

—Gulf RFMC: EIS will be written to support a generic EFH amendment to the FMPs for Coastal Migratory Pelagics, Coral Reefs, Red Drum, Reef Fish, Spiny Lobster, and Stone Crabs FMPs.

—South Atlantic RFMC: To supplement the EISs for the Snapper-Grouper and Shrimp FMPs and to write an EIS on Marine Protected Areas.

—Comprehensive programmatic EISs (inclusive of EFH) in New England for amendment 10 to the scallop FMP and amendment 13 to the multispecies FMP.

—EIS to address EFH for monkfish, herring, and salmon.

Fiscal year 2002—$5.0 million (In-house/contract/grants [2])

Of the remaining $3.5 million:

—$800,000—To begin hiring the fiscal year 2003 full staff of: 6 NEPA coordinators (1 HQ, 5 Region); 23 regional support staff for various analyses and document management capabilities in Councils, regional offices and centers; and Paralegal support may also be hired to support regional offices.

—$30,000 for training in fiscal year 2002.

—$2.7 million will be spent on the following NEPA related activities:

  —There are 2 EIS for the West Coast groundfish; one EFH and one programmatic EIS. Continue work started in fiscal year 2001 on programmatic

[1] $1,120,000 of the $8.0 million was divided among the Regional Fishery Management Councils.

[2] $1.5 million of the $5 million was divided among the Regional Fishery Management Councils.

EIS for west coast groundfish, inclusive of EIS in fiscal year 2002, including contracts for data analysis and science needs.

—EIS for coral reef FMP was completed and bottomfish almost completed with 2001 funds; crustacean FMP is on hold waiting for information on fishery status. Work with 2002 funds will complete bottomfish and update the pelagics EIS for seabirds and begin a new EIS process for a new squid fishery to determine if pelagics plan should be amended to include this fishery, and lastly work on MHLS and South Pacific tuna convention requirements.

Question. For fiscal year 2003, the National Marine Fisheries Service requests 115 new positions. None of these are for paralegals to manage case files and enforcement of schedules. Why?

Answer. After consultation and coordination with NMFS Regional Offices on staffing requirements, NMFS is considering hiring paralegals to support our litigation activities and will keep the Congress informed.

Question. NMFS does not keep a data base of litigation wins and losses and the reasons for the outcomes. It has also failed to report progress on management of regulatory issues such as standardized formats, assigning paralegals to manage case files and enforcement of schedules. In addition, NMFS has not created a regulatory calendar of expected regulatory actions. Such a calendar could be available over the Internet so that all interested parties could anticipate regulatory actions of interest to them. This would also establish a published regulatory schedule. Why haven't you implemented such improvements?

Answer. NOAA General Counsel does maintain a database that tracks open and closed cases. However, this database does not enable NMFS to respond in a timely way to the numerous queries about litigation. As a result, NOAA General Counsel and NMFS have undertaken a joint project to develop a searchable database. This searchable database will enable agency personnel to access information via the internal website about open and closed cases and recent court decisions.

The Federal government has published the Semi-Annual Unified Agenda of Federal Regulatory and De-Regulatory Action (Unified Agenda) and the Annual Regulatory Plan. The Regulatory Plan contains the most important significant regulatory actions that each agency reasonably expects to issue in the current fiscal year or thereafter. The Unified Agenda is published twice each year in the Federal Register and contains a compilation of the rules planned, in process, and completed for each department or agency.

All NMFS regulatory actions are included in the NOAA portion of the Department of Commerce Unified Agenda available on the Internet at: http://ciir.cs.umass.edu/ua/info.html. Most rules and regulations are also available through the NMFS website.

Question. There are thirteen layers of review within NOAA of each regulatory decision. There is further review in the Department of Commerce and OMB. Are you working on streamlining this process?

Answer. Although the Kammer Report notes thirteen bullets under the Rulemaking Process, these represent the different stages in the development of a Fishery Management Plan (FMP), not thirteen layers of review for a single action. This process is designed to ensure adequate opportunity for public participation in the regulatory process. In some cases, multiple reviews are noted. However, these reviews are often conducted concurrently; they are not necessarily redundant since the various offices noted have different functions.

Under its Regulatory Streamlining Project, NMFS is carefully considering such concurrent reviews. We have identified certain cases where we can eliminate layers of review without sacrificing the quality of the final product.

To bring about some of these changes, NMFS plans to implement a number of measures to ensure the necessary infrastructure is in place to support streamlined review processes such as:

—Update the "Operational Guidelines for the Fishery Management Plan Process" to incorporate changes in agency procedure (last revised 5/1/97).

—Develop an internet-based guide for agency and Council staff containing checklists and examples of required documentation for all actions.

—Adopt mandatory standards for document contents and format to ensure that decision documents address all pertinent issues and adhere to a basic level of national consistency.

—Assign regulatory review experts in each region to provide drafting assistance and quality control review for all regulations and associated documents.

—Conduct appropriate training to ensure that regional experts are fully conversant with Federal Register document requirements, compliance with all legal requirements, etc.

—Establish a quality assurance protocol to monitor whether agency fishery management decisions are adhering to all applicable requirements.
—Expand use of the internet to enhance the regulatory process through electronic rulemaking.

NORTHERN RIGHT WHALES

Question. There are only 300 Northern right whales left in the world and each year several of them are killed by being entangled in fishing gear or by being run over by ships.

Biologists have been able to tag Steller sea lions, bluefin tunas and Great White sharks, but NMFS claims that Northern right whales cannot be tagged. Is this true? Please explain.

Answer. North Atlantic right whales can be tagged in a variety of ways. There have been numerous short-term (1–2 day) successful attachments of time-depth recorders, VHF (very high frequency) radio tags, and acoustic (underwater transmitter) tags attached to the animals using suction cups. Right whales have also been tagged using implantable VHF and satellite-linked radio tags.

In the last two decades of tagging work involving a number of large whale species in many locations, the main problem with transmitter technology has been attachment methods inasmuch as the tags (even those implanted into the tissue) tend to slough off the animal or migrate out as a foreign body would. In this regard, the challenges with attachment to a whale are different from those species listed in the question. For example, in seals and sea lion transmitter studies, the devices are glued to the fur or pelage with little impact.

Nonetheless, a number of successful transmitter studies have been conducted. Fourteen implantable VHF tags were successfully attached to right whales by Goodyear in the late 1980s. More recently a right whale cow was tagged on January 20, 1999, approximately 30 nmi east of Fernandina Beach, Florida. The whale and her calf were tracked continuously for 44 hours, when tracking was abandoned due to bad weather. The pair was relocated on January 25, 1999 and tracked continuously for an additional 96 hours.

Between 1988 and 1997, 41 satellite tags were attached to right whales. All tags were implantable. A reliable tag did not result, as most instruments failed within a few weeks of the initial deployment. In 2000, NMFS provided funds for Oregon State University researcher Dr. Bruce Mate and colleagues to conduct satellite tagging studies of right whales in the Bay of Fundy. In summer 2000, Dr. Mate successfully tagged 16 whales. The study was generally successful, but not all transmitters worked. Transmitters sent signals for up to 130 days with one transmitter broadcasting during a migration from the Bay of Fundy to the coast of South Carolina. It was believed that the antennae on the other tags were rubbed off during whale-to-whale contact or contact with the sea floor. As a result of the partial success in 2000, Dr. Mate continued his studies in 2001 using southern right whales off of South Africa. Deployments there appeared to be more successful, and NMFS hopes to continue support for Dr. Mate's work on North Atlantic right whales in United States and Canadian waters. As a cautionary note, there has been much concern expressed over the physiological and medical impacts of implantable tags. In response to this concern, particularly since right whales are a highly endangered species, NMFS has evaluated the tagged whales. Swellings have been noted at the site of tag implantation suggesting the tags were creating serious infections which could be compromising the health of the whales. Whales tagged by Dr. Mate in 2000 were observed during 2001 with follow-up photo-studies to track the progress of the wounds. Swellings were noted, but there was no evidence of long-term effects.

GLOBAL CLIMATE CHANGE INITIATIVE

Question. NOAA has budgeted for an $18 million Climate Change Initiative. This is part of the President's $40 million multi-agency Climate Change Initiative. The overall Federal Climate Change budget is $4.5 billion.

NOAA's fiscal year 2003 Budget request for Global Climate Change research and policy is $114 million. What is NOAA's role in the $4.5 billion federal Global Climate Change research and policy program?

Answer. NOAA has participated in the government-wide U.S. Global Change Research Program (USGCRP) and funds climate research on all the elements of the program. These focus areas are: atmospheric composition, changes in ecosystems, global carbon cycle, human dimensions, climate variability and change, and the global water cycle. In support of its mission of environmental monitoring and prediction, NOAA plays a lead role in the government in maintaining observing sys-

tems, providing operational forecast products, and maintaining environmental data bases and data distribution systems.

Question. The budget request proposes a $700 million increase for global climate change funding, yet NOAA is asking only for an $18 million increase. Why isn't NOAA playing a larger role in the global climate change arena?

Answer. Of the approximately $700 million increase in climate change funding, $555 million is related to tax incentives for clean energy technologies like renewable energy, hybrid and fuel cell vehicles, and the conversion of landfill gas to fuel. Increases in climate change science, international climate change assistance, and certain climate-related energy programs account for the remainder of the $700 million increase.

NOAA is a major participant in the Climate Change Research Initiative (CCRI), which was developed through an interagency process. The total fiscal year 2003 request in the President's budget for CCRI is $40 million. NOAA's request is $18 million, which is 45 percent of the government-wide CCRI increase request. The total request breaks down according to the following:

Reduce uncertainties in climate science:

—Develop reliable representation of the global and regional climatic forcing by atmospheric aerosols: $4 million (NOAA: $2 million, NASA: $1 million, and NSF: $1 million)

—Inventory carbon and model sources and sinks: $15 million (NSF: $9 million, NOAA: $2 million, DOE: $3 million, and USDA: $1 million)

—Climate Modeling Center: $5 million at NOAA

Support policy and management decisions:

—Tools for risk management under uncertainty: $6 million (NSF: $5 million and NOAA: $1 million)

—Atmospheric observations: $4 million at NOAA

—Oceanographic observations: $4 million at NOAA

—Satellite observations: $2 million at NASA

Question. What are your plans for spending the $18 million increase you requested for global climate change research in your fiscal year 2003 budget request?

Answer. The $18 million will be spent according to the following plans:

—$5 million will be used to establish a Climate Modeling Center within NOAA Research's Geophysical Fluid Dynamics Laboratory to provide a suite of climate products for decision support by policy makers.

—$8 million will used to support the Global Climate Observing System:

  —$4 million will be used in conjunction with the World Meteorological Organization system of Observing Networks. Working with other developed countries following the President's June 11, 2001, speech, NOAA will reestablish the benchmark upper-air network, emphasizing data sparse areas, and place new equipment in priority sites to measure pollutant emissions, aerosol, and ozone.

  —$4 million will be used to contribute to the establishment of an ocean observing system that can accurately document climate scale changes in ocean heat, carbon, and sea level changes, improving fields of sea surface temperature and surface fluxes.

—$2 million will be used for an intensive North American study of carbon monitoring.

—$2 million will be used to allow NOAA to contribute to the interagency National Aerosol-Climate Interactions Program (joint with NASA, DOE, DOI) that is presently under development. The work will focus on the establishment of new and augmentation of existing monitoring sites, and efforts to establish distribution trends and assess the radiation properties of aerosols, which are small particulates in the atmosphere.

—$1 million will go towards work with the National Science Foundation to apply the research on decision-making in the face of uncertainties, within the framework of existing Regional Integrated Science Assessment (RISA) programs.

NATIONAL ESTUARINE RESEARCH RESERVE PROGRAM

Question. There are 25 National Estuarine Research Reserves (NERRs) in the United States; two of them, North Inlet/Winyah Bay and ACE Basin are in South Carolina.

Do you have a backlog of land acquisition and construction needs for the NERRs sites?

Answer. Yes. In addition to the five year projection of reserve acquisition and construction projects shown below, NOAA's Office of Ocean and Coastal Resource Management has contracted to have a land acquisition strategy prepared. The report

will document land acquisition needs of the reserves system. A draft report is scheduled for completion in June 2002. A facilities plan for the sites was prepared in 1998, but needs to be updated.

There are 25 existing National Estuarine Research Reserves with two more in the development stage (San Francisco Bay, California and St. Lawrence River, New York). NERRS allocations are done in a collaborative workshop involving all the NERRS sites and the NOAA national program office. The working group determines the split among sites, adjusting the split to account for specific needs of each site, and accounting for national, system-wide needs.

See Attachment B for a proposed list of priority projects for fiscal year 2003-fiscal year 2007:

ATTACHMENT B

Reserves	Projects	Fiscal Year 2003 Proposals	Fiscal Year 2004 Proposals	Fiscal Year 2005 Proposals	Fiscal Year 2006 Proposals	Fiscal Year 2007 Proposals
ACE Basin, SC	Land acquisition	.....	$2,750,000	$2,500,000	$2,500,000	.....
Apalachicola, FL	Reserve Visitor Center Renovation/Expansion	$477,000	.....	.....	.....	.....
Ches. Bay, MD	Acquire Monie Bay parcel	.....	.....	.....	$200,000	.....
Elkhorn Slough, CA	Office and Public Meeting Area Expansion	$665,000	.....	.....	.....	.....
	Outdoor Classroom/Field Lab	.....	.....	$100,000	.....	.....
	Parcel A-adjoining reserve	$200,000	.....	.....	.....	.....
	Parcel B-adjoining reserve	$450,000	.....	.....	.....	.....
	Parcel C-adjoining reserve	.....	$500,000	.....	.....	.....
	Parcel D-adjoining reserve	.....	$800,000	.....	.....	.....
Deleware, DE	Reserve Headquarters addition	$400,000	.....	.....	.....	.....
Grand Bay, MS	Phase II Construction Admin Offices, Ed & Outreach Facility	$800,000	.....	.....	.....	.....
Great Bay, NH	Facilities	$200,000	.....	.....	.....	.....
GTM, FL	Facility construction: Guana River State Park Facility	$500,000	$500,000	.....	.....	.....
	Facility construction: Complete Environmental Educ. Cntr.	$200,000	.....	.....	.....	.....
	Facility construction: Marineland Facility	.....	$250,000	$250,000	.....	.....
	Future Land Acquisition	.....	$300,000	$200,000	.....	.....
Jacques Cousteau, NJ	Dry labs, cupola enhancement	$185,000	.....	.....	.....	.....
North Carolina, NC	Research/educational facilities	$300,000	$200,000	.....	$2,000,000	.....
North Inlet/Winyah Bay, SC	Education kiosks and signs	$25,000	.....	.....	.....	.....
	Education Center construction	$770,000	.....	.....	.....	.....
	Cottages for visiting researchers and educators	.....	$450,000	.....	.....	.....
Padilla Bay, WA	Acquire farmland next to bay (700 acres)	$500,000	.....	.....	.....	.....
	Exhibits in renovated aquaria/display room	$450,000	.....	.....	.....	.....
Rookery Bay, FL	Expanded vehicle parking Phase V	$150,000	.....	.....	.....	.....
	Planning and design: research dormitory Phase VI	.....	$200,000	.....	.....	.....
	Construction and research dormitory Phase VII	.....	.....	$700,000	.....	.....
Sapelo, GA	Construction boat house, dock facility for research vessels, and educational exhibits.	$100,000	.....	$100,000	.....	.....
	Water quality research lab	$500,000	.....	.....	.....	.....
South Slough, OR	Acquire Indian Pt. uplands and tidelands	.....	.....	.....	$914,600	.....

ATTACHMENT B—Continued

Reserves	Projects	Fiscal Year 2003 Proposals	Fiscal Year 2004 Proposals	Fiscal Year 2005 Proposals	Fiscal Year 2006 Proposals	Fiscal Year 2007 Proposals
	Phase II interpretive center renovations exhibit construction	$250,000				
	Phase II interpretive center renovations observation tower and		$264,000			
	Road repair and North Creek Trail Loop	$75,000				
	Parking lot expansion			$50,000		
	Acquire Empire Tidelands (33 acres)				$100,000	
	Coastal Environmental Learning Center (acq. plan, proj. mgmt.)	$100,000	$40,000			
	Acquire Joe Ney Uplands (100 acres)	$100,000				
	Acquire Hayward Creek Uplands (200 acres)			$500,000		
	Acquire Hidden Creek Headquarters (30 acres)			$130,000		
	Acquire Wasson Creek Watershed			$1,000,000		
	Acquire Elliot Creek Headwaters			$1,100,000		
	Acquire Small Tract Willing Sellers		$150,000	$350,000		
	Trail System—Historic Jed Smith Expedition Trail	$50,000	$60,000			
	Trail System—boat shelter			$35,000		
	Admin Office in Charleston property acquisition	$100,000				
	Admin Office in Charleston planning and design	$50,000				
	Admin Office in Charleston construction		$330,000			
	CELC site restoration demolition			$50,000		
	CELC parking area and landscaping			$10,000		
	CELC reuse existing building		$25,000	$5,000		
Tijuana River, CA	Border Field State Park Interpretive Center	$256,000				
	Acquire 20 acre parcel	$170,000				
Waquoit Bay, MA	Land acquisition	$200,000				
Weeks Bay, AL	Land acquisition (2000 acres)	$1,039,000	$2,181,000	$1,210,000	$1,588,600	$1,000,000
	Wetland restoration construction	$250,000				
	Construction needs: equip. storage and workshop bldg.			$150,000		
	Construction needs: equip. storage and workshop bldg.				$150,000	
	Construction needs: bike-hike trail/boardwalk	$100,000				
	Construction needs: coastal initiative training center		$1,000,000	$1,000,000		
Wells, ME	Land acquisition	$400,000				
Wells, ME	Dormitory			$560,000		
SUBTOTAL, ALLOCATED FUNDS		$10,012,000	$10,000,000	$10,000,000	$7,453,200	$1,000,000

UNALLOCATED FUNDS		$0	$0	$0	$2,546,800	$9,000,000
TOTAL		$10,012,000	$10,000,000	$10,000,000	$10,000,000	$10,000,000

This projection was updated in fiscal year 2001—however, the fiscal year 2005-fiscal year 2007 figures are not complete.

Question. Could you provide the Committee with a list of staffing needs throughout the NERRs network?

Answer. With the substantial increases in reserve funding for grants over the last three years, staffing levels at reserve sites has improved. All personnel at the NERRS sites are state employees, not Federal employees. At this point, most reserves have the core staff—a manager, research coordinator, and education coordinator. In addition, increased funding has allowed many reserves to add a water quality monitoring technician, Coastal Training Program coordinator, and part-time geographic information technician. Approximately half of the reserves also have stewardship coordinators. These positions are funded with either state or Federal funds, depending on the site. In general, limitations in the ability of the NERRS sites to add staff have been a function of a lack of ability to obtain a state funding match or tight state FTE ceilings, rather than a shortage of Federal funding for the sites. A few sites have been inhibited from adding staff because of these state budget and FTE restrictions.

For NOAA, recent increases in the CZMA Program Administration line item have allowed the Estuarine Reserves Division to add much needed staff. These staff provide critical support to the reserves and help NOAA advance system-wide initiatives.

SALTONSTALL/KENNEDY FUNDS

Question. Within the past five years, the highest amount of new budget authority generated by the Saltonstall/Kennedy program has been $4.8 million. The average grant level has been approximately $125,000. $11 million was made available for fiscal year 2002. You recently issued a $5 million grant to the State of Maine to help the Atlantic Salmon Aquaculture Industry. This single grant is more than the entire program level in fiscal year 2001 and more than $4.5 million more than any other single grant the program has ever issued.

Clarification: NOAA has not issued a $5 million grant to the State of Maine to help the Atlantic Salmon aquaculture industry. For the fiscal year 2002 S-K Program, NOAA has reserved $5 million for projects addressing Atlantic Salmon aquaculture (Priority A) which will study the possible negative impacts of cultured Atlantic salmon on endangered wild stocks. Concern about such impacts threatens the viability of the Atlantic salmon aquaculture industry. The remaining funds are available, in no predetermined allocation, for projects addressing five other funding priorities, B-F (see below). The S-K Request for Proposals was published in the Federal Register on May 14, 2002. Proposals must be submitted by COB July 15, 2002.

The S-K Program, which NMFS administers, provides financial assistance on a competitive basis for research and development projects to benefit the U.S. fishing industry. Grants or cooperative agreements are awarded to selected applicants for a maximum of 18 months. Eligible applicants include individuals, universities, state and local government agencies, Indian tribes, businesses, and non-profit organizations.

All applications to the S-K Program must address one of the six published priorities, and will be subject to the requirements of the competition, including eligibility, submission deadline, and review process. Proposals found to have merit will be recommended for funding. Although we do not specify a minimum or maximum requested funding amount, we do not expect to make just one award with the $5 million.

If we do not receive enough applications that meet the established requirements, to use the entire $5 million reserved for Priority A, NOAA will carry over the remainder to address this Atlantic Salmon priority in our fiscal year 2003 competition.

Question. Why did you not alert the Appropriations Committee to the fact that Saltonstall/Kennedy fund receipts were substantially higher in 2001?

Answer. Saltonstall-Kennedy funds are derived from a transfer from the Department of Agriculture to NOAA from duties on imported fisheries products. An amount equal to 30 percent of these duties is made available to NOAA and, subject to appropriation, is available to carry out the purposes of the American Fisheries Promotion Act (AFPA). These duties are tabulated on a calendar year basis and therefore the estimated transfer amount from the U.S. Department of Agriculture is not known until early summer, well after the President's Budget Request goes to the Congress.

Question. Did the Administration issue this grant through the Secretarial review process established by Congress in the Saltonstall-Kennedy Act? Please provide a copy of both the grant application and all documentation of the Secretary's review and approval.

Answer. A grant has not been issued and NMFS expects that the $5 million will fund multiple grants versus one. Atlantic Salmon is one of the 6 priorities within the Saltonstall-Kennedy solicitation and proposed projects will be reviewed based on the established criteria for all grants approved for funding from the S-K program. Below are descriptions of all priorities.

A. Atlantic Salmon Aquaculture Considering the Endangered Species Status of Atlantic Salmon

Promote the continued development of the Atlantic salmon aquaculture industry, by minimizing the potential for negative impacts on wild Atlantic salmon, which is listed as endangered under the ESA. Acceptable activities include the development and testing of: More secure cages to reduce farmed fish escapement; brood stock strains that grow more quickly, better resist disease, or pose less genetic threat to North Atlantic wild salmon stocks; improved marks or tags to trace potential escapes of farmed fish; vaccines or other methods to prevent the spread of disease between farmed fish and wild fish; and improved methods to monitor sea cage integrity and farmed fish disease.

B. Fishing Capacity Reduction under section 312(b)–(e) of the Magnuson-Stevens Act

Promote the reduction of excess harvesting capacity in appropriate fisheries by analyses and evaluations that prepare the proponents of buybacks financed by NMFS loans under Title XI of the Merchant Marine Act to consider, plan for, organize, justify, support, and effect financed buybacks. (See 50 CFR part 600.1000, et seq. for framework rules governing buybacks; see section I.I. for electronic address of rules.) Acceptable activities include, but are not limited to:

1. Analyzing cost/benefit to determine a fishery's potential for financed buyback, including:
   a. Establishing the type of financed buyback (i.e., permit only or permit and vessel buyback) that reduces the maximum capacity at the least cost in the least amount of time;
   b. Knowledgeably estimating various capacity ranges in a fishery that could be bought back at various cost ranges;
   c. Evaluating harvesters' pre-buyback cost-income, how various buyback capacity/cost ranges could change post-buyback cost-income, the prospective ability of post-buyback harvesters to pay the estimated fees to service the buyback loan, and the benefits to them of doing so; and
   d. Assuming the fishery's FMP already prohibits new entrants to the fishery, establishing the scope and possible content of appropriate FMP amendments that might first be required to effectively and permanently resolve latent capacity in that fishery prior to buyback, and to prevent post-buyback vessel upgrading or other circumstances from replacing the capacity that a buyback removes.
2. Evaluating detailed means and methods for industry buyback proponents in the fishery to efficiently and effectively:
   a. Survey potential referendum voters (each permit holder in the buyback fishery) to establish the prospective degree of interest in, and support for, a financed buyback in that fishery, and
   b. Prepare a successful financed buyback application and business plan (see 50 CFR 600.1003).

In addition to the above, responsible proponents of financed buybacks in individual fisheries may also submit proposals to prepare actual financed buyback applications and business plans for that fishery.

C. Conservation Engineering

(1) Reduce or eliminate adverse interactions between fishing operations and non-targeted, protected, or prohibited species, including the inadvertent take, capture, or destruction of such species. These include juvenile or sublegal-sized fish and shellfish, females of certain crabs, fish listed under the ESA, marine turtles, seabirds, or marine mammals.

(2) Improve the survivability of fish discarded or intentionally released and of protected species released in fishing operations.

(3) Reduce or eliminate impacts of fishing activity on EFH that adversely affect the sustainability of the fishery.

D. Optimum Utilization of Harvested Resources under Federal or State Management

(1) Reduce or eliminate factors such as diseases, human health hazards, and quality problems that limit the utilization of fish and their products in the United States and abroad.

(2) Increase public knowledge of the safe handling and use of fish and their products.

(3) Develop usable products from economic discards (defined in the Magnuson-Stevens Act as "fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons"), underutilized species, and byproducts of processing.

(4) Facilitate industry cooperation and outreach to promote and enhance marketability of regional U.S. fishery products.

ENERGY INITIATIVE

Question. The President's fiscal year 2003 budget for NOAA includes an initiative to "assist the operations of the U.S. energy sector" at a cost of an additional $8.7 million. This increase is comprised of:

—$6.1 million to implement a National Weather Service pilot program that will provide more accurate forecast products to help the energy industry improve electrical load forecasting and hydropower facility management—a nationwide program cost is estimated at $100 million;

—$2.0 million to support the establishment and implementation of a streamlined hydropower permit review process at NMFS; and

—$550,000 for "energy management"—which includes "pursuing energy commodities at competitive prices," among other things.

Question. The National Weather Service's mandate is to protect life and property, and National Marine Fisheries Service is charged with conserving our marine resources. Nowhere do I see in NOAA's mandates the responsibility of saving the energy industry money—well, at least that's not NOAA's charge.

Answer. NOAA believes that one of its roles is to support the U.S. economy as part of the Department of Commerce. Our mission statement states our commitment to ensure sustainable economic opportunities, and the NWS Organic Act, 15 U.S.C. 313, states that NOAA, ". . . shall have the charge of the forecasting of the weather, the issuance of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, navigation, . . .". By improving certain basic services that the National Weather Service already provides (e.g., daily temperature forecasts), NOAA will provide information that can improve efficiency in the energy sector which can in turn benefit the economy. There are significant potential savings that can be realized by the general public through lower energy prices if the industry makes better use of environmental information.

In addition, there are numerous benefits to wise energy management beyond cost savings. For example, the potential exists to reduce excess greenhouse gas emissions by providing the necessary data that will enable more accurate electrical load forecasts and reduce excess electrical energy generation. In addition, brownouts and blackouts can be avoided completely if the Nation's electrical needs are better forecast. Thus, while the energy sector is one beneficiary, improved daily temperature forecasts and improved river forecasts benefit multiple sectors of the economy and the public, including agriculture, water resource management, water transportation, and others. The $6.1 million initiative will address these issues.

The $2.0 million proposal is to expedite permits and coordinate Federal, State, and local actions needed for energy-related project approvals on a national basis. The goal is to reduce, by 25 percent, the time required to adjust the permits of licensed energy projects/facilities. Currently, re-licensing of existing facilities takes 6–10 years.

The $550,000 request will be used to identify and implement energy savings opportunities and apply renewable energy technologies and sustainable designs at NOAA-managed facilities. NOAA manages over 500 facilities across the United States.

Question. Whose idea was this?

Answer. The original idea for the NOAA Energy Initiative resulted from the Department of Commerce input to the Administration's Energy Task Force report released in April 2001. In addition, a survey of and meetings with industry executives have validated the benefits of improved weather information to forecast energy needs.

Question. Can you explain to me how the use of an additional $8.7 million of taxpayer dollars for the Energy Sector benefits our citizens more than the critical lifesaving services government should provide—like coastal hazards warnings, transportation advisories, or improving hurricane and tornado prediction?

Answer. The fiscal year 2003 energy initiative, in the Southeast, for $6.1 million, provides energy related benefits to citizens, one of which is energy management. There are numerous benefits of wise energy management beyond cost savings, in-

cluding the potential to save lives with improved temperature forecasts and improved air-quality. U.S. citizens depend on a stable energy supply. Blackouts and brownouts disrupt commerce and place many citizens' lives at risk (e.g., air conditioning failures, heating failures). Heat is the number one weather-related cause of death. Improving daily temperature forecasts will help to improve heat-related advisories and forecasts. The risk of heat-related death can be minimized through more effective use of environmental forecasts.

The remaining $2.6 million funds a $2.0 million request for streamlining the energy-permit process, which responds to an Executive Order directing federal agencies to expedite permits needed for energy related project approval, and $0.55 million for energy management to reduce NOAA's facility operating costs through actively pursuing energy commodities at competitive prices, identifying and implementing energy savings opportunities, and applying renewable energy technologies and sustainable designs at NOAA-managed facilities.

Question. Your budget documents "savings" from the better forecasts at $1 billion per year—if a $100 million nationwide program were instituted. Based on what we have learned from the last year's energy "crisis", those sound like savings to the power producers. Do you know that these savings will be passed on to the consumer?

Answer. The potential does exist to transfer savings to the consumers but we do not know the extent of these savings. With increasing deregulation of the energy industry, consumers are realizing the actual costs of energy production and the savings associated with increased efficiency. NOAA aims to ensure that the best environmental information is available to all sectors of the economy and to the public.

Question. I understand you did one of these "pilot projects" in New Hampshire—are you still funding that? Why would you stop funding that, and start a new one?

Answer. NOAA, as a result of Congressional action, is funding a pilot project in New England with a focus on improving the daily temperature and air quality forecasts for the region. The initial data-gathering phase will be completed by September 2002. A competitive contract is being let to conduct an independent, peer-reviewed assessment of the expected improvements in forecasting and their benefits to energy efficiency. The Modernized Cooperative Observing Program instrument network installed during fiscal year 2002 for this project will remain operational thereafter with operation and maintenance costs supported through the National Weather Service.

While Congress was conferring about the fiscal year 2002 budget, NOAA simultaneously developed through the fiscal year 2003 budget formulation process a separate energy pilot study focusing on the Southeast. The Southeast was identified through NOAA's internal process as the target region. The decision was based on both need and opportunity as expressed by industry stakeholders nationwide who were consulted in the development of the pilot program. This region was also chosen because there is a greater reliance on hydropower and an opportunity to test and evaluate potential improvements in river flow forecasts. The information gained from conducting the fiscal year 2002 pilot program will benefit the fiscal year 2003 program and is applicable to all regions of the country. The long-term goal is to expand the program nationwide.

INTERNATIONAL ISSUES

Question. The United States has some of the strictest marine protection laws in the world. It is important that NOAA and the Department of State continue to pursue international agreements in order to level the playing field. With respect to regulation of shrimpers, Congress in 1990 enacted Section 609 of Public Law 101–162, which restricts the import of shrimp harvested in a way that harms sea turtles. Under this law, nations must be certified as having a regulatory program to protect sea turtles in their shrimp trawl fisheries that is comparable to the U.S. program in order to obtain access to U.S. shrimp markets. Evidence observed during an inspection by the National Marine Fisheries Service (NMFS) at the port of Mazatlan, Mexico, November 13–16, 2001 revealed serious compliance and enforcement issues with respect to the use of Turtle Excluder Devices (TEDs). A follow-up inspection took place during the week of March 4, 2002.

Back in November of last year, NMFS found serious compliance and enforcement problems in Mexico with respect to shrimpers' use of Turtle Excluder Devices, or "TEDs". Admiral, such TED violations in Mexico come at a time when NMFS is considering a rule that would impose more stringent regulations on U.S. shrimpers. I understand that a new team was recently in Mexico to inspect the situation down there.

Answer. Yes, you are correct. A team consisting of NMFS and Department of State personnel conducted inspections from early to the middle of March, 2002, in several ports of Mexico—Tampico, Ciudad del Carmen, Campeche, Guaymas, and Mazatlan.

Question. Did the inspection team find improvements in Mexico? If not, does the Administration plan to decertify Mexico, and block imports of shrimp?

Answer. While a few problems were observed on some vessels, in general the inspection team found that the Government of Mexico has taken actions to improve its enforcement program since the November inspection. The team noted that it is important for Mexico to increase or, at a minimum, maintain TED enforcement activity at sea and dockside. To help ensure that this occurs, NMFS, with assistance from the Department of State, has organized a fishery enforcement training workshop for Mexican fishery enforcement personnel. The Mexican Navy will be included in the training to assist Mexico's General Bureau of Fishery and Marine Resource Inspection and Oversight (PROFEPA) to accomplish higher TED compliance. The preliminary determination is that Mexico's sea turtle protection program for its commercial fisheries is currently effective and meets the requirements for certification.

Question. On a broader note, what is the Administration doing to ensure that foreign fishing fleets are held to the same standards as the U.S. fleet, such as negotiating an international agreement to prohibit the practice of shark finning, or to prevent marine debris that ends up on U.S. shores?

Answer. Our efforts to conserve and manage sharks go back many years and are detailed in our February 1, 2002, "Report to Congress Pursuant to the Shark Finning Prohibition Act of 2000 (Public Law 106–557)," a copy of which is enclosed. The Shark Finning Prohibition Act calls for a multiplicity of actions to the taken by the Administration, including the collection of information on the incidence of finning as well as seeking an end to the practice. Clearly, these actions must be carried out in a logical sequence, and our Report explains how we will do this. In addition, working closely with the Department of State, before the end of May 2002, we will carry out a worldwide program of diplomatic démarches that will include our message regarding the requirements of: (1) the Shark Finning Prohibition Act and (2) the International Plan of Action for the Conservation and Management of Sharks of the Food and Agriculture Organization of the United Nations. These démarches will go to appropriate coastal countries and regional fisheries management organizations worldwide.

NMFS has consulted, under the Endangered Species Act, with many federal agencies on their activities that are likely to result in adverse effects to endangered sea turtles as a result of marine pollution and plastics. For example, through a consultation with the Air Force on Search and Rescue Training in the Gulf of Mexico, NMFS required the Air Force to collect as many lightsticks, a major source of marine plastic debris, as possible after completion of an exercise and properly dispose all plastic wrappings associated with the lightsticks. NMFS also required the Mineral Management Service to condition permits issued to oil companies to require collection and removal of flotsam resulting from explosive or mechanical rig removals. The Commerce Department's National Oceanic and Atmospheric Administration (NOAA), including NMFS' staff, joined forces with the Ocean Conservancy, U.S. Coast Guard, Fish and Wildlife Service, and the Hawaii Sea Grant program in a major ocean debris removal campaign in the northwestern Hawaiian Islands where derelict fishing gear and trash threaten marine turtles and other living marine resources. NOAA deployed three chartered commercial vessels, and to date more than 120 tons of nets and derelict gear have been recovered. NMFS recognizes that marine debris is a serious threat to the recovery of marine turtles and will continue to address this threat through consultations with federal agencies and collaborative efforts such as those conducted in the northwestern Hawaiian Islands.

FEDERAL TRADE COMMISSION

STATEMENT OF TIMOTHY J. MURIS, CHAIRMAN

SUMMARY STATEMENT

Senator HOLLINGS. We next have the Federal Trade Commission. We welcome you, Chairman Muris, and we would appreciate your statement at this time, which will be included in full. You can highlight it or deliver it as you wish.

Mr. MURIS. Thank you very much, Mr. Chairman. As your letter requested, let me just briefly summarize my testimony. I appreciate the opportunity to appear before you today in support of our fiscal year 2003 appropriations request.

Let me start by expressing my sincere thanks to the subcommittee and in particular to you, Mr. Chairman and Senator Gregg, for your strong support of the FTC in both antitrust and consumer protection. As you know, the FTC is the only Federal agency that has jurisdiction over both consumer protection and antitrust in broad areas of the economy. With credit to our excellent and dedicated staff, the FTC's record of protecting American consumers is impressive. We will continue to build on the successes of my predecessors.

The most important word in understanding what we are doing at the FTC, I believe, is continuity with the past. We will continue to address competition and consumer protection issues with the same expertise and commitment as was the case under Bob Pitofsky.

To accomplish our mission in fiscal year 2003, the FTC requests $176,599,000 and 1,074 FTE. Funding at this level would allow us to further our record of solid accomplishment on behalf of American consumers. A few highlights, I think, reveal the benefit of our role.

In consumer protection, fighting fraud, especially on the Internet, remains a key priority. For example, we have cracked down on the sale of bogus bioterrorism-related products that sprung up after September 11. We sent 121 warning letters to Internet marketers of these products and most sites have eliminated their suspect claims. We targeted the most egregious of the remaining marketers for law enforcement action. Last month, we announced settlements with the marketers of a home test kit for anthrax and an online seller of a purported anthrax treatment product.

We also have moved aggressively against diet deceptive claims about supplements on the Internet. We have taken action against fraud involving our telemarketing sales rule. Last fall, we achieved a settlement of over $8 million involving the pernicious practice of companies that had the consumer's credit card information, called the consumer, and did not tell them they had the information. Yesterday, we announced a $39 million order in a telemarketing sales case.

We are planning many more cases on fraud, both online and off. We are increasing our efforts to have career fraudsters put in jail, and we are spending more money on the growing problem of cross-border fraud.

We have also, Mr. Chairman, turned much greater attention to the issue of privacy, and we propose to do more in the future. We have recently proposed amendments to our telemarketing sales rule, including a national "do not call" list, and a proposal to deal with the pre-acquired account information that I mentioned.

We have begun law enforcement in a new area with our *Eli Lilly* case involving promises of security made by companies. In that case, Eli Lilly inadvertently sent an e-mail with 600 e-mail addresses of individuals taking Prozac. They had promised to keep the information confidential. They had promised, in our opinion, to take reasonable steps for security and they did not. We accordingly achieved a consent agreement.

We have also, for the first time, systematically begun to attack deceptive spam with a series of cases we brought last month and we have several more in the pipeline.

We also, as requested by this committee, are continuing to monitor the marketing of violent media to children. We issued our third report last December and have another one coming this summer.

On the antitrust side, despite the decline in the merger wave, we are still pursuing many cases. This fiscal year alone, the FTC has taken action in 10 cases. In non-merger antitrust, we have doubled our number of investigations. The pharmaceutical area is a particularly important area. We have what I call a first and second generation of cases and investigations.

The first generation involves agreements between branded products and generic products to keep the generic products off the market. The Commission has brought three such cases.

The second generation involves unilateral actions by branded companies to keep generic competition off the market. These cases, I think, promise enormous benefits for consumers. We recently were successful in an amicus brief that we filed involving the unilateral action where a branded company had tried to manipulate the FDA process to keep a generic off the market. The District Court in New York accepted our analysis and rejected the branded company's arguments. We are pursuing many other cases in health care at all levels of health care competition. We have a consent agreement that we will announce soon. Also, as former Chairman Bob Pitofsky suggested to me, we are holding hearings to explore the complex relationship between intellectual property and antitrust.

Mr. Chairman, let me briefly address the issue that has attracted much attention lately, which is this so-called clearance agreement with the Department of Justice's Antitrust Division. First, we are grateful that you have confidence in the FTC and want us to do more. In more than 50 years of clearance process agreements, no Member of Congress has ever taken such close interest in the process.

The reality, Mr. Chairman, is that we have two antitrust agencies enforcing the same antitrust law with the exact same standard. The law, however, states that only one agency can investigate

a specific merger. Because of that, the agencies have agreed for decades that neither will proceed with an investigation unless one first clears the investigation to the other.

This process worked well up until the 1990s. In the 1980s, for example, there were only, on average, about 10 disputes a year. Since then, however, there have been more than 80 disputes per year. There have been delays in the last 2 years of 3 weeks or more in one-quarter of the cases for which clearance was sought. When I arrived at the FTC last summer, there was a case where both agencies wanted to investigate and they had fought for over 1 year over who would do it. In that 1 year, neither could investigate. Bob Pitofsky and Joel Klein tried to fix this problem, but they could not agree on a solution.

Now, I know there is concern about media mergers, but I want to make clear that the new clearance agreement does not affect which agency will do media mergers. Even without the new agreement, the Antitrust Division would have done media mergers. If we had not signed a new agreement, disputes would be governed by the 1993 agreement. That agreement said that the primary grounds for resolving clearance disputes is experience within the last 5 years.

In media, the DOJ has a lot of experience and the FTC has very little. There are only two major FTC cases in the last several years. One is Turner-Time Warner, which is now outside the 5-year window contained in the 1993 agreement. The other is AOL-Time Warner. In that case, the clearance was so hotly contested that Chairman Pitofsky promised that if the FTC could do the deal, then the FTC would not count the experience in AOL-Time Warner in future clearance disputes. Now, even if we were to count AOL-Time Warner, in the last 5 years, the FTC has done only one major media deal and the Department of Justice has done six.

The clearance agreement did do something different. It publicly announced in detail for the first time how the process would work. A secret process has become transparent. I believe this is a good Government initiative that will avoid investing resources in fighting with the DOJ. In fact, our predecessors, Joel Klein and Bob Pitofsky, wrote us a letter saying exactly that.

PREPARED STATEMENT

In summary, Mr. Chairman, I believe the role of the FTC is vital for consumers. I believe we do good work and I hope that you approve our full budget request. Thank you.

[The statement follows:]

PREPARED STATEMENT OF TIMOTHY J. MURIS

INTRODUCTION

Mr. Chairman, I am Timothy J. Muris, Chairman of the Federal Trade Commission. I am pleased to appear before the Subcommittee today to testify in support of the FTC's fiscal year 2003 Appropriation request.[1]

[1] The written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or of any other Commissioner.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.[2] We enforce laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, as well as promote informed consumer choice and public understanding of the competitive process. The work of the FTC is critical in protecting and strengthening free and open markets in the United States.

The FTC's record is impressive. The agency has fulfilled its mission of protecting American consumers by pursuing an aggressive law enforcement program during rapid changes in the marketplace—the past decade saw the largest merger wave in history, the rapid growth of technology, and the increasing globalization of the economy. Through the efforts of a dedicated and professional staff, the FTC has shouldered an increasing workload despite only modest increases in resources. I would like to thank the Chairman and members of the Subcommittee for their continued support of the Commission's mission.

The guiding word at the FTC is "continuity." The agency continues aggressively to pursue law enforcement initiatives, launch consumer and business education campaigns, and organize forums to study and understand the changing marketplace, just as we have done for several years. We will continue to address competition and consumer protection issues in the evolving economy with the same expertise and commitment as before.

Our competition mission continues to reflect the following widely shared consensus: (1) the purpose of antitrust is to protect consumers; (2) the mainstays of antitrust enforcement are horizontal cases—cases involving the business relations and activities of competitors; (3) in light of recent judicial decisions and economic learning, appropriate monopolization and vertical cases are an important part of the antitrust agenda; and (4) case selection should be guided by sound economic and legal analysis, and made with careful attention to the facts. The FTC is primarily a law enforcement agency, and we will continue aggressive enforcement of the antitrust laws within the agency's jurisdiction. The FTC is also an independent expert agency and a deliberative body, and is thus well suited to studying an evolving marketplace and developing antitrust policy—we will continue to hold public hearings, conduct studies, and issue reports to Congress and the public.

Similarly, there is widespread agreement on how the FTC best carries out its consumer protection mission. Twenty years ago, the FTC shifted its emphasis toward more aggressive enforcement of the basic laws of consumer protection. The staple of our consumer protection mission is to identify and fight fraud and deception. The FTC monitors trends and developing issues in the marketplace to determine the most effective use of its resources. The FTC has become the national leader in consumer protection and partners with other law enforcement agencies at the federal, state, local, and international levels to maximize benefits for consumers.

To accomplish our mission in fiscal year 2003, the FTC requests $176,599,000 and 1,074 FTE. These figures represent an increase over the current year of $20,617,000, but no additional FTE. Almost 25 percent of the requested dollar increase would be devoted to comply with proposed legislation requiring all federal agencies to begin funding directly certain retirement and health benefits. Funding at the requested level would allow the FTC to build on a record of solid achievement on behalf of American consumers.

During fiscal year 2003, the FTC will address significant law enforcement and policy issues throughout the economy, devoting the major portion of its resources to those areas in which the agency can provide the greatest benefits to consumers. This testimony in support of our fiscal year 2003 appropriation highlights program priorities in the FTC's two missions. In the Consumer Protection Mission, we discuss Privacy; Internet Law Enforcement; Health, Safety, and Economic Injury; Media Violence, Gambling, and Children; Globalization; and Consumer Outreach. In the Maintaining Competition Mission, we discuss Merger Enforcement; Streamlining the Merger Review Process; Nonmerger Enforcement; Targeting Resources for Consumer Impact; and Outreach Efforts. The testimony concludes with a brief summary of the FTC's fiscal year 2003 appropriation request.

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[2] The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq*. With certain exceptions, the statute provides the agency with jurisdiction over nearly every sector of the economy. Certain entities, such as depository institutions and common carriers, as well as at the business of insurance, are wholly or partially exempt from FTC jurisdiction. In addition to the FTC Act, the FTC has enforcement responsibilities under more than 40 additional statutes and more than 30 rules governing specific industries and practices.

Privacy

During fiscal year 2003, the FTC intends to devote significant resources to privacy protection. Consumers are deeply concerned about the privacy of their personal information, both online and offline. Although privacy concerns have been heightened by the rapid development of the Internet, they are by no means limited to the cyberworld. Consumers can be harmed as much by the thief who steals credit card information from a mailbox or dumpster as by the one who steals that information from a Web site. Of course, the nature of Internet technology may raise its own special set of issues.

The FTC currently enforces a number of laws that address consumers' privacy,[3] and intends to increase substantially the resources dedicated to privacy protection. Our initiatives in this area attempt to reduce the serious consequences that can result from the misuse of personal information and fall into three major categories: vigorous enforcement of existing laws, additional rulemaking, and continued consumer and business education.

Privacy Law Enforcement

The FTC will pursue law enforcement efforts in the following areas:

—Enforcing privacy promises, focusing on cases involving sensitive information, transfers of information as part of a bankruptcy proceeding, and the failure of companies to meet commitments made under the Safe Harbor Program to comply with the European Commission's Directive on Data Protection.[4] For example, in January 2002, the FTC accepted a consent order with Eli Lilly & Company to resolve allegations that Lilly violated the FTC Act. According to the complaint, Lilly claimed that it employed measures appropriate under the circumstances to protect the confidentiality of personal information obtained from consumers who visited its Prozac.com Web site, when in fact it did not.[5]

—Enforcing the Children's Online Privacy Protection Act (COPPA),[6] which prohibits the collection of personally identifiable information from young children without their parents' consent. Since 2001, the Commission has brought a number of COPPA enforcement actions resulting in more than $100,000 in civil penalties.[7]

—Bringing actions against fraudulent or deceptive spammers. In February of this year, the Commission launched a crackdown on deceptive junk email, or "spam," and announced six settlements with seven defendants who allegedly continued

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[3] *See, e.g.,* Federal Trade Commission Act, 15 U.S.C. § 41 *et seq*. (prohibiting deceptive or unfair acts or practices, including violations of stated privacy policies); Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (addressing the accuracy, dissemination, and integrity of consumer reports); Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.* (including the Telemarketing Sales Rule, 16 C.F.R. Part 310) (prohibiting telemarketers from calling at odd hours, engaging in harassing patterns of calls, and failing to disclose the identity of the seller and purpose of the call); Children's Online Privacy Protection Act, 15 U.S.C. § 6501 *et seq*. (prohibiting the collection of personally identifiable information from young children without their parents' consent); Identify Theft and Assumption Deterrence Act of 1998, 18 U.S.C. § 1028 (directing the FTC to collect identity theft complaints, refer them to the appropriate credit bureaus and law enforcement agencies, and provide victim assistance); Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.* (requiring financial institutions to provide notices to consumers and allowing consumers (with some exceptions) to choose whether their financial institutions may share their information with third parties).

[4] The European Commission's Directive on Data Protection became effective in October 1998, and prohibits the transfer of personal data to non-European Union nations that do not meet the European "adequacy" standard for privacy protection. To bridge different privacy approaches between the United States and the EU, and to provide a streamlined means for U.S. organizations to comply with the Directive, the U.S. Department of Commerce, in consultation with the European Commission, developed a "Safe Harbor" framework, which was approved by the EU in July 2000. Companies that self-certify to the Department of Commerce that they comply with the Safe Harbor Principles may be deemed by the EU to provide "adequate" privacy protection under the EU Directive. The FTC will give priority to referrals of non-compliance with safe harbor principles from EU Member States. *See* Department of Commerce's Safe Harbor Website, www.export.gov/safeharbor.

[5] *Eli Lilly & Co.*, No. 012–3214 (Jan. 18, 2002) (consent agreement accepted subject to public comment).

[6] 15 U.S.C. § 6501 *et seq*.

[7] *United States* v. *American Pop Corn Co.*, No. C02–4008DEO (N.D. Ia., Feb. 28, 2002) (consent decree); *United States* v. *Lisa Frank, Inc.*, No. 01–1516–A (E.D. Va., Oct. 3, 2001) (consent decree); *United States* v. *Looksmart, Ltd.*, No. 01–606–A (E.D. Va., Apr. 23, 2001) (consent decree); *United States v. Bigmailbox.com, Inc.*, No. 01–605–A (E.D. Va., Apr. 23, 2001) (consent decree); *United States* v. *Monarch Servs., Inc.*, No. AMD 01 CV 1165 (D. Md., Apr. 20, 2001) (consent decree).

to send deceptive chain email after being warned that the chain email scheme was illegal.[8] The FTC maintains a special electronic mailbox, uce@ftc.gov, to which Internet customers can forward spam. This database currently receives 10,000 new pieces of spam every day. We will continue to use this mailbox to identify targets for law enforcement action.

—Challenging "pretexting," the practice of fraudulently obtaining personal financial information, often by calling banks under the pretense of being a customer. Earlier this month, the Commission announced settlements in three federal district court actions against information brokers who allegedly engaged in illegal pretexting.[9]

—Enforcing the privacy protections of the Fair Credit Reporting Act,[10] which ensures the integrity and accuracy of consumer credit reports and limits the disclosure of such information to entities that have "permissible purposes" to use the information.

Privacy Rulemaking

The Commission is engaged in the following rulemaking activities:

—Considering proposed amendments to the Telemarketing Sale Rule,[11] which were announced in January 2002.[12] Among other things, the proposed amendments would create a national do-not-call list to allow consumers to make one call to remove their names from telemarketing lists. The proposed amendments also would address the misuse of "pre-acquired account information," lists of names and credit card account numbers of potential customers. Misuses include billing consumers who believed they were simply accepting a free trial, or billing consumers for products or services that they did not purchase.

—Completing the current rulemaking on safeguarding consumers' financial information pursuant to the Gramm-Leach-Bliley Act.[13]

Privacy- and Security-Related Consumer and Business Education and Outreach

The agency will continue to conduct workshops and other educational activities:

—Training law enforcement officials about identity theft. On March 14, 2002, the FTC, the U.S. Secret Service, and the Department of Justice kicked off a series of training seminars to provide local and state law enforcement officers with practical tools to enhance their efforts to combat identity theft.[14]

—Collecting information about identity theft with the FTC's new ID Theft Affidavit. In February 2002, the FTC joined with several companies and privacy organizations to make available a universal identity theft affidavit that victims of identity theft can submit to creditors. This form will help victims recoup their losses and restore their legitimate credit records more quickly.

—Continuing to explore and monitor the privacy implications of new and emerging technologies through workshops, reports, and other public meetings. Earlier this month, the FTC released a summary and update of the proceedings of a workshop sponsored by the Commission titled, "The Mobile Wireless Web, Data Services, and Beyond: Emerging Technologies and Consumer Issues."[15] On May 20–21, 2002, the FTC will host a two-day public workshop to explore issues related to the security of consumers' computers and the personal information stored in them or in company databases.[16]

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[8] *FTC* v. *Boivin*, No. 8:02–CV–77–T–26 MSS (M.D. Fla., Jan. 15, 2002) (consent decree); *FTC* v. *Estenson*, No. A3–02–10 (DND, Feb. 5, 2002) (consent decree); *FTC* v. *Larsen*, No. 8:02–CV–76–T–26MAP (M.D. Fla., Jan. 16, 2002) (consent decree); *FTC* v. *Lutheran*, No. 02 CV 0095 K (RAB) (S.D. Cal., Jan. 18, 2002) (consent decree); *FTC* v. *Va*, No. 02–60062-Civ-Zloch (S.D. Fla., Jan. 18, 2002) (consent decree); *FTC* v. *Pacheco*, No. 02–CV–31L (D.R.I., Jan. 22, 2002) (consent decree).

[9] "Information Brokers Settle FTC Charges," FTC Press Release (Mar. 8, 2002), available at <<http://www.ftc.gov/opa/2002/03/pretextingsettlements.htm>>.

[10] 15 U.S.C. § 1681 *et seq*.

[11] *See* Telemarketing Sales Rule, 16 C.F.R. Part 310.

[12] 67 Fed. Reg. 4492 (Jan. 30, 2002).

[13] The Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801(b) and 6805(b), requires the FTC to issue a rule establishing appropriate standard for safeguards to ensure the security, confidentiality, and integrity of customer records and information.

[14] *See* Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. § 1028. This Act makes the FTC a central clearinghouse for identity theft complaints. Under the Act, the FTC is required to log and acknowledge such complaints, provide victims with relevant information, and refer their complaints to appropriate entities (*e.g.*, the major consumer reporting agencies and other law enforcement agencies).

[15] The report is available at <<http://www.ftc.gov/opa/2002/03/wireless.htm>>.

[16] *See* "FTC to Host Public Workshop on Consumer Information Security," FTC Press Release, available at <<http://www.ftc.gov/opa/2002/03/security.htm>>.

Internet law enforcement

The FTC will continue aggressively to monitor the Internet to ferret out frauds and schemes. Since 1994, the early days of the Internet, the FTC has brought 222 Internet-related law enforcement actions against 688 defendants, stopping consumer injury estimated at more than $2.1 billion. These cases often pose novel challenges: tracking anonymous fraud artists, unraveling complex technological schemes, and responding at lightning speed to frauds moving just as rapidly.

A growing number of these high tech schemes exploit the design and architecture of the Internet. A recent example is *FTC* v. *Zuccarini,* C.A. No. 01–CV–4854 (E.D. Pa., filed Sept. 25, 2001), in which the defendant allegedly used more than 5,000 copycat Web addresses to hijack surfers from their intended destinations to one of his Web sites, hold them captive, and pelt them with a barrage of ads, some of them pornographic. According to the FTC's complaint, the defendant was able to divert consumers who misspelled addresses of popular legitimate sites because he had registered multiple misspelled variations of those sites. Once he had lured consumers to his sites, the defendant "mousetrapped" them by disabling their browsers' "back" and "exit" commands. At the FTC's request, the court enjoined the defendant from continuing these activities. The FTC will seek an order requiring the defendant to disgorge as much as $1 million in ill-gotten gains.

As in past years, the FTC's Internet fraud campaign is combating scams that jump from news headlines—this year, scams that have appeared since September 11th. The FTC, working with 30 State Attorneys General, the New York Better Business Bureau, the California Department of Health, the FDA, and other federal agencies identified more than 200 Web sites pitching products to protect against, detect, or treat illnesses caused by biological or chemical agents, including anthrax. These products, most of them bogus or ineffective, include herbal remedies for anthrax, air filters, gas masks, and do-it-yourself kits to test mail for anthrax. After identifying these Web sites, the FTC sent warning letters to the operators of 121 sites, and published two consumer alerts to warn the public that fraudsters follow the headlines and tailor their offers to prey upon the public's latest fears. As of March 1, 2002, 62 percent of those warned had dropped the troubling claims from their Web sites, and the FTC continues to monitor the remainder of the Web sites. The FTC brought two law enforcement actions against the operators of Web sites engaging in more egregious practices. In one case, the FTC obtained a federal court order prohibiting a marketer from selling anthrax home test kits.[17] In second, the FTC has issued a consent order prohibiting a vendor from making anthrax cure claims for a colloidal silver product.[18] Because the Internet transcends national boundaries, future cases increasingly will involve cross-border scams. During the past fiscal year, the FTC, other federal agencies, state agencies and foreign agencies from nine countries participated in "Operation Top Ten Dot Cons." Through this sweep, the largest in FTC history, the FTC and its partners filed 209 actions around the world attacking the top 10 Internet scams, as identified by data received in our consumer complaint database.[19]

Health, safety, and economic injury

The Commission also will continue to bring law enforcement actions in cases involving consumers' health and safety, and in cases resulting in significant economic injury. Just two weeks ago, for example, the Commission announced consent agreements in cases challenging allegedly deceptive advertising claims that, as a good source of calcium, Wonder Bread helps children's minds work better and helps children remember things.[20] In a recent case involving significant economic injury, the Commission announced that a group of "buying clubs" had agreed to pay $9 million to settle charges by the FTC and State Attorneys General. The defendants were charged with misleading consumers into accepting trial buying club memberships and obtaining consumers' credit card account numbers without the consumers' knowledge or authorization from telemarketers pitching the buying clubs. Con-

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[17] *FTC* v. *Vital Living Products, Inc.*, Civ. No. 3:02CV74–MU (W.D.N.C., proposed consent decree filed with court, Feb. 25, 2002).

[18] *Kris A. Pletschke,* C–4040 (Feb. 22, 2002) (consent order).

[19] The top 10 targeted frauds were: Internet Auction Fraud, Internet Service Provider Schemes, Internet Web Site Design/Promotions (Web Cramming, Internet Information and Adult Services), Credit Card Cramming, Multi-level Marketing/Pyramid Schemes, Business Opportunities and Work-At-Home Scams, Investment Schemes and Get-Rich-Quick Schemes, Travel/Vacation Fraud, Telephone/Pay-Per-Call Solicitation Frauds (including modem dialers and videotext), and Health Care Frauds.

[20] *Interstate Bakeries Corp.,* File No. 012 3182 I (consent agreement accepted subject to public comment, Mar. 6, 2002); *Campbell Mithun LLC*, File No. 012 3182 (consent agreement accepted subject to public comment, Mar. 6, 2002).

sumers then were enrolled in the clubs and charged up to $96 in yearly membership fees.[21]

In addition, last month the FTC obtained a stipulated preliminary injunction in a federal district court action against the promoters of "Miss Cleo" psychic services.[22] The FTC's complaint alleges that the defendants misrepresented the cost of services both in advertising and during the provision of the services, billed for services that were never purchased, and engaged in deceptive collection practices, among other things. The FTC estimates that the defendants billed consumers at least $360 million in connection with this alleged scheme.

Media violence, gambling, and children

The FTC is continuing to monitor violent media directed toward children, and appreciates the leadership of Senators Hollings, McCain, Gregg, and other Subcommittee members on this issue. In a September 2000 report, the agency reported that the entertainment industry targeted advertising and promotion of violent video games, movies, and music to children.[23] We received requests from Congress to take a variety of steps to follow up on this report. In particular, this Subcommittee requested that the FTC continue its efforts in child protection through three related initiatives: consumer research and workshops, an underage shopper retail compliance survey, and marketing and data collection.[24]

In response to these requests, in April 2001 the FTC released a follow-up report outlining improvements in the movie and electronic game industries but finding no appreciable change in the music industry's target marketing practices.[25] The agency released a second follow-up report in December 2001, finding that the movie and electronic game industries had made continued improvements. The December 2001 report also found that the music industry had made some progress in disclosing parental advisory label information in its advertising, but the Commission's review of advertising placement showed that the music industry had not altered its marketing practices since the September 2000 report.[26] The December report also described the results of a second underage shopper retail compliance survey. The FTC will release a third follow-up report in June 2002. In addition, as requested by this Subcommittee, the Commission's staff is conducting research on appropriate consumer education messages for parents. The Commission is also working to respond to the language in last year's appropriations bill regarding the marketing of on-line gambling sites to children. We will be reporting our findings and announcing a consumer education initiative in the near future.

Globalization

The FTC will continue to respond to the challenges created by the increasingly global marketplace. First, the FTC will participate in international efforts to craft policies and self-regulatory programs to protect consumers. Second, we will build new international partnerships to tackle cross-border fraud through information sharing and coordinated law enforcement. An example is the FTC's participation in the International Marketing Supervision Network (IMSN), a network of consumer protection and fair trade organizations from more than two dozen countries. The IMSN identifies worldwide enforcement issues, facilitates the sharing of information about cross-border commercial activities affecting consumer interests, and encourages international cooperation among law enforcement agencies. Another example is econsumer.gov, a joint effort by the United States and fifteen other countries to gather and share cross-border e-commerce complaints.

Third, to meet the challenge of identifying critical consumer issues in the global marketplace, the FTC plans to continue to use its Consumer Information System, a consumer complaint database, to identify and target the most serious consumer problems. By sharing fraud complaints with a broad group of law enforcement part-

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[21] *FTC* v. *Ira Smolev*, No. 01–8922–Civ-Zloch (S.D. Fla., consent decree entered as to all except two defendants, Nov. 28, 2001).

[22] *FTC* v. *Access Resource Services, Inc.,* No. 02–60226 Civ. Gold (S.D. Fla., stipulated preliminary injunction entered Feb. 20, 2002).

[23] Federal Trade Commission, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Sept. 2000), available at <<http://www.ftc.gov/reports/violence/vioreport.pdf>>.

[24] Conf. Rpt. on H.R. 2500 (fiscal year 2002 appropriations), H. Rep. No. 278, 107th Cong., 1st Sess. 162 (Nov. 9, 2001).

[25] Federal Trade Commission, *Marketing Violent Entertainment to Children: A Six-Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (April 2001), available at <<http://www.ftc.gov/reports/violence/violence010423.pdf>>.

[26] Federal Trade Commission, *Marketing Violent Entertainment to Children: A One-Year Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Dec. 2001), available at <<http://www.ftc.gov/os/2001/12/violencereport1.pdf>>.

ners through the secure Consumer Sentinel Web site, the FTC enhances the effectiveness of law enforcement agencies across the United States, Canada, and Australia. The FTC also will continue training enforcement officials on how to bring cases involving new technologies. Since fiscal year 2001, the FTC has educated more than 1,750 law enforcement personnel from more than 20 countries, 38 states, 23 U.S. federal agencies, and 19 Canadian agencies on use of the fraud database.

Consumer outreach

Just as consumer outreach is a key component of the FTC's efforts to protect consumers' privacy, the FTC will continue to place great emphasis on consumer outreach involving fraud and deception. Our consumer education programs provide two key benefits. First, they inform consumers of their rights under various consumer protection laws. Second, they give consumers the information they need to identify and avoid fraud and deception in the marketplace. In fiscal year 2002, the FTC will use national and local media, state and local government agencies, business and consumer groups, and the ftc.gov and consumer.gov Web sites to reach millions of consumers across the country. The FTC also will continue to reach consumers through its Consumer Response Center and the hundreds of consumer protection organizations that distribute FTC materials and provide links to the FTC Web site. In fiscal year 2001, the FTC issued 77 publications, distributed more than 5.4 million print publications, and logged more than 9.6 million accesses of its publications on the ftc.gov Web site. The FTC also will continue to host workshops to highlight the FTC's activities and resources for Congressional district office staff. By July of this year, the FTC will have held workshops in each of its regional offices for all Congressional district offices.

MAINTAINING COMPETITION MISSION

Merger enforcement

Merger enforcement will continue as a major focus of the competition agenda for fiscal year 2003. Stopping mergers that lessen competition ensures that consumers will have the benefit of lower prices and greater choice in their selections of goods and services. The recently revised Hart-Scott-Rodino Act ("HSR")[27] filing threshold, coupled with economic conditions during the last fiscal year, reduced the number of reportable filings by approximately two-thirds from their peak. Reported mergers, however, continue to increase in scope, complexity, and size. In fiscal year 2001 alone, the total value of all reported mergers was over $1 trillion. Large, multifaceted transactions—the ones still subject to HSR—are the ones most likely to raise antitrust issues, and typically involve a number of separate product and geographic markets, each requiring analysis.[28] Further, mergers in high tech markets require careful analysis, because new technical issues continue to emerge.

We will devote resources to searching for mergers that are no longer subject to premerger reporting requirements under HSR, but that could be anticompetitive. While the revised HSR filing threshold eliminated the reporting requirement for smaller mergers, it did not change the substantive standard of legality under section 7 of the Clayton Act.[29] The agency will be alert to smaller mergers that could harm consumers by substantially lessening competition. Since the fiscal year began, the FTC has opened investigations into mergers that were not reportable under the

[27] 15 U.S.C. § 18a, as amended, Pub. L. No. 106–553; 114 Stat. 2762 (2000).

[28] For example, the FTC's settlement agreement in *Chevron Corp./Texaco Inc.*, No. C–4023 (Jan. 2, 2002) (consent order), provided for relief in (1) retail gasoline markets in numerous metropolitan areas in various parts of the country, including Alaska and Hawaii, the western United States (including Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), and the southern United States (including Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia); (2) marketing of CARB gasoline in California; (3) refining and bulk supply of CARB gasoline for sale in California; (4) refining and bulk supply of gasoline and jet fuel in the Pacific Northwest; (5) the bulk supply of RFG II gasoline into St. Louis; (6) terminaling of gasoline and other light petroleum products in several metropolitan areas in Arizona, California, Mississippi, and Texas, and on four Hawaiian islands; (7) transportation of crude oil from California's San Joaquin Valley; (8) transportation of crude oil in the eastern Gulf of Mexico; (9) pipeline transportation of natural gas in the Central Gulf of Mexico; (10) natural gas fractionating in Texas; and (11) marketing of general aviation gasoline in 14 states (Alaska, Alabama, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, Nevada, Oregon, Tennessee, Utah, and Washington).

[29] 15 U.S.C. § 18.

HSR Act, and has issued an administrative complaint challenging one merger that fell below the amended HSR threshold.[30]

Litigation to challenge anticompetitive mergers requires significant resources. While the FTC resolves most merger cases through settlement (this fiscal year we have obtained settlements of ten administrative or court complaints),[31] it is sometimes necessary to litigate challenges to certain proposed or consummated mergers. Since the fiscal year began, the Commission has authorized the staff to file complaints in five merger cases, three of which are in litigation [32] and two of which have settled.[33] The FTC must have the resources and expertise needed to support effective challenges in complex and high-stakes cases to protect consumers from higher prices, limited choices, and thwarted innovation.

Streamlining the merger review process

The FTC has been working with the Antitrust Division at the Department of Justice to establish procedures to make the HSR merger review process more efficient and transparent. The FTC has focused on several areas for streamlining, including:

—*Electronic Premerger Filing*.—As part of an overall movement to make government more accessible electronically, the FTC, working with DOJ, will accelerate its efforts in fiscal year 2003 to develop an electronic system for filing HSR premerger notifications. E-filing will reduce filing burdens for businesses and government and create a valuable database of information on merger transactions to inform future policy deliberations.

—*Burden Reduction in Investigations*.—The agencies have taken steps to reduce the burden in document productions responsive to requests for additional information under the HSR Act ("second requests"). In response to legislation amending the HSR Act,[34] the FTC amended its rules of practice to incorporate new procedures. The rule requires Bureau of Competition staff to schedule conferences to discuss the scope of a second request with the parties and also establishes a procedure for the General Counsel to review the request and rule promptly on any remaining unresolved issues.[35] Measures adopted include a process for seeking modifications or clarifications of second requests, and expedited senior-level internal review of disagreements between merging parties and agency staff; streamlined internal procedures to eliminate unnecessary burdens and undue delays; and implementation of a systematic management status check on the progress of negotiations on second request modifications. In addition, we recently have announced that agency staff will participate in a series of discussions with the bar and other interested parties to elicit suggestions on further improvements to the second request process, and to provide information on our investigation procedures.

—*Improved FTC/DOJ Clearance Process*.—The achievement of an efficient division of work between the two federal antitrust enforcement agencies has occupied the energies of the Department of Justice and the FTC since the Commission began operating in March 1915. For many years, the two agencies have allocated matters mainly on the basis of their relative expertise. For the most part, this arrangement has worked smoothly. In the last decade, however, the convergence of industries increasingly has blurred the lines between the agencies' historical areas of responsibility. Consequently, clearance disputes have become both more common and, in the case of major clearance disputes, more con-

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[30] *MSC.Software Corp*., No. D–9299 (complaint issued Oct. 10, 2001) (alleging that a dominant supplier of a popular type of advanced computer-aided engineering software acquired its only two competitors).

[31] This fiscal year, the Commission has issued final consent orders in the following eight merger cases: *Ina-Holding Schaeffler KG/FAG Kugelgischer Georg Schafer AG,* No. C–4033 (Feb. 15, 2002); *Nestle Holdings, Inc./Ralston Purina Co.,* No. C–4028 (Feb. 8, 2002); *Diageo p.l.c./Vivendi Universal S.A*., No. C–4032, (Feb. 8, 2002); *Chevron Corp./Texaco Inc.*, No. C–4023 (Jan. 2, 2002); *Valero Energy Corp./Ultramar Diamond Shamrock Corp.*, No. C–4031 (Feb. 19, 2002); *Koninklijke Ahold N.V./Bruno's Supermarkets, Inc.*, No. C–4027 (Jan. 16, 2002); *Metso Oyj/Svedala Industri AB*, No. C–4024 (Oct. 23, 2001); *Airgas*, No. C–4029 (Dec. 18, 2001). On March 7, 2002, the Commission accepted subject to public comment a settlement in the matter of *Deutsche Gelatine-Fabriken Stoess AG/Goodman Fielder Ltd.,* File No. 011–0117. In addition, the Commission obtained a consent decree in the matter of Hearst's acquisition of J.B.Laughery. *FTC* v. *The Hearst Trust*, No. 1:01CV00734 (D.D.C., Dec. 18, 2001).

[32] *MSC. Software, supra* n. 30; *Chicago Bridge Iron Co., Inc.,* Dkt. No. 9300 (complaint issued Oct. 25, 2001); *Libbey, Inc./Newell Rubbermaid, Inc.*, No. 1:02CV00060 (D.D.C., complaint filed Jan. 14, 2002).

[33] *Diageo/Vivendi* and *Deutsche Gelatine-Fabriken Stoess/Goodman Fielder, supra* n. 31.

[34] 15 U.S.C. § 18a, as amended, Pub. L. No. 106–553; 114 Stat. 2762 (2000).

[35] 16 CFR § 2.20. To date, two appeals have been filed under this procedure; both have been completed.

tentious.[36] On average, from 1982 through 1989, 10 clearance disputes arose each year. In contrast, between 1990 and 2001, the annual number of contested matters has equaled or exceeded 45, and in three years exceeded 100. On average, 83 clearance disputes occurred annually during this period.

—These disputes result in significant delays. Delays averaging three weeks occurred in 24 percent of the matters on which either agency sought clearance from the beginning of fiscal year 2000 through January 28, 2002. Cumulatively, these investigations were delayed by 4,521 business days—more than 17 years. During this time, neither agency could investigate potentially serious allegations of illegal behavior.[37] Recognizing the severity of the problem, FTC Chairman Robert Pitofsky and Assistant Attorney General Joel Klein attempted to negotiate a global clearance agreement for over a year, but could not reach consensus.

—Consistent with his authority,[38] Chairman Muris negotiated a new clearance agreement with Assistant Attorney General for Antitrust Charles James.[39] The new agreement will allocate matters between the two agencies more efficiently, rationally, and predictably. This agreement allocates primary areas of responsibility for antitrust enforcement on an industry-wide basis, and implements expedited clearance dispute resolution procedures. The new agreement will enhance the quality of antitrust enforcement, and will benefit businesses, consumers, and taxpayers.[40] Moreover, an agreement that allocates primary areas of enforcement responsibility enjoys overwhelming support within the antitrust and business communities.[41] The clearance agreement requires that the agency

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[36] Perhaps the most notable example of industry convergence and resulting clearance disputes concerns electricity and natural gas. Historically, electricity matters have been handled by the DOJ, and natural gas matters have been handled by the FTC. Convergence of these industries has led to contentious clearance disputes. Each merger of an electricity company and a natural gas company has been hotly contested by the agencies. Disputes over these convergence mergers have accounted for approximately 10 percent of all clearance disputes since the beginning of fiscal year 2000. Moreover, to resolve clearance disputes generally, it became increasingly necessary to employ conditions—such as Chairman Pitofsky's agreement that, in return for receiving clearance to investigate the matter, the FTC would not cite its expertise in AOL/Time Warner as a source of expertise in future clearance disputes.

[37] The number of disputes has decreased somewhat recently, particularly since Chairman Muris and Charles James assumed office last summer and resolved a clearance dispute that had lasted for more than a year. In effect, they declared a cease-fire in the clearance war while attempting to negotiate a peaceful settlement. In any event, the Commission believes that its scarce resources should be spent on investigating allegations of misconduct, and in developing appropriate expertise, rather than in fighting with the Antitrust Division. Moreover, the recent decline in clearance disputes may reflect the recent decline in merger filings. Changing market conditions could lead to an increase in merger filings and, consequently, an increase in clearance disputes.

[38] *See* Statement of Commissioners Orson Swindle and Thomas B. Leary on the Memorandum of Agreement Concerning Clearance Procedures for Investigations (Jan. 18, 2002) (stating that "We are not troubled by the process by which the Agreement was fashioned. Not only was negotiation of the Agreement with Assistant Attorney General James the prerogative of Chairman Muris; it was also simply the most effective way to get the job done. Historically, the agencies employed a procedure for dealing with clearance issues that was based on a case-by-case approach, with the Chairman and the Assistant Attorney General making the ultimate decision when necessary (with little or no involvement by other Commissioners). This long course of interagency discussion and negotiation then established 'precedent' for allocating antitrust review responsibilities between the agencies—a kind of 'private law' for the kinds of matters that the Agreement was designed to describe publicly. It is proper that the agency heads were the ones to devise a new arrangement that would have injected greater efficiency and clarity into the allocating system—a system in which the Chairman, and not other Commissioners, will continue to have operational responsibilities."), available at <<http://www.ftc.gov/opa/2002/01/ftcdojostl.htm>>.

[39] *See* Memorandum of Agreement Between the Federal Trade Commission and the Antitrust Division of the United States Department of Justice Concerning Clearance Procedures for Investigations, available at <<http://www.ftc.gov/opa/2002/02/clearance/ftcdojagree.pdf>>.

[40] *See* Statement of Commissioners Orson Swindle and Thomas B. Leary on the Memorandum of Agreement Concerning Clearance Procedures for Investigations (Jan. 18, 2002), *supra* n.38; "FTC Releases Antitrust Clearance Process Documents," FTC Press Release (Feb. 27, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance.htm>>; and "FTC and DOJ Announce New Clearance Procedures for Antitrust Matters," FTC Press Release (Mar. 5, 2002), available at <<http://www.ftc.gov/opa/2002/03/clearance.htm>>.

[41] *See* Letter from Robert Pitofsky, *et al.* to Timothy J. Muris and Charles A. James (Feb. 4, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance/multiletters.pdf>>; Letter from Roxane C. Busey, Chair, Section of Antitrust Law, American Bar Association, to Timothy J. Muris and Charles A. James (Jan. 23, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance/aba.pdf>>; and Letter from the Business Roundtable, the National Association of Manufac-

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heads review the allocation of industries in four years to determine whether the goal of efficiently and rationally allocating competition matters is being achieved.

—In response to concerns about the agreement expressed by the Chairman of this Subcommittee, the agencies have provided information on clearance procedures, the historical allocation of matters, and clearance delays. We will, of course, provide any additional information that the Subcommittee desires.

Nonmerger enforcement

The FTC will continue the trend, begun last year, to devote more resources to nonmerger enforcement. In fiscal year 2001, the agency opened 56 nonmerger investigations, more than double the number of such investigations begun in the previous year, when deadline-sensitive HSR merger investigations siphoned away resources allocated for nonmerger work. Thus far in fiscal year 2002, the agency has opened 15 nonmerger investigations. The major focus of our nonmerger work will concern activities among competitors, reflecting the broad consensus in antitrust policy that horizontal arrangements that fix prices or restrict output are the ones most likely to harm consumers.

Efforts in this area are producing benefits for consumers. Just last month, the FTC settled litigation against American Home Products (AHP) to resolve charges that Schering-Plough Corporation (Schering) illegally agreed to pay AHP millions of dollars in exchange for AHP's agreement to delay introduction of a generic potassium chloride supplement, which would have competed with Schering's branded K-Dur 20, used to treat patients with low potassium, which can lead to cardiac problems.[42] In another recent matter, the agency achieved a settlement with one defendant in a price-fixing case last fiscal year, and is presently in litigation with the other defendant.[43]

The settlement with AHP marks the third instance in which the FTC has reached a settlement with generic or branded drug manufacturers regarding alleged anticompetitive conduct designed to delay generic entry.[44] A major portion of the American health care dollar purchases prescription drugs, and we will continue our efforts to prevent firms from engaging in anticompetitive practices that raise drug prices. In particular, we will strive to ensure that anticompetitive practices do not delay market entry of generic drugs, which cost less than name-brand pharmaceuticals. We will seek to ensure that protections provided to drug innovators under the Hatch-Waxman Act are not abused to the detriment of consumers. As you know, Hatch-Waxman was designed to increase the flow of new pharmaceuticals into the marketplace by carefully balancing two public policy objectives: encouraging vigorous competition from generic drugs, while maintaining incentives to invest in the development of innovator drugs.

In addition to agreements between makers of brand-name drugs and makers of generics, under which the generic entrant is essentially paid not to compete, the FTC continues to investigate unilateral conduct by branded manufacturers designed to forestall competition. For example, some branded manufacturers list additional patents in the FDA's "Orange Book," often shortly before their original patents expire, which sets the stage for launching patent infringement suits against generic drug firms poised to enter the market. Under Hatch-Waxman, such litigation trig-

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turers, and the U.S. Chamber of Commerce to Timothy J. Muris (Feb. 25, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance/brt.pdf>>. Of course, most of the signatories to these three letters did not possess detailed knowledge of the recent, industry-specific expertise of the FTC and the DOJ. Accordingly, they could not, and did not, opine on specific allocations between the FTC and the DOJ. Some consumer groups, however, have expressed concerns about the agreement. *See* Jeffrey Chester, Center for Digital Democracy, "FTC–DOJ Clearance Agreement Will Hurt Consumers," available at <<http://www.democraticmedia.org/news/dojclearance.html>>; Letter from Andrew Jay Schwartzman, President and CEO, Media Access Project, to Senator Ernest F. Hollings (Jan. 22, 2002), available at <<http://www.mediaaccess.org/press/hollingsletter.pdf>>.

[42] *American Home Products Corporation,* Dkt. No. 9297 (consent agreement accepted subject to public comment, Feb. 19, 2002). Complaints against Schering and Upsher-Smith are currently before an FTC administrative law judge. *Schering-Plough Corporation, Upsher-Smith Laboratories, Inc.,* Dkt. No. 9297 (complaints filed Apr. 2, 2001).

[43] In September of 2001, the FTC entered into a consent agreement with Warner Communications to resolve charges that Warner and Polygram illegally agreed to fix prices for audio and video products featuring "The Three Tenors." *Warner Communications, Inc.*, No. C–4025 (Sept. 17, 2001) (consent order). The case against Vivendi Universal S.A., the successor corporation to Polygram, is currently before an FTC administrative law judge, Dkt. No. 9298.

[44] The other two cases are *Abbott/Geneva* (*Abbott Laboratories*, No. C–3945 (May 22, 2000), and *Geneva Pharmaceuticals, Inc.*, No. C–3946 (May 22, 2000) (consent orders)) and *Hoechst Marion Roussel, Inc./Andrx Corp.*, No. C–9293 (May 11, 2001) (consent order).

gers an automatic 30-month stay on FDA approval of the generic drug. If the listings do not meet statutory and regulatory requirements, their inclusion in the Orange Book may constitute unlawful restraints on competition.[45]

To uncover whether strategies such as these are isolated examples or represent patterns of anticompetitive conduct, the Commission has undertaken a study, as requested by Representative Henry Waxman, to provide a more complete picture of how generic competition has developed under the Hatch-Waxman Act. The Commission has issued nearly 100 orders to innovator and generic drug companies to obtain documents related to the issues identified through investigations and to identify any other anticompetitive strategies that may exploit certain Hatch-Waxman provisions. The facts obtained through this study may provide a basis for policy recommendations in this area.

Targeting resources for consumer impact

In both its merger and nonmerger programs, the FTC will continue to focus competition resources in sectors of the economy that have a substantial impact on consumers' wallets. Because of the important cost implications for consumers, one critical area is health care. Health related products and services account for over 13 percent of gross domestic product, up from 10.9 percent in 1988.[46] In addition to preserving opportunities for generic drugs to compete, the FTC's enforcement agenda also includes agreements among doctors and other health professionals to restrict competition, codes of conduct containing anticompetitive provisions, and mergers of hospitals and suppliers of health care products.

Another critical sector is energy. Representing a significant portion of the total U.S. economic output, energy is a vital input to virtually all parts of the economy. The FTC has garnered considerable experience with energy issues over the past two decades, investigating numerous oil mergers and bringing cases in appropriate instances. Recently, the FTC obtained two significant settlements to prevent loss of competition resulting from the Chevron/Texaco[47] and Valero/Ultramar Diamond[48] mergers.[49] To understand current issues involving energy markets, the agency has recently announced that we will hold a second public conference to examine factors that affect prices of refined petroleum products in the United States. The agency held a preliminary conference on the subject last fiscal year. In addition, the FTC will continue to investigate pricing behavior, where appropriate, in energy markets. In just the past year, we investigated various price spikes or pricing anomalies in petroleum products. Staff also investigated the gasoline price spikes in the aftermath of the September 11th terrorist attacks. Thus far, we have found no evidence of collusive activity in violation of the antitrust laws. Commission investigations nonetheless both have a deterrent effect on wrongdoing and provide the basis for action when anticompetitive practices have occurred.

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[45] The FTC recently filed an amicus brief in the *In Re Buspirone Patent Litigation* that addresses some of these issues. The *Buspirone* litigation concerns whether Bristol-Myers Squibb Company ("BMS") violated Section 2 of the Sherman Act by making false filings with the U.S. Food and Drug Administration that caused BMS's newly issued patent to be wrongfully listed in the FDA's Orange Book in order to block generic competition to its branded drug, BuSpar. BMS argued that a claim based on its allegedly improper filing of a patent in the FDA's Orange Book could not proceed because its actions were entitled to immunity under the *Noerr-Pennington* doctrine. The *Noerr* doctrine immunizes genuine petitioning activity directed at persuading government bodies to adopt a particular course of action. In its brief, the Commission argued that Orange Book filings, even when made properly, are decidedly not "petitions." Rather, they are mechanical, informational filings that do not trigger any exercise of legal or discretionary judgment by the FDA and do not call for any agency decision-making. FDA's role in receiving and publishing Orange Book information is simply ministerial. As such, Orange Book filings are akin to tariff filings, which have consistently been held not to constitute immunized *Noerr* petitioning. The district court recently issued a decision on a motion to dismiss in this case that accepted the arguments made by the Commission and squarely held that Orange Book filings are not petitioning under *Noerr*. *In Re Buspirone Patent Litigation,* MDL Dkt. No. 1410, 2002 U.S. Dist. LEXIS 2625, (S.D.N.Y., motion to dismiss granted in part and denied in part, Feb. 14, 2002). The Commission's amicus brief is available at <<http://www.ftc.gov/os/2002/01/busparbrief.pdf>>.

[46] Katharine Levit *et al.*, "Inflation Spurs Health Spending in 2000," 21 *Health Affairs* 172 (Jan–Feb 2002).

[47] *Chevron Corp./Texaco Inc.*, No. C–4023 (Jan. 2, 2002) (consent order).

[48] *Valero Energy Corp./Ultramar Diamond Shamrock Corp.*, No. C–4031 (Feb. 19, 2002) (consent order).

[49] Additionally, in recent years, the agency has achieved significant settlements, requiring divestitures of oil fields, refineries, pipelines, and gas stations to prevent loss of competition resulting from the Exxon/Mobil and BP/ARCO mergers. *Exxon Corp./Mobil Corp.*, No. C–3907 (January 26, 2001) (consent order) and *BP Amoco p.l.c./Atlantic Richfield Co.*, No. C–3938 (Aug. 29. 2000) (consent order).

Yet another sector of the economy involves high tech industries. Our economy increasingly has become more knowledge-based; for some companies, patent portfolios represent far more valuable assets than manufacturing or other physical facilities. Thus, an increasing number of the FTC's competition matters require the application of antitrust law to conduct relating to intellectual property. Both antitrust and intellectual property law share the common purposes of promoting innovation and enhancing consumer welfare. On occasion, however, there have been tensions in how to manage the intersection between the doctrines, as well as questions about how best to spur innovation through competition and intellectual property law and policy. The FTC and DOJ currently are holding a series of hearings on competition and intellectual property law and policy to help understand the interplay between intellectual property and antitrust law.[50] Issues to be addressed in the hearings include standard-setting, cross-licensing and patent pools, unilateral refusals to deal, proliferation of patents, and the changing scope of patents. In addition to the hearings, we continue to pursue antitrust investigations involving issues concerning intellectual property.

Outreach efforts

The FTC will continue competition outreach to various constituencies during fiscal year 2003. Among these efforts, the agency strives to increase understanding and awareness of important emerging industries and issues, such as business-to-business (B2B) and business-to-consumer (B2C) electronic commerce. The FTC also increases awareness of antitrust law through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups, and consumers; the development and publication of antitrust guidelines and policy statements; speeches; and publications. The agency will assess the need for additional workshops, and whether its ongoing outreach efforts effectively target audiences and address critical issues in the marketplace.

NEEDED RESOURCES—FISCAL YEAR 2003

To accomplish our mission in fiscal year 2003, the FTC requests $176,509,000 and 1,074 FTE. The increase of $20,527,000 over fiscal year 2002 includes:

—$7,352,000 for base expenses (including pay raises, non-pay inflation, increased rental of space, and increased Consumer Response Center contract costs);
—$5,000,000 for expenses related to generating a National Do-Not-Call List to protect consumers' privacy;
—$3,265,000 for systems support and the increased physical security for staff; and
—$4,910,000 to comply with proposed legislation (to require agencies to pay the full Government share of accruing costs of retirement for current CSRS employees and post-retirement health benefits).

The FTC's fiscal year 2003 budget request is calculated based on using two sources of offsetting collections: an estimated $173,509,000 from HSR Premerger Filing Fees and an estimated $3,000,000 from a new Do-Not-Call fee. The HSR fee estimate is based on a three-tiered filing rate structure mandated by Congress, with an effective date of February 1, 2001. The new Do-Not-Call fee would be assessed, collected, and used to cover the costs of developing, implementing, and maintaining a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers. This new fee structure will be subject to notice and comment as part of a rulemaking process.

Mr. Chairman, the FTC appreciates your past support and that of this Subcommittee. I would be happy to answer any questions that you and other Members may have about the FTC's budget request and programs.

Senator HOLLINGS. Mr. Chairman, let us, like we have in the law, what we call a demurrer, where we assume everything you say is very true, you still do not state a cause of action. Wherein do you think you get the authority to change the authorizing statute?

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[50] *See* "FTC/DOJ Hearings to Highlight Further Business and Economic Perspectives on Competition and Intellectual Property Policy," FTC Press Release (Mar. 12, 2002), available at <<http://www.ftc.gov/opa/2002/03/ftcdojhearing.htm>>; "FTC/DOJ Hearings to Highlight Business and Economic Perspectives on Competition and Intellectual Property Policy," FTC Press Release (Feb. 15, 2002), at <<http://www.ftc.gov/opa/2002/02/ipsecond.htm>>; "FTC/DOJ Hearings to Focus on the Implications of Competition and Patent Law and Policy," FTC Press Release (Jan. 30, 2002), at <<http://www.ftc.gov/opa/2002/01/iphearings.htm>>; "Muris Announces Plans for Intellectual Property Hearings," FTC Press Release (Nov. 15, 2001), at <<http://www.ftc.gov/opa/2001/11/iprelease.htm>>.

Mr. MURIS. Mr. Chairman, I do not believe we have changed any authority. The——

Senator HOLLINGS. Oh, yes, you have. You just testified to it.

Mr. MURIS. Well, but——

Senator HOLLINGS. You said, look, we have to check one with the other and we are going to stop all that checking one with the other and so we are just going to have an understanding that we are not going to have any check on it and the Justice Department will have the check.

Mr. MURIS. No, sir, I do not think that is what we have done. What we have done is to explain that the clearance process, which has gone on for decades, has been based on experience. We have taken that experience and, for the first time, told the world this is what the experience means. The clearance agreement specifies which cases will be done by DOJ and which will be done by FTC.

The DOJ has the experience in media. Even if we had never entered the agreement, the DOJ would still do the media cases. Under the clearance process we have to clear agreements with each other. Under the law only one agency can investigate a merger. We must have a process to make that determination.

Senator HOLLINGS. Then we can change that law, but we cannot abandon the public interest envisioned in the Federal Trade Commission. You have the authority over anticompetitive, deceptive, unfair trade practices, protecting consumers, public interest for general authority with respect to protecting the public interest, not necessarily the violation of an antitrust law. It could be anticompetitive, it could be deceptive, it could be unfair, but not in violation of antitrust, and so you have got to look at it.

You are right, and that was the one point being checked out. We would have more confidence in what you have just said. On the one hand, we see here that the release with respect to the American Bar Association, speaking at the American Bar Association conference in Washington, Jones, Day, Reavis, and Pogue partner Joe Simms said that the FTC pushed for merger conditions that had nothing to do with any real antitrust violations. He did not talk about just one person to review and investigate it, not Joe Simms. He said, look, I am pushing for merger conditions that had nothing to do with any real antitrust violations.

He also contended that the agency based its open access and interactive TV conditions on almost entirely unsupported theoretical claims that the new AOL-Time Warner colossus already controlled high-speed data, ITV and instant messaging markets and would move quickly to crush the competition in them. And so he sat about changing it and we have a headline in the Wall Street Journal, "Lawyer's Ties Questioned in AOL Accord," nothing about this one agency investigating, mind you.

I quote, "An attorney general representing Time Warner helped write a controversial agreement between two agencies, dividing antitrust enforcement that steers future AOL merger reviews to the Justice Department Antitrust Division headed by one of his former law partners. Joe Simms, an antitrust expert and partner in Jones, Day, Reavis, and Pogue here was solicited by the Federal Trade Commission and Justice Department on how the two agencies should divide responsibility." I understand James is the man

doing the soliciting, his former law partner—"how the two agencies should divide responsibility for antitrust reviews." Mr. Simms had represented AOL against the Federal Trade Commission in its 2000 review of the merger with Time Warner and continues to represent the company.

That is just outrageous. We do not talk about one reviewing and everything. I have been up here with the Federal Trade Commission for 35 years, never heard of what you just related in your testimony. We know what happened. I can tell you here and now, Mr. Chairman, that we know how to act. I studied my humility under Mendell Rivers down there and when he was over there in charge of Armed Services.

So it is not authorized by law. If you think the problem is as you have stated it, the proper thing to do is not to go to a losing attorney with his former law partner and rewrite memorandums of understanding. Even if they had merit, we would not believe it. That is totally improper.

What we will have to do is, by gosh, just come here and just cut that budget around so that we get their attention, whether we do away with the political positions, repeal 605, reprogramming authority to your Federal Trade Commission, or actually I am studying to see whether or not legally we can cut the pay. Sometimes when you cut pay, you get their final attention. But this idea, this administration has run amuck. We come up here, and to take the COPS program that is working and put it over to a relief agency, FEMA. We take the sea grant that you have just heard about and put it over into research that has nothing to do with education and so forth and the culture that we have developed there.

We take the Border Patrol and everything else and how that is going to be jumbled up, I do not know, but the IMF has got a problem with the Immigration and Naturalization Service, so we have that lined up. Customs is working well. The Border Patrol is working well. But they are either going to bring Customs to Justice or put it all over to Customs, and they do all of this without even talking to the people who have been working in these disciplines, specifically you in the Federal Trade Commission. You just got there. We have been there a long, long time, and we have got to authorize it in committee and no one has mentioned any of this problem to us at the authorizing committee level, period.

If you care to comment, we would be delighted to hear it.

Mr. MURIS. Yes, sir, Mr. Chairman. Mr. Chairman, I first started as a staff attorney at the Federal Trade Commission 28 years ago. This is the fourth job I have had at the Federal Trade Commission. I have watched the deterioration of the clearance process to where, when I arrived, we had a matter that had been going on for over 1 year. I probably spent 2 full days, not in doing the public's business, but in trying to fight with the Antitrust Division over which one of us would do the public's business. I think it is better if we do not fight and if we investigate anticompetitive conduct. But let me respond to a few of your specific comments.

There is nothing that prevents us, to the extent we have jurisdiction, and there are some areas where jurisdiction is weak, from investigating deceptive or unfair practices beyond the antitrust laws of any media company. The law that was involved in AOL-Time

Warner is Section 7 of the Clayton Act. It is an antitrust law. Both agencies apply the exact same law and the exact same standard. I think Joe Sims was having sour grapes because he did not like Bob Pitofsky's interpretation of Section 7. But the Commission did not say that it was applying anything other than Section 7. And Section 7(a), which is an accompaniment to Section 7, requires that only one agency engage in these detailed investigations of mergers. It is the law.

Two more points, one on Joe Sims. If Joe Sims was really interested in his pocketbook, he would have recommended that matters be sent to the FTC, not to the DOJ, because his former partner is recused from matters for 2 years. I was an "of counsel" to a law firm, and I know that law firm has lost business before the FTC because of my recusal.

Finally, I do not understand how we could have violated reprogramming in this media matter area because with or without this agreement, the Department of Justice has much more experience than we do, and would do media mergers.

Senator HOLLINGS. Most respectfully, you have had 28 years, I have had 35 years, and perhaps we ought to assign you to the CIA because you have kept what you have pointed out top secret. I am also chairman of the authorizing committee and never heard what you just stated. So the procedure in Government is for this particular Appropriations Committee to appropriate in accordance with authority, not memorandums of understanding, and with that in mind, we will act accordingly, I can tell you that, if you folks go forward with a so-called memorandum of understanding.

Senator Reed.

Senator REED. Thank you, Mr. Chairman, and thank you, Commissioner. As we have discussed previously, I have also concerns about the allocation of these different functions. You return again and again to the issue of experience, and I ask these questions not rhetorically but for information.

It seems to me that Mr. Pitofsky's sort of aside that he would not count the experience of the AOL-Time Warner merger is irrelevant. In fact, the FTC was involved in that, probably one of the more complicated and one of the largest merger applications in the media companies, embracing not just one media but several, the Internet, television, you name it, they have got it there, I think. So I think if the benchmark is experience, certainly FTC is not without experience.

And just again, for information, the six other cases that you referred to the DOJ, either for the record or now, could you tell us, what were those cases that the DOJ has on their side for experience?

Mr. MURIS. Well, there is AT&T's acquisition of Media One, AT&T's acquisition of TCI. There is the Primestar acquisition of DBS and MCI. They are currently reviewing Echostar-DirecTV. They are also looking at another major matter involving the same sets of issues.

Part of our problem, Senator, is a lot of these issues arrive at the intersection of telephones and cable. They involve issues about broadband access and how to regulate that. We do not have jurisdiction over common carriers at the FTC. I think we should have

jurisdiction. I have recommended that. But because we do not have jurisdiction over common carriers, the Justice Department Antitrust Division for decades has done these sorts of cases. It was the Antitrust Division that broke up AT&T. If you look just on a simple experience basis, they have done much more.

We do have experience, but because the law requires the two of us to agree somehow, I am in the position of all past chairmen and heads of the Antitrust Division of honoring past promises. I agree that Chairman Pitofsky's promise does not seem to make a lot of sense, but the process had become so confrontational and fractious that those were the sorts of promises needed to keep the system going.

No chairman who I have known would violate a promise like that of his predecessor, and I feel that I cannot violate it, either. But even if I did, the Antitrust Division has a lot more experience.

Obviously, if the Congress wants to change the way media and telecom have been handled and give it to the FTC, we would love to be able to do that. But we have two antitrust agencies enforcing one statute, in this case, in terms of mergers, and because the law says only one of us can do it, we have to come to some sort of an agreement.

Senator REED. I will defer to the chairman in his understanding of the law and, indeed, the debate between the two of you. But I would note that, apparently, there are some other matters that you have looked into under mergers, Time Warner-Bell South 2001, the preliminary Section 7 investigation. Is that something that FTC pursued?

Mr. MURIS. The rules for clearance are that only substantial investigations count. The FTC has only two substantial investigations. One was a very small deal involving so-called cable overbuild, where the Commission had a sensible case. It was small. It brought relief to several thousand cable subscribers. Preliminary investigations under the 1993 clearance agreement are not significant and do not count.

Senator REED. It just, again, it seems to me that if there is statutory interpretation, that I will not opine on because I do not have the expertise, but if the touchstone is experience, I think, one, the FTC has it. Two, you can get it if you need it. So I do not know how you resolve this, but this issue continues to be of concern to me.

GENERIC DRUG INDUSTRY

Let me turn to an unrelated point, and that is that the FTC is currently examining the competition of the generic drug industry under the Hatch-Waxman Act.

Mr. MURIS. Yes.

Senator REED. In the pilot study, you filed a citizen's petition with the FDA seeking guidance on the types of patents that can and cannot be appropriately listed in their so-called Orange Book. Could you give us an idea of the status of that investigation and have you received any response back from the FTC?

Mr. MURIS. We have been in discussions with the FDA, Senator. The FDA held a hearing, actually, on generic questions of Hatch-Waxman. I quite frankly think that no person who has been at the

FTC is probably going to be more aggressive in pursuing those Orange Book investigations than we will be under my chairmanship. I think there is an enormous stake here for consumers. We put a lot of resources into it. We had great success with our BuSpar brief, which involved this issue, and we are hoping that the FDA, quite frankly, rules in that citizens' petition and we have been encouraging them to do so.

TELEMARKETING

Senator REED. I commend you and the FTC for your proposal for the "no call" list, if you will, for telemarketing salespeople. That is one of the most annoying practices. If I took a poll in Rhode Island, it might be the only issue where you get 100 percent agreement.

I would just ask whether you are prepared for the demand. I noted today in the Washington Post there was an article, "FTC Anti-Telemarketing List Would Face Heavy Demand Based on the Experience in Missouri and Other Jurisdictions." Do you have the resources and the infrastructure to, I think, deal with this tsunami that is coming when people discover they can get their names off these lists?

Mr. MURIS. That is an excellent question, Senator, and we are at the mercy of the committee. We will need more money to do this. We can charge a fee for the lists, but we cannot spend the money unless the Congress allows us to spend the money. So we, in fact, have asked for that additional authority from you and we hope that you give it to us.

Senator REED. But that will not delay the imposition of this procedure?

Mr. MURIS. No. We are still in a rulemaking procedure. We obviously have not made final decisions yet, nor have I, but under the timetable that we are on, if Congress passes, and I assume because this is an election year you all will pass appropriations bills sometime by early in the next fiscal year, and that will give us enough time.

Senator REED. Thank you, Commissioner. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you very much.

PREPARED STATEMENTS

I would like to include in the record written statements submitted by FTC Commissioner Mozelle W. Thompson and FTC Commissioner Sheila F. Anthony.

[The statements follow:]

PREPARED STATEMENT OF MOZELLE W. THOMPSON, COMMISSIONER, FEDERAL TRADE COMMISSION

Today, the Commission has voted to approve testimony before the Senate Commerce, Justice, State and the Judiciary Subcommittee of the Appropriations Committee. Although I concur with most of this testimony, I am compelled to dissent from the discussion of the recently executed agreement between the Assistant Attorney General for Antitrust Charles James and Chairman Timothy Muris. I have previously expressed my concern about the Agreement which, among other things, seeks to allocate to each agency exclusive jurisdiction over certain merger reviews

and other antitrust investigations.[1] I am unable to concur because of those concerns and my concern that the testimony's description of the facts and circumstances supporting the Agreement is misleading in several ways.

First, the testimony overstates the necessity for the Agreement by claiming that "major clearance disputes have become both more common and more contentious."[2] While I continue to support an inter-agency agreement that would streamline our clearance process, I believe that our clearance history shows that the total number of clearance contests between the two agencies has actually decreased 28 percent from 81 to 65 to 58 beginning in fiscal year 1999 and continuing through 2000 and 2001.[3] And more significantly, the agencies have improved the speed of granting clearances. This fact is demonstrated by the increased percentage of clearance requests cleared in 2001 compared to 1999 for three different time periods: 21 percent (in 1999) improved to 41 percent (in 2001) for investigation requests cleared within 6 business days; 53 percent improved to 63 percent for clearance resolved within 9 business days; and 90 percent improved to 94 percent for clearance resolved within 15 business days.

Perhaps more impressive than these facts is the fact that between 1995 and 2001 only a handful—one percent—of clearance requests were not resolved within 20 business days. Accordingly, while there may be room for clearance process improvement, the testimony may misrepresent the nature of clearance contests because the simple fact is that the antitrust agencies have already improved the clearance process substantially over recent years. Morever, it is unclear whether reallocating industries from one agency to the other is necessary to achieve greater efficiencies.[4]

Additionally, the Commission's clearance testimony omits important information about the process that led to the creation of the Agreement. For example, the testimony cites the January 18, 2002 Statement of Commissioners Orson Swindle and Thomas B. Leary for the proposition that the Chairman has authority to unilaterally effect administrative changes. But the testimony fails to note that this Commission has never voted to deem clearance matters administrative,[5] nor has it voted to approve the Agreement or the process which led to its creation—including the empaneling of a non-public advisory panel consisting of private antitrust attorneys. Similarly, the testimony cites letters from the ABA Antitrust Section, former agency officials, and the business community as supporting the Agreement. However, the testimony fails to state that while the authors of those letters supported improved clearance procedures, they did not approve the substance of the James/Muris Agreement or the process by which it was reached.[6]

For all of these reasons, I am concerned that an important portion of the Commission's testimony—the clearance discussion—is misleading and falls short of what this Subcommittee and the public deserve to know. Accordingly, I respectfully dissent from the clearance portion of the testimony.

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[1] See Statements of Mozelle W. Thompson, January 18, 2002 and March 5, 2002.

[2] Testimony at pages 13–14.

[3] As we approach the halfway point in fiscal year 2002, the agencies have contested clearance for only 18 matters.

[4] Interestingly, the clearance testimony also implies that the convergence of certain technology and economic sectors has significantly increased clearance disputes and that allocating industries is needed to improve the clearance process. There is no evidence to show that drawing new industry lines will avoid future disputes when a product involved in a merger review or other investigation falls between any two assigned industries.

[5] I doubt whether altering the Commission's concurrent enforcement responsibilities under Section 5 of the Federal Trade Commission Act or affecting the use of our exclusive powers under Section 6 of the Act, can be characterized as merely administrative. Nor would I concur that the negotiation of the Agreement is an appropriate subject for the "private lawmaking" it embodies. Also, I have not been provided with any information that would enable me to measure the budgetary ramifications of altering the Commission's responsibilities under the Agreement.

[6] See, e.g., Letter to Charles A. James and Timothy J. Muris from Roxane C. Busey, Chair, Section of Antitrust Law (January 23, 2002) ("The Section supports the concept of such an agreement—without commenting on the specifics of the particular allocation agreement, which we have not seen, or the particular process by which it was reached."); Letter to Charles A. James and Timothy J. Muris from Robert Pitofsky, et al. (February 4, 2002) (A letter drafted by private attorney Joe Sims for signature by former agency officials states: "[The signatories take] no position on whether the assignments and reassignments in the draft proposal are appropriate . . . ." See also Letter to Timothy Muris from The Business Roundtable, the National Association of Manufacturers, and the U.S. Chamber of Commerce (February 25, 2002) (Letter from business groups did not endorse the Agreement process and stated that the business groups believed it did not matter which agency reviewed particular matters). The fact that outside parties have expressed support for the concept of a procedural clearance agreement absent consideration of allocating industries casts doubt upon the necessity for an agreement as sweeping in scope as the one signed by Chairman Muris and AAG James.

PREPARED STATEMENT OF SHEILA F. ANTHONY, COMMISSIONER, FEDERAL TRADE COMMISSION

I support the Commission's testimony before this Subcommittee, except that part which discusses the clearance procedures for merger investigations. While "streamlining the merger review process" is a laudable goal that deserves our attention, I am not convinced that the approach agreed to by Chairman Muris and Assistant Attorney General Charles James fully maximizes the unique makeup, experience, and institutional assets of the Commission.[1]

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Senator Domenici has some questions that will be submitted for your response.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

Question. Why do you think it would be good government to repeal the common carrier exemption and allow the FTC to review the practices of such firms?

Answer. The FTC does not have jurisdiction over "common carriers subject to the Acts to regulate commerce" (15 U.S.C. § 45(a)(2)), including common carriers subject to the Communications Act of 1934 (15 U.S.C. § 44). When Congress originally exempted common carriers from FTC oversight, the telecommunications industry was controlled by a single, large telecommunications company subject to tight government regulation. The industry has undergone dramatic changes, however, since it was deregulated. Numerous telecommunication companies now offer an ever widening array of services and engage in fierce competition, sometimes resulting in deceptive advertising and marketing schemes. Because of the common carrier exemption, consumers in a very important segment of the economy telecommunications do not benefit from ordinary FTC action against deceptive and unfair marketing, advertising, and billing. Because the FTC, the primary agency responsible for consumer protection matters, does not have jurisdiction over telecommunications common carriers, consumers are not receiving the full benefit of the FTC's expertise and the agency is not being used to its fullest potential.

Repealing the exemption would have a secondary benefit. The FTC has jurisdiction over charges on the phone bill that are not related to the transmission of telecommunications. We have been effective in attacking telephone bill "cramming" the placement of unauthorized charges for non-telecommunications services on consumer's phone bills. Acting as a common carrier with respect to some activities should not shield an entity from the FTC Act with respect to non-common carrier activities. Some "cramming" defendants try to cloak themselves with common carrier status, or claim immunity from the FTC Act based on common carrier activities unrelated to the practices at issue. While this defense has not been successful to date, countering the defense has proven expensive and time-consuming. Furthermore, there is the risk that a court could find that the FTC does not have jurisdiction over such defendants, thereby laying a foundation for fraudulent telemarketers and others to register as common carriers to shield themselves from FTC enforcement. In addition, repealing the exemption would permit the FTC to investigate and challenge the activities of all of the participants involved in a deceptive telecommunications-related scheme.

Question. What authorities and what resources would you need to do the job of evaluating media competition issues?

Answer. Prior to the execution of the new clearance agreement, the Department of Justice's Antitrust Division (DOJ) had handled the vast majority of media mergers based on its greater experience in the area. Much of this experience was accumulated because the DOJ has exclusive jurisdiction over anticompetitive practices by telecommunications common carriers, and those companies are becoming increasingly prominent in the media area. Without full jurisdiction over telecommunications common carriers, it remains inherently difficult for the FTC to garner the necessary level of experience within the broader media context to be able to prevail

[1] See Statement of Commissioner Sheila F. Anthony on the Memorandum of Agreement Concerning Clearance Procedures for Investigations (Jan. 18, 2002), available at http://www.ftc.gov/opa/2002/01/ftcdojsa.htm for further discussion.

in a clearance dispute over a media merger with the DOJ. If Congress believes that the FTC should have full authority to investigate telecommunications matters, including media mergers, then a first step could be to repeal the common carrier exemption that prohibits the FTC from pursuing anticompetitive practices of telecommunications common carriers.

Question. How much time has been spent fighting with the Department of Justice over who would review each merger or case involving issues of competition?

Answer. Under the U.S. antitrust laws, both the FTC and the DOJ have jurisdiction to review proposed mergers as well as other competition matters. For mergers, 15 U.S.C. § 18a provides that only one of the two agencies can conduct a detailed antitrust investigation. Therefore, it is necessary for the agencies to determine which one will review a specific matter to avoid duplication. Since 1948, the agencies have agreed that neither would proceed with an investigation until one agency "cleared" the matter to the other agency. This decision has been based primarily on one agency's greater expertise in a certain industry.

Until recently, this process worked fairly well. From 1982 through 1989, for example, there were only about 10 clearance disputes each year. However, as traditional industry boundaries have become blurred in the current high tech economy, this system has resulted in significant clearance delays as each agency argues for the ability to handle a specific matter. Subsequently, from 1990 through 2001, there has been an average of 83 clearance disputes per year. Delays averaging three weeks occurred in 24 percent of the matters on which clearance was sought from the beginning of fiscal year 2000 through January 28, 2002. Cumulatively, these investigations were delayed by 4,521 business days more than 17 years. As an example of the system at its worst, when I arrived at the FTC last summer, one investigation had been delayed over a year because neither agency would "clear" it to the other.

Question. How does the new "clearance" procedure meet the needs of the private sector and of consumers?

Answer. The new clearance agreement will eliminate almost all of the delays of the previous system and will provide the public with a transparent understanding of how industries will be allocated. Instead of wasting time and resources on clearance disputes, the agencies will be able to devote that time to reviewing proposed transactions for possible anticompetitive consequences. In addition to the allocation of industries, the clearance agreement also improves the overall transparency of the process and institutes specific procedures for possible disputes. The agreement sets forth expedited time frames for review, provides for the development of a Clearance Manual that will be posted on each agency's Web site, and establishes a dispute process involving a Neutral Evaluator for clearance resolution all of which make the process more effective and efficient for the agencies, consumers and businesses.

Question. What benefits accrue to the operation of the government under the new "clearance" procedures?

Answer. The new clearance agreement represents good government. Because both agencies have jurisdiction to review proposed mergers while only one agency can actually conduct an antitrust investigation of the merger, the clearance agreement eliminates much of the conflict and inefficiencies in the previous system. In recent years, the clearance process had become more contentious as the convergence of industries blurred bright lines between industry boundaries. As each agency vied for clearance over particular matters in these converging industries, both the level of tension that developed between the agencies' staff and the delays associated with the prolonged process increased. The new agreement will significantly reduce the occurrence of clearance disputes through a clear delineation of industries and the establishment of a formal process for resolving any clearance issues. These policies will enhance the previous system by reducing the inefficiencies associated with the ensuing delays and virtually eliminating the possibility of protracted disputes between staff on clearance issues.

The new agreement will remedy another inefficiency of the old process: division of matters even within a given industry between agencies based on historical experience with particular industry segments. Prior to the new agreement, one agency could not study the full array of related matters in some industries, and thereby maximize the breadth and depth of its expertise. It is not sound public policy for one agency to investigate cars, for example, while the other agency investigates trucks, or for one agency to investigate electricity mergers, while the other handles all other energy matters. The new clearance agreement allows for expertise in one industry to be developed as fully as possible by avoiding historical allocations to the agencies that divided different segments of the same industry. For example, the old allocations that divided cars from trucks, and divided electricity from other energy matters, will no longer be followed under the new agreement.

Question. I understand that a request for an advisory opinion has been filed with the FTC seeking its guidance on advertising by a smokeless tobacco manufacturer that its products are a reduced risk alternative to smoking cigarettes. What steps will the Commission follow in reaching a determination on the advisory opinion request?

Answer. The Federal Trade Commission received a request for an advisory opinion from the U.S. Smokeless Tobacco Company ("USSTC") regarding the acceptability of communicating in advertising that smokeless tobacco products generally are considered to be a significantly reduced risk alternative as compared to cigarette smoking. The Commission has placed USSTC's request on the public record, along with letters received from the Campaign for Tobacco-Free Kids, the American Academy of Otolaryngology Head and Neck Surgery, Inc., and the California Department of Health Services, urging the Commission to deny the request. Commission staff is reviewing the request and supporting materials submitted by USSTC and is consulting with the federal government's science-based public health agencies. Following this review, the Commission will make a determination as to an appropriate response to USSTC's request.

CONCLUSION OF HEARINGS

Senator HOLLINGS. The subcommittee will be in recess, subject to the call of the Chair.

[Whereupon, at 10:58 a.m., Tuesday, March 19, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2003

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

NONDEPARTMENTAL WITNESSES

[The following testimonies were received by the Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies for inclusion in the record. The submitted materials relate to the fiscal year 2003 budget request for programs within the subcommittee's jurisdiction.]

DEPARTMENT OF COMMERCE

PREPARED STATEMENT OF THE OCEAN CONSERVANCY

The Ocean Conservancy is pleased to share its views regarding the marine conservation programs in the National Oceanic and Atmospheric Administration's (NOAA) budget and the Department of State, and requests that this statement be included in the official record for the fiscal year 2003 Commerce, Justice, State, and the Judiciary Appropriations bill.

The Ocean Conservancy (TOC) strives to be the world's foremost advocate for the oceans. Through science-based advocacy, research, and public education, we inform, inspire, and empower people to speak and act for the oceans. TOC is the largest and oldest nonprofit conservation organization dedicated solely to protecting the marine environment. Headquartered in Washington D.C., TOC has regional offices in Alaska, California, Florida, and Maine. TOC can not overstate the importance of this subcommittee to advance marine conservation and greatly appreciates the funding provided in fiscal year 2002. While TOC recognizes the subcommittee has many difficult choices to make this year, we urge you to continue to make ocean conservation a top priority.

DEPARTMENT OF STATE

Implementation of the Inter-American Convention for the Protection of Sea Turtles (IAC).—The IAC, the first international treaty dedicated to sea turtle protection and conservation, was ratified by the United States in 2000. To date, eight nations, including Brazil, Costa Rica, Ecuador, Honduras, Mexico, the Netherlands, and Peru have ratified the IAC, and Costa Rica will host the first meeting of the Parties in August 2002. TOC requests $100,000 (within the International Fisheries Commission program account) in fiscal year 2003 for the State Department to assist the independent Secretariat and maintain the leadership of the United States on this treaty.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Conservation Spending Category

In October of 2000, Congress established the Land Conservation, Preservation, and Infrastructure Improvement Fund (LCPIIF) to provide increased support for conservation activities. The fund dedicates an additional $480 million in the fiscal

year 2003 budget, above fiscal year 2000, for critical coastal conservation activities within NOAA. TOC strongly encourages the subcommittee to make full use of this funding to provide additional support for high priority coastal conservation initiatives, as outlined below.

Coral Reef Conservation

Coral reefs are known as "the rainforests of the sea," and are among the most complex and diverse ecosystems on earth. Coral reefs provide habitat to almost one third of marine fish species, serve as barriers to protect coastal areas, and provide an estimated $3 billion annually in economic benefits to the country from tourism and recreational fishing. Coral reefs are also extremely fragile and face serious threats from overutilizaiton and pollution around the world.

NOAA serves on the successful Interagency Coral Reef Task Force and is responsible for implementing the National Action Plan to Conserve Coral Reefs. TOC appreciates this subcommittee's past support of NOAA's coral reef activities and requests $30.2 million in fiscal year 2003 to support critical monitoring, mapping, and restoration activities, especially those identified as priorities by the Task Force. This $2 million increase above the Administration's request should be directed to the Coral Reef Conservation Fund established by the Coral Reef Conservation Act of 2000 (Public Law 106–562) to leverage an additional $2 to $4 million in public-private partnerships for on-the-ground coral reef conservation activities in the United States and its territories.

NATIONAL OCEAN SERVICE

National Marine Sanctuary Program

TOC requests the subcommittee provide $37.6 million for sanctuary operations, $2 million above the Administration's request. Our nation's 13 sanctuaries encompass almost 18,000 square miles of our most significant marine resources. This increase is critical to reducing staffing shortages and supporting conservation, community outreach, research, and education programs, and updating sanctuary management plans as required by law. TOC also supports the Administration's request of $10 million for construction, particularly for interpretive facilities to educate the general public about the role of the federal government in managing our nation's ocean and coastal resources.

Marine Protected Areas

TOC greatly appreciates this subcommittee's support of NOAA's marine protected areas (MPAs) initiative in fiscal year 2002 and requests $5 million in fiscal year 2003. This increase will allow NOAA to work more effectively with federal and state agencies and other partners to acquire data for the ongoing MPA inventory and support the forthcoming Marine Protected Areas Advisory Committee and its science advisory panel. In addition, this increase will allow NOAA to better assist stakeholders, including regional fishery management councils, states, and others by providing technical assistance and research to determine how best to design and implement MPAs.

Nonpoint Source Pollution

Nonpoint source pollution, or polluted runoff, continues to be the nation's largest source of water pollution. Last year there were over 11,000 closings and advisories at U.S. beaches. TOC greatly appreciates the subcommittee's support of $10 million in fiscal year 2002 to help states address polluted runoff and requests $25 million in fiscal year 2003. This will enable coastal states and territories with approved nonpoint plans to make continued progress in implementing their priority actions.

NATIONAL MARINE FISHERIES SERVICE

Expand Fisheries Stock Assessments

The status of 78 percent of commercially-caught ocean fish populations is unknown due in large part to lack of funding for basic research and regular stock assessments. It is essential that we develop a better understanding of the status of our fish populations. Even with the Administration's request of $11.9 million, the NMFS still would lack the funding necessary to conduct nearly a quarter of its research days-at-sea. TOC urges the subcommittee to expand funding for stock assessments to $25 million in fiscal year 2003 to reduce this deficit.

Fisheries Observers

Along with stock assessments, reliable, objective information about how many fish are being caught, directly and as bycatch, is crucial to responsible management of our fish populations. Observers are a key means of collecting such information, yet

current coverage is limited. TOC requests $25 million for fisheries observers in fiscal year 2003, $8 million above the Administration's request. TOC encourages the subcommittee to strengthen and establish the following observer programs.

National Observer Program

While encouraged by the Administration's proposal for expanding the national observer program to $4 million, TOC believes this funding is still inadequate and recommends additional support for NMFS to meet its national observer needs.

West Coast Observers

TOC appreciates the subcommittee's funding of $4 million for West Coast Observers in fiscal year 2002 and urges the subcommittee to reject the Administration's proposed cut and increase funding to $7.2 million in fiscal year 2003.

Gulf of Mexico Shrimp Fishery

The shrimp fishery is believed to be the largest fishery in the Gulf of Mexico. Efforts to monitor the effort and catch are limited, and available data indicates that, Gulf-wide, an average of 80 percent of the catch by weight is bycatch, which include juvenile red snapper as well as sea turtles. TOC requests dedicated funding to establish an observer program to help managers better understand the region's fishery and better enforce the use of turtle excluder devices, which are required year-round in most shrimp trawl nets.

Gulf of Mexico Longline Fishery

Longlines capture a variety of ocean wildlife besides the reef fish they target, including marine birds, sea turtles and soft corals. Little reliable information is available on catch and effort for longline vessels in the federal waters of the Gulf. An observer program for this fishery would provide valuable information, facilitating science-based management decisions. TOC requests that the subcommittee identify and appropriate the necessary funds to establish this observer program.

Atlantic Coast Gillnet Fishery

In response to the more than 100 bottlenose dolphin mortalities in the gillnet fishery off North Carolina (over four times allowable levels), the Atlantic Bottlenose Take Reduction Team was established in 2001. TOC urges the subcommittee to appropriate $3 million to establish an observer program for this fishery and support the efforts of the take reduction team to reduce dolphin mortalities.

Enforcement and Surveillance

In addition to better data, enforcement of our fishery management laws is critical. Unfortunately, enforcement has not kept pace with need, and has in fact dropped dramatically since the attacks of September 11th. TOC urges the subcommittee to address this shortfall so that our fisheries management laws can be better enforced. We request $46.9 million in fiscal year 2003, $11 million above the Administration's request, to hire more officers.

Within these funds, TOC requests $12.4 million, $5 million above the Administration's request, for expanding the Vessel Monitoring System (VMS) program. VMS, a satellite-based fishery enforcement system, has the ability to provide real-time catch reporting throughout a number of different fisheries. This increase would allow for establishment and implementation of the VMS systems and place a VMS transponders onboard many of the estimated 10,000 boats in the U.S. commercial fishing fleet. VMS programs enhance data collection and safety at sea and can be beneficial to fisherman by allowing them to fish right up until a quota is reached. Finally, with VMS system is benificial to fishermen because it allows them in many fisheries to fish right up to the day the fishery is closed. Currently, some fisheries require boats to be tied up at dock when the announcement is made. with VMS systems, officials can tell when a fishing vessel is fishing in closed areas, or is fishing beyond the end of a regulated fishing season. This funding is one of The Ocean Conservancy's highest priorities.

Marine Mammal Protection Act

TOC believes the lack of adequate resources has severely hampered NMFS's ability to effectively implement the MMPA and requests $38 million in fiscal year 2003, the amount authorized under the MMPA. This increase is necessary to fund top priority studies identified by the marine mammal take reduction teams: to design and implement fishery management plans that will not endanger marine mammals; conduct research on population trends, health, and demographics; and to carry out education and enforcement programs. It would also allow health assessment and research into the causes of strandings and die-offs and identification of mitigation measures to prevent such deaths in the future. TOC also asks that report language

be included to direct NMFS to undertake research to develop reflective netting in the gillnet fishery to reduce harbor porpoise mortality.

Essential Fish Habitat

Protecting essential fish habitat (EFH) is key to ensuring healthy fish populations in the future. Given the need to better understand the impacts of fishing and other activities on these habitats, and the need to more fully comply with the Sustainable Fisheries Act requirement to minimize impacts to those habitats, TOC believes that increased funding is crucial. TOC greatly appreciates this subcommittee's increased support of EFH in fiscal year 2002 and requests $12.5 million in fiscal year 2003.

Marine Debris Removal

Derelict fishing gear and other marine debris has the potential to damage and kill coral and other marine animals, including the highly endangered Hawaiian monk seal. The NMFS marine debris removal program in the Northwestern Hawaiian Islands was successful in removing 110 tons of derelict fishing gear in 2001. Studies show that debris continues to accumulate, indicating the need for further funding of $3 million for removal of marine debris.

Atlantic Coast Cooperative Statistics Program

TOC greatly appreciates the subcommittee's support of $2 million in fiscal year 2002 for the Atlantic Coast Cooperative Statistics Program. This unique cooperative state and federal fisheries data collection program encompasses all marine fisheries sectors on the Atlantic Coast, including recreational anglers, charter and headboat operators, commercial fishermen and seafood processors/dealers. It has allowed resource managers from 15 states to develop a plan to cooperatively collect, manage and disseminate fishery statistics for the Atlantic coast. We request $3 million in fiscal year 2003 so that this program can be expanded and better implemented along the East Coast, thereby helping to ensure that data collection methods are more consistent and reliable.

Endangered Species

NMFS bears significant responsibility for administering the Endangered Species Act with respect to marine and anadromous species. NMFS is responsible not only for the recovery of already-listed species such as Northern Atlantic Right Whales (see below), Steller sea lions, and all species of sea turtles found in U.S. waters, but also for responding to petitions to list species, such as smalltooth sawfish, bocaccio rockfish, and green sturgeon. TOC is concerned about NMFS's ability to meet its responsibilities under the ESA, including responding to listing petitions in a timely fashion, consulting with federal agencies on proposed actions that may affect listed species and designated critical habitat, and coordinating up-to-date recovery planning and activities to ensure that the nation's most vulnerable marine species can progress towards full recovery. TOC urges the subcommittee to substantially increase NMFS's ESA funding to meet its fiscal year 2003 demands.

North Atlantic Right Whales

With approximately only 300 North Atlantic Right Whales remaining, funding is needed to improve our understanding of right whales and to develop fishing technologies to reduce entanglements. TOC thanks the subcommittee for its past support and requests $7 million in funding in fiscal year 2003.

National Invasive Species Act

Nonindigenous species infestations degrade natural resources of virtually every U.S. waterway and coastal area. Free of natural predators, alien species which become established in our waters often out-compete native organisms, destroy habitat and alter physical/chemical conditions in our coastal waters. Invasive species are regarded as a leading cause of diminished biodiversity and cost our economy millions of dollars each year. The leading vector of unintentional introductions of aquatic pest species is the discharge of ballast water by oceangoing vessels.

The National Invasive Species Act (Public Law 104–332) coordinates federal efforts to prevent and combat the spread of invasive species through the interagency Aquatic Nuisance Species Task Force, which is co-led by NOAA and the Fish and Wildlife Service (FWS). Under the Act, NOAA is authorized at $7.5 million to help implement the Aquatic Nuisance Species Program and work with the FWS and the Coast Guard to develop and demonstrate environmentally sound ballast water treatment technologies. TOC appreciates this subcommittee's support of $6 million in fiscal year 2002 and, consistent with the National Research Council's recommendations on ballast water, urges you to reject the Administration's 87 percent proposed cut and fully fund the program at $7.5 million.

Highly Migratory Shark Fisheries Research Program

This effective multi-regional collaborative effort conducts research on shark and ray populations in the Gulf of Mexico, the Atlantic, and the Pacific. Information developed from this program has provided critical information for assessing the status of shark populations and their management. TOC greatly appreciates the subcommittee's support for the program in fiscal year 2002, urges the subcommittee to reject the Administration's proposed cut, and requests an increase in funding to $1.95 million.

Pacific Highly Migratory Species Research

TOC also supports funding for Pacific Highly Migratory Species Research, but believes the Administration's request of $0.75 million is inadequate. Funding for stock assessments and biological studies, as well as improving bycatch mitigation techniques for these fisheries, are critical for the long-term health of the fishery. TOC requests $1.5 million in fiscal year 2003, with $0.5 million to be specifically dedicated to completion of the Pacific Fishery Management Council's Highly Migratory Species Fishery Management Plan.

Marine Mammal Commission

TOC requests that the subcommittee support the Marine Mammal Commission at its authorized level of $1.75 million in fiscal year 2003.

These programs are of the utmost importance to the stewardship of the nation's living marine resources. We greatly appreciate your support for these programs in the past and look forward to continued, responsible funding for these programs in fiscal year 2003. Thank you for considering our requests.

PREPARED STATEMENT OF THE NATURE CONSERVANCY

The Nature Conservancy is escalating its focus on freshwater, coastal, and marine conservation by establishing Freshwater and Marine Initiatives that will employ the science, partnerships, ecosystem approach, and site-based conservation that has worked throughout our fifty-year history. These initiatives will strengthen the work that we are engaging in with partners to develop a "conservation blueprint" identifying the places that, if conserved, will collectively protect the nation's plants, animals, and natural communities for the long-term. Several NOAA programs have been, or will be successful at conserving many places identified by our blueprint.

COASTAL ZONE MANAGEMENT

This unique federal-state-territorial partnership created under the Coastal Zone Management Act (CZMA) serves to protect, restore, and responsibly develop the nation's coastal communities and resources along 95,000 miles of shoreline. State and territorial CZM programs link national objectives with implementation and stewardship at the local level. Through a review of federal activities and permits, they also integrate resource protection and economic development activities with state coastal management plans. Increased funding for this program in fiscal year 2003 ($80 million Grants to States; $7 million Program Administration; $15 million Non-Point Pollution Implementation Grants) would advance protection of coastal, ocean, and Great Lakes species and their habitats; maintain natural shorelines; and enhance scientific research and education, while allowing for certain economic growth. This funding would also improve coordination and government efficiency. Finally, we also urge that the $2 million cap on state grants be eliminated so that all states can share equitably in funding increases.

NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM

Authorized as part of the Coastal Zone Management Act (CZMA), the twenty-five "living laboratories" making up the National Estuarine Research Reserve System (NERRS) require funding ($18 million for operations; $15 million for Procurement, Acquisition, and Construction) appropriate to the importance of estuaries to critical habitat and coastal economies. Adequate funding for the NERRS will permit individual reserves to better implement strong management, research, education, and stewardship activities within surrounding communities, and acquire key tracts of land and conservation easements that buffer development impacts. This funding would also facilitate implementation of system-wide monitoring and coastal training programs, and would enable expansion in order for the system to represent the suite of biogeographic regions that together comprise our nation's coastlines.

NATIONAL MARINE SANCTUARIES

The Nature Conservancy supports the President's funding request for the National Marine Sanctuary (NMS) program ($36 million for Program Administration; $10 million for Procurement, Acquisition & Construction). This funding would extend volunteer programs, provide for additional monitoring, and would fulfill a national plan for public outreach. It would also enable new investments in science needed to better manage complex issues surrounding sanctuaries. Finally, additional funding will enable implementation of revised and more detailed management plans. Eight sanctuaries are currently undergoing management plan reviews.

The Conservancy is currently working with the Monterey Bay NMS to determine overlapping goals and opportunities for collaboration as the sanctuary reviews its management plan. However, our most extensive experience has been with the Florida Keys NMS where their management plan, developed in cooperation with the state of Florida and an Advisory Council, is being implemented. The Florida Keys NMS management plan has shown promising results as it focuses on education and outreach, enforcement, research and monitoring, and zoning. It also addresses significant issues facing the health of the Florida Keys ecosystem such as water quality, sewage treatment, live-aboards, hazardous spills, and pesticides.

COASTAL AND ESTUARINE LAND CONSERVATION

The Coastal and Estuarine Land Conservation Program (CELCP) was authorized by Congress as part of the Commerce, Justice, State, and Judiciary Appropriations Act of 2002. In its first year, this new program directed $15.8 million to coastal and estuarine areas with significant conservation, recreation, ecological, historical, or aesthetic value that are threatened by conversion from their natural state to other uses.

Nowhere in the nation are threats such as sprawl, habitat loss, and fragmentation more significant than along our nation's coasts. That is why a program providing grants that allow for land acquisition as a conservation strategy serves as an important addition to federal efforts focused on protecting valuable habitat for the long-term. As a result, the Conservancy supports a significant increase in funding ($60 million) for the CELCP in fiscal year 2003. We also urge the adoption of guidelines that will allow organizations like the Conservancy to qualify for funding in order to forward CELCP goals across the nation. The development and land use pressures along the coasts and Great Lakes are immense, and they are projected to accelerate in the next ten years. If we do not act aggressively now, we may lose that opportunity forever.

HABITAT RESTORATION

The Nature Conservancy strongly supports NOAA's coastal habitat restoration efforts, and recommends funding levels of $18 million for Fishery Habitat Restoration. Most of this funding would ensure the continued success of NOAA's Community-based Restoration Program (CRP). This funding level would enable the CRP to direct more money to local communities for the restoration of vital habitats. Additionally, it would increase the geographic scope and rate at which it can encourage community ownership and restoration of critical and rapidly dwindling habitat. This program has not only leveraged up to $10 for every federal dollar invested at more than 500 projects, but has also leveraged a conservation ethic across the nation. As a national partner, the Conservancy has experienced first hand how the CRP inspires local efforts to conduct on-the-ground restoration of freshwater, coastal, and marine habitat. Since 2000, we have already directed $1 million to community-based projects in Florida, New York, Connecticut, North Carolina, Delaware, Virginia, California, and Texas. With two years remaining in our national partnership, we are excited about what lies ahead.

SALMON RECOVERY

The Conservancy considers salmon conservation a critical aspect of our work in the Pacific Northwest, Alaska, and the Northeast. Given the complex life history of this keystone species—migrating hundreds of miles past forests and farms, cities and dams, from fresh to saltwater during their lifecycle—successful salmon conservation requires action across a broad landscape.

History has demonstrated that money spent on habitat restoration and recovery could have been used more effectively and at less cost to the taxpayer if applied at a landscape-scale before systems were altered and degraded. However, habitat destruction, reduced streamflows, pollution, passage impediments, and overharvest have already played a role in the decline of salmon stocks. That is why generous

funding to conserve and recover salmon in the Pacific Northwest and Alaska ($200 million for the Pacific Coastal Salmon Recovery Fund; $55 million for NMFS Agency Funding for Pacific Salmon Recovery), and in the Northeast ($30 million for an equivalent Atlantic Coastal Salmon Recovery Fund), is now critically needed.

In the Pacific Northwest and Alaska, the Pacific Coastal Salmon Recovery Fund has enabled states and tribes to support local efforts to evaluate, protect, and restore key habitat while enhancing local economies. NMFS Agency funding enhances that support with scientific research and monitoring, and by spurring new cooperative efforts. In the Northeast, a significant amount of collaborative work among federal agencies, industry, private landowners, and other stakeholders has begun. However, a lack of comparable funding and capacity has hindered efforts in this region from addressing mounting stresses on dwindling salmon stocks. The time is right to establish a similar approach and complementary funding for USFWS and NMFS.

MARINE PROTECTED AREAS

Marine protected areas (MPAs) are proven tools for rebuilding and sustaining fisheries, recovering threatened and endangered species, and providing recreational opportunities. The Conservancy has learned this first hand through work with scientists, community members, international governments, and federal agencies to establish MPAs in places such as the Florida Keys, the Exuma Cays Land and Sea Park in the Bahamas, and Kimbe Bay in Papua New Guinea. It is time to reserve more of these places for future generations, just as the nation has done on land with national parks and refuges, national forests, and other managed areas.

The Conservancy recommends that $5 million be appropriated for MPAs so that NOAA can continue working with federal and state agencies and other partners to assess MPA design and effectiveness as a management tool that protects biodiversity while permitting use of the nation's valuable marine resources. Increased funding would also expedite information collection and collaborative efforts required for completion of the first nationwide inventory of MPAs. Additional funds would be employed to improve coordination and information sharing at regional and national levels; support training and technical assistance for communities, users, management agencies, and others; and increase public involvement through the MPA web site.

CORAL REEF CONSERVATION

The Nature Conservancy supports the President's budget for activities that benefit coral reefs ($16 million for NOS; $11 million for NMFS; $700,000 for NESDIS; $500,000 for OAR). This funding would be used to advance priorities identified by the U.S. Coral Reef Task Force including comprehensive mapping and monitoring of coral reefs, research into ecological processes upon which reefs depend, integration of human activities, and public education. With such funding, this scientifically-based effort will protect and restore coral reefs in the United States and its territories. It will serve as a model in intergovernmental coordination and coral reef protection for similar initiatives around the world.

While NOAA's activities, guided by the Task Force, have made great strides in coral reef conservation, the Conservancy would like to see more funding dedicated to addressing this issue at an international scale. The combined effects of global climate change and human activities have led coral reef ecosystem health to decline severely all over the world in recent decades. It is now critical to take action before the tragedy becomes irreversible. Successful conservation of coral reefs will involve a broad-scale, global, and long-term commitment. The Conservancy has been working throughout the world with governmental and non-governmental partners to protect these fragile systems. We hope that NOAA funds dedicated to coral reefs in the future will be made more available for public-private partnerships at the international level.

ESTUARINE RESTORATION PROGRAM

The Estuary Restoration Act of 2000 created this program with the goal of restoring one million acres of estuary habitat by 2010. Subject to annual appropriations by Congress, the legislation authorized $275 million over five years dedicated to public-private partnerships reversing the deterioration of estuaries through restoration of degraded habitat.

The U.S. Army Corps of Engineers has primary jurisdiction over this program, and would receive the bulk of any funding. However, no funds have been appropriated to date. If funded, the program would encourage the restoration of estuarine habitats through enhanced coordination of Federal and non-Federal efforts, and through financing of innovative local, state, and regional projects focused on restor-

ing healthy ecosystems that support wildlife, fish and shellfish; improve surface and groundwater quality, quantity, and flood control; and provide recreation. In hopes that the program will receive full funding in fiscal year 2003, the Conservancy urges that $1.2 million be appropriated to NOAA for their duties related to this program.

CONCLUSION

Thank you for the opportunity to submit these remarks. Conserving freshwater, coastal, and marine habitat is challenging and requires a variety of innovative strategies at every level. The Nature Conservancy looks forward to working with NOAA, other federal agencies, state and local governments, non-governmental organizations, and the private sector to ensure the long-term protection and sustainable use of our productive and diverse coastal waters.

PREPARED STATEMENT OF THE YUKON RIVER DRAINAGE FISHERIES ASSOCIATION

ABSTRACT

The Yukon River Drainage Fisheries Association (YRDFA) requests a reauthorization of a $500,000 appropriation to the YRDFA for salmon habitat and stock restoration projects, to conduct research on the marine bycatch of salmon and to assess salmon productivity in the marine environment. Funds would be transferred to the YRDFA through a National Oceanographic and Atmospheric Administration /National Marine Fisheries Service grant.

CURRENT RESEARCH EFFORTS BY YRDFA

In the fiscal year 2000, 2001, 2002 budget Congress authorized a $500,000 appropriation to YRDFA for "habitat restoration, monitoring projects, stock assessments and bycatch research." YRDFA's previous and current research plans for the years 2000—2004 are divided into seven objectives:

—*Objective I.*—Stock origins, migration patterns and marine productivity of Bering Sea Chinook salmon,
—*Objective II.*—Habitat restoration of Yukon River drainage salmon streams,
—*Objective III.*—Stock restoration through instream incubation technology,
—*Objective IV.*—Chinook smolt productivity and out-migration analysis,
—*Objective V.*—Coho salmon spawning surveys,
—*Objective VI.*—Capacity building of local residents in salmon research,
—*Objective VII.*—Program reporting and coordination with other research agencies.

Stock origins, migration patterns and marine productivity of Bering Sea chinook

Analysis is focusing on scales from chinook collected by observers in the Bering Sea trawl fisheries from 1997–1999. The first year of the study has involved processing observer program samples, getting baseline scales from agencies, digitizing baseline scales, and developing and testing classification models. The second would focus on digitizing and analysis of observer program samples and report writing.

Anticipated results include: identification of trawl salmon bycatch into broad regional stock groupings that will enable managers to adjust trawl fishing effort to avoid stocks that are having conservation problems, improved understanding of migration patterns and marine productivity of Bering Sea chinook that will enable managers to better forecast returns of adult chinook salmon and to assess impacts of changing ocean conditions on Chinook stocks.

Habitat restoration of Yukon River drainage salmon streams

Efforts are focusing on improving access of chinook and chum salmon to spawning and rearing areas currently impeded due to historical mining activity. Methods will include realignment and regarding of stream channels, streambank reclamation, floodplain modification, construction of fish habitat structures and enhancement of fish passage to access spawning and rearing habitat. Likely project locations include Sourdough, Ruby, Faith and Hope Creeks, the Birch Creek watershed and the Minook Creek watershed. As part of this effort YRDFA will also work with local miners—many of who still have active claims in these areas—to educate them on the importance of protecting and restoring fisheries habitat.

Stock restoration through instream incubation technology

Habitat restoration activities such as those described above as well as USFWS and BLM efforts to build an access channel around the FE dam (Davidson Ditch) on the Chatanika River will open up new areas for salmon. In some cases, however,

salmon spawning in these areas would benefit from a "jump-start" through the use of instream egg incubation boxes to greatly improve winter egg-fry survival rates. YRDFA will also survey other road-connected streams for possible installation of incubation boxes to serve as demonstration projects and feasibility tests. Additional streams to be surveyed include the Nenana, Delta, Chena, Salcha and Goodpaster.

Chinook smolt productivity analysis and outmigration

Trapping of juvenile chinook near the Chena River flood control dam and other streams will enable us to gain a better understanding of their overall health and to collect baseline data which will enable fishery managers to make better forecasts of salmon returns in future years. While the database on the number of adult spawners has been steadily improving since 1994, little data is available, other than that collected by USGS, on egg-to-fry survival rates and general health of smolt and juvenile salmon. In addition to the Chena River YRDFA will attempt to survey select index streams in different sections of the drainage such as the lower Yukon and the Koyukuk River.

To maximize the effectiveness of research funding, YRDFA is working closely with various agencies and researchers. Cooperating entities include: the Alaska Department of Fish & Game, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the U.S. Geological Service, and the University of Washington, School of Fisheries.

Coho salmon spawning surveys

Identified in the 1998 Yukon River Comprehensive Salmon Management Plan as an important research need, very little is known about coho salmon spawning in the Yukon River. YRDFA staff is working with state and federal fisheries research staff to design effective survey methodology for learning more about the distribution and abundance of coho salmon spawning. Survey efforts will be planned to maximize usefulness to managers and be directed toward those areas (tributary streams) identified through traditional knowledge and sport fishing reports to support spawning coho. Field surveys will be led by YRDFA biologists and technicians hired from local villages.

Capacity building of local residents in salmon research

Building capacity among village organizations and individuals to participate in and eventually develop salmon research projects presents a valuable opportunity for collaboration among resource users, local and regional groups, biologists, and managers.

YRDFA is planning two capacity building seminars in appropriate regional centers along the river—using local projects as examples—with hopes of promoting increased involvement in current research and encouraging future efforts. Funds would be used for lodging, meals, transportation, stipend for students, travel costs for some instructors, as well as for YRDFA administration, staff and travel costs. Such activities would strengthen communication among stakeholders and lead to improved salmon management on the Yukon River.

Research & management policy monitoring

YRDFA is committed to disseminating knowledge gained through its research activities to affected communities. Recognizing that communication among villages in rural Alaska can be challenging, through newsletters, meetings and other outreach media, YRDFA will distribute reports in a timely manner. Similarly, YRDFA staff will continue to reach out to others involved in Yukon River fisheries management—keeping abreast of what other groups and agencies are working on and sharing its research with others.

Monitoring management and regulatory actions will enable YRDFA to contribute its knowledge to the process of adaptive management wherein lessons learned through research and the management process are incorporated into new management measures. This will create a feedback information loop so that the effects of regulations can be monitored and if necessary changed to be more effective.

Tasks accomplished or in progress with the fiscal year 2001 and fiscal year 2002 funds are as follows:

—A report on "Ocean Distribution and Migration of Yukon River Chinook Salmon"
—Restoration of salmon habitat on Ruby Creek in the lower Chatanika River
—A Report on "Feasibility Testing of In-Stream (Streamside) Incubation Technology"
—Habitat restoration opportunity surveys of Minook and Birch Creeks
—Salmon egg incubation opportunity surveys in Tanana River tributaries
—Installation of an egg incubation feasibility test on the Chatanika River

—Out-migrating salmon smolt survival studies in Tanana and Koyukuk River tributaries
—New salmon smolt survival studies in the Andreafski River tributary
—New coho salmon spawning surveys in the Anvik River tributary.

FISCAL YEAR 2003 REQUEST

For fiscal year 2003 the YRDFA requests a reauthorization of $500,000 in funding. If these funds were received YRDFA would be able to:

Budget request breakdown

	Fiscal year 2003 request
YRDFA staff and field researchers	$150,000
Marine productivity assessment	30,000
By-catch analysis and reduction	20,000
Smolt survival studies	100,000
Coho salmon escapement monitoring	50,000
Salmon research education for villagers	50,000
Habitat monitoring and restoration	50,000
Traditional Knowledge Research	50,000
TOTAL	500,000

CLOSING STATEMENT

Our funding requests propose to conduct research and educational efforts aims that will fill information gaps not addressed by current agency research plans. Yukon River salmon are a vital resource to more than 14,000 Alaska residents in 42 different communities. The annual wholesale value of the commercial salmon fishing industry approaches $10,000,000. Yukon River Chinook and fall chum salmon also spawn in Canada and are currently the subject of an Executive Agreement between the two countries.

Our research program will aid significantly in the management of this resource and the continuation of fishing families and communities in rural Alaska. Thank you for this opportunity to submit written testimony.

PREPARED STATEMENT OF THE NORTHWEST INDIAN FISHERIES COMMISSION

Mr. Chairman, and Honorable Members of the Committee, I am Billy Frank, Jr., Chairman of the Northwest Indian Fisheries Commission (NWIFC). On behalf of our twenty member tribes I would like to thank you for the opportunity to offer written testimony concerning the Department of Commerce and Department of State fiscal year 2003 appropriations that pertain to Pacific Salmon Recovery funding needs.

SUMMARY OF FISCAL YEAR 2003 APPROPRIATIONS REQUEST

We would like to ensure that the following items be included in the fiscal year 2003 appropriations:

Department of Commerce

$110 million for the Pacific Coastal Salmon Recovery Fund Initiative, with a set aside of $15 million to affected tribes for their management responsibilities. A specific allocation of the set aside for the Northwest Indian Fisheries Commission of $9 million is requested.

$20 million for the Pacific Salmon Agreement's Restoration and Enhancement Funds consistent with the treaty annexes.

$3 million for a Displaced Tribal Fishers Program.

Support additional ESA Program Funding to National Marine Fisheries Service (NMFS) and Earmark $530,000 for National Marine Fisheries Service Tribal/NMFS ESA Task Force.

Department of State

$309,000 additional funding for implementation of Pacific Salmon Agreement.

$20 million for Pacific Salmon Agreement's Restoration and Enhancement Funds consistent with the treaty annexes.

INTRODUCTION

Twenty-seven years ago, the *U.S.* v. *Washington* case was decided by the federal court system. This decision, respecting the treaty rights of our member tribes, propelled major changes in fisheries management in the Pacific Northwest. These changes have altered the legal, political, social and economic institutions of the State of Washington, and have also fostered a nationwide quest for tribal self-determination and self-governance led in part by the Northwest tribal leadership.

We have made great strides in institutionalizing tribal management consistent with tribal values, treaty rights and federal court decisions. We have developed great professional capabilities and policy respect. We are efficient and effective, but we have significant unmet needs, and the management obligations are many. New and highly difficult complexities abound, many of which have been precipitated by the demands of the Endangered Species Act.

In late February 1999, a number of species of Pacific Salmon were "listed" by the National Marine Fisheries Service as "threatened" under the terms of the Endangered Species Act (ESA). This ESA listing process has triggered a cascading chain of events which have resulted in significant changes to harvest, hatchery, and habitat practices for the region and its inhabitants.

Tribes are affected by this federal process. As fishers, the listings raise serious questions about the status of the stocks and poses a threat to the opportunity for these individuals to continue to harvest salmon, a treaty secured resource. As governments, the ESA process now places enormous bureaucratic demands upon the tribes as co-managers of the resource. In addition, the tribes are working hard to provide much needed technical and policy leadership to protect and recover Puget Sound salmon. Continued and expanded tribal funding is essential to address endless issues raised by the ESA and to fulfill the tribes' unwavering commitment to salmon recovery.

Additional funding is also needed for the National Marine Fisheries Service so that they can actively participate in the many ESA functions that exist in the Pacific Northwest. To our knowledge, never before has a resource—in this case, salmon—been both secured to tribes by treaties and regulated by the federal government under the ESA. The relationship raises vexing issues relating to the federal government's fiduciary responsibilities to the tribes in the context of the ESA. As the federal agency charged with implementing the ESA for salmon, NMFS requires additional funding to properly discharge their trust responsibilities to the tribes. Furthermore, the tribes require funding to ensure the federal-tribal trust relationship is properly discharged. As a result, we would like the Subcommittee to earmark $530,000 for a Tribal/NMFS ESA Task Force that brings tribal and NMFS technical and policy representatives together to implement the ESA in the context of tribal treaties.

$110 MILLION FOR THE PACIFIC COASTAL SALMON RECOVERY WITHIN THE LANDS LEGACY PROGRAM WITH $15 MILLION TRIBAL SET ASIDE

Tribes have been greatly appreciative of the Committee's efforts to include Pacific Coastal Salmon Recovery funding in last year's appropriation. We have long advocated for such a concerted partnership approach between federal, state, local, and tribal governments to save the Pacific Salmon. We wish to support a funding level of $110 million for the Pacific Coastal Salmon Recovery Initiative.

For many years, the tribes have sounded alarms about the declining status of the salmon resource. Tribes have actively participated in the implementation of the Northwest Forest Plan and have also worked diligently to implement the Pacific Salmon Treaty. Locally, tribes have linked their work with county and city governments to develop watershed recovery strategies. Connections between tribes and private interests, including the timber industry, environmental community, and volunteer organizations are in place, and expanding regularly. All of these efforts require a consistent source of funding that allows tribes to actively work salmon restoration efforts. That is why a continued set aside for the tribes is essential. We support $15 million set aside for the Pacific Coastal tribes for salmon restoration work. We also seek a specific allocation of $9 million from this amount for the Northwest Indian Fisheries Commission for the work described below.

As noted earlier, treaty tribes in western Washington have court-affirmed fisheries co-management authority and responsibility for salmon, which includes not only harvest and hatchery management activities, but also habitat protection. This collection of rights places the tribes in a principal management role with the State of Washington to ensure that the salmon resource is managed wisely for the benefit of all.

This obligation for sound resource management weighs heavily on the tribes as more than three-quarters of the state is affected by several Endangered Species Act (ESA) listings, with many of the remaining areas experiencing declining levels of many salmon species.

Each tribe has an existing fisheries management program, and will utilize its program as a base for salmon recovery efforts. Fiscal year 2002 funds have increased each tribe's ability to engage in salmon restoration activities and programs. This increased capacity has enabled the tribes to dedicate necessary staff and policy attention to work through various reviews, listings, consultations, rule developments, and conservation planning processes that have already begun as the National Marine Fisheries Service moves forward with legal requirements under the Endangered Species Act. Moreover, this infrastructure has also provided the tribes with additional capabilities to provide leadership and scientific direction in various salmon restoration projects and efforts that are under way within the region and individual watersheds.

A coordinated tribal effort is necessary on a variety of "statewide" and "regional" issues. Using the expanded capacity described above, tribes and their policy and technical staff will be able to increase the time and effort dedicated toward developing salmon conservation and recovery planning processes that are essential to salmon restoration.

One of these new efforts—the Shared Strategy for Recovery of Puget Sound Salmon—is an example of the leadership the tribes are providing in salmon recovery. Working with state, federal, and local government leaders, and former EPA Administrator William Ruckleshaus, the tribes are developing salmon recovery goals for each Puget Sound watershed and identifying means to achieve those goals. This is an exciting new initiative that promises much needed direction, coordination, and strategic planning to the region's salmon recovery challenges. But without additional funding, the tribes' ability to participate in and properly manage this growing initiative will be impaired.

In addition, tribes, along with the State of Washington, will develop comprehensive species management plans for coastal river systems, Puget Sound chinook, Hood Canal summer chum, and Lake Ozette sockeye salmon. They will also work on conservation concerns for coho salmon, which in some areas are listed by NMFS as a "candidate" species for potential listing in the future.

Tribes will develop new hatchery genetic guidelines, stock productivity models, fishery guidelines and standards for local salmon recovery. Tribes will continue work to update the Salmon and Steelhead Stock Inventory (SASSI) and will complete the Salmon and Steelhead Habitat Inventory and Assessment Project (SSHIAP). These two data systems integrate stock status and habitat information, essential knowledge for effective salmon restoration and protection activities. SSHIAP is also an essential component for long-term habitat monitoring programs, including that of the recently enhanced forest practices program.

To make these activities complete, however, requires coordination and integration of the tasks at a number of levels. In some cases, special studies and assessments must be done. In other cases, regional and/or case-area-wide coordination must occur to ensure project completion.

This broad array of activities will allow the maximum flexibility for locally driven processes to determine which activities are most important for each watershed. This is essential as the current status of habitat inventories, wild stock assessments and hatchery impacts in each watershed are highly variable.

The following is a partial list of salmon restoration projects and activities that may be conducted: Watershed assessments, including habitat conditions, in-stream flow studies, water quality and quantity analysis pertaining to salmon productivity; develop/design projects to address limiting factors; compliance monitoring for regulatory components of salmon recovery; habitat monitoring; stock monitoring; and, adaptive management monitoring, research, assessment and application.

It must be recognized that tribes also anticipate accessing various funds that are available to state governments for active watershed restoration and protection projects. These funds would come from the Coastal Salmon Recovery monies provided by the subcommittee to state governments. In many cases, tribes will be in the best position to protect and preserve habitat through the purchase of riparian habitat. In other cases, tribes will have the best expertise and infrastructure in place to effectively complete restoration projects.

PACIFIC SALMON AGREEMENT REQUIRES FURTHER FUNDING

Many new demands have been placed on the United States and Canada as a result of the 1999 Pacific Salmon Agreement. This agreement resulted in an increase

of fisheries management demands on the Pacific Salmon Commission. We support the U.S. Section's recommendations for the Commerce and State Departments' budgets, which includes increasing the State Department's funding level by $309,000 to address their increased responsibilities.

The tribes also support the congressional appropriations of a funding package of $40 million for fiscal year 2003 for the two Restoration and Enhancement Funds. We are appreciative of the continued support by Congress to fulfill this obligation of the 1999 Pacific Salmon Agreement. This authorization represents the final installment for this agreement. These monies will be handled as an endowment and administered by the Pacific Salmon Commission for habitat, stock enhancement, science and salmon management initiatives in both countries.

These funds are essential in order to implement the Agreement. Clearly, there have been very significant harvest reductions taken by all parties involved as a result of this new Agreement. Unfortunately, harvest reductions alone will not bring back the salmon. The new Restoration and Enhancement Funds will provide long term funding resources to the two countries to target a multitude of recovery efforts that are complimentary to the harvest reductions.

TRIBAL FISHERS BEAR A HUGE BURDEN AND FUNDS SHOULD BE FOUND TO SUPPORT THEM WHILE SALMON RECOVERY OCCURS

Tribes are very concerned about our displaced fishers. Unemployment rates on some reservations, which depend heavily on salmon fisheries now seriously curtailed due to low stock abundance, are as high as 80 percent. We would like the Committee to consider an extension of the successful federal "Jobs In the Woods" Initiative of the Northwest Forest Plan which utilized unemployed loggers. This program could be expanded for specific inclusion of tribal fishers. New funds for "fishers support" should also be found to ensure that tribal fishers could continue to make boat payments and leases during these low abundance periods. These funds could be earmarked from within the existing Department of Commerce budget, so long as they become available to the Tribal Fishers. It is expected that this program would cost about $3 million per year for the next decade.

CONCLUSION

We strongly urge the Committee to provide $110 million in funding for Pacific Coastal Salmon Recovery. We ask the Committee to support the use of $15 million of these funds for use by the Pacific Coastal Tribes. Language directing $9 million of these funds to the Northwest Indian Fisheries Commission will enable us to actively engage in all phases of salmon recovery efforts in western Washington. These monies would be carefully managed to ensure results and accountability. $530,000 is needed to fund a tribal/NMFS ESA Task Force.

The new Pacific Salmon Agreement requires $40 million during fiscal year 2003 to fully fund the Restoration and Enhancement Funds. $309,000 in new funding is needed for State Department implementation of the Pacific Salmon Treaty Agreement. A new initiative to support tribal fisheries and ameliorate their financial burden will cost $3 million.

We thank you for your consideration of our request. We are available to answer any questions.

PREPARED STATEMENT OF THE AIRPORTS COUNCIL INTERNATIONAL—NORTH AMERICA AND THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

On behalf of Airports Council International—North America (ACI–NA) and the American Association of Airport Executives (AAAE) we appreciate the opportunity to offer the views of the airport community regarding the fiscal year 2003 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations bill. ACI–NA represents local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. AAAE is the world's largest professional organization representing the men and women who manage primary, commercial service, reliever and general aviation airports.

We would like to begin by thanking Chairman Hollings, Ranking Member Gregg and all those who served on the Subcommittee last year for the leadership they provided on H.R. 2500, the fiscal year 2002 Commerce-Justice-State Appropriations bill. Because of your efforts, that bill included a provision to allow the Immigration and Naturalization Service (INS) to charge cruise line passengers who enter the United States a $3 inspection fee and increase the fee on airline passengers from $6 to $7.

Like many on this Subcommittee, ACI–NA and AAAE made the case that the INS needs additional inspectors and equipment to meet the increased demand for inspection services at congested international airports. One of our top priorities was convincing Congress to lift the current cruise line exemption as a way to pay for additional inspectors at international airports. That is why we were pleased that the fiscal year 2002 Commerce-Justice-State Appropriations bill lifted the cruise line exemption and included report language stating that the user fee increase should be used, in part, to hire additional inspectors at new and existing airport terminals as well as at high growth terminals.

Additional Inspectors.—This year, AAAE and ACI–NA strongly urge this Subcommittee to approve funding for the INS to deploy additional inspectors at air ports-of-entry. Prior to the tragedies that occurred on September 11, INS officials expected the new user fees would generate as much as $100 million per year. At that level, revenue from the fees would allow the INS to hire 283 new inspectors at airports. The fees would also allow the INS to hire 60 inspectors to expand the INS/U.S. Customs Service passenger analysis units at airports to analyze traveler information in advance of plane arrivals.

Because of the temporary decline in passengers that occurred after the terrorist attacks, the new inspection fee will not generate as much revenue as previously expected. That is why AAAE and ACI–NA strongly support a provision in the Administration's fiscal year 2002 Supplemental Appropriations Request that would provide $35 million to the INS to enable the agency to fully implement increased air and sea port initiatives.

The Administration's fiscal year 2003 budget request includes $85.5 million to hire, train and deploy 1,160 additional Immigration inspectors. We see this as a step in the right direction. Under the Administration's proposal, INS would deploy some 615 inspectors to international airports, 460 to land border ports, and 65 to seaports. Approximately $362 million would also be used to fund a multi-year effort to provide a comprehensive land, sea, and air entry/exit system for the United States. INS expects to meet traffic management goals of processing 79 percent of commercial airline passengers within 30 minutes.

Since September 11th, the INS and U.S. Customs suspended all international-to-international (ITI) transit, progressive clearance, technical fuel stops and the use of in-transit lounges placing an even greater strain on both agencies. Consequently, inspectors from both agencies were required to inspect international passengers who they were not previously required to inspect—either because those passengers were traveling to another foreign country or because they would be inspected at another destination in the United States. In either case, before September 11, those passengers were required to remain in sterile in-transit lounges until boarding their next flight.

In November of last year, the INS and U.S. Customs allowed ITI to resume under new and strict criteria. For instance, carriers were required to provide 100 percent Advanced Passenger Information prior to the aircraft's arrival. Moreover, both INS and U.S. Customs inspectors could require all passengers, crew and baggage to be inspected.

Last week, the INS announced that it would be modifying the ITI transit procedures and reinstating progressive clearance, again under new and strict criteria. Carriers will now be allowed, under certain circumstances, to present their ITI and progressive passengers to INS inspectors at INS-approved in-transit lounges. While these new procedures may help speed up the inspection process for those particular passengers, they will require the INS and U.S. Customs Service to deploy more inspectors at air ports-of-entry.

The number of passengers that the INS and U.S. Customs will be required to inspect is also increasing because more international passengers are traveling to the United States. The FAA predicts that international passengers will increase slightly this year and increase by 6.8 percent in calendar year 2003. The FAA also predicts that the number of passengers traveling between the United States and the rest of the world will increase from approximately 131 million passengers in calendar year 2001 to approximately 226 million by 2013.

45-Minute Clearance Time.—Considering that 30-minute goal, we are surprised and disappointed that INS is proposing to eliminate the 45-minute clearance time for the inspections of passengers arriving on international flights. Under current law, the INS is required to inspect passengers who arrive in the United States on scheduled airline flights within 45 minutes of their presentation for inspection. Airports around the country fear that eliminating the 45-minute clearance time will reduce the pressure on INS to deploy enough inspectors and new technology at international airports to enhance security and process passengers in a thorough and timely manner.

Repeatedly, Congress has given INS the resources and information it needs to inspect passengers. As we mentioned previously, Congress increased the INS inspection fee on airline passengers from $6 to $7 so the agency can deploy more inspectors at international airports. Moreover, the aviation security bill that Congress passed last year requires airlines to submit detailed passenger information including passport and visa numbers to the U.S. Customs Service—which shares that information with INS—before an aircraft even lands in the United States.

The report accompanying the House version of the fiscal year 2002 Commerce-Justice-State Appropriations bill stated that a number of airports around the country are short of inspections personnel and that it "expects that this fee increase will enable the INS to meet increasing staffing demands and meet the mandated 45 minute inspection timeframe at all airports." With additional funding, additional inspectors and additional passenger information, we agree that the INS should be capable of meeting the 45-minute clearance time that Congress created ten years ago.

A lot has changed since then, and continuing to improve security is now more important than ever. Airports realize that there will be passengers who raise red flags with the INS and who will require additional inspections. INS inspectors should focus on those passengers and take as much time as they need to inspect them. Airports understand that it may be necessary to eliminate the 45-minute clearance time for those passengers who are identified by immigration officers as requiring secondary inspections.

Again, however, airports fear that eliminating the time limit for all passengers—including those who do not require a secondary inspection—will reduce the pressure on the INS to deploy enough inspectors and new technology at international airports. Congress has given INS additional funding, additional inspectors and additional passenger information in the past. It should continue to require the agency to use those valuable resources to enhance security at international airports and process passengers in a thorough and timely manner. We encourage the Subcommittee to include language in the fiscal year 2003 Commerce-Justice-State Appropriations bill that will require the INS to inspect passengers within 45 minutes unless they are identified by immigration officers as requiring secondary inspections.

Automated Technologies.—In addition deploying an adequate number of inspectors and being held to a firm 45-minute clearance time, INS needs to introduce automated technologies and risk-based analysis tools into its inspections process. These mechanisms will improve customer service, assist inspectors in their duties and allow INS to process most passengers within 45 minutes.

In the report accompanying the fiscal year 2002 Commerce-Justice-State Appropriations bill, the user fees increases will allow the INS to invest funds in its automated entry/exit system that tracks alien arrivals and departures at airports. It will also allow the agency to upgrade the National Automated Inspection Lookout System and deploy additional Live Scan Devices that can send electronic fingerprints to the Federal Bureau of Investigations. We hope this Subcommittee will include funding in the fiscal year 2003 Commerce-Justice-State spending bill to allow INS to improve the inspection system by using new technology.

Toward that goal, ACI–NA and AAAE urge Congress to appropriate funds for the INS to conduct research and development on technologies that will enhance the inspections process. Technologies that should be given strong consideration include so-called "smart credentials" and biometrics. These are tools that airports are urging the newly created Transportation Security Administration (TSA) to use to identify domestic passengers at airports.

Airports would like to assist INS on "smart credentials," and we think the agency should coordinate its research and development and future activity on this initiative with stakeholders including airports and airlines. Moreover, we think Congress should direct INS to coordinate this activity with TSA and the Department of Transportation. INS coordination with those two transportation agencies is vital to ensuring that smart credentials can be used efficiently to satisfy the requirements of multiple government interests.

Recruitment, Training and Retention.—In addition to hiring more inspectors and using better technology, INS needs to do a better job of recruiting, training and retaining the inspectors it already has. ACI–NA and AAAE urge Congress to appropriate the necessary funds to ensure that the INS can improve the recruitment, training, retention of its inspectors. While mindful that a small percentage of individuals entering the United States may pose a risk, INS must continue to train and enhance the customer service mission of inspectors. Foreign visitors and tourists are vital to sustaining the nation's economy.

Enhanced recruitment and training efforts must also be accompanied by competitive salaries for INS inspectors. The average entry-level annual salary for an INS

inspector is under $23,000. That puts INS inspectors at the bottom of the pay scale for similar inspectors in other agencies. The average entry-level salary for a U.S. Department of Agriculture Animal and Plant Health inspector is $34,000 per year. Screeners hired by TSA are expected to make up to $35,400 per year. Law enforcement officers hired by TSA are expected to make at $45,000 and above per year.

It is imperative that the INS provide a more competitive salary package and allow for upward mobility within the inspections program. This mobility allows more individuals to enter the Service with a career-oriented focus and reduces the possibility that other federal agencies will hire individuals trained by INS. INS suffers annual financial losses due to individuals leaving the inspections program after completion of training. A large number of individuals leaving the program are hired by other federal agencies that pay better wages.

Chairman Hollings, Ranking Member Gregg and Members of the Subcommittee, thank you again for your assistance last year and for inviting us to submit our testimony on the fiscal year 2003 Commerce, Justice, State appropriations bill. All of us at ACI–NA and AAAE look forward to working with you during the 107th Congress as you continue to work to improve the inspection process and security at airports around the country.

PREPARED STATEMENT OF NATIONAL PUBLIC RADIO

INTRODUCTION

Thank you Chairman Hollings and Senator Gregg for giving National Public Radio and its hundreds of member stations the opportunity to submit written testimony for the record in support of the Public Telecommunications Facilities Program (PTFP) and its fiscal year 2003 appropriation. This year, public broadcasting is requesting that $110 million be allocated to PTFP. This level of funding will ensure that there is sufficient money available to help public broadcasters in their conversion to digital audio broadcasting and to maintain and expand service.

PTFP

PTFP is a competitive matching grant program to help public broadcasters, state and local governments, and Indian tribes construct facilities to bring educational and cultural programs to the public. Run by the National Telecommunications and Information Administration (NTIA) under the Department of Commerce, this program provides financial assistance to stations for capital projects such as replacing outdated hardware, purchasing new equipment to expand service to unserved areas, and converting to digital technology. It is the only capital grant program available to public broadcasters, many of whom are constrained in their ability to finance capital expenditures. Stations cannot pass their costs on to their listeners, and most cannot take out loans for such projects, especially those in rural areas. The matching-grant structure of PTFP allows public radio stations to leverage funding from local government and private entities while providing the money needed to help defray the high costs of capital projects.

The demand for PTFP funding far exceeds the amount of funds available. In fiscal 2001, there were 246 applications requesting a total of $120 million in funding through PTFP—88 from public radio stations and 111 from public television stations—yet only $42 million were available. Of those applications, only 105 were awarded money.

Unfortunately, budget constraints have limited the amount of funds available for PTFP grants. Appropriations for the program in fiscal year 2002 increased only slightly from fiscal year 2001. Funding PTFP at $110 million this year will help to meet the demand for this small, but important program, which will help many stations with their transition to digital radio as well as help them expand coverage to unserved areas.

DIGITAL RADIO CONVERSION

Public radio will soon begin the process of converting to digital audio broadcasting. Stations are preparing to upgrade their equipment and digitize their programming in anticipation of the Federal Communication Commission's impending decision on the creation of a digital FM radio standard.[1] Once the Commission issues its final rule later this summer, public radio broadcasters will begin the expensive process of converting to a digital format, which is currently estimated to

[1] Industry testing is currently occurring on AM–IBOC technology.

cost about $116 million. That amount is solely for the cost of transmission and does not include the cost of digitizing production.

Digital radio is expected to transform the radio industry and allow it to compete on equal footing with other digitized media. Digital technology will allow stations to broadcast near CD quality sound free of interference to listeners, as well as help utilize spectrum more efficiently. Developed by the industry, In-Band, On-Channel (IBOC) technology will allow stations to simultaneously broadcast their analog and digital signals using their existing analog AM and FM frequency. Unlike television stations, radio stations will not require additional spectrum to convert to a digital format.

In addition to providing near CD quality sound and the efficient use of spectrum, digital radio will afford new service opportunities. IBOC technology has the potential to provide important new public interest programming such as:

—Assisted-living services, such as radio reading services for the print-impaired and radio captioning;
—Public safety services such as weather alerts, traffic safety, and national security notifications;
—Foreign language programming; and
—Audio-on-demand

Digital radio will also enable new functions such as the ability to search program formats, scan selective programming, and read music lyrics and song titles.

PTFP will play an important role in the public radio system's conversion to digital radio technology. Once a FM IBOC standard is adopted, many stations will quickly begin the process of converting, which will involve high capital costs. PTFP funding will help public radio stations finance their projects as well as leverage vital funding from other sources.

EXPAND SERVICE

NTIA has established a priority system for issuing PTFP awards. Stations expanding service to new areas have the top priority in the selection process followed by equipment replacement for stations that are the only public radio station in a community (level 2), stations upgrading their transmitter (level 3), and finally, stations replacing equipment (level 4).

Expansion of public broadcasting to unserved areas is PTFP's first priority when issuing grants. For more than 35 years, the program has played a major role in the development and expansion of public radio throughout the country. Today, more than 90 percent of the American public can listen to a public radio station in their community.

In fiscal year 2001, PTFP awarded eight grants to extend public radio signals to over 300,000 unserved individuals. Areas benefiting from these awards include Lakeport, California; Lake Okoboji, Iowa; Fergus Falls, Minnesota; Altus, Oklahoma; Pelham, North Carolina; rural areas east of Charlotte, North Carolina, and 12 interior Alaska villages.

MAINTAIN SERVICE

Maintaining service is also one of PTFP's main priorities. In fiscal year 2001, the program awarded 28 grants to help stations replace basic equipment. For example, in 2001 PTFP awarded Ohio State University $149,491 to replace the 63-year-old broadcast tower and concrete base supports of WOSU, which serves approximately six million people in the greater Columbus, Ohio area, and to purchase EAS emergency warning equipment for the four repeaters of WOSU–FM, which serve a population of roughly 1.6 million individuals.

PTFP also funds the radio reading service for the blind and descriptive video services for the disabled. Last year, the Nevada Public Radio Corporation was awarded $47,926 to extend the Radio Reading Service of KNPR, 89.3 MHz, in Las Vegas, to Reno/Carson City, Elko, Ely, and Tonopah, Nevada by acquiring subcarrier generators, STL interfaces, an audio-vault, audio receivers, satellite receivers, and SCA receivers. The project will provide new radio reading service to an estimated 15,000 visually handicapped listeners in the state.

CONCLUSION

For 35 years, PTFP has played a major role in the development of public broadcasting throughout the United States. Through the assistance the program provides, public radio has grown considerably and now reaches just over 90 percent of the U.S. population. That funding is even more important now than ever before.

NPR thanks the Subcommittee for allowing written statements to be submitted for the record, and for its long-standing support of public broadcasting.

NPR is a private, nonprofit corporation that produces and distributes award-winning programming such as Morning Edition, All Things Considered, Performance Today, and Car Talk. NPR is also a membership organization. NPR member stations are independent entities licensed to a variety of nonprofit organizations, local communities, colleges, universities, and other institutions. Public radio stations independently select and produce community appropriate programming that best serve their listening areas.

PREPARED STATEMENT OF THE NATIONAL AUDUBON SOCIETY

On behalf of the National Audubon Society and our one million members and supporters, we appreciate the opportunity to submit testimony regarding funding priorities for the fiscal year 2003 budget of the National Marine Fisheries Service (NMFS), and the National Ocean Service (NOS). The mission of the National Audubon Society is to conserve and restore natural ecosystems, focusing on birds and other wildlife and their habitat for the benefit of humanity and the earth's biological diversity. Audubon's Living Oceans Program is dedicated to protecting and restoring the living communities and special places of the seas for fish, seabirds, and other marine life and for the benefit of humankind

To adequately execute their mandates, NMFS and NOS need additional monies over those provided in fiscal year 2002. Below is a detailed list of those programs Audubon sees as critical funding priorities within these agencies, accompanied by what Audubon views as minimum necessary appropriations levels at the current time.

NATIONAL MARINE FISHERIES SERVICE

Science

Expand Annual Stock Assessments

The Administration has requested $11.9 million for expanding annual stock assessments. This represents an increase of $9.9 million over fiscal year 2002 enacted levels. While this level of funding would represent an important step in the right direction, it falls well short of what is actually needed to improve the science upon which management should be based. Accurate stock assessments are the foundation of proper management of fishery resources. Without them, rational management of fish populations is not possible. With that understanding, it is unacceptable that the status of 78 percent of fish stocks in U.S. waters remains unknown largely because of inadequate funding.

The Administration's plan to dedicate just $2.4 million toward at-sea research days is inadequate. This level of funding will purchase only 260 at-sea research days, reducing the annual deficit to 1,573 research days, based on recommendations made in NMFS' Stock Assessment Improvement plan. The Committee should, at a minimum, appropriate funds adequate to eliminate fully half of the annual research days deficit ($8.5 million). Audubon supports the $5.1 million increase intended to provide for the recruitment and training of stock assessment biologists and staff to produce annual stock assessments.

Recognizing the shortcoming with regard to days-at-sea research dollars and noting that the fiscal year 2002 appropriation fell $14.7 million below the Administration's request, Audubon urges the Congress to allocate $18.0 million toward improving stock assessments. Such an allocation would demonstrate a commitment toward more informed science-based management of our nation's fish populations.

Highly Migratory Shark Fisheries Research Program

Audubon strongly urges restoration of funding for the Highly Migratory Shark Fisheries Research Program. In fiscal year 2002 the Administration requested $1 million for this program and Congress appropriated $1.5 million. However, in the Administration's fiscal year 2003 request the program was zeroed out. An effective multi-regional collaborative effort, this program conducts fisheries relevant research on shark and ray populations in the Gulf of Mexico, Atlantic, and Pacific Oceans. The information developed from this program provides data that are critical for assessing the status of shark populations and management activities. Audubon urges the Committee not only to restore funding to this program, but to increase it to $1.95 million for fiscal year 2003.

Pacific Highly Migratory Species Research

The Administration's request of $750,000 for Pacific highly migratory is inadequate. Funding for stock assessments and biological studies, as well as improving bycatch mitigation techniques for these fisheries, are critical for the long-term

health of the fishery. Of vital importance to improving management of these species in both the near and long-term is the completion of the Pacific Fishery Management Council's Highly Migratory Species Fishery Management Plan. To guarantee the timely completion of this plan, Audubon proposes that appropriations for Pacific highly migratory species research be raised to $1.5 million with $500,000 of these appropriations specifically dedicated to completion of the Pacific Fishery Management Council's plan. These monies should be used, in part, to fund the work necessary to make maximum sustainable yield determinations for bigeye and pelagic thresher sharks.

Bluefin Tuna Tagging

The Administration's request of $850,000 for bluefin tuna research is below the level needed to conduct appropriate and necessary scientific research. Audubon strongly urges the Congress to appropriate $1.15 million and ensure that these research dollars be evenly distributed between Stanford University's Hopkins Marine Station and the New England Aquarium. The Stanford University research team has traditionally led the field in Atlantic bluefin tuna research and their expertise should be not be forfeited. In fiscal year 2001 all federal bluefin tuna research dollars were allocated to the New England Aquarium without explanation or warning, jeopardizing the continuation of Stanford University's Atlantic bluefin tuna research program. Audubon suggests that $150,000 should be dedicated toward the current NMFS program to determine if there is a discrete spawning ground for bluefin tuna in the Gulf of Mexico.

Sea Turtle Research

Audubon supports the Administration's request of $6.5 million for Endangered Species Act Sea Turtle Research, which represents an increase of $2.0 million over the fiscal year 2002 enacted levels. With sea turtles threatened or endangered on both coasts, it is critical to develop information to better recover these animals and to implement identified management strategies to reverse declining population trends.

Fisheries Research Vessel

Audubon supports the Administration's request of an additional $45.5 million over fiscal year 2002 enacted levels for the purpose of constructing a second NOAA fisheries research vessel. As research vessels around the country age, it is critical to give NOAA the capacity to continue fisheries research so as not to disrupt time-series data streams. The new vessel will provide NOAA with the capability to continue current research programs and better meet data gathering needs in the future.

Essential Fish Habitat

The additional $1.5 million within NMFS' $4.8 million base for designation and protection of essential fish habitat (EFH)—those waters and substrate on which fish depend—is inadequate. The Sustainable Fisheries Act of 1996 gave NMFS a clear mandate to identify and conserve essential fish habitat. While progress has been made in identification of EFH, too little has been done to protect these habitats. Audubon recommends that the Congress allocate $11.0 million to further refine EFH designations and to take action to conserve EFH.

Fisheries Oceanography

The Administration requested $1.0 million for fisheries oceanography for fiscal year 2003. This sum is equal to fiscal year 2002 enacted dollars but $1.0 million less than the Administration's fiscal year 2002 request of $2.0 million. Audubon supports dedicating $2.0 million for fisheries oceanography as per the Administration's fiscal year 2002 request. It is critical to further our understanding of how long-term environmental factors affect fish stocks through continuing research and development new tools and techniques as increasing pressure is brought to bear on fish stocks.

Horseshoe Crab and Migratory Shorebird Survival Research Funding

Audubon urges the Committee to provide $700,000 in fiscal year 2003 to establish the Horseshoe Crab Population Dynamics Research Program. This proposal builds on the recent action by the Commerce Department to create a horseshoe crab sanctuary off of the mouth of Delaware Bay. This proposed public-private partnership between the Atlantic States Marine Fisheries Committee and the Virginia Polytechnic Institute and State University's Horseshoe Crab Research Center is critical to monitoring the status of declining horseshoe crab populations, determining the impact of coastal habitat degradation on them, and protecting endangered migratory shorebirds that are dependent on horseshoe crabs as a primary food source during

migration. The Delaware Department of Natural Resources and Environmental Control is also an important partner in the research process. Funding is sought through the Atlantic States Marine Fisheries Commission, with 100 percent of the funds to be passed to the researchers.

Management

Fishery Observers

The administration's request of $16.95 million for fisheries observer programs represents a modest but inadequate increase of $2.85 million for fishery observer programs. Because of fiscal constraints, observer coverage levels in some fisheries, such as the Atlantic pelagic longline fishery, have been below levels mandated by international agreements that the United States are a party to, as well as below levels dictated by biological opinions issued under the authority of the Endangered Species Act. To ensure that observer coverage occurs at a statistically reliable level within all areas fished, at levels mandated by international agreements and biological opinions issued under the ESA, Congress must provide additional money to NMFS for fishery observers. Audubon recommends an increase to $25 million ($11.4 million above fiscal year 2002 enacted levels) to ensure that adequate observer programs are implemented without further delay.

Regional Fishery Management Councils

The Administration has requested $16.0 million for the Regional Fishery Management Council system, which represents an increase of $1.8 million over the fiscal year 2002 enacted level. Audubon is supportive of the proposed increase, however we note that this level of appropriations falls short of what is needed to support the work load of the eight regional councils. The regional council system is in need of significant reform. Needed changes include a more balanced distribution of seats between representatives of the commercial, recreational, and public interest in marine conservation—currently there is only one representative of the conservation community serving on the eight councils in aggregate—and more stringent regulations regarding recusal of council members from votes where they have a financial interest. Nevertheless, Audubon recognizes that despite the present Council system's serious flaws, it is under-funded and recommends that the Congress increase appropriations to $20.5 million for fiscal year 2003. This level of funding represents the aggregate fiscal year 2002 request of the eight councils plus $1.5 million to close the shortfall stemming from enacted fiscal year 2002 monies. This higher level of funding more accurately reflects the appropriations necessary for the councils to fully execute their responsibilities.

International Fisheries Commissions

The Administration's request of $400,000 for international fisheries commission work is insufficient and represents an increase of just $1,000 over fiscal year 2002 enacted levels. Fishing vessels of many nations are ranging further afield on the oceans to find fish every year. The importance of international cooperation in managing highly migratory and transboundary species has never been more important and the difficulty never greater. Budgetary constraints limit the role U.S. scientists play in working on issues of critical importance to the United States and the various commissions of which the United States is a party. Furthermore, U.S. delegations are often understaffed because of travel budget constraints. Audubon urges the Congress to allocate an additional $100,000 which will allow a more appropriate level of commitment of U.S. resources to international negotiations.

Enforcement and Surveillance

The Administration's overall request of $50.9 million for enforcement and surveillance appropriations represents an important commitment toward reigning in illegal fishing activities which undermine conservation and management measures established by the NMFS. The request represents an increase of $9.6 million over fiscal year 2002 enacted levels, however, it still falls short of what is needed to allow for effective enforcement of current fisheries regulations.

Vessel Monitoring System (VMS).—VMS is an indispensable satellite based fishery monitoring and enforcement tool. Given the increased use of large-scale fishery area closures it is the only viable mechanism to monitor compliance with time-area closures. Enforcement/monitoring alternatives to VMS would be immensely more costly and include 100 percent observer coverage in some fisheries and the procurement of significant numbers of additional enforcement personnel, aircraft and ships to patrol area closures. VMS also provides the added benefit of improving fisheries management by providing refined real-time data regarding spatial and temporal distribution of fishing effort. Within the Enforcement and Surveillance account, we are

encouraged to see the proposed increase to $7.4 million for vessel monitoring systems (VMS). This represents an increase of $5.4 million over fiscal year 2002 enacted levels, and will allow coverage of roughly 1,500 vessels. Nevertheless, the coverage afforded by these new dollars would be substantially below what is needed on a nationwide basis. An increase of $10.4 million over fiscal year 2002 enacted levels to $12.4 million is necessary to ensure VMS coverage for a noticeable portion of the U.S. commercial fishing vessels.

Pacific Coastal Salmon Recovery

The Administration's request of $90 million for the Pacific Coastal Salmon Recovery represents a $20 million decrease from fiscal year 2002 enacted levels. This level is insufficient to adequately execute the wide range of activities needed including habitat restoration and protection, research, monitoring and evaluation, and salmon recovery planning. Audubon recommends that the Committee restore funding to fiscal year 2002 enacted levels ($110 million) and that these restored funds be dedicated toward establishing a comprehensive regional monitoring program. Without a comprehensive region-wide system in place it will be impossible to full evaluate the effects of recovery efforts.

Energy Permit Rapid Response

The Administration's request of $2.0 million and 13 fulltime equivalents (FTE) to support establishment of a streamlined energy permit review process for energy related project approvals represents an inappropriate diversion of badly needed funds from priority programs. Many departments within NMFS are badly under-funded and understaffed and unable to meet existing mandates. The diversion of this significant amount of money and personnel to expedite energy permit review when the agency is unable to meet its current mandates is unacceptable. Audubon recommends redirecting these monies toward resource management or data collection programs.

National Ocean Service

Marine Protected Areas Program

The administration has requested $3 million for the Marine Protected Areas (MPA) Program, which represents status quo with regard to fiscal year 2002 enacted and requested levels. This amount is insufficient and proposes an additional $3.4 million in funding for fiscal year 2003, resulting in an aggregate of $6.4 million for the NOS MPA program. Of this, we recommend that $1.4 million be dedicated to the West Coast marine reserves initiative with $1.0 million going to the National MPA Center for natural and social science work and $.4 million earmarked for the Pacific Council to conduct stakeholder work. Preparation of a supporting framework for collaboration between the stakeholders, as well as execution of the first comprehensive inventory and assessment of existing MPAs in U.S. waters are critical to the success of the program and cannot be adequately carried out without additional monies beyond those proposed by the Administration.

Coral Reefs Coral Reef Conservation

Audubon recommends that the Congress supplement the Administration's request of $30.2 million for coral reef conservation by an additional $2.0 million. Support for continued monitoring, mapping and restoration activities, especially those identified by the Interagency Coral Reef Taskforce are critical. Audubon suggests that the new monies be directed to the Coral Reef Conservation Fund as established under the Coral Reef Conservation Act of 2000. This program leverages additional money through public-private partnerships for on-the-ground coral reef conservation activities.

National Marine Sanctuaries Program

Audubon supports the Administration's fiscal year 2003 request of $10 million for construction of facilities to educate the public about the ocean and the importance of special places in the sea as well to reduce the operations and maintenance backlog. The Administration's request of $35.6 million for sanctuary operations is below what is needed to inventory natural and cultural resources, maintain facilities and equipment, and effectively implement and enforce management plans. Audubon recommends that the subcommittee provide an additional $2.0 million over the Administration's request ($37.6 million) for sanctuary operations.

Mr. Chairman and Members of the Committee, thank you for providing Audubon the opportunity to comment on funding priorities for the National Marine Fisheries Service and the National Ocean Service. I understand that it is a large agenda, but the problems facing America's marine resources are significant. We look forward to working with you to secure a legacy of living oceans for future generations.

PREPARED STATEMENT OF THE AMERICAN RIVERS

This year, American Rivers was joined by over 600 local, regional and national conservation organizations [1] from all 50 states in calling for significantly increased funding for the following programs in the Commerce, Justice, State and the Judiciary (CJS) Appropriations bill. I urge that these requests be incorporated in the CJS Appropriations bill for fiscal year 2003.

FEDERAL SALMON PLAN FOR THE COLUMBIA AND SNAKE RIVERS

Several Members of Congress from the Northwest, as well as the Administration, have pledged to work to restore twelve Endangered Species Act listed stocks of Snake and Columbia river salmon without partially removing the lower four Snake River dams. Congress can help honor that commitment by funding the necessary salmon recovery measures. More than a year since the release of the 2000 Federal Salmon Plan for the Columbia and Snake rivers, federal agencies have failed to fulfill three-quarters of its requirements.

The Salmon Plan relies primarily on improving tributary and estuary habitat and reforming hatchery and harvest practices. While most fisheries scientists and conservationists believe that partial removal of the lower Snake River dams must be the cornerstone of a larger strategy to recover Snake River salmon, many elements of the Salmon Plan are also necessary to achieve salmon recovery.

If the Salmon Plan's non-breach recovery package is not funded and implemented, or if these actions do not yield the needed biological benefit for Snake River stocks, the plan contemplates seeking congressional authorization—as soon as next year—to partially remove the four lower Snake River dams.

So far, Salmon Plan implementation has fallen well behind schedule, due in part to inadequate federal funding. Full funding for fiscal year 2003 will require $455.4 million distributed among nine different federal agencies through four different appropriations bills. The CJS Appropriations bill governs funding for the National Marine Fisheries Service (NMFS), which is charged with pursuing and administering the Salmon Plan's crucial science and monitoring activities, as well as implementing hatchery and harvest reform measures. The administration has proposed increasing the NMFS budget for Columbia River salmon by nearly 50 percent this year, to $36.6 million. While this increase would be helpful, internal NMFS estimates call for funding NMFS Columbia Basin salmon programs at nearly twice the level proposed by the Administration. To ensure full development of the scientific standards, reforms, and restoration activities required by the Federal Salmon Plan, Congress should fund NMFS Columbia Basin salmon programs at $69.8 million.

PACIFIC COASTAL SALMON RECOVERY FUND

Pacific salmon are a national treasure with enormous economic, cultural, and environmental significance in the Pacific states of Washington, Oregon, California, Idaho, and Alaska. A century ago, salmon were an anchor of the region's economy. Unfortunately, past and present mismanagement of our rivers, lands, and salmon fisheries have caused populations of salmon to decline dramatically over the past century, and 26 runs of Pacific salmon and steelhead are now listed under the Endangered Species Act.

One important program aimed at restoring imperiled runs of chinook, coho, sockeye, and chum salmon, as well as steelhead trout, is the Pacific Coastal Salmon Recovery Fund, funded through the National Oceanic and Atmospheric Administration. For the past three years, this program has provided much-needed assistance to state, local, and tribal governments in Washington, Oregon, California, and Alaska for salmon recovery projects. This year we urge Congress to make the State of Idaho and Snake River salmon and steelhead eligible to benefit from this program as well.

By substantially increasing funding for the Pacific Coastal Salmon Recovery Fund in fiscal year 2003, Congress can help preserve this economically, culturally, and ecologically valuable resource and help the Northwest states and local communities to adopt and embrace the measures needed to restore Pacific salmon and steelhead. Restoring salmon will also allow the United States to satisfy treaty obligations with Northwest Indian tribes and Canada.

We urge Congress to fund the Pacific Coastal Salmon Recovery Fund at $200 million.

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[1] These groups have endorsed "The River Budget 2003", a report of national funding priorities for local river conservation. A list of groups endorsing the River Budget can be viewed at http://www.americanrivers.org/riverbudget/default.htm.

FISHERIES HABITAT RESTORATION

The fisheries habitat provided by estuaries and coastal wetlands serves many essential functions for communities across the nation. Eighty to 90 percent of all recreational fish catch and 75 percent of all commercial harvest depends upon healthy coastal and estuarine habitats. More than half the coastal wetlands in the lower 48 states have been lost, and almost 40 percent of estuarine habitat has been impaired by damming and diverting countless rivers and streams.

The Fisheries Habitat Restoration program, funded through the National Oceanic and Atmospheric Administration (NOAA) Restoration Center, reaches out to local constituencies to accomplish on-the-ground, community-based projects to restore estuaries and coastal habitats. Partnerships and local involvement are fundamental to the success of this program. Partners typically match federal dollars 1:1 and leverage those dollars up to 10 times more through state and local participation. To date, the program has funded 179 projects in 25 states, promoting fishery habitat restoration in coastal areas with a grassroots, bottom-up approach.

We urge Congress to provide the NOAA Fisheries Habitat Restoration Program with $18,000,000 to help more communities restore and protect and restore the health of their estuaries and coastal habitats.

HYDROPOWER RELICENSING

The National Marine Fisheries Service (NMFS) would greatly benefit from additional funding to address the growing number of hydropower dams that need renewal of their operating licenses from the Federal Energy Regulatory Commission (FERC). Under the Federal Power Act, NMFS plays a role in setting license conditions to protect and conserve anadromous (sea-run) fisheries such as Pacific and Atlantic salmon, steelhead and sea-run cutthroat trout, and shad. Licenses are nearing expiration at hundreds of dams around the country, and workloads are increasing for NMFS and other resource agencies. Increasing NMFS's limited hydropower relicensing budget would help ensure a more efficient licensing process, benefit the hydropower industry, and further efforts to protect and restore our nation's anadromous fisheries. Congress should provide NMFS with a $2 million increase to its Habitat Conservation line item specifically for hydropower relicensing.

PREPARED STATEMENT OF THE NATIONAL RECREATION AND PARK ASSOCIATION

The National Recreation and Park Association appreciates the opportunity to comment on programs administered by the departments of Commerce, Justice, and State. As the largest single provider of non-school recreation services in the country, public park and recreation entities offer youth in underserved communities, including individuals with disabilities, expansive opportunities to engage in positive, enriching activities, learning, and community service. Collectively, recreation services are provided at over 80,000 sites by a combination of professionally and technically trained staff supplemented by volunteers. In many jurisdictions public parks and recreation coordinate services with law enforcement agencies, schools, and social services agencies, resulting in effective prevention and crime reduction.

With this background in mind, the Association urges the Subcommittee to consider the following.

RECOMMENDATIONS

Reinstatement of authorized funds for the Technology Opportunities Program within the Department of Commerce. The digital divide remains a serious impediment to communications and learning for millions of Americans. Increasingly, but only in small increments, youth and adults are gaining access to these technologies and services at local public park and recreation sites that also serve as community technology centers. Through these opportunities individuals are developing skills required for employment and living in the 21st Century.

Inclusion of public parks and recreation as local eligible agencies to receive Justice Assistance Grant (JAG) program funds. The Administration proposed that the JAG program replace the Byrne Formula Grant Program and the Local Law Enforcement Block Grant program. The Administration also proposed that $15 million of JAG funds be set aside to support citizen volunteer programs to improve communities' terrorism preparedness. Public park and recreation agencies are already coordinating disaster preparedness activities, including terrorism preparedness. Public park and recreation agencies also coordinate youth programs within public housing communities. The Local Law Enforcement Block Grant (LLEBG) program of fiscal year 2002 included an earmark of $60 million for Boys and Girls clubs in public

housing communities. Yet public recreation centers run by local governments in these same communities are not eligible for these funds. Public recreation and park services are typically more far-reaching then individual private groups. Thus, they are extremely effective at improving protective factors for youth and play a pivotal role in crime prevention. Public services are typically jurisdiction-wide including services to individuals in public housing communities. The subcommittee should specifically reference public agencies as being just as instrumental as Boys and Girls clubs in reducing crime and improving youth development in public housing communities. We ask the Subcommittee to include public recreation and park agencies as eligible entities to receive JAG or LLEBG funds.

An increase in funding for the Juvenile Justice and Delinquency Prevention Title V program to $130 million. The Subcommittee reported this level of funding for fiscal year 2002. This year, with three earmarks of $32 million, only $63 million of Title V funds are actually available for the core prevention activities, including public recreation, authorized by the Juvenile Justice and Delinquency Prevention Act of 1973.

An increase in Title IID Gang Prevention and Intervention funds to $20 million would bolster prevention efforts nationwide. For each youth diverted from incarceration, the government saves approximately $43,000 each year. Prevention services are fully cost-effective; they assist youth in developing individual capacities and ability to contribute to society.

Restoration of funds for the Juvenile Accountability Incentive Block Grants (JAIBG) program from $215 million to $250 million. The Administration's proposed use of these funds includes an earmark of $75 million for Project Child Safe trigger locks, leaving only $235 million for other activities. Legislation reported in the 107th Congress would authorize the utilization of JAIBG funds to establish accountability-based programs that reduce recidivism. Graduated sanctions would include: counseling, restitution, community service, or supervised probation. Park and recreation agencies already work with law enforcement officials to develop accountability-based programs and graduated sanctions for youth offenders.

PERSPECTIVES ON PROGRAMS AND SERVICES

Youth offenders are four times more likely than non-offending youth to commit suicide. Former Surgeon General David Satcher, M.D. observed that up to two-thirds of youth in the juvenile justice system actually suffer from mental health problems. Higher levels of physical activity are associated with lower levels of mental health among young people, including anxiety, depression and stress. Research suggests that adolescents are also less likely to use substances, including tobacco, if they participate in physical activity programs that incorporate life skills (not boot camps). The more time youth spend being highly active, the greater their self-efficacy and self-esteem are found to be.

Public park and recreation services emphasize active recreation and the contributions of youth to communities through service-learning projects and youth advisory committees/councils. Often park and recreation agencies collaborate with law enforcement and social service agencies. Programs of this type empower youth and frequently spur the development of community-wide plans to address developmental, vocational, and academic needs of youth as well as their needs for health resources.

Researchers for the 2002 National Research Council's Community Programs to Promote Youth Development study assert that workforce development programs help youth avoid substance abuse, adolescent pregnancy, school failure, and delinquency. Park and recreation-sponsored workforce development programs, based on proven practices, provide urban youth with opportunities to connect with caring adults, to develop job skills, and to contribute to their communities. But these programs need to include technology skills in order to help youth leave poverty through employment; thus the Technology Opportunities Program is critical.

The Parks and Recreation Department of McAllen, Texas, for example, operate a computer center in collaboration with the Public Library Department. These agencies work together to make classes in a variety of "computer use topics" available throughout the year to underserved populations. Also in Texas, the Austin Park and Recreation Department hosts a computer technology center where underserved youth use the technologies available to make films about their lives. At a library outreach/computer center in North Aurora, Colorado, Parks and Recreation for People sponsored a "Teen Library Corps" (TLC) to help users on the computers, and assist customers with library card applications. In addition, the park and recreation department in Taos, New Mexico works with a local non-profit, La Plaza Telecommunity, to make computers with Internet access available for both adult and youth use. These programs are extremely popular and illustrate innovations that

could be expanded with the help of the Technology Opportunities Program. The skills individuals learn at community technology centers will enable them to be more competitive for technology based private and public sector jobs.

With the assistance of federally sponsored delinquency prevention and technology programs, public park and recreation agencies, staff, and civic leaders can strengthen their collective commitment to creative, results-oriented programs for underserved communities. The Subcommittee can help youth that have access to vital community resources to become productive citizens.

National Recreation and Park Association contacts: Erica Shane Hamilton, Policy Associate and Barry Tindall, Director of Public Policy, 202/887–0290, nrpapolicy@aol.com.

PREPARED STATEMENT OF THE HUMANE SOCIETY OF THE UNITED STATES

As the largest animal protection organization in the country, we appreciate the opportunity to provide testimony to the Appropriation Subcommittee on Commerce, Justice, State, and the Judiciary on fiscal year 2003 funding items of great importance to The Humane Society of the United States and its more than 7 million supporters nationwide.

Protection For Right Whales

Right whales are arguably the most endangered whale species in U.S. jurisdiction. The Scientific Committee of the International Whaling Commission has acknowledged the need for urgent action to reduce human-related causes of mortality in right whales—specifically ship strikes and entanglement in fishing gear. The HSUS supports the need for additional research and action to protect this fragile species. We request $1 million to be allocated to the Department of Transportation for the purpose of developing and implementing regulations that would either shift shipping lanes to areas with less risk to right whales or slow ship speeds through areas in which right whales are known to congregate. We ask that $1.5 million be directed to the Department of Commerce, National Marine Fisheries Service, for the purpose of establishing cooperative enforcement agreements with the States of Florida, Georgia, Rhode Island, Massachusetts and Maine. Providing funds to assist states in enforcing fishery compliance with federally mandated risk reduction measures is important to assuring that projected risk reductions are realized. In addition, $2 million should be directed to fund research into additional risk reduction measures that can be used by commercial fisheries. This money is for several purposes including: funding a workshop that would incorporate engineering and technical expertise from outside the normal sphere of fishery technology to help generate innovative ideas for modifying fishing gear; further development of modeling that can help predict right whale aggregations; funding of field trials and implementation of promising technological developments; and additional aerial surveys of the mid-Atlantic right whale migratory corridor.

Protection For Bottlenose Dolphins

The HSUS also requests that $1.5 million be added to the Department of Commerce, National Marine Fisheries Service budget for the purpose of expanding research on bottlenose dolphins in the mid-Atlantic. These monies would fund expanded survey efforts to estimate population abundance, increase biopsy sampling and telemetry efforts to further refine understanding of stock boundaries; and to fund additional experiments with innovative fishing gear to reduce risk of entanglement.

An additional $1 million should be directed to the National Marine Fishery Service to increase the level of coverage of marine mammal fishery observers or alternate platforms for quantifying mortality levels resulting from interactions with fishing gear.

We need more and better information if we are going to be successful is saving these magnificent animals.

Thank you in advance for your consideration of our views and we would be pleased to talk with you or your staff about our recommendations.

PREPARED STATEMENT OF THE INTERNATIONAL RESEARCH INSTITUTE FOR CLIMATE PREDICTION

Mr. Chairman, thank you for this opportunity to submit testimony for the Subcommittee's consideration concerning the fiscal year 2003 Appropriations Bill for the Office of Global Programs within NOAA/Department of Commerce.

Columbia University's Earth Institute houses the International Research Institute for Climate Prediction, (IRI), located at the Lamont-Doherty Campus of Columbia University. The IRI was selected through an intense, competitive process in 1994 by NOAA (1) to produce long range, seasonal to interannual forecasts based on major climate events such as El Niño, and (2) to develop experimental climate models for improvement of climate forecasting and predictions on a global and regional scale. NOAA last year extended the original five-year agreement to include additional long- range goals and research targets.

The requests in this statement represent the generic need for the maintaining ongoing programs and additional resources needed for NOAA and its extramural research collaborators to advance the science and accuracy of climate and weather forecasting.

SUMMARY

The components of this statement are:

(1) Maximum support for the Office of Global Programs, funded at a minimum at the fiscal year 2003 request level of $72.835 million;

(2) Funding of $20 million for a Supercomputer to be shared by universities/institutions for high end climate modeling and research;

(3) Funding of $20 million for a Supercomputer for NOAA to be used as a backup for National Weather Service and other NOAA forecasting purposes, including research.

MAXIMUM SUPPORT FOR OGP BUDGET

This Committee has supported full funding of the budget request of the OGP through the past several appropriations acts. Built in to the OGP budget request are the ongoing research initiatives of several multiyear efforts, such as the IRI. To maintain continuity and the essential research core of NOAA's multi-tiered agenda, assurance of continuity and a stable base of funding are paramount. All of NOAA's intramural and extramural research initiatives have been determined and planned by nonpartisan, scientific experts whose goals have been to improve the science, accuracy and lead-time of long range climate forecasts, and to improve regional warning systems through down-scale modeling from IRI global forecasts.

The importance of maintaining and sustaining this comprehensive, integrated and balanced approach to understanding our climate system will permit improved and longer lead time forecasting. This in turn will allow better planning for the effects of climate forced events, resulting in saved lives, minimized property losses, and improved planning in resource allocation and crop planting.

This request is for maximum funding for NOAA's OGP activities. At a minimum, the level for consideration should begin with the fiscal year 2003 request level of $72.835 million.

HIGH END SUPERCOMPUTING

Current climate modeling in the United States is limited by computer capacity. The Japanese and European advances in climate modeling and forecasting have been enabled through the availability of government funded and provided Supercomputers. U.S. climatologists have now reached the capacity of currently utilized computer systems in the high-end tasks associated with water and atmospheric modeling. The ability to process massive amounts of data can be only achieved through the acquisition of vector analysis Supercomputers. Vector analysis Supercomputers are capable of managing and analyzing large databases, such as those involved in multiple climate modeling on a worldwide scale.

Vector analysis computers were not available to U.S. government-funded institutions until recently, when Cray gained the U.S. marketing rights for NEC (Japanese manufactured) vector analysis Supercomputers. The current United States approach, using Massive Parallel Processing (MPP) technology, cannot process the whole of computer modeling tasks associated with water and atmospheric data on a global scale. The inherent limitations of the MPP computer architecture cannot embrace the data as one complex set of variables and adequately process the multiple paths and variables associated with global modeling.

Generically, scientists acknowledge that the facility must be located apart and distinctly separate from NOAA's ongoing computer functions, due to the need for a dedicated Supercomputer specifically configured for high-end climate and modeling and research. A shared computer with NOAA for NOAA's use, whether part-time or back up, does not provide the capability and sustained processing power needed for the demands associated with high-end climate modeling. This request for $20 million in fiscal year 2003 is for a computer to be competitively bid and awarded,

and for institutions, like the IRI, to have access for sharing the use of Supercomputing capacity.

NATIONAL WEATHER SERVICE SUPERCOMPUTER

There is widespread recognition among the extramural research community for the necessity of improved capacity and backup among computers for the National Weather Service. There is also a recognized and documented need in NOAA for a backup computer for the NWS. Last year's shutdown of NOAA's main computer, and subsequent loss of forecasting ability, left the NWS unable to provide the services upon which U.S. citizens, state and local governments, and private industry have come to rely. The necessity of a backup is clear, and in times of non-use as a backup, NOAA's internal research demands for this capacity exist. This statement concerning NOAA's needs represents consensus among the extramural community for additional resources and Supercomputer capacity for NOAA and the NWS.

Thank you for this opportunity to present and articulate the needs and request for climate modeling and research in the United States.

DEPARTMENT OF JUSTICE

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians (NCAI) and its more than 200 member tribal nations, we are pleased to have the opportunity to present written testimony on fiscal year 2003 appropriations for Commerce-Justice-State.

The tragic events of September 11 brought forth the strength and the determination of our nation to survive in the face of adversity. It is this same spirit that has carried Indian Country through years of annihilation and termination. It is this same spirit that has propelled Indian Nations forward into an era of self-determination. And it is in this same spirit of resolve that Indian Nations come before Congress to talk about honoring the federal government's treaty obligations and trust responsibilities throughout the fiscal year 2003 budget process.

The federal trust responsibility represents the legal obligation made by the U.S. government to Indian tribes when their lands were ceded to the United States. This obligation is codified in numerous treaties, statutes, Presidential directives, judicial opinions, and international doctrines. It can be divided into three general areas—protection of Indian trust lands; protection of tribal self-governance; and provision of basic social, medical, and educational services for tribal members.

NCAI realizes that Congress must make difficult budget choices this year. As elected officials, tribal leaders certainly understand the competing priorities that members of Congress must weigh over the coming months. However, the fact that the federal government has a solemn responsibility to address the serious needs facing Indian Country remains unchanged, whatever the economic or political climate may be. We at NCAI urge you to make a strong commitment to meeting the federal trust obligation by fully funding those programs that are vital to the creation of vibrant Indian Nations. Such a commitment, coupled with continued efforts to strengthen tribal governments and to uphold the government-to-government relationship, will truly make a difference in helping us to create stable, diversified, and healthy economies in Indian Country.

NCAI's statement focuses on our key areas of concern surrounding the President's budget request. Of course, there are numerous other programs and initiatives within the Commerce-Justice-State appropriations bill that are important to American Indians and Alaska Natives. Attached to this testimony is a breakdown of key programs for which we urge your support at the highest possible funding level as the appropriations process moves forward.

PUBLIC SAFETY

More than 200 police departments, ranging from tiny departments with only two or three officers to those with more than 200 officers, help to maintain public safety in Indian Country. According to a recent Justice Department [1] study, the typical Indian Country police department has no more than three and as few as one officer patrolling an area the size of the state of Delaware.

The same study found that inadequate funding is "an important obstacle to good policing in Indian Country." According to DOJ, the appropriate police coverage com-

[1] U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Policing on American Indian Reservations, September 2001.

parison may be between tribal departments and communities with similar crime problems. Because the violent crime rate in Indian Country is more than double the national average, we should compare our police coverage with large urban areas with high violent crime rates. According to the Bureau of Justice Statistics, cities like Baltimore, Detroit, and Washington have high police-to-citizen ratios of 3.9 to 6.6 officers per 1,000 residents. On the other hand, virtually no tribal police department has more than 2 officers per thousand residents.

We can certainly point to the lack of an adequate police presence as a contributing factor to the crime rate that plagues many of our communities. The Bureau of Justice Statistics has just released findings that the violent crime rate for American Indians and Alaska Natives is twice as high as the rate reported by Hispanics and Whites and one and one-half times that of African-Americans.

Another contributing factor is our extremely limited jails space in which to house adult and juvenile offenders. According to the Bureau of Justice Statistics, tribal jail capacity exceeded 118 percent in 2000, an increase of seven percent from the previous year.

Given that the Justice Department itself just published a study that justifies the need to increase resources for Indian Country law enforcement, it is astounding to see that our law enforcement programs actually took a $40 million direct hit in the fiscal year 2003 budget request. The budget would eliminate all $35 million in tribal jail construction funding and would cut $5 million in tribal law enforcement personnel funds. We strongly oppose these cuts, and request an increase to the fiscal year 2002 funding levels for Indian Country law enforcement programs.

ECONOMIC DEVELOPMENT

The Census Bureau's Poverty in the United States for 2000 showed that American Indians and Alaska Natives remain at the bottom of the economic ladder—with 25.9 percent of our population falling below the poverty line. This compares to an 11.9 percent poverty rate for all races combined. Today, unemployment rates in Indian Country are the highest in the nation, sometimes topping 50 percent. The development of new and diverse businesses in Indian Country is one cornerstone of self-sufficiency.

Many economic development programs that assist tribes would be cut or eliminated in the budget. The request for the Small Business Administration would eliminate One Stop Capital Shops, Micro-Loan Technical Assistance, New Markets Venture Capital, and BusinessLINC. The Administration also failed to request any funding whatsoever to establish the Office of Native American Business Development, as authorized in the Native American Business Development, Trade Promotion, and Tourism Act of 2000.

Furthermore, programs designed to help tribes close the "dial-tone divide" and improve the telecommunications infrastructures in their communities are eliminated outright or severely reduced in the President's budget. Nowhere is the lack of telecommunications infrastructure more apparent than in Indian Country. According to Commerce Department statistics, nearly forty percent of rural Native American households lack basic telephone service, and less than ten percent have a personal computer or any kind of access to the Internet.

Since 1994, the Technology Opportunities Program (TOP) has helped to improve the technology infrastructure in American Indian and Alaska Native communities. In fiscal year 2002, a record $4.23 million was provided to projects directly benefiting Indian Country. These grants, combined with contributions from the private sector and state and local organizations, extend the benefits of advanced telecommunications technologies to underserved communities.

Reducing or eliminating economic development tools for Indian Country is unthinkable in the face of the compelling needs that exist. NCAI has approved numerous resolutions[2] calling for increased support of economic development programs within the Small Business Administration and Department of Commerce, and we urge that these programs and others that are designed to promote tribal community development be fully funded.

CONCLUSION

Thank you for this opportunity to present written testimony regarding Commerce-Justice-State appropriations programs that benefit Indian Country. The National Congress of American Indians calls upon Congress to fulfill the federal government's fiduciary duty to American Indians and Alaska Native people. This responsibility should never be compromised or diminished because of any political agenda or budg-

[2] See attached resolutions SPO–01–019, SPO–01–020, SPO–01–022, SPO–01–024.

et cut scenario. Tribes throughout the nation relinquished their lands and in return received a trust obligation, and we ask that Congress maintain this solemn obligation to Indian Country and continue to assist tribal governments as we build strong, diverse, and healthy nations for our people.

ATTACHMENT A.—COMMERCE-JUSTICE-STATE APPROPRIATIONS BENEFITING TRIBES

DEPARTMENT OF COMMERCE

The budget request for the Commerce Department is approximately $5.2 billion, $14 million less than the estimate for the current year. Like last year, the Administration has proposed elimination of the Technology Opportunities Program, which in fiscal year 2001 provided $4.2 million in competitive grants to tribes and tribal organizations for the purpose of expanding telecommunications and technology in their communities. No funds were requested to establish the Office of Native American Business Development, as authorized in the Native American Business Development, Trade Promotion, and Tourism Act of 2000.

[In millions of dollars]

Commerce	Fiscal year 2001 enacted	Fiscal year 2002 enacted	Fiscal year 2003 request
Economic Development Administration	412.0	335.0	317.2
Minority Business Development Agency	27.0	28.4	29.8
Public Telecommunications Facilities	43.5	43.5	43.6
Technology Opportunities Program	43.5	15.5	.....

NCAI Resolution #SPO–01–020—Supports a $300 million increase to the Economic Development Administration in fiscal year 2003 to support increased financial assistance to tribal economic and development and planning projects, including tribal manufacturing.

NCAI Resolution #SPO–01–022—Supports funding for the Office of Native American Business Development.

Department of Justice Indian Country law enforcement programs took a hit in the fiscal year 2003 DOJ request, with the Administration proposing to eliminate all $35 million in tribal jail construction funding and to cut $5 million in tribal law enforcement personnel funds.

[In millions of dollars]

DOJ	Fiscal year 2001 enacted	Fiscal year 2002 enacted	Fiscal year 2003 request
U.S. Attorneys	5.00	.....	.....
Jail Construction	33.93	35.19	.....
Tribal Courts	7.98	7.98	7.98
Alcohol and Substance Abuse	4.99	4.99	4.99
Juvenile Justice [1]	12.47	12.47	12.47
Law Enforcement Personnel (COPS Grants) [2]	40.00	35.00	30.00

[1] Fiscal year 2002 Juvenile Justice Funds also can be used for prevention activities focusing on alcohol and drugs.
[2] As in previous years, fiscal year 2002 law enforcement personnel funds can be used for equipment and training.

SMALL BUSINESS ADMINISTRATION

The fiscal year 2003 request for the SBA is $798 million, down from $1.1 billion in fiscal year 2002 spending. While funding for Small Business Development Centers would rise under the President's proposal, many other programs that assist tribes would be eliminated.

[In millions of dollars]

SBA	Fiscal year 2001 enacted	Fiscal year 2002 enacted	Fiscal year 2003 request
Small Business Development Centers	88	88	161
One Stop Capital Shops	3	.....	.....
Micro-Loan Technical Assistance	20	18	.....
New Markets Venture Capital	37	.....	.....
BusinessLINC	7	2	.....

NCAI Resolution #SPO–01–019—Support $25 million for SBA Office of Native American Affairs in fiscal year 2003 to provide training and technical assistance and to develop and expand Tribal Business Information Centers.

NCAI Resolution #SPO–01–024—Supports $750,000 in fiscal year 2003 to the SBA Office of Women-Owned Businesses to establish an American Indian, Alaska Native, and Native Hawaiian Women Entrepreneur Outreach and Technical Assistance Pilot Project.

PREPARED STATEMENT OF THE MIDDLE ATLANTIC-GREAT LAKES ORGANIZED CRIME LAW ENFORCEMENT NETWORK

The Regional Information Sharing Systems (RISS) Program respectfully requests that Congress, as authorized in the USA PATRIOT ACT of 2001 (Public Law 107–56) appropriate for fiscal year 2003, $50 million to continue their support in combating drug trafficking and organized crime.

These funds will enable RISS to continue its mandate of assisting law enforcement in identifying, targeting, prosecuting, and removing criminal conspirators involved in terrorism activity, drug trafficking, organized criminal activity, criminal gangs, and violent crime that span multijurisdictional boundaries. Funds will allow RISS to continue to support the investigation and prosecution efforts of almost 6,000 local, state, and federal law enforcement member agencies across the nation comprising 675,000 sworn law enforcement personnel.

Through funding from Congress, RISS has implemented and operates the only secure Web-based nationwide network—called riss.net—for communications and sharing of criminal intelligence by local, state, and federal law enforcement agencies. Funds will allow RISS to upgrade the technology infrastructure and resources to support increased use and reliance on the system by member law enforcement agencies and support the integration of other systems connected to riss.net for information sharing and communication. Using Virtual Private Network technology, the law enforcement users access the public Internet from their desktop and have a secure connection over the private riss.net intranet to all RISS criminal intelligence databases and resources. RISS member law enforcement agencies accessed riss.net an average of 3.6 million times per month during fiscal year 2001. Riss.net is a proven, highly effective system that improves the quality of criminal intelligence information available and puts it in the hands of the law enforcement officers to make key decisions at critical points in their investigation and prosecution efforts.

The Office of Justice Programs (OJP), Regional Information Sharing Systems (RISS) is a federally funded program comprised of six regional intelligence centers. The six centers provide criminal information exchange and other related operational support services to local, state, and federal law enforcement agencies located in all fifty states, the District of Columbia, U.S. territories, Canada, England, and Australia. These centers are:

—Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLEN): Delaware, District of Columbia, Indiana, Maryland, Michigan, Pennsylvania, Ohio, New Jersey, and New York, as well as Canada and England.

—Mid-States Organized Crime Information Center (MOCIC): Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, as well as Canada.

—New England State Police Information Network (NESPIN): Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, as well as Canada.

—Regional Organized Crime Information Center (ROCIC): Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, as well as Puerto Rico and the U.S. Virgin Islands.

—Rocky Mountain Information Network (RMIN): Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming, as well as Canada.

—Western States Information Network (WSIN): Alaska, California, Hawaii, Oregon, and Washington, as well as Canada, Guam, and Australia.

Since the September 11th attacks, the idea of putting the right information in the right hands has been offered as a solution to the war on terrorism. Because of this, information technology will play a key role. The RISS secure Intranet; a proven, trusted law enforcement-sharing network will play a vital role in responding to terrorist activity.

RISS is also a force multiplier in responding to increased violent criminal activity by street gangs, drug traffickers, sophisticated cyber criminals, and emerging crimi-

nal groups that require a cooperative effort by local, state, and federal law enforcement. There is a rising presence of organized and mobile narcotics crime, distinguished by increases in drug-related emergency room incidents, increases in drug purities (especially heroin, methamphetamine, ecstasy, cocaine, GHB, and marijuana), and increasing communications sophistication by the criminal networks. Interagency cooperation has proven to be the best method to combat the increasing criminal activity in these areas. The RISS centers are filling law enforcement's need for rapid, but controlled sharing of information and intelligence pertaining to known or suspected drug traffickers and criminals. Congress funded the RISS Program to address this need as evidenced by its authorization in the Anti-Drug Abuse Act of 1988 and the USA PATRIOT ACT of 2001.

The success of RISS has been acknowledged and vigorously endorsed by the International Association of Chiefs of Police (IACP), as well as other national law enforcement groups such as the National Sheriff's Association (NSA) and the National Fraternal Order of Police (NFOP). These groups have seen the value of this congressional program to law enforcement nationally and have worked with the National Association of Attorneys General (NAAG), the National District Attorneys Association (NDAA), and the National Criminal Justice Association (NCJA) to further strengthen the awareness of RISS. In fact, the National Association of Attorneys General passed a resolution calling for full funding for RISS and increased funding for the Bureau of Justice Assistance (BJA).

According to the Executive Working Group for Federal-State-Local Prosecutorial Relations, in its publication titled, Toward a Drug Free America: A Nationwide Blueprint for State and Local Drug Control Strategies, "Each state should develop a computerized capacity to store, collate, and retrieve intelligence and historical information concerning drug offenders. Before initiating new computer projects, each state should take advantage of existing computerized information exchange and pointer systems, such as the Regional Information Sharing Systems (RISS). Each state should actively participate in multi-state, regional, and national information networking projects."

RISS is operating current state-of-the-art technical capabilities and systems architecture that allow local, state, and federal law enforcement member agencies to interact electronically with one another in a secure environment. The RISS system has built-in accountability and security. The RISS secure intranet (riss.net) protects information through use of encryption, smart cards, Internet protocol security standards, and firewalls to prevent unauthorized access. The RISS system is governed by the operating principles and security and privacy standards of 28 CFR Part 23 (Criminal Intelligence Systems Operating Policies). The technical architecture adopted by RISS requires proper authorization to access information, but also provides flexibility in the levels of electronic access assigned to individual users based on security and need-to-know issues. Riss.net supports secure e-mail and is easily accessible using the Internet. This type of system and architecture is referenced and recommended in the General Counterdrug Intelligence Plan (GCIP).

The GCIP promotes federal, state, local, and tribal law enforcement information sharing, and leveraging resources and existing cooperative mechanisms. RISS fully supports the GCIP and the following initiatives are underway related to action items in the Plan. RISS has entered into a partnership with the High Intensity Drug Trafficking Areas (HIDTA) to electronically connect all of the HIDTAs to riss.net for communications and information sharing. Currently 13 HIDTAs are electronically connected as nodes to riss.net and RISS is working to complete the connection of the remaining HIDTAs. Seven state agencies are currently connected as nodes on riss.net with an additional ten states pending connection. The National Drug Intelligence Center (NDIC) is a member of RISS and uses the RISS network as a communications mechanism for publishing counterdrug intelligence products to federal, state, and local law enforcement members. RISS and the El Paso Intelligence Center (EPIC) officials entered into a partnership and have electronically connected EPIC as a node to riss.net to capture clandestine laboratory seizure data from RISS state and local law enforcement member agencies. Riss.net has also been recommended by Attorney General Ashcroft as the communications link to the ninety-three U.S. Attorney's offices for instant communication regarding terrorist activities. RISS needs funds to purchase hardware and software to support and integrate these systems that improve the accessibility to critical criminal intelligence for law enforcement agencies throughout the country.

RISS continues to promote interagency investigations by improving capabilities for member agencies to quickly and easily access RISS databases by expanding the enrollment of member agencies for access to riss.net through distribution of security hardware and software. Web browser technology has been implemented for use by member agencies in accessing the RISS intelligence database pointer system and

the RISS National Gang Database. At the direction of Congress, dial-up (800) access capability to the RISS secure intranet will be provided for member agencies in geographic areas where access to Internet Service Providers is not available. Funds are required to increase the distribution of security hardware and software to additional RISS member agencies that need electronic access to riss.net.

In fiscal year 2002, Congress invested $28.3 million in the RISS Program. During the past 5 fiscal year funding cycles and up to the current time, RISS has furnished case specific support to hundreds of local and state police, as well as sheriff departments. These investigations have had an unrivaled impact on the local jurisdictions of main street America, the grass roots of law enforcement in the nation. During this same time period, RISS implemented the secure intranet providing Web-based access for communications and information sharing to almost 6,000 law enforcement agencies nationwide—a network which is now electronically linked to 13 HIDTAs, seven state law enforcement systems, and the EPIC Clandestine Laboratory Seizure System. The Southwest Border States Anti-Drug Information System (SWBSADIS) initiative encompassing the states of Arizona, California, New Mexico, and Texas is also integrated with riss.net. RISS is currently working to connect the Bureau of Land Management, Department of Interior, NW3C, and FINCen to riss.net as nodes. To support this increased need to integrate other systems and the increased demand for RISS services, RISS is requesting an increase in funding to $50 million for fiscal year 2003.

In view of today's increasing demands on federal, state, and local law enforcement budgets, requests for RISS services have risen. The Institute for Intergovernmental Research (IIR) report on the RISS Program showed that as of December 31, 2001, the number of criminal subjects maintained in the RISSIntel intelligence databases for all centers combined was 882,679 with 159,035 new subjects being added in 2001. The combined databases of all six RISS centers also maintained data on 1,491,827 locations, vehicles, weapons, and telephone numbers for a grand total of 2,374,506 data entries available for search. For the twelve-month period January through December 2001, the total number of inquiries by law enforcement member agencies to the RISSIntel database for all six regional intelligence centers combined was 618,262. These inquiries resulted in hits or information to assist law enforcement agencies in their criminal cases. All RISS centers combined delivered 11,169 analytical products to member agencies in support of their investigation and prosecution efforts in 2001.

This support of law enforcement has had a dramatic impact on the success of their investigations. Over the three-year period 1999–2001, RISS generated a return by member agencies that resulted in 11,772 arrests, seizure of narcotics valued over $242 million, seizure of almost $15 million in currency, and recovery or seizure of property valued at over $24 million. In addition, almost $4 million was seized through RICO civil procedures. In the 21-year period since 1980 when the Program was fully implemented, the RISS Program has assisted its member agencies with their investigations. Results of these investigations have amounted to over $12.6 billion in recoveries at a total cost that approximates 2.52 percent of that amount, or a $40 return for every dollar spent.

RISS is continuing initiatives with the Federal Bureau of Investigation and with the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury to assist in their efforts to facilitate the exchange of criminal intelligence with state and local law enforcement. RISS continues to work with federal and state corrections departments to strengthen cooperation and information sharing with the law enforcement community, and to maintain a national prison gang database to identify prison gang criminal activity, both within and outside the prison environment. We have established a working relationship with gang investigators across the nation to identify and maintain information on violent street gangs, as well as their membership, organization structure, migration trends, and their propensity for violence.

RISS has also assisted the Office of Juvenile Justice and Delinquency Prevention, and continues to work with federal, state, and local agencies in their efforts to combat the menace of drugs on our street, and the growing influence of youth gangs in the distribution and sale of drugs.

The Bureau of Justice Assistance administers the RISS Program and has established guidelines for provision of services to member agencies. The RISS regional intelligence centers are subject to oversight, monitoring, and auditing by the U.S. Congress, the General Accounting Office, a federally funded program evaluation office; the U.S. Department of Justice, Bureau of Justice Assistance; and local government units. The Intelligence Systems Policy Review Board also monitors the RISS centers for 28 CFR Part 23 compliance. This 28 CFR Part 23 regulation places stricter controls on the RISS intelligence sharing function than those placed on fed-

eral, state, or local agencies. Evaluation of RISS center operation has been very positive.

Full funding of the RISS Program is necessary in order to permit membership growth and improve service capabilities to the membership nationwide. In the past five years, RISS membership has increased 25 percent to almost 6,000 local, state, and federal law enforcement agencies at present. It is respectfully requested that the Congress fully fund the RISS Program as a line item in the congressional budget, in the requested amount of $50 million.

We are grateful for this opportunity to provide the committee with this testimony and appreciate the support this committee has continuously provided to the RISS Program.

PREPARED STATEMENT OF THE NATIONAL, COORDINATED LAW-RELATED EDUCATION PROGRAM

I am Lee Arbetman, the Coordinator of the National, Coordinated Law-Related Education Program. I am submitting this testimony on behalf of Youth for Justice, the National, Coordinated Law-Related Education Program (LRE). The National, Coordinated Law-Related Education Program received an appropriations earmark for fiscal year 2002 in the amount of $1.9 million.[1] The need for the Program continues to substantially exceed the Program's resources. Accordingly, for fiscal year 2003, the National, Coordinated Law-Related Education Program respectfully requests the Subcommittee's appropriations support at a level of $2.4 million. In addition to helping LRE to meet the increasing demands on the Program, this increased funding level would also (1) allow the Program to increase its funding to state LRE programs; and (2) make expansion of the Program possible in three critical areas including teaching students about terrorism; youth offender reentry programs; and school safety.

LRE/YOUTH FOR JUSTICE—HELPING YOUNG PEOPLE TO IDENTIFY AND IMPLEMENT SOLUTIONS TO VIOLENCE

LRE/Youth for Justice is committed to involving young people in each state directly in identifying and implementing solutions to this nation's epidemic of violence. The Program's approach is to teach young people about the law so that they can lead their lives within the law. In the last decade, the National Program has reached millions of at-risk children and trained thousands of teachers, juvenile justice counselors, and law enforcement officials.

Law-Related Education, despite its name, has nothing whatsoever to do with legal or pre-legal training. The National, Coordinated Law-Related Education Program has a proven record of success in juvenile delinquency and violence prevention. Law-related lessons reach at-risk children and juvenile offenders in school and juvenile justice settings in urban, suburban and rural environments. Youth for Justice meets its goals by developing and maintaining strong, viable LRE centers in each state. The National Program leverages a tiny federal investment, $1.9 million in fiscal year 2002, many times over in private sector and state and local money and in in-kind support from the criminal justice and juvenile justice communities.

The program has two components. The first component of the program is intervention. This part of the program operates primarily in various kinds of juvenile justice facilities. In settings ranging from detention centers to training schools and after-care, Law-Related Education Programs help youth develop problem-solving, conflict resolution, and communication skills in the context of engaging lessons that focus on personal responsibility.

The second component, prevention, operates primarily in elementary and secondary schools. When you visit a school involved in this program, you are very likely to see a teacher, a judge, a lawyer, the town's police chief, a law student or a probation officer working with a class of students. In some of the best Youth for Justice classrooms, police officers co-teach with classroom teachers on a daily basis.

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[1] Ten percent of the fiscal year 2002 earmark will be set aside for an independent evaluation of the Program as required by the Conference Report accompanying the fiscal year 2002 appropriations act for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies.

THE NATIONAL, COORDINATED LAW-RELATED EDUCATION PROGRAM IS A VITAL, COST-EFFECTIVE PROGRAM

The National, Coordinated Law-Related Education Program is comprised of five not-for-profit corporations, each of which is recognized nationally and internationally as a leader in the field of law and civic education: The American Bar Association's Division for Public Education; the Center for Civic Education; the Constitutional Rights Foundation; Street Law, Inc.; and the Phi Alpha Delta Public Service Center. By combining their expertise and experience as teachers, school administrators, juvenile justice professionals, attorneys and professors, these five organizations have successfully administered the nationwide program.

Thanks to the continued commitment of this Subcommittee, Youth for Justice, the National, Coordinated Law-Related Education Program, has built a vital, cost-effective program. This program:

—Involves young people in identifying and implementing solutions to violence;
—Promotes research-based educational programs that strive for safe, disciplined and drug-free schools and communities;
—Teaches young people acceptable ways to resolve conflicts;
—Fosters constructive attitudes towards authority figures;
—Provides young people with meaningful opportunities to serve their communities;
—Promotes understanding of and reasoned commitment to the rule of law along with tolerance for varied points of view in a free and diverse society; and
—Helps young people understand the democratic process and develop the decision-making and problem-solving skills to enable their full participation in that process.

LRE/Youth for Justice uses technology as a cost-effective way to expand its reach to the LRE field. For example, LRE has posted a planning guide for its Youth Summits on the Internet as well as free competition mock trials and descriptions of and contact information for state LRE programs.

Youth for Justice is committed to providing leadership in the national effort to stop the outrage of violence committed by and perpetrated against this nation's youth. Each Spring, thousands of young people from both the school and juvenile justice settings gather with public officials to participate in Youth Summits designed to help develop public policy to help prevent violence by and against youth. Law-Related Education is an extraordinarily effective prevention program, but it is also an extraordinarily effective intervention program—Law-Related Education also reaches juvenile offenders in halfway houses, detention centers, and other non-school settings.

EXPANSION OF THE NATIONAL PROGRAM IS CRITICAL IN THREE AREAS

The National, Coordinated Law-Related Education Program has identified three areas in which expansion of the National Program is critical. In addition to allowing the Program to increase its funding to state LRE programs, funding at the $2.4 million level would make expansion in the following three areas possible: (1) teaching students about terrorism; (2) youth offender reentry programs; and (3) school safety.

Teaching Students About Terrorism.—The expanded program would allow state centers to link with homeland security efforts. Specifically, the National Coordinated Law-Related Education Program would use the national network of statewide LRE centers to provide specially developed educational materials for teaching students about terrorism, including the constitutional powers of the executive and legislative branches in dealing with war and foreign affairs. In addition, specially developed educational materials would also address the role of the judicial branch in analyzing the tension between the compelling need to protect against terrorism while, at the same time, protecting individuals' civil liberties.

Youth Offender Reentry Programs.—Additional funding for fiscal year 2003 would allow Youth for Justice to expand its pilot efforts to add cutting-edge life skills and civic participation educational components to youth offender reentry programs being promoted by the U.S. Department of Justice around the country. As part of the Department of Justice's efforts to strengthen reentry programs, Youth for Justice would customize lesson plans for use in reentry programs in correctional settings as well as in community-based settings.

Increased Focus on School Safety.—The Program also plans to increase its focus on school safety through special training for school resource officers and other school officials as well as through a partnership with the National Resource Center for Safe Schools.

ASSISTANCE TO STATE LAW-RELATED EDUCATION PROGRAMS

Assistance from the National, Coordinated Law-Related Education Program continues to enhance state Law-Related Education programs. For example—

South Carolina.—In South Carolina, students participate in mock trials, mock congressional hearings through the We the People Program, and learn conflict resolution skills from teachers who receive training through LRE. In May 2000, the South Carolina Bar hosted the 17th Annual National High School Mock Trial Championships in Columbia. In July 2002, the South Carolina Bar will host the Southeastern Regional We the People Summer Institute for classroom teachers. The LRE Division of the South Carolina Bar also enjoys collaborative efforts with such groups as the South Carolina Department of Education, the South Carolina Council for Social Studies, the South Carolina Middle School Association, the South Carolina Department of Juvenile Justice, the South Carolina Association of School Resource Officers/State Association of Crime Prevention Officers, and the South Carolina Criminal Justice Academy.

Hawaii.—The LRE program in Hawaii provides training and funds for several education projects in Hawaii's public and private schools including We the People, Project Citizen, and Kids Voting Hawaii. This year's LRE support allowed the Hawaii State Judiciary and non-profit Hawaii Friends of Civic and Law-Related Education to continue Parents and the Law (PAL), a project providing legal information to at-risk parents at every public high school teen parenting class in the state, as well as several juvenile detention facilities, adult corrections settings, and social service agencies.

New Hampshire.—The LRE program in New Hampshire operates statewide and helps thousands of young people throughout the state each year to appreciate our democracy and participate in our democracy as law-abiding, effective citizens. The LRE program in New Hampshire has a busy 2002 schedule. The Nashua High School team won the statewide We the People competition in January, and the mock trial competition was held in early April. Both winning teams will participate in the national competitions. The Lawyer in Every School project is well underway for the first week of May.

Colorado.—In Colorado, over 300 teachers attended the 2001 annual public-private partnership conference—the largest number in the past sixteen years. The conference theme, Balancing Liberty and Security, provided an opportunity for teachers to renew their commitment to teach about our democratic institutions in the wake of the terrorist attack on the United States. In addition, in May, for the eighth year in a row, at-risk youth from Colorado schools will participate in a Colorado Project Citizen Showcase where they meet with federal, state, and local policymakers to present youth perspectives on policy issues that impact their lives. Hundreds of students participate in this youth-empowering program.

EVALUATIONS AND STUDIES OF LAW-RELATED EDUCATION

For the past two decades, researchers have consistently reported that law-related curricula and instruction make a positive impact on youth when compared with traditional approaches to teaching and learning law, civics, and government:

—The Office of Juvenile Justice and Delinquency Prevention has noted that evaluations of the Law-Related Education Program have been "encouraging . . . confirming the previous findings that such education serves as a significant deterrent to delinquent behavior". Eighth Analysis and Evaluation of Federal Juvenile Delinquency Programs, U.S. Department of Justice, OJJDP, p. 60 (1985). The Twelfth Analysis and Evaluation of Federal Juvenile Delinquency Programs published in 1988 similarly states, "[A] national study suggests that Law-Related Education, when properly implemented, can reduce the tendency to engage in delinquent behavior."

—A review of the research in Law-Related Education and related fields conducted by Dr. Jeffery W. Cornett (April 1997) concludes that LRE programs have a positive effect on student knowledge about law and legal processes, and about individual rights and responsibilities. Research studies indicate that effective LRE programs have improved juveniles' attitudes toward the justice system and toward authorities.

—In January 2001, Caliber Associates, the Office of Juvenile Justice and Delinquency Prevention's evaluation contractor, analyzed Law-Related Education in terms of programs proven to be effective in delinquency prevention and intervention. The results of this study demonstrate the promise of Law-Related Education with respect to delinquency prevention and intervention.

CONCLUSION

The National, Coordinated Law-Related Education Program has a unique and remarkable record of achievement and continued support is crucial for the following reasons:

First, congressional support for Law-Related Education is vital to its survival.

Second, the federal government and, in particular, the Congress, has made a substantial investment over more than a decade in the creation of a National, Coordinated Law-Related Education network and infrastructure including state coordinating organizations.

Third, only a national program will undertake national initiatives that benefit the entire country, such as national training; national technical assistance; state financial assistance; new program and curriculum development such as Law-Related Education's highly successful and acclaimed Youth Summits; and the replication of successful state programs and the avoidance of unsuccessful pilot programs.

Fourth, federal money is seed money used to sustain a national program which raises approximately seven times the federal support through state legislative support, private donations and in-kind support.

For all of these reasons, the National, Coordinated Law-Related Education Program is seeking earmark support at the $2.4 million level. We thank you, Mr. Chairman and the members of this Subcommittee, for your support over all these many years and we ask for your continued support.

PREPARED STATEMENT OF THE NATIONAL CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS

The Membership Group of SEARCH submits this testimony seeking appropriation support for our National Technical Assistance and Training Program in the fiscal year 2003 Byrne discretionary program appropriation for the Bureau of Justice Assistance (BJA), U.S. Department of Justice (DOJ). The National Technical Assistance and Training Program received an appropriations earmark in fiscal year 2002 in the amount of $2.0 million. For the reasons described below, we respectfully submit this testimony to request funding at the $4.0 million level for fiscal year 2003.

SEARCH is a nonprofit criminal justice organization governed by a Membership Group comprised of one gubernatorial appointee from each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. For over 30 years, we have dedicated our efforts to assisting state and local justice agencies combat crime and administer justice through the effective and responsible use of information and identification technologies.

SEARCH's National Technical Assistance and Training Program provides no-cost assistance to all components of the state and local criminal justice system with respect to the development, operation, improvement and/or integration of all types of justice information systems. This significant program helps state and local agencies work more efficiently and effectively through the use of advanced information technology, and it also creates the foundation for a national information infrastructure for justice systems.

SEARCH continues to experience steady growth in demand for the program. We are also experiencing a marked increase in the complexity of these efforts, as many involve multiple agencies or jurisdictions and an increase in the amount of time spent on research and site visits—often as many as four visits per assistance effort. There are a number of reasons for this demand, including the success of grant programs such as the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, the Local Law Enforcement Block Grants Program, the COPS Technology Grant Program and the Crime Identification Technology Act, which have provided seed money for justice information systems automation and integration.

Also impacting the continued demand for SEARCH technical assistance and training services is the critical need of the nation's criminal justice agencies to share complete and accurate information quickly. The need to share information quickly has dramatically escalated as a result of the terrorist attacks of September 11, 2001. Criminal justice agencies need to share information in order for the system of justice to function, and for purposes of national security. These agencies are now confronted with an urgency to exchange information that they have not previously experienced. The need to capture, analyze and share information among federal, state and local justice agencies (and other government agencies involved in homeland security efforts) has never been more evident or more important.

We want to commend BJA and its fine, professional staff. Working in partnership with SEARCH, BJA has provided strong, national leadership to create opportunities

for information systems training and technical assistance for state and local criminal justice officials.

Technical Assistance Program Benefits all States

SEARCH provides technical assistance via written correspondence, telephone consultaions, electronic mail, an Internet Website and onsite visits to agencies nationwide (including assistance focusing on statewide or regional justice integration efforts), as well as assistance provided at our National Criminal Justice Computer Laboratory and Training Center in Sacramento, California. SEARCH is responsive to technical assistance requests from every state, assisting agencies from all branches of government (state, county, city, regional) and providing guidance to every discipline in the justice system, including law enforcement, courts, prosecution, probation, parole, corrections and other case management agencies.

Integrated systems assistance typically involves being onsite to help a state or region establish an automated justice information system, or evaluate and plan for multiagency integration of existing systems. These efforts are typically significant and complex, can involve multiple agencies and site visits, and deal with issues with far-reaching impact on state and local governments. SEARCH is currently providing such long-term assistance to agencies in Colorado, Hawaii, Kentucky, Texas, Washington and Wisconsin, among others.

In the past year, SEARCH has provided hundreds of technical assistance efforts via telephone, letter and email; thousands of Internet-based assistance efforts; and dozens of technical assistance efforts provided onsite at justice agencies or at our Sacramento facility. In fiscal year 2003, as mentioned earlier, we expect those numbers to increase dramatically as demand for our technical assistance services rises.

National Training Program Can Help Justice Agencies Enhance Their Information-sharing Capabilities, Which is Vitally Important to Homeland Security

In light of the terrorist attacks of last September 11, it is critical that state and local criminal justice agencies be able to use information technology in the fight against terrorism and, in particular, to share information with federal, state and local agencies with homeland security responsibilities. The nature of the technical assistance requests that SEARCH receives is expected to broaden and involve problems associated with the automated sharing of information related to: The deployment and support of first responders; the prediction of terrorist activity; and the identification and investigation of individual terrorists or terrorist groups.

Agencies needing information from state and local criminal justice agencies include, for example, the White House Office of Homeland Security and state and local offices of homeland security and defense; the Federal Emergency Management Agency and state and local offices of emergency preparedness; the Immigration and Naturalization Service; and the U.S. Department of Transportation and its Transportation Security Administration.

SEARCH's request for a funding increase of $2.0 million over its fiscal year 2002 earmark would allow the National Technical Assistance and Training Program to meet approximately 40 additional technical assistance requests.

National Training Program Continues to be Responsive to Cybercrime Threats

SEARCH continues to help the nation's law enforcement agencies combat the escalating problem of computer crime by training and equipping them with the skills needed to investigate cybercrime, make arrests and prosecute offenders. Since its inception, SEARCH's National Technical Assistance and Training Program has trained more than 31,000 criminal justice officials from every state in the use of computers and other information technologies. In fiscal year 2002, SEARCH will train more than 3,000 state and local criminal justice officials across the nation, both at agencies and at our National Criminal Justice Computer Laboratory and Training Center in Sacramento. SEARCH has implemented a Mobile Training Center, which uses laptops and other mobile equipment, to provide training at more sites nationally.

Training courses focus on providing investigators with critical operational skills, knowledge and techniques that will have a real-world impact, enabling them to gain a technological edge over the new breed of criminals who use computer technology to commit crimes such as fraud, theft and the online sexual exploitation of children. SEARCH's training courses, which range from one day to two weeks in length, include: The Investigation of Computer Crime; The Seizure and Examination of Microcomputers; Basic Local Area Network Investigations; Introduction to Internet Crime Investigations; Advanced Internet Investigations; and The Investigation of On-line Child Exploitation.

To help our trainees keep pace with the ever-changing environment of cybercrime, SEARCH has developed two new courses, which will debut in 2002: Digital Media

Analysis and The Investigation of Online Child Exploitation II. We are also beginning development of an Advanced Computer Forensics course, which we expect to debut in 2003. In the past year, among those attending SEARCH training were staff from justice agencies in Alaska, Colorado, Hawaii, Kentucky, Maryland, New Hampshire, New Mexico, Rhode Island, South Carolina, Texas, Vermont, Washington and Wisconsin.

Selected Examples of Assistance

The following illustrates just a few examples of SEARCH technical assistance and training efforts in the past year and the broad range of agencies served.

South Carolina.—A team of justice officials, including representatives of the South Carolina Judicial Department and Department of Corrections, attended SEARCH training on integrated justice information systems (IJIS) issues, such as strategic planning; developing governance structures; funding, leadership and management strategies; and technology standards. SEARCH also provided hardware and Internet connectivity training to prosecutors from throughout the state at a "cybersleuth" seminar presented at the National Advocacy Center on the University of South Carolina campus in Columbia. SEARCH also assisted a local prosecutor's office on legal issues involving computer forensics.

Hawaii.—SEARCH is providing assistance to a statewide justice integration effort spearheaded by the Department of the Attorney General. SEARCH is helping the state with integration planning; setting vision, mission, goals and objectives for the integration initiative; and determining operational requirements. In another statewide effort, SEARCH is assisting the Department regarding strategic planning for and integration of the state's Juvenile Justice Information System. SEARCH also assisted the Kauai Police Department with the acquisition of a computer-aided dispatch/record management system (CAD/RMS), helping to draft a Request for Proposal and functional specifications. Officials of the Hawaii County Police Department attended SEARCH training on The Investigation of Online Child Exploitation, a weeklong course that provides law enforcement investigators and support staff with the skills needed to conduct proactive Internet investigations involving child exploitation. In addition, this very week, April 29-May 3, 2002, SEARCH trained 22 justice officials onsite in Hilo, Hawaii, in The Investigation of Computer Crime, which teaches how to investigate high-technology theft and computer-related crime.

Vermont.—In a statewide effort, SEARCH provided onsite integration assistance to the Vermont Department of Public Safety (DPS) regarding a strategic direction for its integrated CAD/RMS used by nearly all local law enforcement agencies in the state. A 12-member team of justice officials, representing the state DPS, Department of Corrections (DOC), Office of Court Administration, Supreme Court and Office of the Chief Information Officer, among others, attended SEARCH training on IJIS issues, including emerging trends in biometric technologies for identification, identity verification and secure access/authorization for physical and data security, and critical success factors and the risk management strategies employed by project leaders in integration initiatives. SEARCH also assisted the Burlington Police Department on issues related to computer forensics issues and CAD/RMS/mobile computing system acquisition. In addition, officers of the Rutland Police Department attended SEARCH training on The Investigation of Computer Crime.

New Hampshire.—A team of 14 justice officials, representing such agencies as the Office of the Attorney General, the state DPS, the Administrative Office of the Courts, the State Police, State Legislature and DOC, attended SEARCH training on IJIS issues, such as performance metrics, security technologies, techniques for undertaking regional integration efforts, procurement, outsourcing, Web-based justice applications and IT project management strategies. Over a dozen officers from New Hampshire police and sheriff's departments also attended a weeklong SEARCH training session on The Investigation of Computer Crime, held in Concord. In addition, SEARCH assisted the New London Police Department regarding the setup of a computer forensics laboratory.

Colorado.—Colorado has benefited from a number of SEARCH technical assistance and training efforts. For example, SEARCH is helping the state work toward integration planning in an initiative that involves the State Judicial Branch, Department of Human Services' Division of Youth Corrections, Department of Public Safety's Bureau of Investigation, Department of Corrections and the Colorado District Attorneys' Council. SEARCH also helped the Colorado Bureau of Investigation and the Arvada County Sheriff's Office with computer forensics issues; the Colorado State University Police Department with computer crime investigation materials and best practices for law enforcement investigative training; the Greeley Police Department on setting up a computer forensics laboratory; and the Colorado District Attorneys Council regarding the future of court information technology. Colorado

agencies also benefited from SEARCH training: the Aurora Police Department attended SEARCH training on Introduction to Internet Crime Investigations, which teaches investigators the basic techniques for successfully cracking cases involving crimes committed using the Internet. Officials from the 18th Judicial District Attorney's Office attended an intensive, two-week course on Advanced Internet Investigations, which teaches investigators how to investigate crimes online and track intruders. In addition, representatives of the Colorado State University Police, Arvada Police Department and Weld County Sheriff's Office attended SEARCH training on The Investigation of Computer Crime.

Technical Assistance and Training Program Materials

SEARCH's National Technical Assistance and Training Program also includes the preparation, publication and national dissemination of materials and reports that assist criminal justice agencies in acquiring and using computers and other information technology. For example, SEARCH publishes Technical Bulletins that identify and evaluate information systems and technologies that have existing or potential application in criminal justice management. SEARCH also offers an online resource, the Integrated Justice Information Systems Website (www.search.org/integration), which features state and local profiles of justice integration efforts, including links to information on governance structures, funding, technical overviews, project documents and more, as well as links to useful integration publications, articles and other resources. SEARCH's Website received an average of 12,350 hits per day in 2001.

Conclusion

Without question, federal support for the National Technical Assistance and Training Program makes a vital contribution to the war on crime. For a modest federal investment, leveraged many times over by state and local funds, a critical contribution is made to the ability of state and local criminal justice agencies to provide—and to share—timely, accurate and compatible information for use in apprehending, prosecuting and sentencing offenders.

Accordingly, we respectfully request that the Subcommittee act to provide fiscal year 2003 funding of SEARCH's National Technical Assistance and Training Program at the $4.0 million level. Supporting state and local criminal justice agencies' information systems and their ability to share information is a matter of public safety and national security. The National Technical Assistance and Training Program can help state and local law enforcement agencies meet those expectations. We thank you, Mr. Chairman, the members of your Subcommittee and the Subcommittee staff for your continued support.

DEPARTMENT OF STATE

PREPARED STATEMENT OF THE ALLIANCE FOR INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE

Introduction

The Alliance for International Educational and Cultural Exchange appreciates the opportunity to submit testimony in support of the educational and cultural exchange programs administered by the Department of State.

The Alliance is the leading policy voice of the United States exchange community, and has worked closely with the subcommittee on exchange issues. We note with gratitude the subcommittee's role in increasing exchange appropriations in recent years.

The Alliance comprises 65 nongovernmental organizations, with nearly 7,500 staff and 1.25 million volunteers throughout the United States. Through its members, the Alliance supports the international interests of 3,300 American institutions of higher education.

With grassroots networks reaching all 50 states, Alliance members help advance the United States national interest by putting a human face on American foreign policy, transmitting American values, fostering economic ties with rapidly developing overseas markets, and assisting individuals with the development of critical foreign language, cross-cultural, and area studies expertise. Our members also leverage considerable private resources—in cash and in kind—in support of these critical programs.

By engaging a very broad array of American individuals and institutions in the conduct of our foreign affairs, exchange programs build both enhanced under-

standing and a web of productive contacts between Americans and the rest of the world.

Two years ago, German Chancellor Gerhard Schroeder described his experience as an International Visitor in an on-air interview with a Berlin news anchor. Schroeder described himself as a young politician with a vague but fashionable anti-American bias, and recounted that his trip to the United States as an International Visitor altered his views. "This is one of the most intelligent ways of giving young politicians a positive attitude about America," Schroeder said.

Our request

As a nation, we need to provide more opportunities for emerging leaders around the world to experience first-hand our society, our values, and our people. The Alliance therefore urges the subcommittee to provide substantial increases in funding for exchange programs. While appropriations for these programs have moved up in recent years, this account still lags well behind its historic levels in constant dollars due to the deep cuts of the mid-nineties. Coupled with the increases in fixed program costs such as airfare and accommodation costs, reduced appropriations have resulted in significantly diminished participant levels in programs consistently cited by our embassies as one of their most effective means of advancing U.S. policy interests.

While the need for increased funding is worldwide, increased exchanges with the Islamic world are particularly critical as we pursue the war on terrorism. To defeat terrorism, the United States will need more than the might and skill of our armed forces. To ultimately defeat terrorism, we must also engage the Muslim world in the realm of ideas, values, and beliefs.

No previous foreign affairs crisis has been so deeply rooted in cultural misunderstanding. One of the lessons of September 11 is that we have not done an adequate job of explaining ourselves, our culture, and our values to the Muslim world. Doing so will require a sustained, serious effort if we are to succeed in our quest for lasting peace and security, stable bilateral relationships, and an end to terrorism. We believe that significant new funding is needed for an Islamic Exchange Initiative, designed to broaden the range of meaningful relationships based on shared interests with current and emerging leaders and key institutions in Muslim countries.

Given the broad arc of countries we will need to engage, stretching from Africa to Southeast Asia, and the importance and urgency of the task, we urge the subcommittee to appropriate $95 million for this purpose. Including a modest but important increase in worldwide exchange funds, we propose an fiscal year 2003 level for State Department exchange programs of $345 million.

In the Islamic world, we envision this initiative engaging the full range of programs and activities managed by the Bureau of Educational and Cultural Affairs: Fulbright and Humphrey exchanges that will stimulate broader cultural understanding, joint research and teaching, and foster positive relationships with a new generation of leaders; university affiliations targeted toward key fields such as mass media and economic development; International Visitor and other citizen exchange programs designed to bring emerging leaders into significant and direct contact with their professional counterparts and the daily substance of American life; youth and teacher exchanges and enhanced English teaching programs, all designed to bring larger numbers of young people a direct and accurate picture of our society, based on personal experience rather than vicious stereotyping.

The need for an intensive new focus on the Islamic world is great, but it should not distract us from the importance of maintaining and increasing our public diplomacy and exchange activity elsewhere in the world. As we engage in what promises to be a lengthy and difficult struggle against terrorism, we will benefit greatly from the support and participation of our friends and allies around the world. We must not neglect these important relationships, or succumb to the temptation to shift resources from other regions of the world to meet our needs in Islamic countries. Should we do so, we will not find resources adequate to the task at hand, and we will lessen our engagement with other crucial regions of the world at a time when we can ill afford to do so.

In considering worldwide exchanges, in addition to the valuable programs already cited in the context of the Islamic initiative, we particularly wish to draw the subcommittee's attention to the importance of overseas advising and the Gilman scholarship program. Our advising centers, funded at slightly more than $3 million annually, struggle with minimal resources to provide comprehensive, unbiased information to prospective students. The foreign students in the United States provide an enormous foreign policy asset—the opportunity to educate the next generation of world leaders—and they contribute to a trade surplus estimated at $12 billion. Other countries—notably the United Kingdom, Australia, Canada, Germany, and

Japan—recognize the policy and economic benefits of foreign students and are making serious and successful efforts to erode our market share. We encourage the subcommittee to increase funding for our advising centers.

The Gilman scholarship program has been a remarkable success in its first year, with many more qualified applicants than available grants. This program, which provides modest funding to allow American students with financial need to study abroad, directly addresses a critical national need. We need to develop more American expertise with key countries, cultures, and languages, and the Gilman program expands the pool of students with the means to study abroad. The program has increased study abroad numbers, and the diversity of participants and locations, coupled with its performance to date, deserves a funding increase.

We also ask that the subcommittee include in its report language support for the creation of a national policy on international education. Such a policy would place appropriate priority on government and private efforts to prepare Americans to succeed in a rapidly globalizing world. It would include several elements: strengthening American capacity to develop specialists in foreign languages, area studies, and international business studies; building a broader international knowledge base among American non-specialists whose work has international dimensions; increasing the number of Americans studying abroad and encouraging more of our students to study in non-traditional locations; developing a more effective strategy for foreign student recruitment; and strengthening exchange programs at all levels. In the last session of Congress, the Senate unanimously passed a resolution introduced by Senators Lugar and Kerry calling for a national policy on international education. A similar resolution has been introduced in the House.

Mr. Chairman, the Alliance appreciates the opportunity to submit its views to the subcommittee, and looks forward to working with you, your colleagues, and staff to maximize the contributions that exchange programs make to our foreign affairs. We would be happy to provide additional information, or to respond to any questions that you might have.

PREPARED STATEMENT OF THE AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. Chairman and Members of the Subcommittee, on behalf of the American Foreign Service Association (AFSA) and the 23,000 active-duty and retired members of the Foreign Service that AFSA represents, I wish to thank you for the continuing opportunity to share our views with you regarding the funding of the Department of State and its programs. As we have said in previous years, and it continues to be true, the decisions that you and your colleagues in Congress make directly affect our professional and personal lives as we serve our nation abroad, therefore we have a direct interest in your work.

Let me state from the beginning that we are fully supportive of the Administration's 2003 request, but we also believe it should be considered as the floor and not the ceiling for fiscal year 2003 appropriations. We believe that more should have been proposed in the funding of the Department of State and its programs. We appreciate the difficult spending constraints facing the Subcommittee as it does its important work. We acknowledge that yours is not an easy task.

But we would emphasize that national security is one of the principle, nondelegatable functions of the federal government and that diplomats, their programs, and the State Department are as critical to our national security structure as are the soldier, the smart bomb, and the Pentagon. As we well know, international problems can quickly become domestic problems. Diplomacy is on the front lines addressing these problems before they reach our shores. As is true for the Defense Department, to achieve our national security tasks, the Department of State and its programs require adequate resources.

AFSA fully agrees with Secretary of State Powell when he said on March 7, 2002:

"I think it is important, and part of my responsibility, and the responsibility of * * * all the Members of Congress, to make the case to the American people that if we are going to live in the kind of world we all want to live in, if we are going to want to see our values adopted by more and more nations—not because they are American values, but because they are universal values—it is important that we give our diplomatic efforts the support that they deserve through significant increases in the 150 Account."

Last year, with the support of the Congress, the Secretary of State began the difficult work of rebuilding the infrastructure of our country's foreign affairs apparatus. At that time, he said that its deterioration has become a "major impediment to the conduct of American foreign policy." As you know, the State Department's re-

quest for fiscal year 2003 is a continuation of these efforts in terms of people, technology, and security.

People.—The availability of resources determines whether we have the talent, tools, and work environment necessary to effectively represent and protect this nation. It affects the recruitment of talented young people to this profession. It affects how thinly we are stretched in manning the 250 posts and missions in which we serve around the world, and it affects how well we are trained to do our jobs. Funding also affects the quality of life for our families as they accompany us around the world.

In the 1990s, insufficient funding created a shortfall of over 1,100+ overseas personnel. This staffing shortage strained the Foreign Service in its ability to fully represent and advance the national security interests of our nation. It reduced the amount of training that our people could take because it forced both the Department and individuals to choose between leaving positions vacant while personnel took the necessary training or sending the person to post without training. And the personnel shortfall adversely affected Foreign Service morale as people were constantly being asked to do more with less, even while they and their families often served in hardship and dangerous locations.

In order to fill this shortfall, the Department is requesting sufficient funds to recruit, hire, train and deploy 399 new foreign affairs and 186 new security professionals above attrition. AFSA fully supports the Secretary in this rebuilding effort and urges this Subcommittee and the Senate to provide the necessary resources requested. We also urge that next year, the request continue to be supported so that we can continue and complete this three-year rebuilding effort.

There is one area that we would ask be addressed in the Committee's report accompanying CJS appropriations bill. Last year, when the Department explained its request in the Budget in Brief for Fiscal Year 2002, amounts in the personnel account were identified to address concerns about morale, recruitment and retention of Foreign Service personnel. For instance, the Administration proposed to allocate funds to continue a pilot program in Mexico for increased spousal employment and possibly expand it worldwide. Although unmentioned in the Administration's fiscal year 2003 request, these proposals are still important initiatives, and we urge the Committee to encourage the Department to continue and expand these programs.

Finally, Mr. Chairman, as the "Voice of the Foreign Service," there is one more issue that we believe needs to be discussed. We understand that the Department and the Office of Personnel Management are seeking to correct inequities arising from the fact that Foreign Service personnel lose their locality pay adjustments when they serve abroad. AFSA strongly endorses these efforts to convince the Office of Management and Budget to support implementation of an overseas comparability adjustment based upon D.C. area locality pay. There is a huge financial disincentive to serve abroad because of the loss of locality pay. Since allowances and differentials do not count in determining retirement annuities, the annuities of our members who retire following an overseas assignment are computed at a lower level than D.C.-posted counterparts. This affects our annuities in terms of both the formula for computation and the amount that can be contributed into the Thrift Savings Plan (TSP). Further, since allowances and differentials are computed as percentages of base pay, their value can be lost or seriously decreased when compared to what our D.C.-posted counterpart is receiving in base pay plus locality pay. Thus, compensation for serving in a hardship or danger post is decreased when compared to what we could earn by serving in Washington. There was a time when the difference was minor. Today, when we serve abroad, we take an 11.43 percent cut in salary and possible TSP contribution levels. There is no authorization for this program as of yet. We ask that when it is requested, the Subcommittee give favorable consideration to the idea of an overseas comparability pay adjustment for Foreign Service personnel posted abroad

Technology.—Mr. Chairman, AFSA receives monthly briefings from the Department on its progress in improving its information and telecommunications system. More importantly, we get reports from our members in the field when things go wrong. As an independent voice, AFSA is pleased to report to you that we are satisfied with the Department's progress to date in bringing the Department and its people into the 21st century telecommunications world. Funding requested in fiscal year 2003 will allow this needed progress to continue.

Security.—For the second year in a row, the Department has requested $1.3 billion for worldwide embassy security funding. This is generally at the annual level recommended by the Overseas Presence Advisory Panel (OPAP) and the Accountability Review Boards established to investigate the 1998 East Africa embassy bombings. The recommendation for this funding was $13–$14 billion over ten years. When the work started, fully 80 percent of our posts and missions did not meet min-

imum Departmental security standards. Today, about 60 percent meet the minimum standards but need major improvements.

What concerns us, however, is that while the overall request for personnel, software, equipment, and "bricks and mortar" work reaches the $1.3 billion level, the request for the "bricks and mortar" portion is $61 million below amounts appropriated in fiscal year 2002. It seems to us that since the Department was able to utilize the full $815.9 million appropriated last year, the request should have been at a similar level to continue improvements to the physical situation of our posts and missions. We ask that the Senators consider increasing the request for this part of the "Worldwide Security Upgrades" from $755 million to last year's level of $815.9 million.

Mr. Chairman, in the area of security, there is one concern to which we wish to draw the Subcommittee's attention. When both the Accountability Review Board and the Overseas Presence Advisory Panel made their recommendations, the emphasis was placed on protecting government facilities abroad from future terrorist attacks. There was always concern, though a generally unspoken concern that, as we "hardened" our missions, terrorists would go after Americans, and particularly representatives of the U.S. government, in "softer" targets. The recent terrorist bombing of the church in Islamabad that killed a member of the embassy staff and her teenage daughter puts a harsh light on that concern. We believe the concept of embassy security needs to be expanded to encompass the embassy community. In part, AFSA believes that this will entail the continued hiring of security professionals and funding to move from a protective, defensive posture to a more aggressive preventive approach to security. We encourage the Subcommittee to join AFSA in engaging the Department in identifying practical solutions to the expanded threat to Americans and to American personnel abroad.

A reinvigorated foreign service.—Finally, Mr. Chairman, there is one more area that we would like to share with the Subcommittee that is not part of the Administration's request, but surely impacts upon the success of U.S. diplomacy. As vital as increased funding is for people, technology, and security, AFSA believes that funding by itself will not guarantee that the Foreign Service possesses the attributes needed to best serve the President, the Congress, and the American people in meeting the challenges of the 21st Century. AFSA believes that the Foreign Service will also need to develop new skills and a new organizational culture.

In the past, AFSA worked with the Congress in supporting legislation that mandated the Department to do workforce planning (Public Law 106–113). We also supported Congressional provisions requiring the Department to report on management training for Foreign Service personnel and to report on the assignment of language trained personnel to language designated positions. Assuring the continued high quality of this nation's Foreign Service has been a continuing concern to AFSA as it has been to the Congress.

Since July 2001, AFSA has been working with the Director General of the Foreign Service in developing reforms to the Foreign Service personnel system. To date, we have reached agreement on over a dozen reforms, including:

1. Establishing leadership and management training requirements that employees must meet by key stages of their career. These requirements will be enforced by promotion precepts that will deny promotions to those who have not taken the required training.

2. Enforce rules governing "worldwide availability" so that Foreign Service members do not extend in Washington or certain posts abroad for unusual lengths of time.

3. Increase the separation of unsatisfactory performers by having the Director General meet with members of the Commissioning and Tenure Boards at the State Department to reinforce with them their duty to identify unsatisfactory performers. AFSA alerted the Department to the fact that, while between 3.5 percent and 7.9 percent of career candidates were denied tenure during the mid-1990s, less than 1 percent were denied tenure in 1998 and 1999.

4. To change the organizational cultures of the Foreign Service, we have come to agreement on several issues such as putting added weight on demonstrated leadership, managerial ability, and good interpersonal skills when selecting personnel to be assigned to Deputy Chief of Mission (DCM) and other senior positions.

5. The Director General accepted AFSA's proposal to modernize the core precepts for promotion in the Foreign Service to provide additional incentives for employees to perform in accordance with the management principles enunciated by Secretary Powell and his management team. The changes promote the career advancement of those employees who exhibit the skills, outlooks, and abilities needed in our new century. For example, the revised precepts put new emphasis on operational effectiveness, intellectual integrity, customer service, teamwork, and leadership and

management skills. In so doing, they signal disapproval of the risk-averse, form-over-substance modes of behavior that are ill suited for actively advancing American interests in the 21st Century.

Conclusion.—Mr. Chairman, AFSA agrees with Secretary Powell when he said that events on and since the tragic day of September 11 have made it clear "that American leadership in international affairs is critical" and that "out on the front lines of diplomacy, we want a first-class offense for America." We agree with him that "quality people with high morale, combined with superb training and adequate resources, are the key to a first-class offense."

Operating accounts do count. The funds requested for fiscal year 2003 and the Supplemental Request that has recently been forwarded, help provide the minimum necessary resources that will allow the Department and the Foreign Service to continue its rebuilding of the Foreign Affairs infrastructure to meet the challenges of this new century. It has been less than three years since the Overseas Presence Advisory Panel (OPAP), chaired by Louis Kaden of Wall Street, and composed of diplomats, representatives of labor and business, and educators reported that:

"Insecure and decrepit facilities, obsolete information technology, outdated human resources practices, and out-molded management and fiscal tools threaten to cripple America's overseas presence. We recognize that except for the security threats, none of these individual problems is a pressing emergency. Still, as with any complex system, if many of the parts of America's overseas presence are not working properly, the system may fail. The Panel fears that our overseas presence is perilously close to the point of system failure."

Mr. Chairman, under the leadership of Secretary of State Powell working with Congress, we are pulling back from that "point of system failure." We need to stay the course and so we urge that, at a minimum, the full $7.5 billion Administration request for the Department of State as well as the funding requested in the Supplemental be provided. In the end, those funds address the needs of diplomacy as it stand on America's front lines serving her and protecting our national interests.

RELATED AGENCIES

PREPARED STATEMENT OF STEVEN A. LUDSIN

I have dealt with the U.S. Small Business Administration for almost 10 years and I was a contractor with the agency for a year and a half with negotiations stemming from those contracts covering at least 3 years. I have concluded that the agency is an anachronism that should be reorganized or abolished and funding should be drastically cut.

The U.S. Small Business Administration, the federal agency mandated by Congress to aid, counsel, assist and protect the interests of small business has become obsolete. Aside from the government guarantees for loan programs and advocating small business procurement protection, the agency is out of touch with our times. I had the simple idea of selling the SBA's real estate collateral for defaulted small business loans on the Bloomberg. The resistance was overwhelming and the staff is so committed to the status quo, they cannot adapt to the changed economic environment since the 1950's. It is as if they are in a time warp, forever stuck in a post World War II mentality.

After law school, I began my investment banking career in 1976 and Michael R. Bloomberg was one of the partners in charge of my department. In 1985 I purchased a home from foreclosure in East Hampton, NY. I began to pursue the concept of selling foreclosures on computers soon after I purchased the home. I tried to get a Small Business Investment Research grant from the Department of Commerce in 1987 but I was turned down. When the S&L bailout began in 1989, I brought the idea of electronic marketing on the Bloomberg to the RTC, the agency in charge of the bailout, but I could not get a contract.

Undaunted I persisted and received a good audience with Erskine B. Bowles, former SBA Administrator and Chief of Staff of the White House. In 1993 he was the Administrator of the U.S. Small Business Administration.

I convinced the SBA to give me a pilot program in 1994 to sell the real estate collateral on the Bloomberg. After enduring the frustration of the contract renewal process, I managed to get the contract renewed in June 1995. Battling the SBA was a full time job; they sapped my financial resources and the results led to an endless litigation process.

I had to use the Freedom of Information Act to get the appraisals of the properties the SBA hired me to sell because they insisted on charging $10,250 for the proc-

essing fee which was discretionary. The SBA decided I was a commercial requester so I had to pay the fees. I challenged the decision in the Federal Courts in New York and actually presented my own oral argument before the Second Circuit Court of Appeals. The 3-judge panel told me I was at the top of the list of attorneys who have appeared on their own behalf, but the Appeals Court held that the SBA could charge me the fee because my contract goals were not in the public interest. So even though I was selling federal assets and disseminating the information world wide on the Bloomberg, I had to pay the SBA the FOIA fee.

I was able to get the appraisals without charge and present them to investors by displaying the photos and descriptions and scanning the full appraisals using my own scanner. I finally received bids from 2 major investment banks but after 2 years into the second contract beginning in June 1995, the SBA had forgotten to tell me that they would need consent of the lending banks to sell the assets in bulk which was my goal under the contract. There was a breach of contract claim before the General Services Board of Contract Appeals. The claim was for $1.2 to $2.4 million for providing buyers ready, willing and able. The lawsuit was settled. I have characterized the experience as "econocide", the purposeful destruction of an entrepreneur's financial security. The experience moved me to write a book, "Roadkill on the Information Highway" published by iUniverse.com.

I share this account of my struggle because it is a microcosm of the cultural rift of the private sector and our federal government. Ironically the SBA is selling $10 billion of assets over the coming years. How could they seriously believe the private sector would participate if the agency doesn't understand the marketplace and thwarts any innovation at every turn?

Although the experience I had is anecdotal, there is a need to put a stop to the obfuscation that the SBA uses to justify its existence. They are eager to hide behind the FOIA laws in order to retard progress. For example, in May 2001, I requested the information about the real estate assets still available from the field offices. The knee jerk reaction was to force the field offices to direct the inquiry to the headquarters and invoke the FOIA law. This creates delay and obstacles to purchasing the assets. Similarly, when I sent emails to the staff asking what their responsibilities were, most responded by directing me to the SBA website.

Why do you need to pay staff to direct inquiries to the website? Why do we pay over $500 million annually to maintain the illusion that the SBA will provide funds for small business, when the real decisions are made by the banking and venture capital community? The days of window dressing must end. I have always supported private-public partnerships, but in the case of the SBA, there is no real capability to partner. The agency should be reorganized and the guarantee component should be reassigned to the Department of Commerce or the Department of the Treasury.

I am grateful for the opportunity to become part of the public testimony advocating severe cuts to an agency that has outlived its usefulness. Former SBA Administrator Philip Lader commented that the SBA was no longer your father's Oldsmobile. Even General Motors retired the Oldsmobile. Its time to let go of the propagandistic illusions that the SBA furthers the interests of small business. It should be abolished.

PREPARED STATEMENT OF THE ASIA FOUNDATION

Thank you for the opportunity to submit testimony, supporting The Asia Foundation's fiscal year 2003 budget request.

Mr. Chairman, I would like to present The Asia Foundation's programs and our future plans to address the challenges and opportunities facing Asia. We believe that our programs demonstrate how a small, independent organization can advance American interests in the Asia-Pacific region.

The Administration has endorsed the work of The Asia Foundation by requesting an appropriation of $9.44 million for fiscal year 2003. While we appreciate that support, we respectfully hope the Congress will add to our funding, given the unparalleled new challenges facing the Asia region. As you know, The Asia Foundation implements programs that improve governance and legal reform, protect human rights, promote economic reform and encourage peaceful, cooperative regional and international relations. In the post-September 11 period, it is clear that in the war on terrorism, it is more important than ever to address its root causes of persistent poverty, lack of opportunity and loss of faith in local leaders and institutions. It is critical to strengthen institutions of governance, advance the rule of law and promote stability. This also means creating economic opportunity, broadening and improving education systems and other public services and protecting the rights of women and children.

OVERVIEW

Let me put the Foundation's work into context. The post-September 11 period presents challenges to political stability, economic growth, and America's relations in the Asia region. Afghanistan requires continuing donor attention in response to humanitarian needs, and to ensure security and stability for the current interim government, the Loya Jirga process, and the new government. Other countries in the region, including countries with larger Muslim populations such as Pakistan, face significant challenges to democratic development, peace and stability.

Asia continues to face complex regional security challenges: on the Korean peninsula and the India-Pakistan border, China-Taiwan cross-straits relations, and in Afghanistan. Despite some recovery from the 1997 crisis, economic stagnation continues in Japan, the world's second largest economy, and economic uncertainty exists in South and Southeast Asia economies. Political instability in Indonesia, extremism in the southern Philippines, and internal conflicts in Sri Lanka and Nepal also threaten regional stability and impede economic development. Human rights abuses and questions of impunity continue. Even though women in Asia have made gains, in many places they are still subject to economic and political inequities and, in the worst cases, they are victims of trafficking and abuse. We have seen reductions in United States presence in Asia over the past few years, due to budgetary and other circumstances, particularly signaled by a decline of public diplomacy efforts.

In our view, the new circumstances we face in Asia highlight the importance and value of the Foundation's programs. There are few American organizations with the operating experience, relationships and access enjoyed by The Asia Foundation in the region. For nearly 50 years, the Foundation has operated programs throughout Asia to support reform-minded government and non-governmental institutions and individuals.

THE ASIA FOUNDATION'S MISSION

The Asia Foundation's core objectives are central to United States interests in the Asia-Pacific region.

—Democracy, human rights and the rule of law: developing and strengthening democratic institutions and encouraging an active, informed and responsible non-governmental sector; advancing the rule of law; and building institutions to uphold and protect human rights, including women's rights and opportunity;

—Open Trade and Investment: Supporting open trade, investment and economic policy reform at the regional and national levels;

—Peaceful and Stable Regional Relations: Promoting regional discussions on security cooperation, regional economic policy, law and human rights.

In the past, this Committee has encouraged the Foundation's grant making role, and we remain faithful to that mission. The Foundation's hallmark is to make sequential grants to steadily build and strengthen institutions, develop leadership and advance policy reforms in countries in the region. Foundation assistance supports training, technical assistance, and seed funding for new, local organizations—all aimed at promoting reform, building Asian capacity and strengthening relations with United States institutions. Foundation grantees can be found in every sector in Asia, leaders of government and industry and at the grass roots level, in the increasingly diverse civil society of Asia. Notably, the current Afghanistan Ministers of Higher Education Sharief Fayez and Women's Affairs Sima Simar are former grantees who have asked the Foundation for immediate assistance in education and training, including re-starting the Books for Asia program, the Foundation's long standing program that has distributed millions of books to Asia since 1954.

The urgency of the political and security needs in Asia, particularly given the instability in South Asia since September 11, have increased the need for experienced American actors in the region. The experiences in countries such as Korea, the Philippines, Thailand and Taiwan, where democratic and economic transitions are well underway, represent, in part, the return on investment the Foundation has made, over time, in support of individuals and institutions committed to reform.

PROGRAMS

The Asia Foundation's programs in Asia strengthen formal institutions of governance—including constitutional frameworks, the legislative branch and the judiciary—and develop more effective civil society organizations, the protection of human rights and the development of law and effective legal systems. The Foundation's programs also increase economic reform and open trade. Its international relations programs reflect a unique capacity to promote increased understanding of different for-

eign policy perspectives to complement more formal diplomatic efforts that advance American economic and security interests in the region.

Legislative development.—The Foundation has contributed to the development of legislatures in 16 countries in Asia through technical assistance, training members and staff, facilitating interaction with the nongovernmental sector and developing parliamentary capacity to review budgets and other executive functions in Thailand, Taiwan, South Korea, Mongolia, the Philippines and Indonesia. The Foundation was the only American organization to provide technical assistance to the Constituent Assembly in East Timor in the recently completed constitutional drafting process, providing international experts and support for the East Timorese People's Constitutional Working Group.

Civil society.—The Foundation is the single largest supporters of the non-governmental sector in the Asian countries in which we operate. The Foundation builds the capacity of organizations, encourages public participation and works to improve the regulatory environment for NGOs. In Pakistan, the Foundation supports community based organizations that provide education services in areas where none exist, through public-private partnerships, particularly in the economically poor Northwest Frontier Province (NWFP). Continued education and advocacy efforts in Nepal are supported that focus on addressing the dire problem of the trafficking of women and children. Many programs focus on western Nepal, under the greatest risk from the growing Maoist insurgency in that part of the country. The Foundation has been the largest supporter of human rights, environmental and research and policy NGOs in Cambodia.

Human rights.—The Foundation's human rights programs promote the protection and advancement of human rights as an important priority. Through its support of nongovernmental and governmental human rights efforts at the local, regional and national levels, the Foundation's programs focus on human rights education and the development of monitoring groups, forensic training to investigate past abuses, media training, guides on international human rights standards, conflict reporting for journalists, programs to reduce trafficking and violence against women, and alternative dispute resolution programs in conflict areas. The Foundation supports moderate Muslim organizations in Indonesia, Pakistan and in Mindanao in the Philippines to encourage programs that promote moderate views, religious tolerance, peace, conflict management and the rights of women under Islam, including the use of Islamic scriptures to support messages of peace and non-violence. The Foundation gives special attention to the troubled areas of Indonesia through support for local human rights efforts in Aceh, Papua and most recently, the Maluku Islands. Programs include increased media campaigns through radio and television by moderate groups to promote pluralism and tolerance in conflict prone areas and the utilization of mosque youth networks to educate and strengthen networks for democracy and pluralistic Islam.

Legal reform.—In China, the Foundation has supported administrative law reform efforts in China to limit the arbitrary power of officials and create greater scope for citizen participation and redress. With China's entry into the WTO, the Foundation has embarked on a training program for provincial and municipal legal affairs offices to promote understanding of the complexities of WTO compliance related to uniform treatment, legal transparency and consistency. Foundation programs also support legal aid services and popular legal education to bring the benefits of legal reform directly to China's citizens, including migrant women populations in the new economic zones of Southern China. In Nepal, the Foundation has started a legal reform program for the courts, through training programs in mediation, establishment of legal information systems, and development of programs with watchdog citizens' groups to raise awareness of corruption and misconduct.

Economic growth and opportunity.—Small and medium enterprise reform is a vital engine of growth, providing employment and opportunity for millions throughout the region. The Foundation's programs help to improve the environment for small business growth in Indonesia, Bangladesh, Thailand and the Philippines by removing policy barriers and regulatory red tape, reducing corruption, and providing a voice for small entrepreneurs through support for business associations and business-government dialogue. The Foundation funds efforts to improve corporate governance in Korea, China, Japan and the Philippines, and supports open trade and investment in the region through assistance to the Pacific Economic Cooperation Council (PECC) and the Asia-Pacific Economic Cooperation (APEC) process.

International relations.—The Foundation continues to invest in the development of young leaders, for example through support for diplomatic training in United States universities for Chinese foreign affairs staff, and fellowships for Vietnamese, Mongolian and for the first time, a young Indian diplomat. Programs also include support for the Council for Security Cooperation in the Asia Pacific (CSCAP), train-

ing programs in compliance with trade agreements and WTO for Chinese and Vietnamese officials and track II programs on cross-straits relations an d Northeast Asian security.

CONCLUSION

As the preceding examples of our work emphasize, the Foundation is a field-based organization that supports projects in Asia that aim at building the capacity of Asian institutions and supporting reform efforts, while at the same time, maintaining close links with the U.S. foreign policy community. Working through 14 offices in the Asia region, including in China, Hong Kong and Taiwan, with newly established project offices in East Timor and Afghanistan, the Foundation provides vital support to local economic and political reform efforts.

The Foundation is first and foremost a grant making organization. The Foundation has consistently received national recognition for its efficient grant-to-operating expense ratio, reflecting its commitment to maximizing the impact of its programs in Asia, while keeping expenses low. We are not a research organization or an academic institution, nor are we Washington based. We work on the ground in Asia as an accepted, trusted partner and supporter of Asian reform efforts that simultaneously support and reinforce American political, economic and security interests. We also partner in our programs with American and international public and private organizations to leverage our resources, and make investments pay off. Our partnership with The Richard & Rhoda Goldman Fund to support Agency Coordinating Body for Afghan Relief (ACBAR), an Afghan donor coordination organization, and PARSA, which supports projects for women in Afghanistan, is but one example.

Public funding is essential to our mission for many reasons. While the Foundation has made gains in expanding private funding, the flexibility and reliability that public funding lends to the Foundation's efforts are critical. As an organization committed to United States interests in Asia, we can only be successful if potential private donors understand that the U.S. government continues to support our efforts in the region. Furthermore, private funding is almost always tied to specific projects (as are USAID funds for which the Foundation competes) and do not replace public funding, either in scale or flexibility. Moreover, the flexibility afforded by U.S. government appropriated funds enables the Foundation to respond quickly to fast-breaking developments and program opportunities, as demonstrated by our programs related to the referendum in East Timor in 2001 and most recently, needs identified by the Afghan Interim Administration and the United Nations in Afghanistan related to the upcoming Loya Jirga process.

As you and your colleagues know, budget constraints resulted in significant reductions in the Foundation's annual appropriation in fiscal year 1996. The requested $9.44 million for fiscal year 2003 is below the $15 million annual appropriation for the Foundation during the decade prior to 1996. The $15 million level has been authorized consistently by the Congressional authorizers in recent years. We have worked hard to manage our budget, reduce staff and expenditures, increase our efficiency and diversify our funding sources. We have struggled to maintain our regional presence through our offices in Asia, although budget cuts did force closure of the Malaysia office in 1996, and ensured that the maximum possible amount of appropriated funds are dedicated to on-the-ground programs. Nevertheless, this constrained level of funding has limited the Foundation's ability to respond to needs in the region.

In closing, Mr. Chairman, I believe that at this critical time in United States-Asia relations we have the opportunity and the obligation to demonstrate America's strong commitment to working with Asian leaders to assure the security and well being of the people of Asia. Now more than ever, The Asia Foundation's programs represent a positive American response to the challenges facing Asia today, contributing to the development of stable societies and advancing the interests of the United States in the region. At a time of rapid change and uncertainty, additional funding would enable the Foundation to expand its role and its programs to help meet these challenges.

Thank you.

LIST OF WITNESSES, COMMUNICATIONS, AND PREPARED STATEMENTS

SUBJECT INDEX

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OFFICE OF THE SECRETARY

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF STATE

OFFICE OF THE SECRETARY

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