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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2004

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 2799/S. 1585

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004, AND FOR OTHER PURPOSES

Department of Commerce
Department of Justice
Department of State
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 2004

THURSDAY, MARCH 6, 2003

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

The subcommittee met at 9:58 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, Hollings, Leahy, and Kohl.

DEPARTMENT OF STATE

OFFICE OF THE SECRETARY

STATEMENT OF HON. COLIN L. POWELL, SECRETARY OF STATE

OPENING STATEMENT OF SENATOR JUDD GREGG

Senator GREGG. Let me begin by thanking Secretary Powell for taking the time to appear before the Subcommittee on Commerce, State, Justice of the Appropriations Committee, which has the jurisdiction over the State Department appropriations. I offered the Secretary the opportunity of taking a pass on this hearing, given the situation in which we find ourselves right now relative to diplomatic activity. But he was still generous enough to be willing to take some time to come up here, which I do greatly appreciate. And I know Senator Hollings also appreciates his commitment to the process, the appropriations process.

We have said to the Secretary that we will get him out of here on a prompt time frame, certainly no later than 11:30, hopefully even earlier. So we are going to forego opening statements on our part, turn to the Secretary and have his opening statement. And we do have a vote at 10:30. So we may stagger the questioning here. But then we will go to questions.

Mr. Secretary.

OPENING STATEMENT OF SECRETARY POWELL

Secretary POWELL. Well, thank you very much, Mr. Chairman. It is a great pleasure to be back before the committee. I do thank you, also, for giving me a hall pass, if I had needed one today. It is a busy time for us in the diplomatic community. I will be heading up to New York this afternoon to work with my colleagues at the

United Nations. But I really did want to be here because it is also an important part of my job to make sure that I present to the Congress our budget request and then appear to testify for that budget request, because the quality of our diplomacy depends on whether or not we get the support we need for the wonderful men and women of the State Department and for the facilities and other items that we need to make sure we can do our job in the most effective way.

I do have a prepared statement for the record, which I would offer, Mr. Chairman. And I would summarize that very briefly.

Senator GREGG. That will be put in the record.

Secretary POWELL. I am pleased to appear before you to testify in support of the President's International Affairs Budget for fiscal year 2004. The funding request for 2004 for the Department of State, USAID, and other foreign affairs agencies is, overall, $28.5 billion. I have given you a great deal of detail on this request in my written statement. And I hope you will find it useful, as you go through your deliberations.

The President's budget will allow the United States to target security and economic assistance to sustain key countries supporting us in the war on terrorism and helping us to stem the proliferation of weapons of mass destruction. The budget will help us launch the Millennium Challenge Account, a new partnership generating support that will go to countries that rule justly, invest in their people, and encourage economic freedom.

It will also strengthen the United States and global commitment to fighting HIV/AIDS and alleviating human hardships. It will allow us to combat illegal drugs in the Andean Region of South America, as well as bolster democracy in one of that region's most important countries, Colombia.

Finally, it will reinforce America's world-class diplomatic force, focusing on the people, places, and tools needed to promote our foreign policies around the world.

I am particularly proud of that last goal, Mr. Chairman, because, as you know, for the past 2 years I have concentrated on each aspect of my responsibilities, as foreign policy advisor to the President and Chairman and CEO of the Department of State. What you need in a large organization is to have the very best people come in and, once they are in, to take care of them.

So we are asking for your full support of our Diplomatic Readiness Initiative. For 2 years, we have been hiring for the first time in years. We will hire, with this budget request, 399 more professionals to help the President carry out the Nation's foreign policy. This hiring will bring us to the 1,100-plus new Foreign and Civil Service officers we set out to hire when I first came into the job 2-plus years ago.

I thank this committee and I thank the Congress for the support that it has provided, not only for our Diplomatic Readiness Initiative, but also for our overall operating accounts over the last several years.

Second, I promised to bring state-of-the-art communications capability to the Department, because people who cannot communicate rapidly and effectively in today's globalizing world cannot carry out our foreign policy. We are doing very well in that regard

in both unclassified and classified communications capability, including desktop access to the Internet for every man and woman in the Department. We are moving rapidly. We are almost there. The $157 million budget request before you will put us there.

Finally, with respect to my CEO role, I wanted to sweep the slate clean and completely revamp the way we construct our Embassies and other overseas buildings, as well as improve on the manner in which we secure our men and women who occupy those facilities. That last task is a long-term, almost never-ending one, particularly in this time of heightened terrorist activities. But we are well on the way to implementing both the construction and security tasks in a better way, in a less expensive way, and in a way that subsequent CEOs of the Department can continue and improve upon.

I am very happy at the work we have done in Embassy construction and security over the past few years under the leadership of General Williams, who you all have come to know. I need your continued support for the $1.5 billion for Embassy security and construction and the $646 million in D&CP funding for worldwide security upgrades.

Mr. Chairman, as the principal foreign policy advisor to the President, I have budget priorities on that side of my portfolio, as well. So let me highlight a few of our key foreign policy priorities before I stop and take your questions.

I might note that one of the successes of our foreign policy was the Moscow Treaty, which reduced significantly the number of strategic offensive weapons held by the United States and the Russian Federation. That treaty is now on the Senate floor. I hope that it will be acted on promptly. I encourage your support for this treaty. With a little bit of luck and with my fingers crossed, it might even be voted on today, when remaining amendments, proposed amendments, have been dealt with.

The fiscal year 2004 budget proposes several initiatives to advance U.S. national security interests and preserve American leadership. The fiscal year 2004 Foreign Operations budget that funds programs for the Department of State, USAID, and other foreign agencies is $18.8 billion. Today, our number one priority is to fight and win the global war on terrorism. The budget furthers this goal by providing economic, military, and democracy assistance to key foreign partners and allies, including $4.7 billion to those countries that have joined us in the war on terrorism.

Of this amount, the President's budget provides $657 million for Afghanistan, $460 million for Jordan, $395 million for Pakistan, $255 million for Turkey, $136 million for Indonesia, and $87 million for the Philippines. In Afghanistan, the funding will be used to fulfill our commitment to rebuild Afghanistan's road network. In addition, it will help establish security in the country through the creation of a national military, as well as a national police force. Our assistance will establish broad-based and accountable governance throughout democratic institutions in Afghanistan by fostering an active civil society.

I am very pleased at what we have been able to do in Afghanistan over the last 1½ years. Some ask whether the glass is half empty or half full. Well, there is still a long way to go in Afghanistan. But, we should be very proud of what we have been able to

accomplish. President Karzai was here earlier this week, and we had good discussions with him.

When you consider we came from nothing, from zero, from nothing, from a ruined country to a country that now has a representative form of government—they have spoken out for the leader that they want to have as their president. They are getting ready for an election next year. A constitution is well underway. Roads are under construction. Two million refugees have returned. Two million people that have been living in other lands, in Iran, in Pakistan, have voted with their feet for this new country and for the leadership that it is under. They are also counting on our full support to rebuild that country. I think we should be very proud of what we have done.

I also want to emphasize our efforts to decrease threats posed by terrorist groups, rogue states, and other nonstate actors with regards to weapons of mass destruction and related technology. To achieve this goal, we must strengthen partnerships with countries that share our views in dealing with the threat of terrorism and in resolving regional conflicts. The fiscal year 2004 budget requests support for the Nonproliferation and Disarmament Fund. The budget also increases funding for overseas Export Controls and Border Security and supports additional funding for Science Centers and Bio-Chem Redirection Programs.

Funding increases requested for these programs will help us prevent weapons of mass destruction from falling into the hands of terrorist groups or states by preventing their movement across borders and destroying or safeguarding known quantities of weapons or source material.

The fiscal year 2004 budget also promotes international peace and prosperity by launching the most innovative approach to foreign assistance in more than 40 years. The new Millennium Challenge Account, an independent Government corporation funded at $1.3 billion, will redefine development aid. As President Bush told African leaders meeting in Mauritius earlier this year, this aid will go to those nations that encourage economic freedom, root out corruption, put in place the rule of law, respect the rights of their people, and have made a firm commitment to democracy.

Moreover, the President's budget request offers hope and a helping hand to countries facing health catastrophes, poverty and despair, and humanitarian disasters. The budget includes more than $1 billion to meet the needs of refugees and internally displaced peoples.

The fiscal year 2004 budget also provides more than $1.3 billion to combat the global HIV/AIDS epidemic, the worst crisis facing this world. The President's total budget for HIV/AIDS is over $2 billion, which includes the first year's funding for the new emergency plan for HIV/AIDS relief announced by the President in his State of the Union address. This funding will target 14 of the hardest hit countries, especially in Africa and the Caribbean.

The budget also includes almost $500 million for Colombia. This funding will support Colombian President Uribe's unified campaign against terrorists and the drug trade that fuels their activities. The aim is to secure democracy, extend security, and restore economic

prosperity to Colombia, and prevent the narco-terrorists from spreading instability to the broader Andean Region.

Accomplishing these goals requires more than simply funding for Colombia. Therefore, our total Andean Counterdrug Initiative is $731 million. Critical components of this effort include resumption of the Airbridge Denial Program to stop internal and cross-border aerial trafficking in illicit drugs, stepped up eradication and alternative development efforts, and technical assistance to strengthen Colombia's police and judicial institutions.

Mr. Chairman, members of the committee, to advance America's interests around the world, we need the dollars in the President's budget for fiscal year 2004. We need the dollars under both of my hats, as principal foreign policy advisor to the President, as well as CEO of the Department of State.

PREPARED STATEMENT

With that, Mr. Chairman, I will stop and be as responsive as I can to your questions.

[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 the President's International Affairs Budget for fiscal year 2004. Funding requested for fiscal year 2004 for the Department of State, USAID, and other foreign affairs agencies is $28.5 billion.

The President's Budget will allow the United States to:

—Target security and economic assistance to sustain key countries supporting us in the war on terrorism and helping us to stem the proliferation of weapons of mass destruction;

—Launch the Millennium Challenge Account—a new partnership generating support to countries that rule justly, invest in their people, and encourage economic freedom;

—Strengthen the U.S. and global commitment to fighting HIV/AIDS and alleviating humanitarian hardships;

—Combat illegal drugs in the Andean Region of South America, as well as bolster democracy in one of that region's most important countries, Colombia; and

—Reinforce America's world-class diplomatic force, focusing on the people, places, and tools needed to promote our foreign policies around the world.

I am particularly proud of the last bullet, Mr. Chairman, because for the past two years I have concentrated on each of my jobs—primary foreign policy advisor to the President and Chief Executive Officer of the State Department.

Under my CEO hat, we have been reinforcing our diplomatic force for two years and we will continue in fiscal year 2004. We will hire 399 more professionals to help the President carry out the nation's foreign policy. This hiring will bring us to the 1,100-plus new foreign and civil service officers we set out to hire over the first three years to bring the Department's personnel back in line with its diplomatic workload. Moreover, completion of these hires will allow us the flexibility to train and educate all of our officers as they should be trained and educated. So I am proud of that accomplishment and want to thank you for helping me bring it about.

In addition, I promised to bring state-of-the-art communications capability to the Department—because people who can't communicate rapidly and effectively in today's globalizing world can't carry out our foreign policy. We are approaching our goal in that regard as well.

In both unclassified and classified communications capability, including desk-top access to the Internet for every man and woman at State, we are there by the end of 2003. The budget before you will sustain these gains and continue our information technology modernization effort. Finally, with respect to my CEO role, I wanted to sweep the slate clean and completely revamp the way we construct our embassies and other overseas buildings, as well as improve the way we secure our men and women who occupy them. As you well know, that last task is a long-term, almost never-ending one, particularly in this time of heightened terrorist activities. But we are well on the way to implementing both the construction and the security tasks

in a better way, in a less expensive way, and in a way that subsequent CEOs can continue and improve on.

Mr. Chairman, since this subcommittee's oversight responsibilities are primarily concerned with my CEO hat, let me give you key details with respect to these three main priorities, as well as tell you about other initiatives under my CEO hat:

THE CEO RESPONSIBILITIES: STATE DEPARTMENT AND RELATED AGENCIES

The President's fiscal year 2004 discretionary request for the Department of State and Related Agencies is $8.497 billion. The requested funding will allow us to:

—Continue initiatives to recruit, hire, train, and deploy the right work force. The budget request includes $97 million to complete the Diplomatic Readiness Initiative by hiring 399 additional foreign affairs professionals. Foreign policy is carried out through our people, and rebuilding America's diplomatic readiness in staffing will ensure that the Department can respond to crises and emerging foreign policy priorities. This is the third year of funding for this initiative, which will provide a total of 1,158 new staff for the Department of State.

—Continue to put information technology in the service of diplomacy. The budget request includes $157 million to sustain the investments made over the last two years to provide classified connectivity to every post that requires it and to expand desktop access to the Internet for State Department employees. Combined with $114 million in estimated Expedited Passport Fees, a total of $271 million will be available for information technology investments, including beginning a major initiative—SMART—that will overhaul the outdated systems for cables, messaging, information sharing, and document archiving.

—Continue to upgrade and enhance our security worldwide. The budget request includes $646.7 million for programs to enhance the security of our diplomatic facilities and personnel serving abroad and for hiring 85 additional security and support professionals to sustain the Department's Worldwide Security Upgrades program.

—Continue to upgrade the security of our overseas facilities. The budget request includes $1.514 billion to fund major security-related construction projects and address the major physical security and rehabilitation needs of embassies and consulates around the world. The request includes $761.4 million for construction of secure embassy compounds in seven countries and $128.3 million for construction of a new embassy building in Berlin.

—The budget also supports management improvements to the overseas buildings program and the Overseas Building Operations (OBO) long-range plan. The budget proposes a Capital Security Cost Sharing Program that allocates the capital costs of new overseas facilities to all U.S. Government agencies on the basis of the number of their authorized overseas positions. This program will serve two vital purposes: (1) to accelerate construction of new embassy compounds and (2) to encourage Federal agencies to evaluate their overseas positions more carefully. In doing so, it will further the President's Management Agenda initiative to rightsize the official American presence abroad. The modest surcharge to the cost of stationing an American employee overseas will not undermine vital overseas work, but it will encourage more efficient management of personnel and taxpayer funds.

—Continue to enhance the Border Security Program. The budget request includes $736 million in Machine Readable Visa (MRV) fee revenues for continuous improvements in consular systems, processes, and programs in order to protect U.S. borders against the illegal entry of individuals who would do us harm.

—Meet our obligations to international organizations. Fulfilling U.S. commitments is vital to building coalitions and gaining support for U.S. interests and policies in the war against terrorism and the spread of weapons of mass destruction. The budget request includes $1 billion to fund U.S. assessments to 44 international organizations, including $71.4 million to support renewed U.S. membership in the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

—Support obligations to international peacekeeping activities. The budget request includes $550.2 million to pay projected U.N. peacekeeping assessments. These peacekeeping activities ensure continued American leadership in shaping the international community's response to developments that threaten international peace and stability.

Continue 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 $296.9 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 are used to engage, inform, and influence foreign publics and broaden dialogue between American citizens and institutions and their counterparts abroad.

The budget request also includes $345.3 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 establish the trust, confidence, and international cooperation with other countries that sustain and advance the full range of American national interests.

The budget request includes $100 million for education and cultural exchanges for States of the Former Soviet Union and Central and Eastern Europe, which were previously funded under the FREEDOM Support Act and Support for East European Democracy (SEED) accounts.

As a member of the Broadcasting Board of Governors, I want to take this opportunity to highlight to you the BBG's pending budget request for $563.5 million. Funding will advance international broadcasting efforts to support the war on terrorism, including initiation of the Middle East Television Network.

Mr. Chairman, I know that your committee staff will go over this statement with a fine-tooth comb and I know too that they prefer an account-by-account laydown. So here it is:

Diplomatic and Consular Programs (D&CP)

The fiscal year 2004 request for D&CP, the State Department's chief operating account, totals $4.164 billion.

D&CP supports the diplomatic activities and programs that constitute the first line of offense against threats to the security and prosperity of the American people. Together with Machine Readable Visa and other fees, the account funds the operating expenses and infrastructure necessary for carrying out U.S. foreign policy in more than 260 locations around the world.

The fiscal year 2004 D&CP request provides $3.517 billion for ongoing operations—a net increase of $269 million over the fiscal year 2003 level. Increased funding will enable the State Department to advance national interests effectively through improved diplomatic readiness, particularly in human resources.

The request completes the Department's three-year Diplomatic Readiness Initiative to put the right people with the right skills in the right place at the right time. New D&CP funding in fiscal year 2004 of $97 million will allow the addition of 399 professionals, providing a total of 1,158 new staff from fiscal year 2002 through fiscal year 2004.

The fiscal year 2004 D&CP request also provides $646.7 million for Worldwide Security Upgrades—an increase of $97.3 million over last year. This total includes $504.6 million to continue worldwide security programs for guard protection, physical security equipment and technical support, information and system security, and security personnel and training. It also includes $43.4 million to expand the perimeter security enhancement program for 232 posts and $98.7 million for improvements in domestic and overseas protection programs, including 85 additional agents and other security professionals.

Capital Investment Fund (CIF)

The fiscal year 2004 request provides $157 million for the CIF to assure that the investments made in fiscal year 2002 and fiscal year 2003 keep pace with increased demand from users for functionality and speed.

Requested funding includes $15 million for the State Messaging and Archive Retrieval Toolset (SMART). The SMART initiative will replace outdated systems for cables and messages with a unified system that adds information sharing and document archiving.

Embassy Security, Construction, and Maintenance (ESCM)

The fiscal year 2004 request for ESCM is $1.514 billion. This total—an increase of $259.1 million over the fiscal year 2003 level—reflects the Administration's continuing commitment to protect U.S. Government personnel serving abroad, improve the security posture of facilities overseas, and address serious deficiencies in the State Department's overseas infrastructure.

For the ongoing ESCM budget, the Administration is requesting $524.7 million. This budget includes maintenance and repairs at overseas posts, facility rehabilitation projects, construction security, renovation of the Harry S Truman Building, all activities associated with leasing overseas properties, and management of the overseas buildings program.

For Worldwide Security Construction, the Administration is requesting $761.4 million for the next tranche of security-driven construction projects to replace high-

risk facilities. Funding will support the construction of secure embassies in seven countries—Algeria, Burma, Ghana, Indonesia, Panama, Serbia, and Togo. In addition, the requested funding will provide new on-compound buildings for USAID in Ghana, Jamaica, and Nigeria.

The ESCM request includes $100 million to strengthen compound security at vulnerable posts.

The request also includes $128.3 million to construct the new U.S. embassy building in Berlin.

Educational and Cultural Exchange Programs (ECE)

The fiscal year 2004 request of $345.3 million for ECE maintains funding for exchanges at the fiscal year 2003 level of $244 million and adds $100 million for projects for Eastern Europe and the States of the Former Soviet Union previously funded from Foreign Operations appropriations.

Authorized by the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), as amended, exchanges are strategic activities that build mutual understanding and develop friendly relations between the United States and other countries. They establish the trust, confidence, and international cooperation necessary to sustain and advance the full range of U.S. national interests.

The request provides $141 million for Academic Programs. These include the J. William Fulbright Educational Exchange Program for exchange of students, scholars, and teachers and the Hubert H. Humphrey Fellowship Program for academic study and internships in the United States for mid-career professionals from developing countries.

The request also provides $73 million for Professional and Cultural Exchanges. These include the International Visitor Program, which supports travel to the United States by current and emerging leaders to obtain firsthand knowledge of American politics and values, and the Citizen Exchange Program, which partners with U.S. non-profit organizations to support professional, cultural, and grassroots community exchanges.

This request provides $100 million for exchanges funded in the past from the FREEDOM Support Act (FSA) and Support for East European Democracy (SEED) accounts.

This request also provides $31 million for exchanges support. This is a straight-line projection of the fiscal year 2003 level.

Contributions to International Organizations (CIO)

The fiscal year 2004 request for CIO of $1.010 billion provides funding for U.S. assessed contributions, consistent with U.S. statutory restrictions, to 44 international organizations to further U.S. economic, political, social, and cultural interests.

The request recognizes U.S. international obligations and reflects the President's commitment to maintain the financial stability of the United Nations and other international organizations that include the World Health Organization, the North Atlantic Treaty Organization, the International Atomic Energy Agency, and the Organization for Economic Cooperation and Development.

The budget request provides $71.4 million to support renewed U.S. membership in the United Nations Educational, Scientific, and Cultural Organization (UNESCO). UNESCO contributes to peace and security in the world by promoting collaboration among nations through education, science, culture and communication and by furthering intercultural understanding and universal respect for justice, rule of law, human rights, and fundamental freedoms, notably a free press.

Membership in international organizations benefits the United States by building coalitions and pursuing multilateral programs that advance U.S. interests. These include promoting economic growth through market economies; settling disputes peacefully; encouraging non-proliferation, nuclear safeguards, arms control, and disarmament; adopting international standards to facilitate international trade, telecommunications, transportation, environmental protection, and scientific exchange; and strengthening international cooperation in agriculture and health.

Contributions for International Peacekeeping Activities (CIPA)

The administration is requesting $550.2 million for CIPA in fiscal year 2004. This funding level will allow the United States to pay its share of assessed U.N. peacekeeping budgets, fulfilling U.S. commitments and avoiding increased U.N. arrears.

The U.N. peacekeeping appropriation serves U.S. interests in Europe, Africa and the Middle East, where U.N. peacekeeping missions assist in ending conflicts, restoring peace and strengthening regional stability.

U.N. peacekeeping missions leverage U.S. political, military and financial assets through the authority of the U.N. Security Council and the participation of other states that provide funds and peacekeepers for conflicts around the world.

Broadcasting Board of Governors (BBG)

The fiscal year 2004 budget request for the BBG totals $563.5 million.

The overall request provides $525.2 million for U.S. Government non-military international broadcasting operations through the International Broadcasting Operations (IBO) account. This account funds operations of the Voice of America (VOA), Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia (RFA), and all related program delivery and support activities.

The IBO request includes funding to advance broadcasting efforts related to the war on terrorism. The request includes $30 million to initiate the Middle East Television Network—a new Arabic-language satellite TV network that, once operational, will have the potential to reach vast audiences in the Middle East. The request also includes funding to double VOA Indonesian radio programming, significantly increase television programming in Indonesia, and expand BBG audience development efforts.

The IBO request reflects the shifting of priorities away from the predominantly Cold War focus on Central and Eastern Europe to broadcasting in the Middle East and Central Asia. Funds are being redirected to programs in these regions through the elimination of broadcasting to countries in the former Eastern Bloc that have demonstrated significant advances in democracy and press freedoms and are new or soon-to-be NATO and European Union Members.

The IBO request also reflects anticipated efficiencies that achieve a five-percent reduction in funding for administration and management in fiscal year 2004.

The fiscal year 2004 request also provides $26.9 million through Broadcasting to Cuba (OCB) for continuing Radio Marti and TV Marti operations, including salary and inflation increases, to support current schedules.

The fiscal year 2004 request further provides $11.4 million for Broadcasting Capital Improvements to maintain the BBG's worldwide transmission network. The request includes $2.9 million to maintain and improve security of U.S. broadcasting transmission facilities overseas.

That finishes the State and Related Agencies part of the President's Budget. But before I stop and take your questions, let me give you an overview of the rest of our budget for fiscal year 2004, the Foreign Affairs part. You are all members of the larger Appropriations Committee and, in that capacity, I hope that you will strongly support this part of our budget also.

FOREIGN POLICY ADVISOR RESPONSIBILITIES: FUNDING AMERICA'S DIPLOMACY AROUND THE WORLD

The fiscal year 2004 budget proposes several initiatives to advance U.S. national security interests and preserve American leadership. The fiscal year 2004 Foreign Operations budget that funds programs for the Department of State, USAID and other foreign affairs agencies is $18.8 billion. Today, our number one priority is to fight and win the global war on terrorism. The budget furthers this goal by providing economic, military, and democracy assistance to key foreign partners and allies, including $4.7 billion to countries that have joined us in the war on terrorism.

The budget also promotes international peace and prosperity by launching the most innovative approach to U.S. foreign assistance in more than forty years. The new Millennium Challenge Account (MCA), an independent government corporation funded at $1.3 billion will redefine "aid". As President Bush told African leaders meeting in Mauritius recently, this aid will go to "nations that encourage economic freedom, root out corruption, and respect the rights of their people."

Moreover, this budget offers hope and a helping hand to countries facing health catastrophes, poverty and despair, and humanitarian disasters. It provides $1.345 billion to combat the global HIV/AIDS epidemic, more than $1 billion to meet the needs of refugees and internally displaced peoples, $200 million in emergency food assistance to support dire famine needs, and $100 million for an emerging crises fund to allow swift responses to complex foreign crises. Mr. Chairman, let me give you some details.

The United States is successfully prosecuting the global war on terrorism on a number of fronts. We are providing extensive assistance to states on the front lines of the anti-terror struggle. Working with our international partners bilaterally and through multilateral organizations, we have frozen more than $110 million in terrorist assets, launched new initiatives to secure global networks of commerce and communication, and significantly increased the cooperation of our law enforcement

and intelligence communities. Afghanistan is no longer a haven for al-Qaeda. We are now working with the Afghan Authority, other governments, international organizations, and NGOs to rebuild Afghanistan. Around the world we are combating the unholy alliance of drug traffickers and terrorists who threaten the internal stability of countries. We are leading the international effort to prevent weapons of mass destruction from falling into the hands of those who would do harm to us and others. At the same time, we are rejuvenating and expanding our public diplomacy efforts worldwide.

Assistance to Frontline States

The fiscal year 2004 International Affairs budget provides approximately $4.7 billion in assistance to the Frontline States, which have joined with us in the war on terrorism. This funding will provide crucial assistance to enable these countries to strengthen their economies, internal counter-terrorism capabilities and border controls.

Of this amount, the President's Budget provides $657 million for Afghanistan, $460 million for Jordan, $395 million for Pakistan, $255 million for Turkey, $136 million for Indonesia, and $87 million for the Philippines. In Afghanistan, the funding will be used to fulfill our commitment to rebuild Afghanistan's road network; establish security through a national military and national police force, including counter-terrorism and counter-narcotics components; establish broad-based and accountable governance through democratic institutions and an active civil society; ensure a peace dividend for the Afghan people through economic reconstruction; and provide humanitarian assistance to sustain returning refugees and displaced persons. United States assistance will continue to be coordinated with the Afghan government, the United Nations, and other international donors.

The State Department's Anti-Terrorism Assistance (ATA) program will continue to provide frontline states a full complement of training courses, such as a course on how to conduct a post-terrorist attack investigation or how to respond to a WMD event. The budget will also fund additional equipment grants to sustain the skills and capabilities acquired in the ATA courses. It will support as well in-country training programs in Afghanistan, Pakistan, and Indonesia.

Central Asia and Freedom Support Act Nations

In fiscal year 2004, over $157 million in Freedom Support Act (FSA) funding will go to assistance programs in the Central Asian states. The fiscal year 2004 budget continues to focus FSA funds to programs in Uzbekistan, Kyrgyzstan and Tajikistan, recognizing that Central Asia is of strategic importance to U.S. foreign policy objectives. The fiscal year 2004 assistance level for Uzbekistan, Kyrgyzstan and Tajikistan is 30 percent above 2003. Assistance to these countries has almost doubled from pre-September 11th levels. These funds will support civil society development, small business promotion, conflict reduction, and economic reform in the region. These efforts are designed to promote economic development and strengthen the rule of law in order to reduce the appeal of extremist movements and stem the flow of illegal drugs that finance terrorist activities.

Funding levels and country distributions for the FSA nations reflect shifting priorities in the region. For example, after more than 10 years of high levels of assistance, it is time to begin the process of graduating countries in this region from economic assistance, as we have done with countries in Eastern Europe that have made sufficient progress in the transition to market-based democracies. U.S. economic assistance to Russia and Ukraine will begin phasing down in fiscal year 2004, a decrease of 32 percent from 2003, moving these countries towards graduation.

Combating Illegal Drugs and Stemming Narco-terrorism

The President's request for $731 million for the Andean Counterdrug Initiative includes $463 million for Colombia. An additional $110 million in military assistance to Colombia will support Colombian President Uribe's unified campaign against terrorists and the drug trade that fuels their activities. The aim is to secure democracy, extend security, and restore economic prosperity to Colombia and prevent the narco-terrorists from spreading instability to the broader Andean region. Critical components of this effort include resumption of the Airbridge Denial program to stop internal and cross-border aerial trafficking in illicit drugs, stepped up eradication and alternative development efforts, and technical assistance to strengthen Colombia's police and judicial institutions.

Halting Access of Rogue States and Terrorists to Weapons of Mass Destruction

Decreasing the threats posed by terrorist groups, rogue states, and other non-state actors requires halting the spread of weapons of mass destruction (WMD) and related technology. To achieve this goal, we must strengthen partnerships with

countries that share our views in dealing with the threat of terrorism and resolving regional conflicts.

The fiscal year 2004 budget requests $35 million for the Nonproliferation and Disarmament Fund (NDF), more than double the fiscal year 2003 request, increases funding for overseas Export Controls and Border Security (EXBS) to $40 million, and supports additional funding for Science Centers and Bio-Chem Redirection Programs.

Funding increases requested for the NDF and EXBS programs seek to prevent weapons of mass destruction from falling into the hands of terrorist groups or states by preventing their movement across borders and destroying or safeguarding known quantities of weapons or source material. The Science Centers and Bio-Chem Redirection programs support the same goals by engaging former Soviet weapons scientists and engineers in peaceful scientific activities, providing them an alternative to marketing their skills to states or groups of concern.

Millennium Challenge Account

The fiscal year 2004 Budget request of $1.3 billion for the new Millennium Challenge Account (MCA) as a government corporation fulfills the President's March 2002 pledge to create a new bilateral assistance program, markedly different from existing models. This budget is a huge step towards the President's commitment of $5 billion in annual funding for the MCA by 2006, a 50 percent increase in core development assistance.

The MCA supplement U.S. commitments to humanitarian assistance and existing development aid programs funded and implemented by USAID. It will assist developing countries that make sound policy decisions and demonstrate solid performance on economic growth and reducing poverty.

—MCA funds will go only to selected developing countries that demonstrate a commitment to sound policies—based on clear, concrete and objective criteria. To become eligible for MCA resources, countries must demonstrate their commitment to economic opportunity, investing in people, and good governance.

—Resources will be available through agreements with recipient countries that specify a limited number of clear measurable goals, activities, and benchmarks, and financial accountability standards.

The MCA will be administered by a new government corporation designed to support innovative strategies and to ensure accountability for measurable results. The corporation will be supervised by a Board of Directors composed of Cabinet level officials and chaired by the Secretary of State. Personnel will be drawn from a variety of government agencies and non-government institutions and serve limited-term appointments.

In fiscal year 2004, countries eligible to borrow from the International Development Association (IDA), and which have per capita incomes below $1,435, (the historical IDA cutoff) will be considered. In 2005, all countries with incomes below $1,435 will be considered. In 2006, all countries with incomes up to $2,975 (the current World Bank cutoff for lower middle income countries) will be eligible.

The selection process will use 16 indicators to assess national performance—these indicators being relative to governing justly, investing in people, and encouraging economic freedom. These indicators were chosen because of the quality and objectivity of their data, country coverage, public availability, and correlation with growth and poverty reduction. The results of a review of the indicators will be used by the MCA Board of Directors to make a final recommendation to the President on a list of MCA countries.

The U.S.-Middle East Partnership Initiative

The President's Budget includes $145 million for the Middle East Partnership Initiative (MEPI). This initiative gives us a framework and funding for working with the Arab world to expand educational and economic opportunities, empower women, and strengthen civil society and the rule of law. The peoples and governments of the Middle East face daunting human challenges. Their economies are stagnant and unable to provide jobs for millions of young people entering the workplace each year. Too many of their governments appear closed and unresponsive to the needs of their citizens. And their schools are not equipping students to succeed in today's globalizing world. With the programs of the MEPI, we will work with Arab governments, groups, and individuals to bridge the jobs gap with economic reform, business investment, and private sector development; close the freedom gap with projects to strengthen civil society, expand political participation, and lift the voices of women; and bridge the knowledge gap with better schools and more opportunities for higher education. The U.S.-Middle East Partnership Initiative is an investment in a more stable, peaceful, prosperous, and democratic Arab world.

Fighting the Global AIDS Pandemic

The fiscal year 2004 budget continues the Administration's commitment to combat HIV/AIDS and to help bring care and treatment to infected people overseas. The HIV/AIDS pandemic has killed 23 million of the 63 million people it has infected to date, and left 14 million orphans worldwide. President Bush has made fighting this pandemic a priority of U.S. foreign policy.

The President believes the global community can—and must—do more to halt the advance of the pandemic, and that the United States should lead by example. Thus, the President's fiscal year 2004 budget request signals a further, massive increase in resources to combat the HIV/AIDs pandemic. As described in the State of the Union, the President is committing to provide a total of $15 billion over the next five years to turn the tide in the war on HIV/AIDs, beginning with $2.0 billion in the fiscal year 2004 budget request and rising thereafter. These funds will be targeted on the hardest hit countries, especially Africa and the Caribbean with the objective of achieving dramatic on-the-ground results. This new dramatic commitment is reflected in the Administration's $2.0 billion fiscal year 2004 budget request, which includes:

—State Department—$450 million;

—USAID—$895 million, including $100 million for the Global Fund and $150 million for the International Mother & Child HIV Prevention; and

—HHS/CDC/NIH—$690 million, including $100 million for the Global Fund and $150 million for the International Mother & Child HIV Prevention.

In order to ensure accountability for results, the President has asked me to establish at State a new Special Coordinator for International HIV/AIDS Assistance. The Special Coordinator will work for me and be responsible for coordinating all international HIV/AIDS programs and efforts of the agencies that implement them.

Hunger, Famine, and Other Emergencies

Food Aid.—Historically the United States has been the largest donor of assistance for victims of protracted and emergency food crises. In 2003, discretionary funding for food aid increased from $864 million to $1.19 billion. That level will be enhanced significantly in 2004 with two new initiatives: a Famine Fund and an emerging crises fund to address complex emergencies.

—*Famine Fund*.—The fiscal year 2004 budget includes a new $200 million fund with flexible authorities to provide emergency food, grants or support to meet dire needs on a case-by-case basis. This commitment reflects more than a 15 percent increase in U.S. food assistance.

—*Emerging Crises Fund*.—The budget also requests $100 million for a new account that will allow the Administration to respond swiftly and effectively to prevent or resolve unforeseen complex foreign crises. This account will provide a mechanism for the President to support actions to advance American interests, including to prevent or respond to foreign territorial disputes, armed ethnic and civil conflicts that pose threats to regional and international peace and acts of ethnic cleansing, mass killing and genocide.

SUMMARY

Mr. Chairman, members of the committee, to advance America's interests around the world we need the dollars in the President's Budget for fiscal year 2004. We need the dollars under both of my hats—CEO and principal foreign policy advisor. The times we live in are troubled to be sure, but I believe there is every bit as much opportunity in the days ahead as there is danger. American leadership is essential to dealing with both the danger and the opportunity. With regard to the Department of State, the President's fiscal year 2004 budget is crucial to the exercise of that leadership.

Thank you and I will be pleased to answer your questions.

REMARKS OF SENATOR GREGG

Senator GREGG. Thank you, Mr. Secretary, for that statement.

Let me begin by saying that we have enjoyed working with you and your Department. I know that Senator Hollings, who I succeeded as chair here, has aggressively pursued many of the initiatives which you have outlined in his original remarks. And I intend to continue Senator Hollings' processes there, initiatives in the area, for example, of gearing up the Diplomatic Corps. We will certainly be funding that.

One of my other concerns is the Consular Affairs area. We have to not only gear up and give the Consular Affairs folks status, but we also have to give them decent working places, so that when people come into our Embassies, they feel comfortable and not as though they are being treated as second class individuals. They should have a nice atmosphere. And I think that this will help the visa process, also.

And I also am concerned about protecting our people overseas, not only the Foreign Service Officers and Consular Affairs folks, but their families, especially at places where they naturally congregate, such as American schools. As you know, we put $15 million into the budget to address that. And we are looking for other ideas that the Department may have in that area specifically.

I want to congratulate General Williams for his efforts. I believe that after a number of years of out-of-control costs, driven in large part by a need to respond to very serious security issues at our Embassies, the issue is being aggressively and effectively addressed by General Williams.

I would say this, however: I am concerned that we are building fortresses that have no architectural identity with the communities that they are in. And I hope that in obtaining security that we will not leave behind the importance of having American presence that does not look like a fortress, that our buildings start to take on some architectural identity with the countries that they are in. I think I would like to get into that issue, but not at this time.

What I would like to address now is a couple more larger issues which are current to the period. Let me read you a couple quotes from Osama bin Laden. In a Time magazine article on the issue of weapons of mass destruction, Osama bin Laden stated, "Acquiring weapons for the defense of Muslims is a religious duty. If I have indeed acquired these weapons, then I thank God for enabling me to do so. And if I seek to acquire these weapons, I am carrying out a duty. It would be a sin for Muslims not to try to possess weapons that would prevent infidels from inflicting harm on Muslims."

He went on to say in another quote, "We, with Allah's help, call on every Muslim who believes in Allah and wishes to be rewarded to comply with Allah's orders to kill the Americans and to plunder their money wherever and whenever they find it. The ruling to kill the Americans and their allies, civilians and military, is an individual duty of every Muslim who can do it in any country which it is possible to do it in."

What, today, is to stop Saddam Hussein from delivering to this criminal individual, who has already participated in the murder of thousands of Americans, those weapons of mass destruction?

SADDAM HUSSEIN AND WEAPONS

Secretary POWELL. Nothing is prepared to stop him today, if he chooses to do so. We want to take away his option of doing so by disarming the Iraqi regime and Saddam Hussein. The chilling words you just read, Mr. Chairman, are from somebody who is committed to strike us again and again and again; let there be no doubt about it, he will use airplanes filled with fuel. He will use

car bombs. As he said in those quotations, if he had weapons of mass destruction, he would use them.

Should there be a doubt in anyone's mind that if Osama bin Laden or other terrorists like Osama bin Laden had access to chemical or biological or nuclear weapons, they would use them? If there was a doubt in anyone's mind, that doubt should have been erased on 9/11. That is why after 9/11 we realized the nature of the conflict we were now in. We had to deal with the Taliban in Afghanistan. We had to break up al-Qaeda. You saw the recent arrest over the weekend of the gentleman who was the brains of the organization that struck us on 9/11. We have to go after not only these individuals, but also the potential sources of their weaponry.

That is why we redoubled our effort in making it clear to the United Nations that we could no longer allow its resolutions to be ignored with respect to Iraq, a known developer of weapons of mass destruction. That is why the moment we find ourselves in now is a critical moment, where we are being tested and where the Security Council, the United Nations, and the international community are being tested. Are we going to allow an individual, such as Saddam Hussein, to continue to develop these weapons of mass destruction or deceive us into believing that he is not, when we know he is, because it is too hard to face the consequences of dealing with the truth, and face a situation some years from now when Osama bin Laden has accomplished the goal he laid out in those statements, and he has such a weapon, and he got it from Iraq?

We must go after these countries, these rogue nations, that proliferate and are led by leaders who would strike us and who have shown in the past they will strike their own neighbors, strike their own people, do anything to stay in power and pursue their own agenda. That is the argument I will be taking to the United Nations this afternoon. This is the time to deal with this kind of threat, not after we have seen thousands of people die as a result of the use of one of these horrible weapons. We cannot allow ourselves to be deterred by false claims that "It is all okay. He is complying," when he is not complying but merely deceiving the international community and trying to keep us from doing what we said we would be prepared to do last October—excuse me—November, when we passed Resolution 1441.

Senator GREGG. Thank you. And I want to congratulate you and the President for pursuing that policy, because I think it should be obvious to all people, whether we wish to admit it or not, that we are dealing with a fundamentally evil individual, not only in Saddam Hussein, but in Osama bin Laden, obviously, and that the coalescence or the convergence of those two forces represents a clear, present, and immediate threat to the United States.

My time is up, and I yield to the ranking member.

VICTORY IN IRAQ

Senator HOLLINGS. Mr. Secretary, I support you, support your budget. I have some questions about Colombia and General Williams, the Embassy there at Berlin.

This cost sharing proposal and the funding request for USAID buildings—the Foreign Operations Subcommittee ranking member Senator Leahy will be back momentarily—but I cannot get any

money back from him. So we have opposed our State Department budget funding buildings under another subcommittees' jurisdiction.

Having said that, I am reading here, I am listening to our President before the American Enterprise Institute, of a regime change. I am hearing you yesterday afternoon. And then I am reading yesterday morning, and I quote, "General Meyers also said disarming Iraq would define victory, not capturing or killing President Saddam Hussein." Is General Meyers correct?

Secretary POWELL. All of the statements that you made reference to and the positions you made reference to are correct.

Senator HOLLINGS. Well, that means then you believe we have to remove Saddam Hussein, is that not right?

Secretary POWELL. Well, in 1998, the previous administration and the Congress believed that the only way——

Senator HOLLINGS. I am not questioning that.

Secretary POWELL. No, no. I just need——

Senator HOLLINGS. I have read——

Secretary POWELL. Yes, I am going to come to our position. But the Congress and the administration at that time, in the face of the intransigence of Saddam Hussein, his unwillingness to disarm as a result of previous U.N. resolutions, made a judgment that we could not solve this problem with that regime in place. So regime change in 1998 became the policy of President Clinton's administration. It was to some extent, I think to a large extent, endorsed by the Congress in laws that were passed at that time.

When we came into office, we worked to see if there was some other way of disarming Saddam Hussein. We modified and strengthened the sanctions policies, so that it was not hurting the Iraqi people. We worked with our friends and allies to see if there was some way to disarm him. We finally got to the point where Resolution 1441 was passed. Resolution 1441 passed unanimously. It has as its goal the disarmament of Iraq.

However, what we have seen since 1441 was passed is that Saddam Hussein has still not made that strategic choice to disarm and allow the inspectors to verify that he is disarming. So we are reaching the point that was reached by others in 1998, such that it appears the only way perhaps to get him to disarm is to remove the regime and disarm that nation of its weapons of mass destruction.

But even at this late date, it is possible to find a peaceful solution, if Saddam Hussein and the Iraqi regime would do what it has been asked to do by the international community for all these many years. But we do not take off the table, of course, the option of forcible removal of the regime. We have a large number of American troops that are assembled there to do that.

But it is the disarmament that is the principal objective. I think that is the point that General Meyers was trying to make, when he said the regime will be removed. But whatever happens to Saddam Hussein, whether he goes into exile or into irrelevance, we will have a better situation in Iraq when those weapons of mass destruction are gone.

REMOVING SADDAM HUSSEIN

Senator HOLLINGS. Well, you and I would agree in a second that if you removed all the weapons of mass destruction in the next hour, you would still have to remove Saddam. You could not just pick up and then leave with General Meyers and say, "The job is done." I mean, that fellow would start building bombs all over again. So I guess you and I agree that removing Saddam Hussein is the mission.

You used the expression "better way, less expensive way," in order to remove him. I was never worried for the last 10, 12 years about any imminent threat from Saddam. We have what you and I know as the AMLR, the best force, Israel, right there. They do not have the luxury of calling up and getting a meeting with the United Nations or asking for monitors. They have to act in self-defense. And so if there is any imminent threat really, they would knock it out by 10:30 or 11:00 o'clock this morning, I can tell you that.

Knowing that, and you used the expression in your major testimony there about "a better way, a less expensive way." Rather than starting a war and all of these other things to remove him, Mossad would know where he is. Why not get a hit team and get rid of him? Why start a war in order to do it?

Secretary POWELL. Because I am not sure anybody really knows where he is. It is easy to say. It is much more difficult to do. I cannot tell you what Mossad or any other intelligence agency knows or does not know. This is a man who has spent the last 30 years putting in place a security system that has as its sole purpose to keep him in place. The suggestion that if there was imminent danger, everybody would know where it is and could hit it by 10:30 this morning, I think, is not quite the case.

His capabilities are well dispersed. They are hidden. They are not easy to find. He has had decades of experience in hiding his activities and diverting the attention of those who are looking for his prohibited activities.

Senator HOLLINGS. Well, the 3,000 missiles in this same story that are precision guided, are they guided against Saddam?

Secretary POWELL. I do not know of any way to guide against a particular individual.

Senator HOLLINGS. Are those military targets alone? Is that your answer, just the 3,000 missiles?

Secretary POWELL. No. My answer is that I do not discuss targeting that might be conducted by our military authorities. In the old days, I used to.

Senator HOLLINGS. You were the chairman.

Secretary POWELL. But now I do not. I think it is unwise to do.

Senator HOLLINGS. But you know where they are guided. You can discuss them. I mean, we have to get the guy. You have to hit the palaces, as well as the command and control. You know what I mean. Hit a few Scud sites. In fact, if you have any good precision guided ones, why not tell the inspectors and let them take them up?

Secretary POWELL. The inspectors do not view as their role to be part of the U.S. targeting system. If we keep saying all we have

to do is hit the palaces, I can assure you that the place Saddam Hussein will not be in is one of his palaces.

Senator HOLLINGS. And you do not think——

Secretary POWELL. I do not think he is as targetable as it is often suggested. He is a survivor. He is aware of our capability. I am sure he is doing everything he can to assure his personal survival.

Senator HOLLINGS. Being a survivor, there would be nothing wrong, if we knew to hit him. In other words, when we hit that automobile full of terrorists down in Yemen, we announced publicly—I would not have announced it, but they did, and said terrorists. In a terrorism war, terrorist open season, they are combatants. And we can hit them anywhere we can find them.

So I take it there would be nothing wrong with trying to hit Saddam with one of those missiles; would there be?

Secretary POWELL. If we were in armed conflict, which we may well find ourselves in, then——

Senator HOLLINGS. As I understand it, excuse me, but we are in armed conflict. The President announced, said, "We are in a terrorism war." And in a terrorism war, terrorists are combatants. And therefore, you can kill them. That is how he justified killing those people down there in Yemen.

So we have described Saddam in every way possible, including as a terrorist. So you could go ahead and hit him, could you not?

Secretary POWELL. I, frankly, do not want to talk about targeting, who might be targeted, or who might not be targeted at an open hearing like this, Senator.

Senator HOLLINGS. Well, you can see what I am getting at. You do not want to level Baghdad to get him. I mean, how do we get to victory, according to General Meyers——

Secretary POWELL. We have no intention of—we are not going to level Baghdad.

DEFINING VICTORY IN IRAQ

Senator HOLLINGS. I agree; we are not going to level Baghdad. So what is going to define victory, other than getting him?

Secretary POWELL. Defining victory will be a disarmed Iraq. If it is done peacefully, with no invasion and no military action required, it would be an Iraqi regime that has foresworn these weapons of mass destruction and done so in a way that there is reason to believe them. It is hard to imagine believing them right now. If there is a military conflict, it will require a change in that regime, because they have demonstrated they will not change otherwise, and the disarming of the country's weapons of mass destruction, putting in place a better government for the people of Iraq.

This has been a terrible government for 30 years. It has squandered the wealth of the nation on weapons of mass destruction. It is all about the survival of one individual and his cohorts in this one regime. The people of Iraq will be a lot better off when their weapons of mass destruction are no longer cause for the rest of the world to be concerned about. If it takes the removal of the regime to do it, because we cannot find a peaceful way, then that is what we are prepared to do.

Senator HOLLINGS. Senator Kohl, I recognize you. And I am going to leave to vote, too. And the chairman is coming back, and——

Senator LEAHY. I believe that I was really here first.

Senator HOLLINGS. You were here first? Excuse me then. Very good. Excuse me, Senator Leahy. But the distinguished Secretary has to leave no later than 11:30.

Senator LEAHY. Thank you, Senator Hollings. I understand we were doing the early bird rule.

CURRENT SITUATION IN IRAQ

And I am sorry that I had to step out earlier, Mr. Secretary. We have one of these judicial confirmation matters that come up periodically on the floor of the Senate. And I was involved in that. So I had to drop by.

I understand you are going to the United Nations. I am glad you could take the time to come here. I appreciate that all the years I have known you, both in the military and now in this, you have always been responsive to consulting with the Congress. I think it has helped your cause, but it has certainly helped our understanding. And I do appreciate that.

I also appreciate the money that you have helped get in the bill for food aid to starving people in Sub-Saharan Africa. For that, some of us have been fighting for this for years.

Now having said that, let me ask you this: A question I get in hundreds of letters, sometimes thousands of e-mails from my little State of Vermont, is "How has it come to this?" They are speaking of Iraq, of course.

When my wife and I go home on weekends, I go in the grocery store. I get asked this question from everybody from the people stocking the shelves to customers. I get to my house in Vermont. People are calling, asking me the same question.

In the immediate aftermath of September 11, we had hundreds of thousands of Germans in Berlin marching in support of the United States. We had Le Monde in France declaring "We're all Americans." We had unprecedented international cooperation in our war against al-Qaeda, including the use of force in Afghanistan. Now we have deep divisions within the Security Council. Some of our closest allies raise serious questions about our effort to launch a war immediately.

Saddam Hussein is one of the world's worst tyrants. He is a war criminal. He is a despicable, dangerous despot. There is no question that in a war crimes tribunal he could be convicted of heinous crimes. The United States is a country that stands for freedom, democracy, and human rights. We stand for making the world a safer place.

But if that case is so clear, why are Russia, China, Germany, France, and a dozen other nations saying we are making a grave mistake by not giving the U.N. inspectors more time? Turkey, which is swimming in debt, turns down our offer of billions of dollars. We are threatening to go to war without a Security Council resolution. We are causing deep divisions among ourselves and within NATO. I have visited with NATO leaders, and the United Nations. How did it come to this?

Secretary POWELL. One of the reasons we are here is because——

Senator LEAHY. What do I say to Vermonters? What do I say to Vermonters who ask me that question?

HISTORY REGARDING REGIME CHANGE IN IRAQ

Secretary POWELL. We are here because the international community has refused to deal with this tyrant, who has all the traits and attributes that you mentioned earlier. He is a dictator. He has more than oppressed his own people; he has allowed rape and murder and all kinds of terrible crimes to occur within his country.

He is not the only one in the world like that. What makes him different is he also has been developing weapons of mass destruction; there is no question about it. He has had the intent to do so, and he has developed them. He has used them in a way that no other modern leader has used such weapons, against his neighbors and against his people.

The international community made a judgment, beginning back in 1991, that this was unacceptable and that he had to be disarmed. He had to give up these weapons. For 11 years, the international community kept passing resolutions and did nothing about it.

This administration came into office determined to do something about it, to see whether that behavior could be changed. We came into office with a strong position from the previous administration that this regime had to be changed, if it would not change itself. We worked with the United Nations to get them to realize the simple reality that this was a dangerous regime and that something had to be done.

What really brought it into focus was 9/11, when it became clear, as you heard from Senator Gregg earlier, that we have people out there who would do anything to get their hands on the kinds of weapons that Saddam Hussein is developing. Now some argue back, "Yes, but you cannot prove that kind of a nexus between al-Qaeda and Saddam Hussein. Yes, you have some evidence, but it is not good enough proof."

Well, we do not want to wait around until the proof is ready for a court of law, to say, "But we have already seen chemical or biological weapons made in Iraq show up somewhere in New York or in Vermont." So we believe this was the time to deal with this. We got the United Nations to agree with a 15–0 vote in the Security Council in early November. All members agreed that Saddam Hussein was guilty. He was in material breach, stayed in material breach. This is the time for the Iraqi regime to change, immediately, unconditionally, right now. Inspectors will help verify the disarmament. If Saddam Hussein did not disarm this time, there would be serious consequences. Everybody who voted for that knew what that meant. It meant that if the Iraqi regime did not comply, there would be a war.

There were some at that time who were already beginning to say, "Well, good. We have bought some time and then we will buy some more time and some more time. Then this whole thing will go away."

STATUS OF ALLY SUPPORT

Senator LEAHY. Is that what our allies are doing? Is that what Germany is doing? Is that what France is doing? Is that what China is doing? Is that what——

Secretary POWELL. Yes. It is what some of our allies are doing. But some of our allies, like the United Kingdom, Spain, Italy, Portugal, the newly emerging nations of Eastern Europe, and Australia, are standing up with us and standing up strongly.

We have most of these European nations standing up strongly, even in the face of public opinion that is in the other direction. The new Turkish government, not fully installed yet, went to their parliament and asked and lost just by a couple of votes. As you heard yesterday, Mr. Erdogan and Turkish general staff leaders said, "We have to go back to our parliament, because it is the right thing to do to support America."

Senator LEAHY. I do not want to make any problem there, but, as the administration tells us, they have not yet come to the appropriators. We are going to have to come up with that $10 billion to back up your bet.

Secretary POWELL. Which $10 billion is that, sir?

AID TO TURKEY

Senator LEAHY. Well, you are not offering $10 billion or $5 billion or some number of billions of dollars in aid extra aid to Turkey?

Secretary POWELL. The Turkish aid package was $6 billion in grant aid, which could be leveraged up through loans to a higher amount. But it was $6 billion. And——

Senator LEAHY. No direct——

Secretary POWELL [continuing]. We were quite aware——

Senator LEAHY. No direct amounts?

Secretary POWELL. Yes.

Senator LEAHY. There will be no direct amounts?

Secretary POWELL. No. I am not sure. It is a $6 billion amount, some of which is direct, but some of it could be used to leverage loans in order to have more impact on the economy.

Senator LEAHY. I do not want to make your negotiations more difficult, but I would suggest that the administration come up here and talk to both Republicans and Democrats on the Appropriations Committee and make sure that the votes are there to support the package that is being promised, and that you are not taking this money from other prior, equally critical needs that both you and I support in the foreign aid bill; because so far, we have not been told where that money is going to come from or how it is going to be used.

There is North Korea, which we all agree poses a major threat. I have heard statements made, I happen to agree with them, that the last thing in the world we want them doing is exporting their rockets or their missiles.

We spent a fortune to track the shipment of missiles from North Korea to Yemen. We show our ability to stop the ship carrying it on the open seas. And then we say, "Oops. Sorry about that. Go ahead and take the missiles anyway."

And I am wondering if, when people see that, when they see officials of the administration referring to our allies as "old Europe," as though they have not faced war and as though they do not have a lot of people who are still alive who have lived through war on their soil. Those same officials suggest the United Nations could be irrelevant, at the same time the President's fiscal year budget says the United Nations serves U.S. interests by helping end conflicts, restoring peace, and strengthen regional stability.

I mean, which is it? If the United Nations does not go along with everything we ask, do they become irrelevant? Are we helped by calling countries in Europe "old Europe" in a dismissive fashion?

RELEVANCE OF THE UNITED NATIONS

Secretary POWELL. Well, first of all, with respect to the United Nations, if we thought it was irrelevant, the President would not have gone there on the 12th of September. But at the same time, the United Nations is in danger of becoming irrelevant if it passes resolution after resolution that are totally ignored by a country in a situation where that country continues to develop weapons of mass destruction.

If the United Nations Security Council fails to deal with this issue, certainly there is a degree of irrelevance then in the Council's actions on this particular issue. The United Nations is a body that we support. We have done a lot of work in the last several years, in the previous administration and this administration, to clear up our arrears, to rejoin UNESCO, and take a number of other actions that show we understand the purpose of international organizations. We want to be multilateral with respect to our efforts.

Europe is not of a single mind on the issue of Iraq. I can list more countries that are supportive of our position than those that are against our position. The fact of the matter is that European public opinion is not supportive of our position. But I think the anxiety that exists within the international community would be gone in a heartbeat if Saddam Hussein would do what he is supposed to do; or, in the aftermath of a successful military operation, people will see that we are doing the correct thing in removing this dangerous threat from the region and from the world.

With respect to Yemen and North Korea, we are deeply concerned about North Korean proliferation and have been for a long time. In the case of those particular Scuds, when we determined that they were not heading to a terrorist organization or a rogue state, but a nation that we have close relations with, and the Scuds were part of a contract that had previously been entered into, and we had assurances from the Government of Yemen that the contract was now concluded with this last shipment and we would not have to be worried about any further sales from North Korea, it seemed the prudent thing to do. I think it was the prudent thing to do, to let the shipment continue to its owner, a friend of ours, with assurances that that was the end of it and that they were discharging any further contractual arrangements they might have had or entered into with North Korea.

Senator LEAHY. Other Senators are back now. And I will go and vote. But two things: One, I hope their new assurances are more accurate than their old assurances.

Secretary POWELL. We did not have old assurances that they would not purchase. We have new ones.

Senator LEAHY. And secondly, if we are going to continue to be offering money and aid to other countries, come on up here and make sure that the Congress will actually back up that money.

Thank you.

Senator GREGG. Senator Kohl.

STATUS OF OTHER ARAB NATIONS

Senator KOHL. I thank you, Mr. Chairman.

Mr. Secretary, President Bush has said that "a new regime in Iraq would serve as a dramatic and inspiring example of freedom for other nations in the region." My question to you is: How are other Arab states reacting to our aspirations for Iraq to be a model democracy, given that our Arab partners in the region are currently not ruled by democratic regimes? What sort of message are we sending to the current governments, particularly at a time when we are relying on some of them for support in our war effort? Are we not implicitly saying, "You are next, and, if necessary, by force"?

Secretary POWELL. No. Our friends and I stay in very close touch with them and spoke to several of them this morning, they know that we have no intention of forcing the overthrow of their regime or leadership, either overtly or covertly. But they also know, because the President has said this on a number of occasions, and I have said it on a number of occasions, that we think that democracy is not something that is just exclusively for Western nations. Democracy should be able to thrive in Arab nations, as well.

I think what we will be seeing in the years ahead is that, as each Arab nation moves further into the 21st Century, they will see the benefits of opening their society up to great opportunity for women, educating their children for the kinds of jobs that will be needed to be performed in those societies in the 21st Century, removing state controls on the economy, diversifying their economy, and having more representative forms of government.

We do not shy away from making this case to our friends in the region. Now, they press back. They have their own culture, their own history, and their own traditions. They have been nations far longer than the United States of America. So we enter into a spirit of dialogue with them. We think each of them will have to find their own way into the future, of course. We hope that we can be of assistance to them. We are.

The Middle East Partnership Initiative that I launched not too long ago will try to help them with their education of young people for the 21st Century by helping to build up a civil society. We have fascinating debates and discussions with our Arab friends. We believe that we should say to them what we believe with respect to the power of a democracy to help transform and better their societies.

POST-SADDAM IRAQ

Senator KOHL. Would it not follow that we then go in and disarm Iraq so that they are no longer a threat to us and let them set up their own society and do it in a way that most fits their own needs and aspirations, much as it is true in Saudi Arabia and so on?

Secretary POWELL. I think we would have an opportunity here, however, to shape this in a way that we can convince them that the best way to set up their new society is on the basis of openness, on the basis of representative government, and on the basis of pulling the diverse elements of the Iraqi population into a form of government that respects each of those diverse elements and yet keeps it together as a nation. So I think we have an important role to play.

We will not ignore their history, traditions, and culture. We could not, even if we wanted to. It's 24 million people. But at the same time, we have some experience over the last 50 to 60 years of going into countries that have not experienced that kind of representative government before and getting them to see the benefit of it and leaving them far better off than when we went in.

Senator KOHL. So this might be something akin, not exactly like, but akin to what we did in Japan after the war?

Secretary POWELL. I do not think it is going to be akin to any of the models of the past. I do not think it is like Japan or—we are not going to have a MacArthur there for 7 years or 8 years or a four power arrangement, as we had in Germany. I think each one of these is unique.

Afghanistan was unique, where we were able to put in place an Afghan government rather quickly. There were people standing there, leaders ready to lead and lead in the right direction. We were able to support them.

There are other models—East Timor, Cambodia, Bosnia, and Kosovo. We are studying all of these models to see what would fit best in Iraq. But our overall principle is: If a military operation is required, obviously then a military commander has to be in charge and would be in charge in the immediate aftermath of the conflict for some period of time. We want that period of time to be as short as possible.

As we transition to a civilian administration, we will bring in international organizations to help with the rebuilding and to help with the funding of the whole exercise, bring in responsible Iraqi leaders to create their own government, work with both people who have been outside and inside of Iraq, and work with the traditional leaders within Iraq to put in place a government that does not commit itself to weapons of mass destruction and threaten its neighbors, as the current government has for the last 30 years.

SAUDI ARABIA AND 9/11 TERRORISTS

Senator KOHL. Last question: Fifteen out of the nineteen terrorists on 9/11 were Saudi Arabian in their origins. If we are going after countries and obviously not willing to abide terrorists or those who sponsor them, where does Saudi Arabia fit it?

Secretary POWELL. Saudi Arabia has been a friend of the United States for many years and still remains one. We are troubled that

so many came from Saudi Arabia, and they are troubled that so many came from their country. We are working with them to put in place a better visa system so we know exactly who is coming into the United States. We are also working with them on searching out sources of financing for terrorist organizations. They have been very cooperative in that regard. They realize they have a problem within Saudi Arabia if they are serving as a place of gestation for these kinds of individuals.

It is not only a threat to the United States. I think we are persuading them that it is a threat to Saudi Arabia as well.

MADRASAS

Senator KOHL. But do they not have schools that educate the young that——

Secretary POWELL. They have schools that I do not think have been organized and are being run in a way that is consistent with what their educational needs are for the 21st Century. Too often, these schools have been educating youngsters in a way that would lead some of these youngsters into this kind of activity. That is also a subject of discussion with the Saudis.

They have also been funding those kinds of schools in other parts of the world. We are now seeing some of the consequences of that and taking it up with the Saudis. In fact, as part of our effort with Pakistan, Pakistan is trying to redo its educational system, so that the schools exist not as a hotbed of extremism, but as a place where youngsters get an education so that they can contribute to Pakistan and not become a problem for Pakistan or for the world.

Senator KOHL. Thank you, Mr. Secretary.

ISLAMIC CENTER IN TURKEY

Senator GREGG. Mr. Secretary, I just wanted to follow up on Senator Kohl's comments a little bit. First, I would note that this committee, under the leadership of Senator Hollings, set up the Center for Muslim Western Dialogue in Turkey, the basic purpose of which is to try to educate folks in the Muslim world about advantages of democracy. And we are continuing to fund that aggressively.

And if the Department has other ideas in this area, we would be interested in them. These are the types of initiatives we would like to pursue. I think Senator Hollings has set out a good course here for us to follow in this committee. We would like to increase the effort in that area. So I guess we are asking for ideas.

ROLE FOR FRANCE AND GERMANY

Secondly, is the issue of post-Saddam Iraq. France has had a very significant commercial relationship with Iraq, which they have continued during the period of Saddam Hussein's leadership and have taken advantage of that criminal regime through commercial activity. I am just wondering: What is the proper role for France, and even Germany, in a post-Saddam Iraq?

Secretary POWELL. Well, I think it remains to be seen. I think that once a new government is in place, it will be up to that government to determine how they will use their economic resources, their oil, their principal source of revenue, and who they will enter

into various economic arrangements with. It is not for the United States to dictate the future of Iraq. It is for us, if we have to have a military operation, to hold in trust for the people of Iraq their wealth in the form of their oil. It will all be used for the benefit of the people of Iraq.

But it would seem to me that the people of Iraq, now having been liberated, might glance around and see who helped and participated in that liberation, and who did not.

FRENCH ROLE IN THE CONGO

Senator GREGG. On a tangential issue, we have spent approximately $800 million of American taxpayer money in the Democratic Republic of the Congo relative to the U.N. peacekeeping mission there, which is primarily being pursued under the auspices of France as the lead country and as the designer of the policy to some degree. And one has to wonder: With the lack of cooperation France is giving us on what we consider to be a major national strategic issue, our national defense and our right to protect ourselves from weapons of mass destruction, to what extent is it appropriate for taxpayers to continue to support the French position in the Congo?

Secretary POWELL. I think we have to be very careful if we are having a particular problem with one of our friends in one area, not to see if we can "get even" in another area, where it does not serve our interest to get even. In the case of the Congo, I think the money that we are using and the efforts of the French have started to have a result and pay off.

For example, Germany, even though we have a major dispute with them over the issue of Iraq, Germany has troops in Afghanistan standing alongside of ours. They have troops in the Balkans. We are cooperating with the Germans in a number of areas. They are working with us in the global war on terrorism.

So we can have strong and serious disagreements. I can assure you that these disagreements are fought out with emotion and heat in the various conference rooms that I spend a lot of my time in, but that does not mean that they are suddenly no longer our friends or that the place is a hotbed of anti-Americanism. We are having a dispute over policy. That dispute over policy should not necessarily result in the end of friendships that have served us well for long, long periods of time.

Now there may be areas where we have to question whether or not we ought to be cooperating with them, because if they took this attitude here and that same attitude translates somewhere else, then they could affect our equity there. So I do not say that we should not look at all we are doing. But, I think any suggestion of "Let us get even with them somewhere else" in a way that hurts us is not necessarily the right policy.

RENOVATION OF U.N. BUILDING IN NEW YORK

Senator GREGG. On one item which is coming at us, which is a big issue financially, is the request by the United Nations to build a new building in New York. I mentioned this to you earlier, $1.6 billion for a new building. Now, the reconstruction of the World Trade Center, which envisions the largest building in the world on

that site, along with a variety of other memorials, is estimated to be less than $400 million. The building of the Beijing Embassy, which is going to be the most expensive undertaking we have ever pursued as a foreign construction project, is projected to cost less than $500 million.

The United Nations is asking for something that exceeds the cost of the World Trade Center reconstruction by over $1 billion. This, on the face of it, seems to be excessive. Now maybe it is not. But we would like to get some ideas about this, since the taxpayers of America are likely to bear the biggest burden of this cost.

Secretary POWELL. Yes. The number I have been hearing is $1 billion. But it is nevertheless a significant number. There are other buildings besides just the U.N. building itself that are involved. There are various partnerships that have been entered into with the City of New York. This is a very complex project, made more complex by the fact that the intent is to rebuild and renovate, not just start from a piece of ground. I think that very prospect adds a lot to the cost of this project.

It is a historic place. It is a landmark in New York. The rebuilding of that landmark is expensive, but I cannot sit here and justify the cost. I am not saying the costs are wrong. It is just that I am not in a position to tell you I know enough about the costing of that project to defend it.

Senator GREGG. Well, before we get assessed with an arrearage from the United Nations for not participating fully in that, I think we are going to have to have some real——

Secretary POWELL. I think the request is for——

Senator GREGG. Maybe we should ask General Williams to be in charge of that.

Secretary POWELL. Well, General Williams and I have spoken about it. He is looking at the project, just as a matter of interest for me, because sooner or later we will be asked to come up with an interest-free loan to help pay for the building.

Senator GREGG. Senator Hollings.

COMPENSATION FOR IRANIAN HOSTAGES

Senator HOLLINGS. I appreciate your answer, Mr. Secretary, about the French, because I fought with them in World War II. They are outstanding fighters. We have the French and the Germans and the Turks with us in Afghanistan. And I hope this afternoon you can convince them to rejoin us.

I have always been concerned about Iranian hostages. On May 22, 2002 you said a plan for compensation would soon be submitted. Can we count on getting that plan from you?

Secretary POWELL. I will have to research with my staff, sir, and give you an answer for the record.

Senator HOLLINGS. Yes. Because we have your letter, and you stated that on May 22, 2002 that a comprehensive plan for compensation would be forthcoming.

Secretary POWELL. Yes. I will try to find out. Obviously, it has not been forthcoming. So I will try to find out the status of it and get an answer for you.

Senator HOLLINGS. Very good.

Secretary POWELL. I may have it now. I do not know.

Senator GREGG. Maybe it just arrived.

Senator HOLLINGS. It just arrived.

Secretary POWELL. Yes. It is out of my office.

I know where it is. I will go ask the Director of this Office of Management and Budget why it is still there.

Senator HOLLINGS. Yes. Well, you have quite a task. And we appreciate it very much.

Thank you, Mr. Chairman.

And thank you, Mr. Secretary.

Secretary POWELL. Thank you, Senator.

Senator GREGG. Senator Kohl, do you have any additional questions?

SITUATION IN NORTH KOREA

Senator KOHL. Just one.

Mr. Secretary, I and others have been very concerned about reports that the United States is prepared to live with a nuclear North Korea and that we intend to shift our focus on preventing the North Koreans from exporting nuclear weapons to other countries. I agree that we need to do all we can to prevent North Korea from exporting weapons of mass destruction; but I believe that we should not back down from our efforts to forestall North Korea from developing nuclear weapons in the first place.

So in that area, why have we decided, or have we decided, not to talk to them directly? Is this not the best way to get to the bottom of it while at the same time encouraging other countries to be a part of the effort?

Secretary POWELL. Well, first of all, I read that report. I do not know of any basis for the report, that we have decided to live with a nuclearized North Korea.

The position of the United States is: We do not want to see nuclear weapons in the Korean Peninsula. It is also the position of China. It is also the position of Japan and South Korea. In fact, South Korea entered into an agreement with North Korea a little over 10 years ago that guaranteed a non-nuclear Korean Peninsula, yet another agreement that North Korea has violated.

We are working with all of our friends in the region to see that North Korea does not become nuclearized or even more nuclearized than it may be, because our intelligence suggests they may have one or two nuclear weapons. Some say they do have one or two nuclear weapons. We will not know until we actually find a way to confirm that.

So we are working hard to see that they do not move any further. Our concern right now would be if they started up the reprocessing facility. They have been acting in provocative ways. They have been trying to get our attention. We are not unmindful of these efforts on their part to get our attention.

But we are making it clear to the North Koreans that we do want to talk, but we want to talk in a multilateral forum. Why do we want to do that? Because it is not just a problem between the United States and the DPRK. That is the way they want to see it. It is a problem with the DPRK and the international community and with the DPRK and the International Atomic Energy Agency, which has condemned them for breaking the seals and moving in

the direction to restart the reactor. It is a problem between the DPRK and South Korea for violating their agreement with South Korea. It is a problem between the DPRK and Japan, China, Russia, and many other nations.

Therefore, we are looking for a multilateral way to deal with this problem. Now, every time I pick up the paper in the morning, it says a quick solution is, "Why do you not just call them up and go talk to them?" Well, that is what happened some years ago when we came up with the Agreed Framework. The Agreed Framework served a useful purpose in capping the Yongbyon facility so that it was not producing any more fissionable material. I give credit to the Agreed Framework for having done that for eight years.

But at the same time, the potential for developing fissionable material was left in place at Yongbyon by the Agreed Framework. As the ink was drying on the Agreed Framework and a number of other assurances that the North Koreans gave us, they had started work on another form of enrichment, enriched uranium, to produce the material needed for nuclear weapons.

While we thought we had them, you know, in one jug with a cork in the jug, even though the jug was left there to be uncorked, they were working on another jug. We found out about it last year. We did the right thing; we called them to account.

We said, "We know you are doing this. This is in violation of all the commitments you have made over the years to the South Koreans and to the international community. It is in violation of the Agreed Framework, the basic intent of the Agreed Framework."

Their response was, "Yes, we did it. Now come talk to us, and we will see what kind of framework we can come up with this time."

Well, what we are saying is: This time it has to be solved for good. It will only be solved for good if it involves all of the nations who are in the region. North Korea has tried to, through its provocative steps over the last several months, get the attention of the world on this issue and get the attention directed toward us. The attention should be directed toward the North Koreans. They are the ones who have people who are starving. Not one person will be saved by enriched uranium or by more plutonium coming out. They have blown the opportunity they had to get enormous assistance from Japan by their actions.

We have a number of diplomatic initiatives underway, some of them very, very quietly underway, to see if we cannot get a multilateral dialogue started. We are looking for a peaceful solution to this problem. We are committed to a non-nuclear Korean Peninsula.

Senator KOHL. Thank you, Mr. Chairman.

Senator GREGG. Thank you, Mr. Secretary. I appreciate you taking the time.

Well, we have been joined by the chairman of the full committee. So obviously we defer to the chairman of the full committee for any questions he may have.

SENATOR STEVENS' REMARKS

Senator STEVENS. No questions for my good friend. I am happy to have a chance to be here and to tell the world what a great job I think you are doing, Mr. Secretary.

Secretary POWELL. Thank you, Mr. Chairman.

Senator STEVENS. I look forward to working with you in any way possible.

Secretary POWELL. Thank you, sir. I was up at Elmendorf the other day. It looked great up there.

Senator STEVENS. Well, the next time we will arrange a site trip around the State, maybe do a little marine research.

Secretary POWELL. Yes, sir. I know the kind you have in mind. I look forward to it.

ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. Mr. Secretary, we will let you get up to the United Nations. And thank you again for what you are doing for the country.

Secretary POWELL. Thank you for your courtesy, Mr. Chairman.

[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

DIPLOMATIC READINESS INITIATIVE

Question. Could you walk us through the methodology State used to arrive at the numbers for the Diplomatic Readiness Initiative? What internal review process took place to determine where additional personnel were needed? Why, during this internal review process, wasn't the Department also able to identify posts that were overstaffed for right-sizing? If such a review took place, why has the Department been unable to tell the Committee where exactly the new FSOs will be placed?

Answer. The Diplomatic Readiness Initiative (DRI) addresses many of our core needs, some of which are determined by our Overseas Staffing Model (OSM) and training requirements. The Overseas Staffing Model is the primary tool for determining baseline overseas staffing needs. It provides an objective, flexible tool to measure what resources are needed to meet the President's and the Secretary's foreign policy priorities and objectives. The OSM quantifies what we need to achieve the International Affairs Strategic Goals, to meet legislative mandates, and to fulfill our responsibilities to support the full USG presence overseas. This model, made up of seven components ("core program," consular, public diplomacy, etc.), identifies the staffing requirements at overseas posts based on specific categories and criteria and provides a comparative assessment of posts. It evaluates each post using workload indicators and host country factors. The OSM serves as a baseline and specific staffing decisions are made through the budget and planning process. The OSM showed in 2001 that we had needs expressed as 386 positions overseas that were not being met. The DRI request for 1,158 positions covered this shortfall.

In addition, we determined we needed to be able to meet other needs without straining our workforce. In order to have people in training and to avoid staffing gaps when transfers and crises occur we need enough people in the system. The remaining DRI positions are to cover establishment of long-term training positions (such as for languages) or detailee positions—to which employees are assigned—as well as to increase our base level of employees. While we need more people to meet crisis response and emerging priority needs, we do not have people in positions designated as "waiting" for that crisis to occur; rather, we planned to use new DRI positions to meet those policy, program, or infrastructure support needs identified by the Department during our budget and financial plan cycle. The increases to overall staffing would reduce the strain when employees were sent to short term training (such as under our new mandatory leadership and management training initiative) or when they needed to be reassigned to higher priorities. The DRI therefore is about flexibility and preparedness rather than specific position-by-position detailed

needs. This is also partly due to the nature of the Foreign Service system of "people in motion" rotating between positions as well as the inherent unpredictability of foreign affairs.

The Department's senior leadership makes final decisions on the Department's staffing requirements, hiring plans, and position allocation based on emerging priorities, funding potential, Overseas Staffing Model projections as well as the Senior reviews led by the Deputy Secretary. This ensures that staffing decisions are made in support of mission requirements. The strong linkage between strategic priorities and resource decisions—with senior management involvement—ensures the Department's ability to meet our mission. The exact allocation of the new positions created in fiscal year 2004 will depend on the results of those decisions.

While the OSM identified that overseas staffing was below what is required, this does not mean that we have not identified places where staff can be reallocated. "Rightsizing" is an ongoing process. The Department continually reviews changing priorities and emerging issues and reallocates positions among regions or between functions so that higher priority needs are met. During the 1990's, as the Department downsized its employment, the necessity to reallocate scarce resources in line with priorities became paramount. Oftentimes, people were pulled to address new issues while old ones still existed. In our strategic planning and budgeting process we require missions to assess how they could meet their new needs within existing resources.

Now, thanks to increased hiring, posts and regional bureaus have been able to move resources to meet the priority counterterrorism mission while still continuing to staff other critical requirements. As we have added positions overseas in the last few years, we have increased infrastructure across the board so that posts are not as thin as they had been, but more positions have gone to posts in the Middle East and South Asia.

PERSONNEL PLACEMENT DECISIONS

Question. Have the events of September 11, 2001 impacted personnel placement decisions? In other words, has the list of posts slated to receive personnel increases changed in light of September 11?

Answer. Post September 11 the Department immediately reprioritized and moved people and resources to meet the emerging counter terrorism mission. New positions were established based on the new needs being identified, particularly in the consular area. These needs are likely to become permanent needs that will have to be regularized and will need to be treated as a baseline requirement.

We have had to use some of the Diplomatic Readiness Initiative (DRI) positions to cover new consular needs in the wake of 9/11 when the workload went up even as MRV fee revenues—which have funded many consular position increases—went down. We have also had increased visa processing requirements that have increased workload while we have also worked to ensure that we have fully trained commissioned Foreign Service Officers in all positions. In the short run we have had to meet these new requirements within our current workforce. These requirements will need to be met continuously, but the original DRI did not envision these changes.

Baghdad is being staffed now by TDY employees from other embassies and the Department. The staffing gaps left behind may be acceptable in the short run, but for the longer term they must be filled. In addition, we must account for the Washington backup of these new programs, such as the new office supporting the reconstruction of Afghanistan.

Even though we had to use some DRI positions for these unexpected contingencies, we still need the personnel complement foreseen by DRI to make training and future crisis response possible.

CONSULAR OFFICERS

Question. Mr. Secretary, your budget request includes an increase of $28 million to hire an additional 68 Consular Officers. Why was this not included as part of the Diplomatic Hiring Initiative request?

Answer. The Diplomatic Readiness Initiative (DRI) request was introduced as a three-year plan by Secretary of State Powell in 2001 to fill gaps created by underhiring in relation to workload in the 1990's. The DRI addresses many of our core needs, some of which are determined by our Overseas Staffing Model and training requirements. However, some personnel requirements are assessed and resources requested separately such as security, IT, and consular, which tend to have specific needs due to outside events. The DRI request did not take into account the additional requirements that would follow from the events of September 11th. Currently, the Department is assessing future personnel needs taking into account the long-

term needs of the Department, to include the implications following the events of September 11th.

The 68 CA positions that are referenced in the question represent new positions not originally contemplated in the DRI. These positions will be used to replace temporary consular associates with full-time consular officers. This is a critical element in the Department's' efforts to support homeland security initiatives.

Additionally, Consular positions have traditionally been funded through the MRV fees collected by the Department. Post September 11, travel has decreased and therefore so has MRV income. This means that we need to request appropriated funds for these additional personnel requirements.

RIGHT-SIZING

Question. What progress has the Department made towards right-sizing? Can you tell me where, for example, the Department has actually decreased the number of U.S. personnel stationed at a post? Could you have your staff transmit a list of the Department's right-sizing "success stories?"

How do you reconcile the DRI with the concept of rightsizing? How does the Department justify bringing on 1,158 new FSOs when it has yet to maximize its existing human capital by carrying out its commitment to right-size overseas posts?

Answer. The Department of State and the Office of Management and Budget (OMB) agree with the General Accounting Office's definition of rightsizing:

"Rightsizing [is] aligning the number and location of staff assigned overseas with foreign policy priorities and security and other constraints. Rightsizing may result in the addition or reduction of staff, or a change in the mix of staff at a given embassy or consulate."

The Department uses a variety of tools to rightsize its overseas presence, as described below. Our rightsizing is one component of the broader President's Management Agenda (PMA) rightsizing initiative, led by OMB, which looks at all agencies with overseas staffing. We are working closely with OMB to ensure the success of the overall PMA initiative.

Diplomatic Readiness Initiative.—The DRI is an integral part of State's rightsizing, i.e., it addresses fundamental staffing needs to reverse the trend of the early 1990s when we hired under attrition. We need these positions to fill unmet needs overseas and to provide for enough personnel to respond to crises and go to training without leaving staffing gaps.

Overseas Staffing Model.—The OSM is our workforce planning tool that assists management in allocation of resources, including those needed to support the USG diplomatic platform. The OSM provides an objective, flexible tool to measure what resources are needed to meet the President's and the Secretary's foreign policy priorities and objectives.

Strategic Planning and Human Resource Allocation Processes.—The Mission Performance Planning (MPP) process integrates strategic human capital planning elements into the planning process with the categorization of staffing and funding resources by strategic goals, as required by the Government Performance and Results Act (GPRA). This enables each mission's senior management to assess the commitment of human resources across the strategic goals, and also assists State regional bureaus to better distribute State Operations and Foreign Operations funding across the strategic goals.

Regionalization.—The Department of State has long made extensive use of regional offices to help us meet the needs of difficult or dangerous posts. Regional centers exist in the United States (e.g., Charleston, South Carolina; Fort Lauderdale, Florida; Portsmouth, New Hampshire), at major overseas hubs (e.g., Frankfurt, Bangkok), and at smaller sub-hubs on an ad hoc basis (e.g., Dakar, Hong Kong). Regional support provided from these centers allows the Department to accomplish a variety of complementary goals, including improving the overall efficiency of our global operations, supporting specific posts which could not otherwise operate effectively, and reducing the burden of workload, and thus staffing, at many of our most dangerous or difficult overseas posts. The Department is constantly reassessing the specific needs of particular posts and adjusting regional support accordingly.

In addition, the Department has underway a number of initiatives designed to apply the benefits of continuing technological improvements to rightsizing. One prominent example: By the end of this fiscal year, the Department will complete the transfer of significant financial management support operations from Paris, France to Charleston, South Carolina, as a result reducing 109 positions in Paris.

This action was made possible by improvements in our financial management systems software. We now have one overseas accounting system that replaces the two

former legacy systems that complies with Federal Managers' Financial Integrity Act (FMFIA) requirements and facilitates the compilation and reporting of data for the Department's financial statements. With further enhancements, posts in Europe, Africa, the Near East and South Asia will be able to communicate and conduct certain financial operations electronically, with "real time" access to financial systems. These management actions reduced the need to maintain overseas staff at the Financial Service Center in Paris to support these posts and reinforced the decision to consolidate many financial operations in Charleston.

Post Openings and Closings.—Rightsizing affects not merely the size of U.S. posts but also their distribution. Perhaps the best illustration of the Department's ongoing rightsizing efforts is the near-constant activity to open, close and relocate overseas diplomatic posts. Since 1990, we have opened 52 new posts (29 embassies, 23 consulates, consulates general, branch offices, etc.) and closed 43 (11 embassies, 32 consulates, etc.).

EMBASSY CONSTRUCTION

Question. Mr. Secretary, what impact has 9/11 had on the way the Office of Overseas Buildings Operations approaches designing and building embassies abroad? 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. The watershed event that reshaped the mission of the Bureau of Overseas Buildings Operations was the August 1998 bombings of our embassies in Dar Es Salaam, Tanzania, and Nairobi, Kenya. The events of 9/11 served to reinforce the continuing threat and therefore the urgent need to accelerate the construction of new facilities that can satisfy the Department's stringent security requirements and protect our diplomatic personnel by providing secure, safe, and functional office and residential environments. We appreciate the support the Congress and this Committee have given to our efforts.

SOFT TARGETS

Question. Mr. Secretary, does the possibility of further and perhaps more ambitious attacks against post housing, churches frequented by Americans, and American Schools concern you as much as it does me?

I would not suggest that we should shift resources away from the security of our official buildings in favor of enhancing security at non-official locations. However, we must do more to assure the safety of overseas personnel outside the embassy walls. Above all, we must assure the safety of our children in their schools overseas.

What do you believe is the State Department's proper role in this area? What level of responsibility should State bear for the security of non-official locales? Based on the risk and threat assessments that have, presumably, been conducted on these non-official locales, do you believe they/we are prepared? When can we expect the $15 million provided in the fiscal year 2003 Conference Report to start being distributed? Do you believe additional funds are necessary to protect U.S. personnel and their families in "soft target" environments?

Answer. The possibility of attacks against soft targets overseas most certainly concerns me. However, there exist many more soft targets overseas where Americans gather than the U.S. government could ever possibly protect. I believe we must pursue a dual strategy. First, identify those soft targets that are readily identified with, and in some way connected to, U.S. Diplomatic facilities abroad. Housing for our employees overseas and schools supported by our missions certainly fit in this category, and it is appropriate that Congress has provided funding to mitigate security vulnerabilities in those areas. We should recognize, though, that in the latter case, a great many other children attend as well, American and non-American. Normal security costs should be borne by all that attend and be reflected in tuition costs. Our role for the schools should be to provide security advice and counsel, and to provide grants for high priority security upgrades such as window films, emergency public address systems, and communications with Embassies and local police and security.

To ensure that the $15 million provided in the fiscal year 2003 Conference Report, as well as the additional $10 million in the Supplemental, is distributed wisely, the Department has a working group with officers from the bureaus of Overseas Buildings Operations, Diplomatic Security, and the Office of Overseas Schools. We expect that funding may be provided to some schools prior to the end of the fiscal year, and continue over a 3-year period.

For the many, many other possible soft targets, I believe our continuing responsibility, and a role that we fulfill very well, is to provide timely and accurate advice that fits the local situation. We fulfill this responsibility every day with Consular information bulletins, Overseas Security Advisory Counsel (OSAC) local country counsels, Regional Security Officer briefings, and other outreach programs.

Question. How has the Consular Affairs mission changed in the aftermath 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 tradition 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?

In my visits to U.S. embassies abroad, I have noted that it is often the Consular Affairs sections where conditions are the worst (most crowded, etc.). In my view, there is a direct link between the quality of CA workspace and the productivity and efficiency of our consular officers. Would you agree with this? What are you doing to change this situation?

Answer. The work of Consular Affairs is a vital element of our country's overall plan to protect our national security. As part of our border security program, we have made significant changes in the wake of 9/11. We have expanded our automated lookout system to include more information shared with us by other government agencies and increased the number and type of special clearances required for applicants of particular concern. Our automated system now requires that we collect additional information on all visa applicants. And we are limiting the circumstances in which a personal appearance can be waived for visa applicants. All of these changes require additional personnel, and we have created additional positions to help meet this workload.

The Department's traditional policy of requiring all junior officers to serve a tour in a consular assignment abroad has benefits for both the officer and the Department. The officer has an early opportunity to develop management skills, demonstrate leadership, and hone interpersonal and foreign language skills. For the Department, the Junior Officer's consular tour can be a chance to see how the officer performs in a difficult situation, dealing with both American and Foreign Service National (FSN) colleagues as well as with often demanding host country nationals. The officer's performance in the consular tour is a vital factor in determining whether the officer should be tenured in the Foreign Service.

Junior Foreign Service Officers (FSOs) have gone through a rigorous examination process to arrive at this point. In addition to the consular training at the Foreign Service Institute, which has recently been expanded, they bring a wealth of academic and real world experience to their jobs. They are dedicated and motivated professionals who take their role in protecting homeland security seriously. Our junior officers are closely supervised by more senior career consular officers. At posts staffed by only a single consular officer, the Deputy Chief of Mission takes on the supervisory role and an experienced regional consular officer visits the posts regularly to provide management oversight and advice for the consular function.

The consular cone is one of five career tracks for Foreign Service generalists. All Foreign Service generalists have the opportunity to serve in positions out of cone to broaden their experience and to compete for positions such as Deputy Chief of Mission.

It has often been difficult for the physical facilities in our consular sections abroad to keep pace with the increasing numbers of personnel, both Foreign Service Officers and Foreign Service Nationals, required by the visa process, which has become even more complex in the post 9/11 world. The employees engaged in this vital work deserve working conditions that are secure, safe, and adequate for the job.

Our Bureau of Overseas Buildings Operations (OBO) has embarked upon an ambitious building program to complete new embassies on time and within budget. The Bureau of Consular Affairs works closely with the designers and planners at OBO to ensure that consular sections in new embassy buildings are adequate to permit an efficient and effective consular operation. CA and OBO continue to work together to refine the standards for consular sections now being designed. OBO and CA also work collaboratively in the rehab of facilities to permit consular sections to be rehabbed along with other parts of the buildings. In order to react more quickly to fluctuations in consular workload, OBO is also looking at acquiring commercial space for consular sections. In the fiscal year 2003 appropriation, Congress directed OBO to undertake a 3-year Consular Workspace Improvement Initiative, earmarking up to $8 million of OBO funds for this purpose. CA has worked closely with OBO to prioritize these projects.

Question. Mr. Secretary, protecting information at our posts overseas is costly. If we had the technological capability to store information in the United States, rather than at post, wouldn't this be worth looking into? Would you agree such a technology could reduce the number of overseas personnel required to assure the security of information, and thus result in cost-savings?

Answer. For the past two years, the Department of State has been exploring the technological capability to store information in the United States rather than at our overseas posts.

We are also studying the implementation of the High Assurance Virtual Wide Area Network (HA VWAN) which will provide classified connectivity to critical threat posts and to posts that have environments with weak physical, administrative or technical security controls. This program would reduce classified holdings. A pilot on this technology will commence in Summer 2003.

But at the core of my Information Technology priorities is to replace the current 60-year-old "cable" technology used by the Department and other Foreign Affairs Agencies with a new system. This new technology called SMART (State Messaging and Archive Retrieval Tool Set) will provide centralized storage in the United States of all document types (currently cables, memorandum, informal messages and notices).

It will give our diplomats access to more information and minimize the holdings at a post because posts will access data from a server in the United States. We expect to deploy SMART in fiscal year 2005.

While SMART will provide some reduction in classified holdings, we will need to continue to ensure the protection of the information and equipment that remains at post.

However, we cannot guarantee, at this time, that there will be a reduction in the number of overseas personnel required to maintain, operate and ensure the integrity of our information stored overseas. Existing Marine Security Guard requirements would not be affected.

Our Information Specialists safeguard and are responsible for the classified network infrastructure including encryption, COMSEC, and other classified network components that must be maintained and protected.

The mandated duties of our Information Systems Security Officers (ISSOs) will not decrease significantly. While compliance and reporting requirements have increased in recent years, posts are not yet staffed properly to meet those new requirements. A restructuring of the duties of Information Specialists at overseas posts would enable the Department to better meet these reporting responsibilities.

Question. I understand that the estimated cost of renovating the U.N. headquarters complex in New York City is $1.6 billion. Mr. Secretary, the design for the World Trade Center site (encompassing a museum, and opera house, a mall, and five office buildings, one of which will be the tallest building in the world) is expected to cost only $350 million. How is it possible, then, that the cost of renovating the U.N. headquarters is $1.6 billion?

A reasonable person would expect that security of the new World Trade Center site would be as robust as any building complex in New York City. The cost of the new U.S. embassy compound in Beijing, China is expected to be $438 million. Surely the cost of security at the U.N. complex in New York City will not exceed our security costs in China by $1.2 billion. Can you explain this?

Answer. As the design phase of the U.N. Capital Master Plan progresses, the Department remains in regular contact with U.N. secretariat officials to monitor closely the cost estimates and assumptions of the project to ensure that they are realistic and reasonable. Also, the General Accounting Office has just completed an updated study on the project—including the issue of cost estimates—and we urge you to examine the conclusions of that report when it is released shortly.

The cost components of the U.N. Capital Master Plan, as currently estimated, are as follows:

—Baseline cost: $1.05 billion, including rental of swing space; and

—"Scope options," related to additional security, energy efficiency, and system contingencies: $150 million, assuming all were to be included in the final design.

—In addition, as part of the overall plan, the U.N. Development Corporation—a public benefit corporation of the State and City of New York—has proposed to construct a new office building just south of the existing U.N. compound which would be used as swing space during the renovation of the existing U.N. facilities (permitting all staff to relocate and allowing the renovation work to proceed all at once, thus reducing costs) and ultimately to consolidate U.N. staff currently housed in several rental buildings off the U.N. compound, with no added costs to the United Nations.

Security is a vital component of both the Beijing Embassy compound as well as the U.N. headquarters facilities. However, security elements do not represent the majority of the cost factors for either project. It is very difficult to compare these two projects, as they serve considerably different purposes. For the Beijing compound, our Office of Overseas Building Operations is working with a budget of $434 million and is designing facilities to accommodate 846 staff as well as consular operations. The U.N. headquarters complex will continue to accommodate the needs of 191 U.N. member states and approximately 4,700 U.N. staff. The existing U.N. facilities do not conform to current safety, fire, and building codes and do not meet U.N. technical or security requirements.

The Department is not involved in the redevelopment of the World Trade Center (WTC) site and would refer you to the New York City Economic Development Corporation for the actual figures relating to that redevelopment project. We understand, however, that the total costs for the redevelopment will be significantly higher than the $350 million figure, which we understand may only represent an estimate for the cost of the World Trade Center Memorial (as distinct from the facilities cited in your question).

Question. The fiscal year 2007 State Department Appropriations Bill required the Secretary of State to notify Congress 15 days before the United States votes in the U.N. Security Council to establish or expand a peacekeeping mission. Mr. Secretary, since we have to fund these missions, do you believe Congress should have a more formal role in the decisions leading up to the Security Council votes? Wouldn't this lessen the need for Members of Congress to place "holds" in order to effect change in these missions?

Answer. Pursuant to legislation, the Administration provides monthly briefings to Appropriations and Authorization Committee staffs on current and prospective peacekeeping missions and information related to expenditures from the Contributions to International Peacekeeping Activities (CIPA) appropriation. The Administration also provides formal Congressional notifications for proposed votes in the U.N. Security Council for new or expanded missions. We believe information provided provides sufficient information to permit the Appropriations Committees to exercise its Constitutionally-required responsibilities.

Question. At the hearing, I raised the point that the American taxpayers have contributed more than $800 million to the U.N. peacekeeping mission to the Democratic Republic of the Congo. This mission is very important to France, and the United States has cooperated with the mission in every way. The Iraq resolution was important to the United States, and yet French negotiators took every opportunity to undermine U.S. efforts towards that end.

Mr. Secretary, you indicated in your testimony that we should not break ties with our allies in one area merely because we are in disagreement with them in another area. Do you not support the concept of issue-linkage? Would you agree that issue-linkage is one of our most important diplomatic tools?

If, in the case of the Congo peacekeeping mission, you believed that continued U.S. participation was vital to U.S. national interests, could you give me other examples of where the United States employed issue-linkage to try to elicit greater cooperation from the French (and Germans) in the U.N. Security Council negotiations over an Iraq resolution?

Answer. The United States supported establishment and continuation of the U.N. peacekeeping mission in the Democratic Republic of the Congo, and requested funding to pay for our portion of U.N. peacekeeping assessments, because we believed, and continue to believe, that MONUC can contribute to restoration of stability in this critical African nation, which can help remove this destabilizing factor in Central Africa. You are correct that support to MONUC was an issue of high importance to France, but it is also an issue of high importance to the United States.

As I have said publicly, France's intransigence in the United Nations Security Council on a resolution to follow UNSCR 1441 has consequences for our future relationship. There will be issues of special importance to France where we will seek to get their attention, but we should not fail to act on issues of manifest interest to the United States.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

Question. Late last congress, I joined with Senators Biden and Lugar in sponsoring the "Nuclear and Radiological Threat Reduction Act." This legislation would authorize the Secretary of State to take specific steps to prevent the use of dirty bombs as a terrorist weapon. It is my understanding that this bill is likely to be introduced again this Congress.

Also in the 107th Congress, the Senate passed my legislation authorizing the National Nuclear Security Administration to take the lead in the Department of Energy's strategy for combating radiological terrorism. Enhanced technology, mitigation systems and international cooperative efforts are a few of the mechanisms prescribed by my bill to better safeguard nuclear materials that are being sought by terrorists.

In addition, my bill, which is now law, calls for greater coordination between all Federal departments and agencies with responsibilities for nonproliferation.

Given the significant roles of both the State and Energy Departments in addressing issues of nonproliferation, I believe there is opportunity for tremendous synergy between them in addressing the problem of nuclear terrorism.

Would you offer your thoughts about how the Department of State and the Department of Energy can more effectively coordinate efforts so as to maximize our progress on this issue?

Answer. In combating radiological terrorism, coordination between the Department of State, NNSA and other agencies has improved regarding the detection of illicit nuclear and radioactive materials. Working with NNSA, the Department of State has taken the lead with NNSA/Second Line of Defense (SLD) in organizing an inter-agency effort by the Department of Homeland Security, State, Energy and the Department of Defense to develop a strategy for assisting key countries overseas in their detection of illicit nuclear materials. NNSA/Second Line of Defense assisted greatly in the drafting of an USG interagency strategic plan for provision of radiation detection equipment, which provides an action plan and performance measures to guide our efforts on this key anti-terrorism/nonproliferation initiative.

State and NNSA are also executing a joint plan for maintaining, repairing and replacing radiation detection equipment the USG has provided to foreign countries in recent years. In 2002–2003, this program, using SLD assets, was very successful in performing required maintenance and re-training in several countries where equipment has been in active use for some time.

Yet much remains to be accomplished in terms of denying terrorists access to high-risk radioactive sources. With your help, NNSA has made a good start on securing these sources. As you have stated, there is indeed an opportunity for tremendous synergy between the Department of State and NNSA.

We believe that a diplomatic solution is the key to a meaningful long-term solution. The security of radioactive sources depends on convincing states to change the fundamental ways that they manage and secure sources. Governments must agree, and be committed, to secure high-risk radioactive sources and keep them secure throughout their life cycle. The Department of State has a history of engaging foreign governments at the highest levels to secure these types of commitments.

More broadly, we are using the Nonproliferation and Disarmament Fund (NDF) to tackle tough, urgent and often unanticipated problems on a worldwide basis. We expect that NDF in the future could be used to help countries develop infrastructures to secure radioactive sources and track dangerous materials, including through the NDF's existing "Tracker" automated software system that helps governments strengthen control over sensitive exports. We hope that requested fiscal year 2004 increases in NDF funding will support the Department's Dangerous Materials Initiative (DMI) to secure radioactive materials, pathogens and sensitive precursors. DMI aims for synergies among U.S. Government agencies and programs and also with international partners.

We believe that an ongoing dialogue between NNSA and the Department of State, along with other relevant agencies, is necessary so that technical and diplomatic efforts can be combined to ensure that high-risk radioactive sources are secured over the long term.

RUSSIA AND IRAN'S NUCLEAR PROGRAM

Question. I remain concerned about Iran's drive to obtain a nuclear capability. Despite its claims to the contrary, Iran's construction of new nuclear facilities along with announced plans to mine uranium point to its growing ambition to advance a nuclear weapons program.

Russia's technical assistance to Iran's nuclear program has been a source of frustration for the United States. It has hastened Iran's efforts while slowing development of the new strategic partnership between Russia and the United States.

It is my understanding that State Department officials were recently in Moscow to discuss arms control issues in general and the Iranian nuclear matter specifically.

Can you report on the substance of those discussions? Do the Russians share our concerns about the prospects of a nuclear-armed Iran? Have they indicated a willingness to consider terminating their support of the Iranian program?

Answer. We raise the subject of ending Russian nuclear cooperation with Iran at every opportunity with senior Russian officials.

In these meetings, the Russians have professed to share our concern about the prospects of a nuclear-armed Iran. And recent revelations about the extent of the Iranian program to develop nuclear weapons have been very useful in making clear to Moscow that Tehran is indeed pursuing this objective.

We appear to be making some progress in our discussions in curbing Russia's nuclear cooperation with Iran. The Russians have agreed to some measures that mitigate the nonproliferation risks of their cooperation—such as providing fuel for the lifetime of the Bushehr reactor as well as taking back all the spent fuel to obviate any rationale for Iran to develop fuel cycle facilities.

Much remains to be done, however. We continue to press the Russians to agree to end all their nuclear cooperation with Iran and more effectively prevent Russian entities from cooperating in other sensitive areas such as missile technology.

ANTITERRORISM TRAINING

Question. Mr. Secretary, I have just joined with Congressman Steve Pearce and Senator Bingaman in a letter to you to urge that the Department reinstate two antiterrorism training programs at the New Mexico Institute of Mining and Technology in Socorro, New Mexico. At the end of last year, the State Department notified New Mexico Tech the Hostage Negotiation course was being relocated to Louisiana State University, which is a partner with New Mexico Tech in the ATA programs. Then this past January, New Mexico Tech was notified by the State Department that the Rural Border Patrol Operations program was being terminated and moved elsewhere. This is a mistake. The community of Socorro and the university have operated very successful ATA programs for the State Department. Both have invested significantly in facilities to accommodate these programs, and they have been very well received by the foreign dignitaries and officials receiving this training. The decision to relocate these programs will significantly impact the local economy. These programs follow successful New Mexico Tech training for the nation's first responders as one of four training partners in the Office of Domestic Preparedness and the National Consortium on Domestic Preparedness for the Department of Justice. I see no valid reason why these programs should be relocated, nor were explanations give to New Mexico Tech for this change.

(A) Mr. Secretary, I understand that the State Department official that recently ordered the relocation of the Rural Border Patrol Operations course did not have the authority to do so. I am now told that this decision has been put on hold, but that the intention is still to move forward with this proposal through regular channels. Will you please take a look at the attached letter and investigate this matter for me? I would urge you to keep the Rural Border Patrol Operations Course right where it has been successfully run for the past several years—at New Mexico Tech in Socorro, New Mexico.

(B) Will you please also investigate the decision that was made to relocate the Hostage Negotiation course to Louisiana State University? While the universities work very closely on these programs, they each have unique capabilities which they bring to the anti-terrorism assistance programs.

CONGRESS OF THE UNITED STATES,
Washington, DC, March 3, 2003.

The Honorable COLIN L. POWELL,
Department of State, 2201 C Street, N.W., Washington, DC 20520.

DEAR SECRETARY POWELL: We write regarding the Antiterrorism Assistance (ATA) training program involving Louisiana State University (LSU) and New Mexico Tech (NMT). We are deeply concerned about the Department of State's (DoS) decision to terminate the Rural Border Patrol Operations training program at NMT. Our concerns are further heightened by the fact that the Hostage Negotiations program at NMT was terminated last year.

Until the end of 2002, NMT successfully conducted both courses under a cooperative agreement between ATA and LSU and a subcontract between LSU and NMT. Before year end, LSU (at the direction of ATA) notified NMT that Hostage Negotiations training would relocate to LSU effective January 2003. At the time, NMT was led to believe that the loss of the Hostage Negotiations training program would be offset by increased activity in the Rural Border Patrol Operations course, thereby resulting in a program neutral change. However, NMT funding for both training programs has dwindled from approximately $1.7 million in fiscal year 2001 to an estimated $900,000 for fiscal year 2003. Obviously, the decision recently announced to relocate the Rural Border Patrol Operations course will eliminate any chance for

a program neutral change and will instead have a significant negative financial impact on NMT.

We are aware of the limited resources available to carry out this and other ATA activities during these critical times. Thus, it is imperative that our best resources are marshaled to provide important training to our allies in foreign countries. We believe the ATA training made available to these countries is important to their security and critical to our country as the front line of defense to antiterrorism activities. It is therefore incomprehensible to us that decisions have been made to terminate this important program at NMT, especially after NMT's success and contributions to the ATA program were formally recognized in the letter from ATA directing the training to be relocated.

The principal reason given by the DoS for its relocation of the Rural Border Patrol Operations course was economic. ATA believes they can achieve a measure of cost savings by consolidating training at another location. It is important to note, however, that more dramatic savings can more likely be realized by consolidating additional training at NMT. We believe that the decision to terminate training at NMT will not represent the greatest cost savings and ignores other factors that impact on the economy and the overall quality of life of our citizens.

It is also important for us to point out the considerable investment in the ATA training program that has been made by both the community of Socorro and NMT. These investments were made as a commitment to a long-term, productive relationship with the ATA program. First, NMT funded construction of a "state-of-the-art" small arms range to provide first class support for the program. Second, local businesses contributed to the success of the program by investing in expansion of their facilities to accommodate students, faculty and ATA representatives. Third, NMT provides an exclusive training area, which consists of 3,137 acres, for the Rural Border Patrol Operations training program at no cost to the ATA program.

In light of the above, we affirm our desire to continue the successful ATA programs already established by NMT in Socorro, NM, and for the DoS to fully use the existing infrastructure and prior investments made to support these important programs. To re-establish this program at DOE training facilities in Albuquerque may require substantial investment of scarce funds and may require entry to a military installation where, due to heightened security restrictions, guaranteed access by foreign nationals could be limited, as was ATA student access to facilities on some military installations immediately following September 11th.

The Department of State should take immediate action to accomplish the following actions:

—Reverse the decision to relocate the Rural Border Patrol Operations training away from NMT.
—Reestablish Hostage Negotiation (or a comparable training course) at NMT.
—Use the unique facilities of NMT to support a Large Scale Terrorist Bombing course or similar training program.
—Relocate the office of the ATA New Mexico representative from Albuquerque to Socorro, NM.

These actions would help realize actual cost savings in the ATA program and permit full utilization of existing (and proven) high quality training facilities at NMT, thus eliminating costs associated with duplicating such facilities at new training locations.

We greatly appreciate your attention to this time sensitive request and look forward to your swift response. Should you have any questions, please feel free to contact Ricardo Bernal of Rep. Steve Pearce's staff at (202) 225–2365.

Sincerely,

STEVAN PEARCE,
Member of Congress.

PETE DOMENICI,
United States Senator.

JEFF BINGAMAN,
United States Senator.

Answer. The Department has not made a final decision to relocate the Rural Border Patrol Operations course from New Mexico Tech. The Hostage Negotiations course was moved to Louisiana State University so that it could be co-located with the Advanced Crisis Response Team (SWAT) course that is taught there, where specialized facilities are available. Both courses end in a capstone joint exercise involving hostage negotiation and hostage rescue.

New Mexico Tech has a sub-grant of a cooperative agreement between Louisiana State University and the Bureau of Diplomatic Security that is renewable each year.

Diplomatic Security regularly reviews these agreements and compares costs for providing courses among various service providers. Recently, as a matter of fact, a course that was once taught in Washington state was relocated to a New Mexico facility.

We would be happy to provide you or your staff with a detailed briefing on the consideration of this matter prior to any final decision.

Question. Would you please tell the Subcommittee the Department's plans to fund the International Law Enforcement Academies in fiscal year 2003 under the omnibus appropriations bill?

Are there sufficient funds to adequately support the operation of the ILEAs for the remainder of the fiscal year? If not, what adjustments does the Department plan to make in ILEA operating plans?

Answer. The Department plans to continue to support the work of the established ILEAs in Bangkok, Budapest, Gaborone and Roswell. The level of funding will be approximately $3.5 million each for Bangkok, Budapest and Gaborone and $5 million for Roswell. In addition, $2 million will provide initial funding for the development of the newest ILEA for Latin America. Existing funds can adequately support the current level of operations at all the ILEAs. No adjustments are necessary.

Question. The conferees endorsed Senate and House report language regarding ILEA, and stated the expectation that the Administration provide sufficient funding to complete the Roswell Center where there is a building currently under construction. Can you please tell me what the status of that project is, and when it is expected to be completed?

Answer. The Department has $3.5 million available for the construction of a new building at the Roswell facility. The New Mexico Institute of Mining and Technology has been instructed to present a proposal including detailed information and specifications, as required by statute for any building project, for review and approval. This type of building project typically takes 12 to 18 months to complete.

Question. Under the President's fiscal year 2004 budget requests for International Law Enforcement and Narcotics Control, what are the Department's plans to fund each of the ILEA programs? Would you please provide the Subcommittee with the details on the proposed ILEA training for the upcoming fiscal year?

Answer. The level of funding will be approximately $2.9 million each for Bangkok, $3.2 million for Budapest, $2.7 million for Gaborone, $5 million for Roswell and $3.3 million for San Jose. This funding will allow for continuing operations—at a reduced training tempo in the regional academies—based on fiscal year 2003 spending levels. No new initiatives are possible without additional funding.

QUESTIONS SUBMITTED BY SENATOR BEN NIGHTHORSE CAMPBELL

Question. Last October, I wrote to the Department, along with several colleagues from the Helsinki Commission, concerning Ukrainian President Kuchma's approval of the transfer to Iraq of the Kolchuga [COL-chew-ga] radar system.

Have efforts been made to investigate possible financial benefit on the part of President Kuchma or his associates in connection with the Kolchuga affair?

Has the Ukrainian government given indications of cooperating in resolving the problem of transfers of military equipment to rogue states such as Iraq?

Answer. Although we remain convinced that President Kuchma authorized the transfer of Kolchuga to Iraq, we do not know if the transfer actually occurred. We are not aware of any violations of U.S. law in connection with payments President Kuchma or any other Ukrainian official might have received in connection with any transfer of the Kolchuga system to Iraq.

The Kolchuga incident exposed serious weaknesses in Ukraine's arms export control system. The United States is working jointly with several other governments in a cooperative effort to strengthen Ukraine's export control system, enforcement, and oversight of defense industries and transshippers. We continue to engage the Government of Ukraine on these issues and are intensifying our diplomacy. As a result of our diplomatic efforts and pressure, the Ukrainian government has undertaken a number of preliminary structural reforms in the arms export industry that enhance nonproliferation. The Ukrainian parliament (Rada) also recently passed a new export control law that could contribute to stronger safeguards. We will be working with the Government of Ukraine to support effective implementation of its export control law and regulations in addition to pushing for continued structural reform.

Question. We have seen disturbing reports that Belarus, Bulgaria, Bosnian Serbs and Serbia have also been actively involved with arms trade to Iraq. I am particu-

larly disturbed over Belarus under Lukashenka—the last dictator in Europe and will soon introduce the Belarus Democracy Act in the Senate.

How serious do you regard the problem of arms transfers to Iraq from other OSCE countries of the Former Soviet Union and Eastern Europe?

While I understand some progress has been made in shutting off a notorious Serbian connection, are we making satisfactory progress with these other suppliers?

Is the United States pursuing the issue of arms transfers within the OSCE framework?

Answer. U.S. strategy to halt military assistance and gray arms transfers from Eastern and Central Europe and Eurasia to Saddam Hussein's Iraq and other state sponsors of terrorism has been a quiet, but significant, success for U.S. national security. Since July 2001, the United States has invested substantial diplomatic and intelligence resources in implementing nonproliferation strategies for states in this region, including for each of the NATO invitees. Relying on the tools of coordinated diplomacy, information sharing, interdiction, and coordinated assistance, our efforts to strengthen border security and encourage responsible export control policies in Eastern and Central Europe and Eurasia have worked remarkably well.

Our cooperation with Serbia and Montenegro and Bulgaria in particular mirrors the very successful nonproliferation strategies pursued in Eastern Europe and the Balkans. The fruitful partnerships that developed as a result of this strategy proved invaluable to our efforts in Operation Iraqi Freedom and continue to play a significant role in the global war on terrorism.

We are beginning to implement a synthesized approach to border security and nonproliferation cooperation in the Balkans, with support from many in Congress. The Department also continues to execute an effective small arms and light weapons destruction program. This program has destroyed 230,000 surplus weapons and several tons of ammunition in Albania, Bulgaria, and Serbia and Montenegro, and will destroy similar amounts in Bulgaria and Romania this year. Our diplomatic efforts have also resulted in virtually all Eastern and Central European governments vetting proposed arms sales and transfers with the USG. The United States has sought to use the OSCE to reinforce our work on conventional arms transfers in order fora, and to cement principles and good practices associated with arms transfers among the members of OSCE states. This effort dates back to agreement in 1993 on Principles Governing Conventional Arms Transfers, but became more focused at the 1999 Istanbul OSCE Summit with the OSCE Document on Small Arms and Light Weapons. The specific measures contained in the Document on Small Arms and Light Weapons go beyond the earlier statement of general principles—firmly based on U.S. principles and practices—and provide a concrete basis for U.S. efforts to encourage institute good practices among our OSCE partners in this regard.

We are at an important point in implementing this strategy. We have begun to steer Eastern Europe away from the arms markets and military cooperation of the past toward productive areas for the future. These positive changes will contribute not only to our efforts to cut off supply lines to terrorists, but also to our goal of supporting further integration into western security and defense institutions. We will continue to work within the effective framework of bilateral and multilateral relationships, including the Wassenaar Arrangement, NATO, and the G–8, to ensure the sustained improvement in arms transfer policies in all OSCE countries.

Question. Mr. Secretary, despite our frustration and disappointment with President Kuchma and his associates in Ukraine, it is important that we continue to assist those elements of Ukrainian society striving for democracy, rule of law and Euro-Atlantic integration.

Cuts in Voice of America and Radio Liberty programming to Ukraine have been proposed. Isn't this a premature move, given the poor environment for independent media there especially in the run-up to next year's presidential elections?

Answer. We share your views on the critical importance of developing a strong civil society in Ukraine, and on the important contributions made by Voice of America and especially Radio Free Europe/Radio Liberty (RFE/RL). In the interest of seeing a free and fair 2004 presidential election in Ukraine, in which all major candidates have access to the media, the role of the Ukrainian service of RFE/RL is especially vital. This is a central goal of U.S. policy towards Ukraine.

In March, Under Secretary Beers sent a letter to the Chairman of the Board of Broadcast Governors (BBG) expressing our concerns about rumored reductions in staffing and operational funding for RFE/RL's Ukrainian language service. We also briefed the BBG on the results of our Ukraine policy review, which called for greater support for independent media in Ukraine. The Chairman, Mr. Tomlinson, assured us that no reductions for RFE/RL were contemplated.

Question. As Co-Chairman of the Helsinki Commission, I recently introduced a bipartisan resolution (S. Con. Res. 7) concerning anti-Semitism and related violence in the OSCE region.

What actions is the Department taking to ensure that our friends are doing everything possible to confront such attacks, prosecute and publicly denounce such violence?

The Porto OSCE ministerial called for a meeting focused specifically on anti-Semitism, a subject high on the Helsinki Commission agenda. Is that meeting on track to take place?

Answer. The Department of State is concerned about the increase in anti-Semitic violence in the OSCE region. We have made combating anti-Semitism a priority for our diplomacy throughout the region and especially at the OSCE.

The OSCE Parliamentary Assembly led the way on this issue by issuing a statement at the Berlin summer session last July highlighting the need for vigilance and governmental attention to the problem of anti-Semitic activities.

Our success at the Ministerial meeting in Porto in scheduling an OSCE meeting on anti-Semitism is in large part a result of the work done on this issue by the Parliamentary Assembly.

Through the OSCE Permanent Council and on a bilateral basis we raise incidents of anti-Semitic violence or policies with the governments concerned.

The OSCE meeting on anti-Semitism scheduled for June 2003, will be a forum to discuss best practices in the fight against anti-Semitic violence and tendencies in societies. The U.S. delegation, to include prominent governmental officials and private individuals, will be robust and will reflect the importance we place on this conference.

Question. Mr. Secretary there have been reports in the media suggesting that the United States is allowing, if not encouraging, other countries to torture individuals suspected of involvement in terrorism. In his State of the Union Address, the President described the horrific forms of torture employed by the Hussein regime and concluded, "if this is not evil, then evil has no meaning." Can you clarify what the U.S. policy is with respect to torture in the war against terrorism?

Answer. The United States condemns and prohibits torture. The President recently reaffirmed this to the United Nations High Commissioner for Human Rights. The Department of Defense General Counsel has further advised in a letter on the subject addressed to Human Rights Watch that:

—(1) When questioning enemy combatants, U.S. personnel are required to follow this policy and applicable U.S. laws prohibiting torture.

—(2) With respect to the transfer of detained enemy combatants to other countries for continued detention, U.S. Government instructions are to seek and obtain appropriate assurances that such enemy combatants are not tortured.

—(3) U.S. Government personnel are instructed to report allegations of mistreatment of or injuries to detained enemy combatants, and to investigate any such reports.

—(4) U.S. Government officials investigate any known reports of mistreatment or injuries to detainees.

The United States does not condone torture and is committed to protecting human rights as well as protecting the people of the United States and other countries against terrorism of global reach.

Question. A year ago I asked you what action might be taken against OSCE countries like Turkmenistan who flagrantly violate their human rights commitments. I understand that the situation has only deteriorated further over the past year. What is the Department doing to address these developments?

Answer. The human rights situation has continued to deteriorate in Turkmenistan, particularly since the November 2002 attack against President Niyazov's motorcade. The United States is deeply concerned about the human rights situation in Turkmenistan, and we have embarked on a number of bilateral and multilateral initiatives to address the problems there.

We have raised our human rights concerns directly with President Niyazov and other senior officials in Turkmenistan on a number of occasions, as well as the Turkmen Ambassador in Washington. In those conversations, we especially discussed the conduct of the Turkmenistan Government during its investigation of the November incident. We have also encouraged other countries to raise the matter with the Government of Turkmenistan.

We have also vigorously pursued multilateral efforts to improve Turkmenistan's human rights record. In December 2002, the United States joined other OSCE member states to invoke the rarely used "Moscow Mechanism," requiring the Government of Turkmenistan to reply in writing to a request for information on the whereabouts and conditions of those arrested. Ashgabat failed to respond adequately,

thereby bringing into motion the second stage of the Moscow Mechanism—the sending of a fact-finding team to Ashgabat to report on the situation. Under its OSCE commitments, the Government of Turkmenistan is obliged to accept a visit by the team and must appoint one member to the team. Despite this obligation, the Government of Turkmenistan did not cooperate, and the OSCE team had to investigate the matter without assistance.

On March 13, 2003, the OSCE Moscow Mechanism Rapporteur submitted his report on abuses in Turkmenistan following the November attack on President Niyazov. The report condemned the attack itself, catalogued a range of grave human rights abuses following the attack, and publicly called on Turkmenistan to make reforms and work with the OSCE to address the problems. Turkmenistan has rejected the findings of the report.

The United States also co-sponsored an April 2003 United Nations Human Rights Commission resolution condemning Turkmenistan for a range of human rights abuses including torture and political and religious repression. In particular, the resolution cited abuses in the crackdown following the November incident. We hope this resolution will encourage reforms in Turkmenistan and enhance U.N. engagement on this issue.

The United States is committed to sustained diplomatic engagement with Turkmenistan to press for fundamental political, economic, and societal reforms, and to push Turkmenistan to develop a healthy respect for human rights in accord with its U.N. and OSCE obligations. The development of such reforms is inextricably tied to security, stability, and prosperity in Turkmenistan. Understanding that significant political change will take time, we have increased our assistance programs that promote democratic freedoms, including human rights, civil society and rule of law.

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

COST SHARING INITIATIVE

Question. Is the program voluntary or mandatory?

Answer. The Administration's Security Capital Cost Sharing Program will be mandatory for all agencies under Chief of Mission authority. As envisioned, agencies, including the Department of State and ICASS, will be required to pay on a per capita basis for each authorized overseas position. It is an Administration initiative that is part of the President's Management agenda. It aligns costs with the overseas assignment process and is a significant right-sizing initiative. It is also consistent with the OPAP recommendations. This approach is reflected in the Foreign Affairs Authorization Bills now being considered by both the Senate and House.

Question. How are you going to guarantee that other agencies will reimburse the Department through the Cost Sharing Program?

Answer. The legislation now being considered (S. 925 and H.R. 1950) would authorize State to collect the amounts due automatically through the Intra-Governmental Payment and Collection System, which is the same way GSA collects rent for domestic buildings. Payment and collection would not be contingent on a particular cost sharing appropriation to an agency.

Question. What specifically is the $120 million for?

Answer. All cost sharing funds will be used solely for the construction of secure, safe, and functional New Embassy Compounds (NEC), in accordance with the Long-Range Overseas Buildings Plan. The fiscal year 2004 funds will help fund the NEC's identified in the President's fiscal year 2004 Budget. The $120 million includes State's cost share of $64 million and $56 million for other agencies' cost share. The actual transfer of funds from agencies will begin in fiscal year 2005 and will be fully phased in by fiscal year 2009.

Question. You propose to phase the program in over 5 years. Does this mean that DOS shoulders the expense for the next 5 years?

Answer. Under this program, State will not have to shoulder all the expense for the next 5 years. State has traditionally provided 100 percent of the capital cost of New Embassy Compounds (NEC), and even when the Cost Sharing Program is fully phased in, the Department will be responsible for about two-thirds of the total budget based on its overseas positions. The 5-year phase-in period will allow other agencies time to rationalize their overseas presence, deciding either to increase their budgets for overseas activities or reduce the numbers of their least essential personnel overseas. The Department of State would also be making the same judgments about its own staffing in light of the larger financial consequences of maintaining positions overseas. The Administration believes that the 5-year phase-in is

a practical accommodation to account for a significant change in the Government's approach to funding the construction of approximately 150 New Embassy Compounds over the next 12 to 14 years.

Question. Would you provide the Committee with a breakout of DOS costs and costs of participating agencies for each of the next 5 years?

Answer. The breakout of Department of State costs and costs of participating agencies currently available are based on data collected almost two years ago. The Department has recently collected fresh data and is now computing new cost figures. As soon as they are available, we will make them available to the committee. We anticipate they will be ready in late June.

USAID FACILITIES

Question. Why did State decide to request additional funding for USAID facilities through CJS, when Congress has consistently not supported this approach?

Answer. The Department of State and the Administration are strongly committed to ensuring that USAID is also provided with secure, safe, and functional facilities. The Secure Embassy Construction and Counterterrorism Act of 1999 requires all agencies, and therefore USAID as well, to be located on the embassy compound. This also allows for economies of scale resulting from concurrent construction. We are eager to work with the Congress to achieve this legislated mandate.

Previous budget submissions have requested full funding from the Commerce, Justice, State, and Judiciary Subcommittees and from the Foreign Operations Subcommittees in different years, and neither subcommittee has been willing to fund USAID buildings. The fiscal year 2004 budget request places the "catch up" projects that should have accompanied the already funded New Embassy Compounds (NECs) in the Foreign Operations budget request. USAID facilities that will accompany the proposed NECs are included in the CJS budget request.

The Administration's proposed Security Capital Cost Sharing Program should render the USAID facilities funding issue moot since USAID, like other agencies, will pay into the program for the space they need.

BERLIN/FRANKFURT FACILITIES

Question. What steps are you taking to ensure that the facility will remain safe in light of the fact that you will not know who owns property inches away from the embassy wall?

Answer. The new embassy in Berlin will be built to withstand catastrophic and progressive collapse from blast, and is being designed with buffer spaces between the building and the contiguous buildings. Additionally, our design features non-office space such as elevator shafts and mechanical rooms located along the space contiguous with adjacent buildings, to the maximum extent feasible.

Question. Will you know who purchases the condominiums next door?

Answer. Our security and intelligence units keep in close contact with German security and intelligence services, as well as building owners and landlords. It is in all of our interests to provide safety and security for not only our facility, but for the Germans and German facilities close to ours. The German authorities and the owners of the adjacent buildings appreciate our concerns and we foresee a very high level of cooperation to address this issue.

Question. If you are capable of building a structure within inches of private property without any knowledge of who owns that property, then do we truly need the 100-foot setback requirement?

Answer. The location of our new Embassy in Berlin is a unique opportunity to build a chancery on a historic and prestigious site. It is not without security challenges, but both the Department and German authorities are working to provide an adequate level of security. While the site does have contiguous buildings, we are working to mitigate the threat from the buildings using both physical and procedural methods. It should also be noted that we are working with the Germans to ensure that uninspected vehicles on the roads around the chancery are kept at a distance of no less than 82 feet. The chancery will be built stronger, to the same level of protection as if it had 100 feet of setback.

While certain waivers will be signed for this particular chancery building, the normal requirement for 100 feet of setback has allowed the Department to construct safe and secure facilities in many countries in the world that may not provide the same level of cooperation or have the same capabilities as the German government. Congress wisely included a waiver process in the Secure Embassy Construction and Counterterrorism Act, and that process will be used only when appropriate. The 100-foot requirement is still valid.

Question. What steps are you taking to secure the property where the subway runs?

Answer. The subway does not run under the building. It does run under the Pariser Platz in front of the chancery. There is an emergency escape tunnel from the subway with an exit in the street approximately 60 feet in front of the embassy, which would open into an area where the public has free pedestrian circulation. We do not consider the subway a vulnerability.

Question. Given the current climate and anti-American sentiment in Germany because of the potential war with Iraq, do you still feel as certain about maintaining the security of the facility today as you did one year ago?

Answer. While there were differences in our positions over Iraq, the Germans provided excellent security for our existing facilities throughout this period of heightened threat. I have no doubt that they will continue to honor their security responsibilities and provide us with excellent services and support. The decision to build on Pariser Platz was taken only after careful consideration, with the condition that security issues be adequately addressed. We continue to move toward that goal.

Question. When will you actually sign the waiver for the security requirements?

Answer. The waiver will be signed when the Department is assured that security issues have been adequately addressed.

EVALUATING THE HIRING INITIATIVE

Question. Since the whole notion of the 1,158-position Hiring Initiative was to meet DOS's high priority needs, why are the 68 additional positions needed for Consular Activities not absorbed in the Hiring Initiative?

Answer. The Diplomatic Readiness Initiative (DRI) request was introduced as a three-year plan by Secretary of State Powell in 2001 to fill gaps created by underhiring in relation to workload in the 1990's. The DRI addresses many of our core needs, some of which are determined by our Overseas Staffing Model and training requirements. However, some personnel requirements are assessed and resources requested separately such as security, IT, and consular which tend to have specific needs due to outside events.

It did not take into account the additional requirements that would follow from the events of September 11th. Currently, the Department is assessing future personnel needs taking into account the long-term needs of the Department, to include the implications following the events of September 11th.

The 68 CA positions that are referenced in the question represent new positions not originally contemplated in the DRI. These positions will be used to replace temporary consular associates with full-time consular officers. This is a critical element in the Department's' efforts to support homeland security initiatives.

Additionally, Consular positions have traditionally been funded through the MRV fees collected by the Department. Post September 11, travel has decreased and therefore so has MRV income. This means that we need to request appropriated funds for these additional personnel requirements.

Question. Does the Department support, as you stated in the letter of May 22, 2002, a comprehensive plan for compensation?

Answer. Yes. We have stated on many occasions that we favor a comprehensive approach to compensation for U.S. victims of international terrorism. We sympathize greatly with suffering endured by U.S. victims of terrorism and their families, including the 1979 Tehran hostages. We support a comprehensive program that allows them to receive quick payments in their time of need.

The current ad hoc, piecemeal legislative approach, however, which depends on the vagaries of litigation, does not work. It is not fair and equitable, as it has provided some victims or categories of victims with compensation and has left others with nothing.

Deputy Secretary Armitage's letter to Congress, dated June 12, 2002, laid out the Administration's principles for a comprehensive plan. The letter stated that such a plan should provide compensation on par with that for death or injury to public safety officers killed in the line of duty in a quick, streamlined and simple claims process, without regard to income. It stated further that such a comprehensive plan should preserve the President's ability to conduct foreign policy by not using blocked assets to fund victims compensation.

Question. Since you have drafted something, perhaps you would like to share with the committee exactly what you propose to do to compensate the original 52 hostages?

Answer. First, some background on this issue is helpful. This is not the first time that Congress or the President has considered the question of compensation for the 1979 hostages. In 1980, Congress passed the Hostage Relief Act, which provided

compensation with respect to the hostages' tax liabilities and other benefits in 1980. After the Algiers Accords were entered into in 1981, which waived the hostages' claims in order to secure their release from captivity, and after extensive hearings were held in both houses of Congress on the Accords as a whole and on this waiver in particular, the President established a special commission to make recommendations to the Congress as to how the hostages should be compensated for their ordeal.

The President's Commission issued its Final Report and Recommendations on Hostage Compensation in 1981. It recommended that the hostages receive a certain amount of compensation and other benefits. In 1986, the Victims of Terrorism Compensation Act was passed and enacted into law. Section 802 and 803 of that act provided for additional compensation and benefits to the hostages. I understand that all of the hostages received compensation according to the directives of that act.

Deputy Secretary Armitage's letter to Congress of June 12, 2002, outlined the Administration's principles for a comprehensive compensation plan. Because the plan is designed to address compensation for all U.S. victims of international terrorism, it does not single out any particular group or category, such as the 1979 hostages.

Question. When can we expect to see such a proposal?

When was the proposal submitted to OMB? What steps are you taking to the proposal released from OMB?

Answer. The submission of a proposal and its timing depend on OMB. We have been working with OMB for some time to develop such a proposal. In November 2001, we sent a draft proposal to OMB that could be circulated for inter-agency review. Our discussions with OMB ultimately resulted in the letter that Deputy Secretary Armitage sent to Congress last June. Following my oral testimony in March, I sent a letter to then-OMB Director, Mitch Daniels, urging that OMB complete its review of our draft proposal as soon as possible. We have been in further discussions about this with OMB and the White House. We have made progress, and I am hopeful that these discussions will result in a proposal that is worked out between the Administration and Congress soon.

Question. To date, how much funding has the Department of State expended on defending Iran—a known terrorist state—in court against American citizens?

Answer. None. We have made appearances in proceedings in U.S. court to protect the interests of the United States. Unfortunately, plaintiffs' lawyers have sometimes mischaracterized our actions. In the *Roeder* v. *Iran* case in the U.S. District Court for the District of Columbia, Judge Sullivan noted in his decision,

> "Plaintiffs consistently mischaracterize the nature of the interest asserted by the United States. The United States is not seeking to vindicate Iran's interests, but rather its own commitment under a binding international agreement, and its ever-present interest in the enforcement of its laws."

Judge Sullivan recognized that we had appeared in the litigation to protect U.S. interests in light of our obligations in the Algiers Accords.

I would also like to address certain statements made by Senator Harkin concerning the Algiers Accords in recent congressional hearings. He suggested that the Algiers Accords should not have any binding effect, asserting that they were never a treaty ratified by the Senate and because they resulted from blackmail.

After the Algiers Accords were signed, and after the hostages were released, Congress had extensive hearings on the Accords in both houses. Former Deputy Secretary Warren Christopher, who was the lead negotiator for the United States, recounted in his testimony how he had reported to the then-Senate Foreign Relations Committee "on nearly a daily basis" concerning the ongoing negotiations. As reflected in the hearings, the Accords and the negotiators received overwhelming bipartisan support and praise. For example, the Chairman of the House Foreign Affairs Committee, Rep. Zablocki, stated, "The agreements preserved the honor of the United States and secured the safe release of the hostages." The Chairman of the Senate Foreign Relations Committee, Senator Percy, also stated, "President Reagan has determined that Presidential authority did exist and does exist to implement these agreements and it is in the best interests of the United States of America that we honor them. I applaud this decision by President Reagan and Secretary Haig." And the Supreme Court noted Congress' approval of the Algiers Accords in its decision in *Dames & Moore*.

Upholding U.S. obligations in the Algiers Accords is in the interests of the United States, and it is those interests that the United States has sought to protect by appearing in court in these cases.

Question. What other terrorist states or organizations has the Department of State defended in court?

How much has been expended on those cases?

Answer. None.

DOLPHIN-SAFE TUNA

Question. With all due respect, doesn't NMFS have greater scientific expertise than the Department of State to make this decision as to whether the science supports changing the standard?

Answer. Yes. The Department of Commerce in general, and the National Marine Fisheries Service in particular, has both the capacity and the statutory responsibility to evaluate the scientific evidence bearing on the issue of dolphin-safe tuna fishing. We understand that the decision was made on this basis.

Question. Despite the clear science-based standard in the statute, isn't it true that the Department of State believes that keeping Mexico and other countries at the table in the international treaty on the tuna fishery in the Eastern Tropical Pacific is an important factor in deciding whether to change the U.S. law? Wasn't this view expressed to the Department of Commerce?

Answer. At the end of 2002, the Secretary of Commerce had the responsibility under the law in question to determine whether the purse seine tuna fishery in the Eastern Pacific Ocean is having a significant adverse impact on any of the depleted dolphin stocks in that region. As you know, he found that the fishery is not having such an impact.

In advance of that finding, I wrote to Secretary Evans to describe what the Department of State saw as a wide range of views of various scientific organizations that were examining this issue and urged him to weigh all the competing evidence carefully, as he certainly did.

The United States has a strong interest in maintaining the International Dolphin Conservation Program, which has reduced dolphin mortality in this fishery by 98 percent. However, the statutory criteria on which the Secretary of Commerce made his finding relate solely to the issue of whether the fishery is having a significant adverse impact on dolphin stocks. The Department of State has not argued otherwise.

Question. There have been serious concerns raised with respect to the failure of certain member countries to comply with the international agreement to reduce dolphin mortalities in the Eastern Tropical Pacific. As a result of these concerns, the fiscal year 2003 Omnibus Appropriations bill includes language calling for a report to Congress on compliance with the international agreement, and also provides $750,000 of the budget for the Bureau of Oceans and International Environmental and Scientific Affairs only for negotiating measures to strengthen the IDCP. I hope you are taking our message seriously.

Answer. The Department of State is aware of the concerns that some have raised with respect to the implementation of the international dolphin conservation program. Since the initial implementation of the program, we have stressed to all participants the need for the highest standards of compliance with the provisions of the agreement and have worked to achieve this result in a number of ways. However, more can and should be done. We will continue to work with the Department of Commerce, Congress and affected U.S. constituent groups to pursue effective implementation of this program.

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

Question. Mr. Secretary, thank you for pursuing the Diplomatic Readiness Initiative to fill staffing gaps in the Foreign Service and Civil Service. Fiscal year 2004 will be the third and final year of the Diplomatic Readiness Initiative.

The State Department authorization act (Public Law 107–228, at Sec. 301) requires that you submit to the Congress a comprehensive workforce plan for the Department for fiscal years 2003 through 2007. We look forward to receiving this workforce plan, which is due 180 days after enactment of the Act. The world has changed considerably since the Diplomatic Readiness Initiative targets were set two years ago, and we expect changes in the State Department to be reflected in the workforce plan.

Are Diplomatic Readiness Initiative targets still adequate to fill the current and anticipated open positions at our diplomatic missions and consular posts?

Will there be a sufficient number of Foreign Service personnel so they can receive needed training without leaving positions unfilled?

Do you anticipate personnel shortfalls or unmet skills needs, which would be identified in the workforce plan? Do you anticipate the need to shift personnel, or problems in recruitment and retention, that the subcommittee should be prepared to consider?

Answer. As mentioned, the Diplomatic Readiness Initiative (DRI) program was intended to "right-size" the State Department staff following a long period of under

hiring in the mid-1990's. Events since the initial DRI (developed in 2001) could support increases. We anticipate that the next iteration of the Overseas Staffing Model will take some of these events into consideration and we will also be reviewing results of our analysis of the Domestic Staffing Model results.

DRI was designed to help make it possible to plan for crises and to have enough people to be able to reprioritize quickly within existing resources; without enough people in the system, those who leave to cover a crisis would leave major staffing gaps.

But for some of these new issues, they cease being crisis requirements and become baseline requirements—such as an embassy in Kabul and the increased consular workload.

We have had to use some of the DRI positions to cover new consular needs in the wake of 9/11 when the workload went up even as MRV fees—which have funded many consular position increases—went down. We have also had increased visa processing requirements that have increased workload while we have also striven to ensure that we have fully trained commissioned Foreign Service Officers in all positions. In the short run we have had to meet these new requirements within our current workforce. These requirements will need to be met continuously, but the original DRI did not envision these changes.

Even though we had to use some DRI positions for these unexpected contingencies, we still need the personnel complement foreseen by DRI to make training and future crisis response possible.

Question. A June 2002 General Accounting Office report on Diplomatic Readiness at Hardship Posts, stated, "According to State officials and Foreign Service employees, the incentive provided by differential (hardship) pay for overseas service has been diminished by rules governing locality pay . . .. State has not analyzed the effect that this difference has had since 1994 on the number of Foreign Service employees who bid on overseas assignments, including hardship posts. However, State Department officials, the American Foreign Service Association, and many officers with whom we met said that this gap penalizes overseas employees and that if it continues to grow, it will inevitably keep employees from choosing an overseas career in the Foreign Service . . .. We estimate that by 2006 and 2010, the differential pay incentives from the 15 percent and 20 percent differential posts, respectively, will be less than the locality pay for Washington, D.C., assuming that the locality pay rate continues to increase at about 1 percent per year."

Do you believe the gap identified as a problem by GAO will result in difficulty filling positions at hardship posts? If so, how can this problem be addressed?

Answer. While our employees always step up to do what is needed, we do believe that the overseas pay gap (now nearly 13 percent as Washington, DC locality pay rose in 2003) has created serious morale problems, causing employees to question our commitment to them as we ask them to do ever more difficult and dangerous work overseas.

The hardship incentive—post "differential"—is intended to both compensate employees for difficult conditions as well as to provide an incentive for service. It is not intended to make up for lost salary. Hardship incentives to do not count as salary for the purposes of annuity calculations or retirement fund contributions.

We believe that this inequity between overseas and domestic salaries will make it harder for us to staff overseas posts—especially hardship posts, but all posts. At nearly a quarter of our posts, even including allowances such as hardship pay, salary is less than Washington salaries.

Unlike the CIA, we do not currently have the legal authority to pay employees overseas at the Washington, DC pay level. In addition, the cost of doing so cannot be managed without additional appropriations. We are working with the Administration on a solution to this inequity and workforce management problem.

Question. At the time of the bombings of our embassies in east Africa, about 88 percent of our embassies did not meet the Department's basic safety standards (according to the Overseas Presence Advisory Panel report).

After five years of a ten or eleven year plan to protect our posts and missions abroad, what percentage now meets the Department's basis safety standards?

Also, because of the changing nature of international terrorism, do you believe additional funds are necessary to protect U.S. personnel and their families in "soft target" environments such as international schools attended by our children, churches and places of entertainment frequented by American families, and even our housing complexes?

Answer. In the immediate period after the embassy bombings, Congressional funding and Department effort was focused on providing immediate improvements to our existing facilities using the Emergency Security Appropriation. These efforts provided necessary and timely upgrades to our facilities, and were instrumental in

protecting our people in such places as Karachi from a car bomb attack. However, this effort could not provide substantial improvements such as blast resistant buildings and improvements in setback for most of our buildings.

Since early 2001, the Department has embarked on a truly ambitious new building program. Since then, new embassy facilities have been constructed in Kampala, Doha, Dar Es Salaam, Tunis, and Abu Dhabi. Three new embassies will be finished in 2003, including Zagreb, Nairobi, and Istanbul. The 88 percent figure relates to 142 of the 163 "Inman" era embassies that were not up to standard, leaving 21 (12 percent) that were up to standard. Adding these 8 new embassies, the percentage rises to nearly 18 percent. With 2004 plans for another 8 embassies, this figure will continue to improve.

As to the question of soft targets, I believe funding can and is being provided to improve the security at overseas schools and for our housing. However, the school program is just commencing, and it is unclear how much funding will be appropriate. The Department will also continue to provide timely and appropriate security advice and guidance to businesses and religious groups overseas to enhance their ability to protect themselves.

SUBCOMMITTEE RECESS

Senator GREGG. The subcommittee will stand in recess.

[Whereupon, at 11:04 a.m., Thursday, March 6, 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 2004

THURSDAY, MARCH 20, 2003

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

The subcommittee met at 10 a.m., in room S–146A, the Capitol, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, Hollings, and Kohl.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

STATEMENT OF HON. DONALD L. EVANS, SECRETARY OF COMMERCE

Senator GREGG. Let me formally welcome you, Mr. Secretary. We appreciate your coming by to tell us what is happening at the Commerce Department. The floor is yours.

Did you have a statement or anything?

Senator HOLLINGS. No, thank you.

Secretary EVANS. Thank you, Mr. Chairman. If you do not mind, Mr. Chairman, for the record let me go ahead and read a brief edition of what I would like to submit to the record in my written remarks.

Mr. Chairman, Mr. Hollings, members of the committee, I am pleased to be here again to present the President's fiscal year 2004 budget request for the Department of Commerce. With your permission, I would like to briefly highlight some of the key components of our budget and submit my written testimony for the record.

A vibrant private sector is essential to American jobs and security. One hundred years ago, Congress created the Department of Commerce to promote American industry and business and economic opportunity for our citizens. This is the nexus of our diverse programs in trade, technology, entrepreneurship, and environmental stewardship.

In developing the budget request, I have carefully followed the President's directive to focus on four priorities. As you know, making a budget entails difficult decisions and resources are limited. Choices have to be made. Clearly, these troubled times of war and attacks on our way of life demand responsible, targeted spending. The President's total budget request for the Department of Com-

merce is $5.4 billion. This budget provides for the continued funding of key Commerce programs, while focusing resources on four critical priorities: fostering economic growth, contributing to homeland security, advancing science and technology, and upgrading facilities.

To generate jobs and economic growth, government and business decisionmakers need the best possible economic information. An additional $5.4 million is requested for the Bureau of Economic Analysis. These funds are required to improve the quality and timeliness of GDP and economic accounts data. As you know, two-thirds of the revisions in the last three GDP annual releases were due to lack of information.

For the Census Bureau, which monitors the Nation's social and economic development, we are asking $9.3 million in increased spending. The money is for improved data collection and methods for measurement of the important services sector and continued planning for the 2010 census.

The President and I are very concerned about the economic security of America's workers. A proposed increase of $13.8 million for economic development administration will assist communities severely impacted by plant closures and layoffs.

To meet homeland security needs, the President is requesting an additional $2.3 million for the Bureau of Industry and Security. The funds will be used to strengthen export controls on the dual use of goods and technologies that would strengthen the military capabilities of our adversaries.

The NOAA budget request includes $5.5 million to expand NOAA weather radio to a truly national all-hazards warning network. The funding will allow first responders and emergency managers direct access to the network to transmit all hazard messages, and to further strengthen homeland security, we are requesting $10.3 million for NIST. As you know, NIST is investigating the collapse of the World Trade Center buildings. Using lessons learned, we want to help develop new standards for cost-effective safety and security of buildings. Additionally, the funds will be used to test performance standards for biometric systems used to identify visitors to our country and to test radiation standards.

To support technology innovation and provide for intellectual property protection, the Department is working to eliminate the practice of using USPTO revenues for unrelated Federal programs. Making more fees available sooner will enable the agency to increase the quality of patents and trademarks issued. Because America's leadership in science and technology has a direct impact on our economic and homeland security, we also are requesting $9.2 million for NIST research in such emerging areas as nanotechnology, quantum computing, and health care quality assurance.

We also include a $16.9 million increase for NOAA to study areas of scientific uncertainty in climate change, and an additional $29.8 million increase to modernize fishery management to better protect this $50 billion industry.

Mr. Chairman, the scientists, engineers, and support staff in our Commerce laboratories are world-class. Unfortunately, in some cases, the facilities they occupy are not. For example, the NIST fa-

cilities in Boulder, Colorado were built in the 1950s under the Eisenhower administration. I have seen them. They lack adequate temperature controls. They suffer power outages and spikes. All of this adversely affects our vital research. The fiscal year 2004 budget request includes funding to renovate the NIST Boulder facilities and to bolster safety and security in NOAA's facilities and throughout the Department.

One last comment. As I said earlier, these are troubled, threatening times for our Nation, and we have had to make some tough choices affecting some very good programs. To enable us to focus on new economic and homeland security needs, this budget phases out funding for the Advanced Technology Program and the Technology Opportunities Program. It includes funding only for those manufacturing extension partnership centers in operation for less than 7 years, as the original law specifies, and it suspends funding for the public telecommunications facilities planning and construction.

I know that there will not be universal agreement about these choices. There are members of this committee and other Members of Congress who will have different views on priorities and on funding. Let me say here, I sincerely respect those views and those judgments, and I look forward to working with you and working through the budget process with you on the many issues affecting this Department.

Mr. Chairman, we appreciate the support of the committee and the support of the committee members that provided for the Commerce programs and initiatives in the past. This budget is focused on helping our Nation meet the challenges it faces in these difficult times.

PREPARED STATEMENT

I welcome your comments, and will be pleased to answer any questions you may have. Thank you, Mr. Chairman.

[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 2004 budget request. Our focus is on funding the core mission of the Department and its bureaus. As you know, the Administration faces great challenges in its commitment to fight and win 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 not only to provide for the physical security of the Nation, but also to work with other agencies and the private sector to promote economic security.

The Commerce Department's budget request of $5.4 billion supports the President's budget plan to focus resources to strengthen our core Commerce activities. In particular, our request supports the Administration's economic revitalization and homeland security 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. To complement the digital convergence in the private sector, we will be proposing legislation to modernize the technology and telecommunication entities of the Department.

The Commerce Department undertakes a wide range of activities designed to stimulate growth of the nation's economy. Commerce gathers and develops economic and demographic data for business and government decision-making; helps American firms and consumers benefit from open and fair international trade; issues patents and trademarks that support innovation; helps set industrial standards and

performs cutting-edge scientific research; forecasts the weather to improve public safety; and promotes sustainable stewardship of the oceans, including ocean fisheries.

This diversity of activities is reflected in Commerce's five strategic goals:

—Foster the Nation's economic growth.

—Secure our homeland and enhance public safety.

—Upgrade the Department's facilities, infrastructure, and safety.

—Improve and streamline the Nation's fishery management system to better meet commercial, recreational, and conservation objectives.

—Implement the Administration's Climate Change Research Initiative to reduce present uncertainties in climate science, and support policy and management decisions to benefit public safety and quality of life.

To enhance these activities, resources will be shifted from various lower priority programs.

ECONOMIC GROWTH

Economic growth is a central theme for the President and for the Department of Commerce's bureaus for fiscal year 2004. The Economics Statistics Administration's 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. BEA seeks to strengthen the understanding of the United States economy and its competitive position by providing accurate economic accounts data in a timely and cost-effective manner. BEA's request includes a $5.4 million increase to accelerate the release of major economic estimates, to incorporate new international economic data classifications, and to acquire real-time data to improve the quality and timeliness of economic statistics.

In conjunction with BEA's request, the Census Bureau's budget request includes an increase of $39.1 million in current economic and demographic statistics to fill gaps in data collection, to improve methodologies for collecting that information, and to improve the measurement of the Nation's service sector. The Census Bureau's budget for fiscal year 2004 also includes funding to process and to review data from the Economic Census, and to continue planning and designing the 2010 Decennial Census.

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. ITA's budget for fiscal year 2004 focuses on promoting U.S. exports and enhancing the competitiveness of U.S. businesses in the global economy, by fighting unfair foreign trade barriers and by negotiating and implementing multilateral and bilateral trade agreements.

The Economic Development Administration (EDA) helps communities across the nation create economic opportunity by promoting a favorable business environment to attract private capital investments and higher-skill, higher-wage jobs. EDA accomplishes this principally through infrastructure investments and capacity building. A program increase of $13.8 million is requested for EDA to assist communities that demonstrate a high level of economic distress.

The Minority Business Development Agency (MBDA) will continue to focus on accelerating the competitiveness and growth of minority-owned businesses by closing the gap in economic opportunities and capital access. MBDA is transitioning from an administrative agency to an entrepreneurial organization, and is driven by entrepreneurship and innovation. MBDA will continue to provide minority business development services, through its Minority Business Information Portal and local Business Development Centers.

For more than one hundred years, the Nation has relied upon the Technology Administration's National Institute for Standards and Technology (NIST) for scientific and technical expertise to promote economic growth, commerce and trade, and national security. The quality of NIST work is exemplified by the awards in 1997 and 2001 of the Nobel Prize, the world's ultimate recognition in science, to two NIST scientists—Bill Phillips in Gaithersburg, Maryland, and Eric Cornell in Boulder, Colorado. The work they are leading in super-cold matter and the strange nature of quantum mechanics is driving whole new areas of science and technology, from atomic clocks that do not gain or lose more than a billionth of a second in thirty years, to the potential for unimaginably powerful computers based on individual atoms, to new forms of telecommunications that provide the ultimate in information security.

The President's request includes a total of $340.8 million for the NIST Laboratories to strengthen the national measurements and standards infrastructure that

enables innovation and economic growth. The request will enable NIST to expand its work in the areas of nanotechnology, advanced information technology, and health care diagnostics—all areas with broad economic impact.

NIST will expand its program in nanotechnology, the so-called "tiny revolution" in technology, (total request of $62 million). Nearly all industrial sectors plan to exploit this emerging technology, and most of these plans call for appropriately scaled measurements and standards, which is NIST's specialty. NIST closely coordinates its nanotechnology work with other Federal agencies through the President's National Nanotechnology Initiative, or NNI. NIST appropriately has the lead in providing the measurements and standards infrastructure for the NNI.

The request also includes $7.3 million to build on NIST's world-class expertise in quantum computing and communications. This effort, with teams led by NIST's two Nobel laureates, is developing revolutionary means of making calculations much more quickly than traditional electronic computers will ever be able to do. NIST scientists already have made the working elements of quantum computers based on individual atoms.

The fiscal year 2004 Budget also requests funding to allow NIST to strengthen its programs supporting health care diagnostics, which not only improve the quality of health care, but also ensure that U.S. manufacturers can compete fairly in the $20 billion global market for these products. The request includes a total of $17.1 million to strengthen this effort. Consistent with the President's emphasis on shifting resources to reflect changing national needs, the President's fiscal year 2004 Budget proposes terminating the Advanced Technology Program (ATP) and requests a total of $27 million for administrative and close-out costs. The fiscal year 2004 President's Budget also proposes maintaining the fiscal year 2003 policy of significantly reducing Federal funding for the Manufacturing Extension Partnership (MEP), for which the budget requests $12.6 million. These programs have been well-run, but the scarce resources are needed for higher priority programs. The budget request focuses on NIST's core mission of measurements, standards, and laboratory research, rather than its extramural programs, by providing the 21st century facilities the NIST Laboratories need for success. Investment of limited NIST resources in the Laboratory programs and facilities will have the greatest impact on fostering innovation that leads to economic growth.

The U.S. Patent and Trademark Office (PTO) request will support the second year of the agency's strategic plan to enhance the quality of products and services and to keep pace with workload growth by promoting e-government activities and reducing pendency. We understand that intellectual property protection is paramount to the Nation's ability to innovate and move products into the marketplace. Concurrently, Commerce has recently proposed legislation to restructure PTO fees to better align the fee system with the work undertaken by PTO. The Department is also working to eliminate the practice of using USPTO revenues for unrelated Federal programs so that a greater share of the applicants' fees are available to the agency in the year they are collected.

HOMELAND SECURITY

The Bureau of Industry and Security (BIS) 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. The fiscal year 2004 budget includes a $5.6 million increase for BIS to address vulnerabilities in regulating exports of critical goods and technologies. This budget increase will enable BIS to strengthen export enforcement with additional agents and capabilities and to enhance the bureau's analysis of U.S. export control regulations to ensure they reflect the dynamics of 21st century market and technological changes.

We request an increase of $13.3 million (for a total of $38.7 million) for NIST to address key national needs for homeland security measurements, standards, and technologies. This request will strengthen NIST's portfolio of more than 100 projects that address homeland security technology needs.

Included in this request is an increase of $7 million (for a total of $10.9 million) as part of a program to use lessons learned from the NIST-led investigation of the World Trade Center (WTC) collapse to make buildings, occupants, and emergency responders safer from terrorist attacks on buildings and other building disasters. NIST has the unique combination of technical expertise in a broad range of building and fire sciences and lengthy experience working with the building and emergency responder communities to provide the Nation with the maximum benefit from the WTC investigation and associated research.

The NIST homeland security request also includes an increase of $5.3 million (for a total of $26.8 million) to develop the measurement infrastructure needed to detect nuclear and radiological ("dirty bomb") threats, to improve the use of radiation such as x-rays and other imaging techniques to detect concealed terrorist threats, and to use radiation safely and effectively to destroy biowarfare agents such as anthrax.

Our homeland security request also includes a total of $1 million to develop standards and test methods for biometric identification systems, used to positively identify the approximately 20 million non-citizens who enter the United States each year or apply for visas. This will enable NIST to carry out the mandate of the USA PATRIOT Act, which requires NIST to develop technology standards for biometric identification, recognizing NIST's long history of expertise in this area.

Ensuring public safety remains a priority of NOAA and its National Weather Service (NWS). The budget request for NOAA includes an increase of $7.7 million (for a total of $65.1 million) to enhance homeland security. This increase includes new funding in the amount of $5.5 million to support a scaled upgrade of the current NOAA Weather Radio (NWR) operation to an All Hazards Warning Network. This upgrade includes systems to standardize and automate receipt and dissemination of non-weather emergency messages. The Administration is also requesting $2.2 million in new funding for emergency preparedness and safety to improve physical security at 149 NWS facilities to prevent unauthorized individuals from entering and/or tampering with NWS property.

The fiscal year 2004 budget request also includes an increase of $3.7 million to secure core aspects of ITA's worldwide communications network, to defend against unauthorized access, and to create recovery mechanisms should damaging events occur.

FACILITIES, INFRASTRUCTURE AND SAFETY

The fiscal year 2004 budget strengthens key Commerce programs that provide the infrastructure that enables U.S. businesses to maintain their technological edge in world markets. Important priorities for fiscal year 2004 are to upgrade NIST's and NOAA's facilities and laboratories and begin consolidating PTO facilities. The NIST budget request includes $36.2 million to address inefficiencies and safety problems at its facilities in Boulder, Colorado and Gaithersburg, Maryland. Valuable research continues to be lost or interrupted by power outages, spikes, and fluctuations. This budget increase will enable NIST to protect critical research data from degradation, and to maintain employee safety and security. The budget also requests $8.2 million to equip, maintain, and operate NIST's Advanced Measurement Laboratory, and to fund time scale and time dissemination backup elements.

The budget includes a $47.7 million program increase for NOAA to address safety and security concerns associated with its buildings, aircraft, and ships, to upgrade weather forecast offices in the continental United States, Alaska and the Pacific Islands, to modernize the primary NWS telecommunications gateway, to continue construction of the NOAA Satellite Operations Facility in Suitland, Maryland, and to plan the replacement of the World Weather Building to be co-located with a major research institution. During fiscal year 2004, NOAA will also continue the tri-agency acquisition (with DOD and NASA) of the next-generation polar-orbiting satellites, and systems design and development for the next-generation geostationary satellite series (GOES R).

In fiscal year 2004, the PTO will begin relocating its facilities from 18 buildings in Arlington, VA into a consolidated 5-building campus in Alexandria, VA with an initial move into two of the buildings this December. The new consolidated facility is designed to meet the PTO's operational needs, provide flexibility to future program or process changes, and fully comply with current fire, life-safety and accessibility guidelines. The budget includes a $44.6 million program increase for construction inflation costs that occurred during the project delay generated by litigation and maintaining dual rent and simultaneous operations during the eighteen-month move period.

To strengthen the spectrum management capabilities of the National Telecommunications and Information Administration (NTIA), to meet the increasing demand for Federal wireless communication systems and services, the Department of Commerce requests an increase of $1 million for NTIA to establish a paperless system for spectrum issue resolution, certification, satellite coordination and frequency authorization, and to intensify research aimed at expanding spectrum utilization through greater understanding of radio frequency interference. The fiscal year 2004 budget also proposes to suspend the Public Telecommunications Facilities Planning and Construction (PTFPC) grants, a program reduction of $41.1 million for NTIA during fiscal year 2004. Up to $80 million in funding for digital conversion grants

for public television stations can be made available from within the Corporation for Public Broadcasting (CPB) $380 million appropriation, which has already been enacted. The fiscal year 2004 President's Budget also proposes to terminate the Technology Opportunities Program (TOP) as funding within the Department of Commerce has been redirected to higher priority programs.

GSA, in coordination with DOC, is planning a major renovation of the 70-year old Herbert C. Hoover Building. This initiative will restore the great building to its original condition, bring it up to current code requirements, address the realities of post 9/11 security needs and extend the useful life of this historic building. It is essential to the optimal stewardship of the taxpayers money that we establish a Renovations Office in fiscal year 2004. In addition, the Department will focus on safety issues by instituting a new Occupational Safety and Health Program targeted toward preventing accidents and injuries through incident tracking and proactive prevention.

FISHERIES

NOAA's budget request for fiscal year 2004 contains a $29.8 million program increase to modernize and improve the nation's fishery management system. Specifically, the requested funding addresses the need to improve socioeconomic data collection, to reduce bycatch in targeted fisheries, to increase fishery observer coverage, to streamline the current fisheries regulatory process, and to implement the Columbia River Biological Opinion effectively. New funds will also increase the understanding of the effects of climate change on marine and coastal ecosystems, and build a national observer program for the collection of high-quality fisheries and environmental data. The fiscal year 2004 budget includes a reduction of $40 million for the Pacific Salmon Treaty for which all U.S. obligations have been met.

CLIMATE CHANGE

Finally, one of the highlights of the Department's fiscal year 2004 Budget is the request of $295.9 million for NOAA's climate change research, observations and services. This amount includes an increase of $16.9 million as part of a total request of $41.6 million for NOAA's contribution to the President's interagency Climate Change Research Initiative (CCRI). The NOAA fiscal year 2004 CCRI request supports NOAA's efforts to: enhance ocean observations for climate; augment carbon-monitoring capabilities in North America as well as in key under-sampled oceanic and continental regions around the globe; advance the understanding of all major types of aerosols; establish a climate modeling center within NOAA's Geophysical Fluid Dynamics Laboratory, which will focus on research, analysis, and policy applications for the development of model product generation; and coordinate and manage the Nation's interagency climate and global change programs through the Climate Change Science Program Office.

The President's CCRI led to the creation of a new interagency framework in order to enhance coordination of Federal agency resources and research activities. Under this framework, thirteen Federal agencies are working together under the leadership of a Cabinet-level committee on climate change to improve the value of U.S. climate change research.

The President's fiscal year 2004 Budget request for climate change activities reflects the President's priorities by focusing Federal research on the elements of the U.S. Global Change Research Program (USGCRP) that can best support improved public discussion and decision-making. Under the CCRI, various agencies will adhere to specific performance goals, including providing products to decision-makers within four years. The priorities of the CCRI are: reducing key scientific uncertainties; designing and implementing a comprehensive global climate and ecosystem monitoring and data management system; and providing resources to support public evaluation of a wide range of climate change scenarios and response options. Even in this time of difficult budget decisions, the President is committed to fully funding climate research so that we can continue to reduce the uncertainties associated with climate change.

As I previously stated, this budget request for the Department of Commerce has been carefully crafted to focus on those core functions that the American people rely on from this agency. We will focus on promoting innovation, entrepreneurship, exports, and safety, while spreading opportunity to all Americans and ensuring responsible stewardship of our natural resources.

CIAO MOVED TO HOMELAND SECURITY

Senator GREGG. Thank you, Mr. Secretary. CIAO has been moved over to Homeland Security, at least in theory. I am wondering to what extent that has actually occurred, how it is physically being done, and whether the transfers are affecting the operations past the infrastructure protection efforts.

Secretary EVANS. It has been done. As far as I know the transfer was made smoothly. We continue within NIST to work with areas of CIAO in terms of protecting cybersecurity in this country, but the CIAO group has been moved over.

Senator GREGG. Have they physically left?

Secretary EVANS. Yes, gone. At least, I am not seeing them around there any more. On March 1, 2003, pursuant to Public Law 107–296 Homeland Security Act of 2002, the CIAO was transferred from the Department of Commerce to the Department of Homeland Security. There are plans for the CIAO/DHS to move out of the Herbert C. Hoover Building, but the move has not yet taken place.

ENTRY/EXIT SYSTEM BASED ON BIOMETRICS

Senator GREGG. NIST is doing biometric identification work. To what extent is that being coordinated with the INS efforts to produce an exit/entry system which is based on biometrics, do you know?

Secretary EVANS. I am certain that there is close coordination, because that is the purpose of it, is to be used in identifying people coming into this country with biometric techniques, and so I know there is close coordination. I am not sure of the specific meetings.

Senator GREGG. I would be interested in getting, or having your staff get for us an explanation of to what extent you are working with INS and to what extent NIST has evaluated the INS efforts in exit/entry, and whether or not they are on the right track.

Secretary EVANS. Sure.

Senator GREGG. This committee has had very serious reservations about INS' capacity to do exit/entry system based on biometrics. NIST is an extremely talented agency, filled with talented people, a very strong agency. I would be very interested in their evaluation of the INS efforts in this area.

Secretary EVANS. You bet.

[The information follows:]

NIST'S WORK WITH INS ON THE ENTRY/EXIT SYSTEM

Under the USA PATRIOT Act of 2001 and the Enhanced Border Security and Visa Entry Reform Act of 2002, NIST (with the Attorney General and Secretary of State) is required to "develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name . . ." NIST has an on-going mandate to provide technical guidance on appropriate biometric identifiers based on technology evaluations and to write reports with the Departments of Justice, State, Defense, and Homeland Security/INS on recommendations for entry-exit systems. The first report, entitled "Use of Technology Standards and Interoperable Databases With Machine-Readable, Tamper-Resistant Travel Documents," was submitted to Congress on February 4, 2003. The NIST appendix to that report is available at http://222.itl.nist.gov/iad/894.03/NISTAPP__Nov02.pdf. The second report on biometric standards has been com-

pleted and is currently circulating for comments within the agencies. NIST is evaluating face recognition and fingerprint matching systems for the INS and is planning an evaluation of the INS' Automated Biometric INDENTification System (IDENT) later in fiscal year 2003.

NIST PROGRESS INVESTIGATING WTC ATTACKS

Senator GREGG. NIST is also investigating the WTC attack and the destruction of the buildings. Do you have any conclusions yet that we can share?

Secretary EVANS. No—well, I think there are some, Mr. Chairman. I know that we have been sharing with some of the designers in New York some of the preliminary findings. I think there is a preliminary report, I believe that will be out this summer, but the full study is scheduled to take 2 years, which means we will not be finished for I think another year or so, but I know that those who are doing the designs under the new construction in New York have been talking to NIST, and they have been communicating, but still the findings, of course, are preliminary.

Senator GREGG. Do they have the funding they need? There has been some indication maybe too much stuff has been sent to the scrap heap and NIST could not get their hands on the necessary material.

Secretary EVANS. Right, Mr. Chairman. That was an issue that was brought up about 1 year ago. I went back and inquired and yes, there was concern about that initially. But after inquiring, my understanding now is, they feel like they have the necessary materials to provide the public with a full, and complete, and thorough report of what occurred, and what kind of standards we ought to think about implementing for providing more safety and security of these kinds of structures.

BACKLOG OF PATENT APPLICATIONS

Senator GREGG. The Patent Office has a 400,000 backlog of patent applications, and that is staggering. What is the game plan for getting that to some sort of reasonable conclusion?

Secretary EVANS. Well, as I mentioned, part of the game plan is more funding, and recruiting more examiners. Part of the game plan is modernization of the systems going from a paper-loaded system to a paperless system, which will take some time. In general, pendency rates have not moved a lot. They have come down a little bit, but I think the thrust, I would say, Mr. Chairman, is to move from a paper system to a technology computer information kind of system where we make more use of the modern information systems we have today, as well as continuing to recruit more examiners.

But I must say to you that a substantial amount of the funding also is going to go into a new program that we are implementing which is just the requalification of the examiners themselves. Right now, the way PTO works is, examiners, once they are a full-time examiner, you would think of it as tenure. They are always a full-time examiner, and we felt like it was important to have a system in place where periodically they go through a requalification process.

One other area, Mr. Chairman, I think—I mean, we are putting a lot of energy and a lot of effort into this, because it is so critical not only to protecting patents here in the United States—not protecting them, but approving them in a timely kind of way, but also making sure that those patents are recognized and honored around the world, and we are moving very aggressively toward a global patent system.

We are working aggressively with USPTO, Europe and with Japan—85 percent of the patents in the world are in those three areas, and so we are working toward a system that would eventually result in the mutual exploitation of search results in terms of integrating the information we have and sharing it with the European Patent Office (EPO) and with Japan, and other intellectual property offices and also them sharing their information with us. We feel like that would not only make the patent system more efficient but reduce a lot of duplication that is out there in the world today.

So just rest assured that I think we have got a very good team working on this. It is certainly a big focus of ours. We understand, just industry after industry in our country, how important intellectual property is, and protecting intellectual property.

Senator GREGG. Well, I do not know about other Members of the Senate, but I have heard from a number of folks in New Hampshire that their frustration with the Patent Office is fairly significant right now. Some of them have just given up on going that route, so I would be interested if there is a plan, a formalized plan for how you are going to reduce the backlog and how you are going to make it more electronically controlled, and how you are going to develop this international system. I would like to see such a plan, if it is a formal plan.

Secretary EVANS. We will be glad to provide that to you, you bet.

[The information follows:]

The U.S. Patent and Trademark Office (USPTO), in response to stakeholder input, updated its June 2002 *21st Century Strategic Plan* on February 3, 2003, and submitted it to the Congress in support of the fiscal year 2004 President's budget.

The USPTO prepared its *21st Century Strategic Plan* in response to Congressional direction. For example, the Senate CJS Subcommittee report language dated July 19, 2001 directed the Secretary of Commerce to develop a five-year plan with three core objectives: Prepare the agency to handle the workload associated with the 21st century economy; improve patent quality; and reduce patent and trademark pendency.

The Committee further said that the plan should include: Recommendations to improve retention and productivity of examiner workforce; targeted hiring increases to deal with high-growth areas; improved training; E-Government and other capital improvements designed to improve productivity; and benchmarks for measuring progress in achieving each of these objectives.

The Committee also directed that the "electronic file wrapper" be fully implemented by the end of fiscal year 2004.

The attached plan identifies the specific actions the USPTO is taking to

—Deliver an operational system to process patent applications electronically by October 1, 2004.

—Reduce duplication of effort and decrease workload by relying on search results obtained via partnerships with other intellectual property offices (see Work Sharing 1).

—Achieve an interim patent pendency goal of 27 months by fiscal year 2008. The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of the strategic plan.

—Reduce total patent examiner hires through fiscal year 2008 compared to the fiscal year 2003 budget and business plan projection.

Each of these actions is supported by a detailed analysis of the issue and an implementation plan. These are posted on the USPTO web site and can be made available to the Senator's staff.

THE 21ST CENTURY STRATEGIC PLAN

EXECUTIVE OVERVIEW

Today, the United States Patent and Trademark Office (USPTO) is under siege. Patent application filings have increased dramatically throughout the world. There are an estimated seven million pending applications in the world's examination pipeline, and the annual workload growth rate in the previous decade was in the range of 20–30 percent. Technology has become increasingly complex, and demands from customers for higher quality products and services have escalated. Our applicants are concerned that the USPTO does not have access to all of the fees they pay to have their patent and trademark applications examined, thereby jeopardizing the benefits intellectual property rights bring to our national economy. In the United States, these demands have created a workload crisis. The Congress, the owners of intellectual property, the patent bar, and the public-at-large have all told us that we must address these challenges aggressively and promptly.

We agree. We believe that the USPTO must transform itself into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. And we also believe that we have the tools, the skills, the will and the plan to do so.

—*The tools*.—The technology exists to create a high-quality, cost-effective, responsive, paperless patent examination process, building on our current success in automating trademarks.

—*The skills*.—We have a cadre of talented staff with the technical expertise and the vision to help guide and support the technical and, even more important, the cultural transformation of the USPTO.

—*The will*.—Organizational transformations require sustained commitment and constancy of purpose "from the top." The USPTO leadership is dedicated to this task.

—*The plan*.—This strategic plan lays out our approach to creating, over the next five years, an agile, capable and productive organization fully worthy of the unique leadership role the American intellectual property system plays in both the American and the global economies.

This new 21st Century Strategic Plan is aggressive and far-reaching. However, anything less would fall short of the expectations of the U.S. Congress, the applicants for, and owners of, patents and trademarks, the patent and trademark bar, and the public-at-large. Additionally, the failure to adopt this strategic plan would have negative consequences. We would be unable to implement our quality and e-Government initiatives, pendency would rise to uncontrollable levels, and our costs would continue to grow.

After the implementation of this strategic plan:

—Market forces will drive our business model.

—Geography and time will be irrelevant when doing business with the USPTO.

—We will strengthen our ability to be ranked as one of the highest quality, most-efficient intellectual property organizations in the world.

—Our products and services will be tailored to meet the needs of customers.

—Examination will be our core expertise.

—Our employees will be recognized as expert decision makers.

—Independent inventors, U.S. industry and the public will benefit from stronger, more enforceable intellectual property rights worldwide.

—Our workplace will become a state-of-the-art facility designed for the 21st Century.

—Following implementation of this plan and its underlying assumptions, including the enactment of legislation to restructure fees, statutory fees will remain steady for the foreseeable future.

ABOUT THE 21ST CENTURY STRATEGIC PLAN

This five-year strategic plan reflects both a thorough internal process review and a systematic attempt to incorporate the best thinking of our applicants, our counterparts in Europe, Japan and other countries, and our stakeholders, including our Public Advisory Committees. Key stakeholders also include our dedicated employ-

ees, without whose commitment the strategic plan could not have been developed and its success could not be assured.

The strategic plan takes a global perspective by envisioning the patent and trademark systems of the future that American innovators would need to remain competitive around the world. It is built on the premise that American innovators want to obtain enforceable intellectual property rights here and abroad as seamlessly and cost-effectively as possible. It emphasizes the opportunity for the USPTO to collaborate with intellectual property organizations in automation, global patent classification, and exploitation of search results. Finally, the plan is predicated on changes to the way all players in the intellectual property system do business with the USPTO and the way USPTO employees respond.

The strategic plan is supported with detailed documentation analyzing all of the related issues, a five-year implementation plan with identified critical tasks, proposed revisions to the fiscal year 2003 budget request to enable timely implementation of the strategic plan, and corresponding proposed legislation and regulations necessary for a successful multi-year implementation.

This strategic plan cannot succeed without enactment of the legislation changing the USPTO's current fee schedule and access to revenue generated in fiscal year 2003, to the extent provided in the President's fiscal year 2003 Budget, revisions to current rules, and legislation for streamlining the patent and trademark systems to facilitate these changes. There are a number of variables, such as potential changes in restriction practice and the use of commercial search services that could affect our projected costs and revenues. Once they have been clarified, any ensuing revisions to our program costs and fee schedule will be resolved in the context of the USPTO's annual budget submission to the Congress.

Proof of Concept

To ensure the USPTO proposes appropriate changes to patent and trademark laws, makes changes to internal processes that provide benefits and increased efficiency, and makes sound investment decisions, the initiatives proposed in this plan will be subjected to thorough evaluation. Pilot projects will be initiated and tested wherever necessary. Evaluation plans will incorporate, where appropriate, measurable objectives, critical measures of success, baseline data, and conditions for full implementation.

Performance Measures

This plan contains measurable objectives and milestones for each of the general goals. The annual budget submission to the Congress will provide additional criteria by establishing key measurements and yearly milestones that will be used to determine the USPTO's success in achieving these goals. The annual integrated budget/performance plan is the most efficient and effective way of establishing accountability by making sure that performance measures and milestones are consistent with the views of the Administration and the Congress in the enacted annual budget.

STRATEGIC AGENDA

Vision

The USPTO will lead the way in creating a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system for the 21st Century.

We believe that quality must permeate every action taken by every employee of the USPTO. The new initiatives in our strategic plan are targeted toward creating a cultural transformation whereby quality is the principal focus of everything we do.

Mission

The USPTO mission is to ensure that the intellectual property system contributes to a strong global economy, encourages investment in innovation, and fosters entrepreneurial spirit.

In order to accomplish our mission, we have prepared this strategic plan. Provided we receive the funding and statutory changes necessary to implement this new strategy, we will:

—Enhance the quality of patent and trademark examining operations through consolidation of quality assurance activities in fiscal year 2003.

—Achieve 27 months overall patent pendency goal[1] in fiscal year 2008.

[1] Pendency is a measurement of USPTO's traditional examination processing time; i.e., from filing (under 35 U.S.C. 111(a)) to ultimate disposal.

—Reduce total patent examiner hires through fiscal year 2008 by 2,400 compared to the 2003 Business Plan.[2]
—Accelerate processing time by implementing e-Government in Trademarks by November 2, 2003, and in Patents by October 1, 2004.
—Competitively source classification and search functions, and concentrate Office expertise as much as possible on the core government functions.
—Expand our bilateral and multilateral discussions to strengthen intellectual property rights globally and to reduce duplication of effort among offices.

Strategic Themes

To achieve our vision and accomplish our mission, we must transform our organization and become a more agile, more capable and more productive USPTO. The Congress has directed us to (1) improve patent and trademark quality, (2) aggressively implement e-Government to handle the workload associated with the 21st Century economy, and (3) reduce patent and trademark pendency. We have identified three strategic themes that correspond directly to these Congressional requirements:

—1. *Agility: Address the 21st Century Economy by Becoming a More Agile Organization*.—We will create a flexible organization and work processes that can handle the increasing expectations of our markets, the growing complexity and volume of our work, and the globalization that characterize the 21st Century economy. We will work, both bilaterally and multilaterally, with our partners to create a stronger, better-coordinated and more streamlined framework for protecting intellectual property around the world. We will transform the USPTO workplace by radically reducing labor-intensive paper processing.
—2. *Capability: Enhance Quality through Workforce and Process Improvements*.—We will make patent and trademark quality our highest priority by emphasizing quality in every component of this strategic plan. Through the timely issuance of high-quality patents and trademarks, we will respond to market forces by promoting advances in technology, expanding business opportunities and creating jobs.
—3. *Productivity: Accelerate Processing Times Through Focused Examination*.—We will control patent and trademark pendency, reduce time to first Office action, and recover our investments in people, processes and technology.

We will transform the USPTO by adhering to these themes in each of the improvement initiatives upon which this strategic plan is based, as well as in all of our other programs. These initiatives are discussed in more detail under each of the major theme sections.

Agility: Address the 21st Century Economy by Becoming a More Agile Organization

An agile organization responds quickly and efficiently to changes in the economy, the marketplace, and the nature and size of workloads. In pursuit of an agile organization, the USPTO will focus both internally and externally.

As a first priority, we have made electronic end-to-end processing of both patents and trademarks the centerpiece of our business model.

We will create a nimble, flexible enterprise that responds rapidly to changing market conditions. We will make the USPTO a premier place to work; we will rely on a smaller cadre of highly trained and skilled employees; and we will place greater reliance on the private sector, including drawing on the strengths of the information industry. We will enhance the quality of work life for our employees by exploring expansion of work-at-home opportunities and moving to the new Carlyle campus facility in Alexandria, Virginia.

Further, we will enhance existing and establish new alliances with our friends in other national and international intellectual property organizations to strengthen American intellectual property rights around the world.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Implement automation for patent and trademark applications

Develop a trademark electronic file management system and begin e-Government operations on November 2, 2003, in tandem with implementation of the Madrid Protocol. [E-Government 1]

Deliver an operational system to process patent applications electronically by October 1, 2004, including electronic image capture of all incoming and outgoing paper documents. [E-Government 2]

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[2] The 2003 Business Plan was submitted to the Congress in February 2002 as part of the USPTO's fiscal year 2003 Budget.

Develop an automated information system to support a post-grant patent review process. [E-Government 3]

Establish an information technology security program for fully certifying and accrediting the security of automated information systems. [E-Government 4]

Provide back-up systems to ensure maximum availability of computer systems to examiners, attorneys, the public and other patent and trademark offices by establishing appropriate back-up systems. [E-Government 5]

Expand work-at-home opportunities

Increase the efficiency and return on investment of our work-at-home program and thereby encourage more employees to participate. [Work-at-Home 1]

Increase flexibility through greater reliance on the private sector or other intellectual property offices

Increase reliance on the private sector or other intellectual property offices for:

Classifying patent documents. [Flexibility 1]

Supporting national application and Patent Cooperation Treaty search activities. [Flexibility 2]

Transitioning to a new global patent classification system. [Flexibility 3]

Classifying trademark goods/services and searching design codes. [Flexibility 4]

Global Development: Streamline intellectual property systems and strengthen intellectual property rights around the world

Promote harmonization in the framework of the World Intellectual Property Organization and its Standing Committee on the Law of Patents; resolve major issues in a broader context and pursue substantive harmonization goals that will strengthen the rights of American intellectual property holders by making it easier to obtain international protection for their inventions and creations. [Global Development 1]

Negotiate bilateral and multilateral agreements to facilitate global convergence of patent standards. [Global Development 2]

Accelerate Patent Cooperation Treaty reform efforts, focusing on the USPTO's proposal for simplified processing. [Global Development 3]

Develop a "universal" trademark electronic application by leveraging the United States' experience with electronic filing of trademark applications. [Global Development 4]

Share search results with other intellectual property offices

Reduce duplication of effort and decrease workload by relying on search results obtained via partnerships with other intellectual property offices. [Work Sharing 1]

Planned Agility Accomplishments

Accelerate processing time by implementing e-Government in Trademarks by November 2, 2003, and in Patents by October 1, 2004.

Competitively source classification and search functions, and concentrate USPTO expertise as much as possible on core government functions.

Expand our bilateral and multilateral discussions to strengthen intellectual property rights globally and to reduce duplication of effort among intellectual property offices.

Capability: Enhance Quality Through Workforce and Process Improvements

A capable organization has a highly skilled, appropriately sized workforce; it has systems and procedures that enhance the capability of every employee; and it has in place effective quality management processes to ensure high quality work and continuous performance improvement. In other words, a capable organization is committed to doing the right job right—the first time and every time. We will be such an organization.

Quality will be assured throughout the process by hiring the people who make the best patent and trademark examiners, certifying their knowledge and competencies throughout their careers at the USPTO, and focusing on quality throughout the examination of patent and trademark applications. By bolstering confidence in the quality of U.S. patents and trademarks, the USPTO will enhance the reliability in the quality of products and services needed to increasingly spur our economy and reduce litigation costs.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Enhance workforce capabilities by certifying competencies

Create an enterprise-wide training strategy that meets the needs of the new business model and the e-Government generation. [Transformation 1]

Restructure the USPTO by redirecting resources to core examination activities, implement revised performance plans to incorporate changes required to implement an e-Government workplace, meet agency-wide standards for senior executives, and implement selected award packages. [Transformation 2 and 3]

Transform the workforce by exploring alternative organizational concepts and structures. [Transformation 4]

Ensure that professionals, support staff and supervisors responsible for the patent process possess the requisite skills needed to carry out their responsibilities. [Transformation 5]

Certification of knowledge, skills and ability in the Trademark Process. [Transformation 6]

Implement pre-employment testing for patent examiners. [Transformation 7 and 8]

Recertify the knowledge, skills and abilities of primary examiners to ensure currency in patent law, practice and procedures. [Transformation 9]

Certify the legal competency and negotiation abilities of patent examiners before promotion to grade 13. [Transformation 10]

Improve the selection and training of supervisory patent examiners to focus on their primary responsibilities of training patent examiners and reviewing and approving their work. [Transformation 11]

Make improvements in patent and trademark quality assurance techniques

Enhance the current quality assurance programs by integrating reviews to cover all stages of examination. [Quality 1]

Expand reviews of primary examiner work. [Quality 2]

Engineer quality into our processing including the selective expansion of the "second pair of eyes" review[3] of work products in such advanced fields of technology as semiconductors, telecommunications, and biotechnology. [Quality 3 and 4]

Incorporate an evaluation of search quality into the patent work product review process, and survey practitioners on specific applications. [Quality 5 and 6]

Enhance the reviewable record of prosecution in patent applications. [Quality 7]

Certify and monitor the quality of searching authorities to ensure that patent searches provided by the private sector contractors or other patent offices are complete and of the highest quality. [Quality 8]

Make process improvements that contribute to enhanced quality through legislation/rule changes

Propose legislation and/or rule changes that have been identified as critical for the accomplishment of this strategic plan. Continue the process of seeking comments from stakeholders on proposed changes.

Planned Capability Accomplishments

Enhance the quality of patent and trademark examining operations through consolidation of quality assurance activities in fiscal year 2003.

Productivity: Accelerate Processing Times Through Focused Examination

We are committed to promoting advances in technology, expansion of business opportunities and creation of jobs through the timely issuance of high quality patents and trademarks. A productive organization maximizes its output of work performed. Improved productivity is key to reducing pendency and inventory.

This strategic plan has aggressive timeliness goals: to make available, on average, a first Office action for first-filed U.S. non-provisional patent applications, at the time of 18-month publication, and a patent search report for other patent applications in the same time frame—by far the fastest in the world. This will be accomplished through a redesign of the entire patent search and examination systems based upon multiple-examination tracks, greater reliance on qualified patent search services, and variable, incentive-driven fees. In Trademarks, achieve an average 12-month total pendency. This will be accomplished by a three-track examination system. Likewise, both Patents and Trademarks will restructure the way they do business to be compatible with an e-Government environment.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Transition to market-driven examination options

Adopt procedures that give greater choice and flexibility to trademark applicants for filing and examination of applications for the registration of trademarks, with

[3] A secondary review of applications for proper claim interpretation and to ensure that the closest prior art has been discovered and correctly applied.

a focus on using technology to improve the process and provide a lower cost filing option. [Pendency 1]

Move from a "one-size-fits-all" patent examination process to a multi-track examination process that leverages search results of other organizations and permits applicants to have freedom of choice in the processing of their applications. This new process will eliminate duplication of effort, encourage greater participation by the applicant community and public, and improve the quality of our patents and decrease processing time. [Pendency 2]

Address the number of claims presented for examination in an application and the size of applications through fee-setting legislation to reflect the cost of processing complex applications. [Shared Responsibility 1]

Achieve greater examiner productivity by reducing their prior art search responsibilities. [Pendency 3]

Implement an accelerated examination path option

Offer patent applicants the market-driven new "rocket docket" option of choosing an accelerated examination procedure with priority processing and a pendency time of no longer than 12 months. [Accelerated Examination 1]

Share responsibility for timely and high quality patents and trademarks between applicant and the USPTO

Seek enactment of legislation to restructure the USPTO fee schedule by mid-fiscal year 2003, and thereby create incentives that contribute to achievement of USPTO goals. For example, the filing fee will be kept as low as possible to incentivize applicants to file, and the refund provision expanded to allow the USPTO to refund a portion of the search fee if the application is expressly abandoned before search or examination. [Shared Responsibility 1]

Make patents more reliable by proposing amendments to patent laws to improve a post-grant review of patents. [Shared Responsibility 2]

Planned Productivity Accomplishments

Achieve first Office action patent pendency of 14.7 months in fiscal year 2008.

Achieve an interim patent pendency goal of 27 months by fiscal year 2008. Note: The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of this strategic plan. Our best estimate is that it will take at least a decade to achieve the 18-month goal.

Reduce total patent examiner hires through fiscal year 2008 by 2,400 compared to the 2003 Business Plan projection. [See Figure 1]

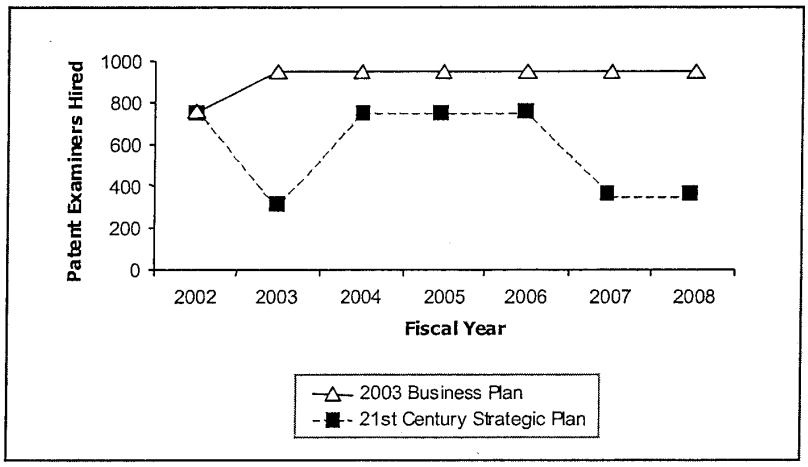


FIGURE 1. *Patent Examiner Hiring Comparison*

Critical Needs

The performance commitments outlined in this strategic plan demand extraordinary effort from every USPTO employee, and the full support of our key stakeholders. Our strategic plan is built around the following critical needs.

Multilateral and Bilateral Agreements

We need to consult with, and receive support of, other patent offices in structuring new bilateral and multilateral initiatives.

Legislation/Rules

We will need enactment of legislation by the Congress to adjust certain patent and trademark fees and access to revenue generated by mid-fiscal year 2003 to the extent provided in the President's fiscal year 2003 Budget. We also will need to promulgate final rules to effect fee changes.

We will need to continue working to develop the proposed legislation and rule changes that have been identified, and continue the process of seeking comments from interested parties on ways to improve our operation.

Labor Relations

We will need to notify the three bargaining units representing USPTO employees of proposed changes and negotiate, where necessary, any changes in working conditions.

Budget

We will need enactment of an appropriation for fiscal year 2003 that is consistent with the level of the President's 2003 Budget.

Move to Carlyle in Alexandria, Virginia

We will need to carefully plan the logistics for relocating the USPTO to a consolidated campus in Alexandria, Virginia, while minimizing any adverse effects on employees, applicants and the public. The USPTO is quickly moving into the implementation phase of the relocation of its facilities from 18 buildings spread throughout Crystal City to a single lease in a consolidated campus. This consolidation is expected to save us $72 million over the 20-year term of the lease, but it is a highly complex and difficult endeavor.

President's Management Agenda

Secretary Donald Evans has committed the Department of Commerce to speedy implementation of the President's Management Agenda. President Bush has stated that true government reform must be based on a reexamination of the role of the Federal Government. In this regard, he has called for "active, but limited" government: a government that empowers states, cities, and citizens to make decisions; ensures results through accountability; and promotes innovation through competition. The reforms that he has identified to help the Federal Government adapt to a rapidly changing world include a government that is: Citizen-centered—not bureaucracy-centered; results-oriented—not process-oriented; and market-based—actively promoting, not stifling, innovation, and competition.

This strategic plan supports the President's Management Agenda:

Human Capital.—We will provide the tools and the resources to ensure that we have a highly qualified, certified, knowledge-based, accountable workforce. Specifically, we will strengthen pre-employment testing; develop a competency certification program; create a new labor-management paradigm to meet changing business needs; streamline our workforce to maximize quality and efficiency; and focus our training, performance evaluation and assessment environment on our core expertise—examination.

Competitive Sourcing.—We are committed to achieving performance enhancements and cost-savings, through the process of competitive sourcing. This process compares the capabilities and costs of commercial service providers with current government program providers. Greater competition drives down costs and yields more innovative solutions. We will seek improved effectiveness in the following areas: patent searching, patent documentation classification, and information technology and logistical support operations.

Improved Financial Management.—The USPTO has a strong, fully integrated financial management system in place and we will continue to strengthen our internal controls, improve the timeliness and usefulness of our management information and continue to achieve an unqualified financial audit opinion.

E-Government.—We are accelerating deployment of critical automated information systems, particularly electronic end-to-end processing of patent and trademark applications. In addition, we are currently working on ways to improve delivery schedules, reliability, performance, security and the cost of all our automated information systems.

Budget/Performance Integration.—We will allocate budget resources to the programs based on the concept of linking them to the achievement of both enterprise-wide goals and individual unit performance. The USPTO will expand the involve-

ment of applicants and the public in assessing the accomplishment of our goals and performance targets.

As a reflection of our commitment to fund our strategic priorities, we conducted a comprehensive review of current operations and redirected substantial fiscal year 2003 resources toward improving examination quality and implementing e-Government processing.

Long-term Agenda

This strategic plan is only the first step toward creating a quality-focused, highly productive, responsive USPTO that supports a market-based intellectual property system for the 21st Century. Once the initial phases of this plan have been supported, adopted and implemented, the USPTO will explore further options to enhance its ability to more fully operate like a business.

Within the framework of the legislative and regulatory packages there are a number of items that will be implemented in the out-years of the strategic plan.

Restriction practice.—We will conduct a study of the changes needed to implement a Patent Cooperation Treaty (PCT) style unity of invention standard in the United States. The study will be completed and appropriate legislation will be introduced before the end of the 108th Congress.

Patent term adjustment.—Before seeking legislation to simplify patent term adjustment, we will explore a number of options to address this issue with the small business community and other key stakeholders.

Mutual exploitation of examination results.—In anticipation of achieving our long-term goal of substantive patent harmonization, we will take a cautious approach to mutual exploitation of examination results by first evaluating International Preliminary Examination Reports during national stage examination. We will subsequently analyze the potential of whether the acceptance of examination results (granted patents) from foreign offices is a proper basis for use in counterpart applications in the United States. However, the USPTO will never recommend any changes that would compromise our sovereign right to determine patentability issues or to preclude our right to make further examinations when necessary.

Copyright issues.—As part of the implementation of the electronic file wrapper, we will ascertain the best means for assuring that these documents in an application file that may be subject to copyright protection can be included in the USPTO's databases. The intent of this option would be to ensure full public access to all the information contained in a pending application file.

Third party request for reexamination.—As part of the initiative to seek post-grant review legislation, we will explore the need for retention of third-party requested reexamination.

District court actions.—We will evaluate the desirability of a revision to the provisions for judicial review of USPTO decisions to make an appeal to the U.S. Court of Appeals for the Federal Circuit the sole avenue for judicial review of a Board of Patent Appeals and Interferences or a Trademark Trial and Appeal Board decision.

Patent Cooperation Treaty Activities.—We will actively pursue revisions to Patent Cooperation Treaty search and examination guidelines to achieve an enhanced level of reliance on PCT International Search Reports and International Preliminary Examination Reports.

Business-like practices.—We also will explore whether we have a good justification for operating in a more business-like manner.

USPTO Campus.—Once we have settled into the Carlyle campus and have fully implemented automated patent and trademark processing, we will be able to assess the feasibility of expanding our work-at-home program by using such virtual office concepts as telecommuting and flexible workplace to the maximum potential.

Examiner Training.—We will evaluate the feasibility of reinstating the Examiner Education Program through corporate sponsorship to enable patent examiners to gain better insights into technological developments in the fields in which they examine.

Some Final Thoughts

This 21st Century Strategic Plan sets forth an ambitious agenda to resolve the crisis all intellectual property organizations are facing. We believe economic and technological progress in the United States and the global market can be significantly enhanced through the implementation of the initiatives proposed in this plan.

We intend to refine and update our strategic plan periodically to adjust to changing conditions and to incorporate the best thinking of the entire intellectual property community. We are eager to work with those who believe, as we do, that American innovators and businesses must have the very best intellectual property system in

the world. This 21st Century Strategic Plan represents an important first step in the pursuit of this goal.

FREE TRADE CONCERNS

Senator GREGG. Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman.

Mr. Secretary, we have got a hot war ongoing, and there is no question in this Senator's mind or anybody in this room that we will win that one, but we have got a cold war economically that we are losing, and you are the Chairman of the Joint Chiefs of Staff in that cold war.

As Secretary of Commerce, you are the most important member, and with the President, the most influential member, and we are looking at the results. The war did not start when you folks came to town. This war has been going on since World War II, and we had the Marshall Plan. It worked. We sent over the expertise, we sent over the technology and everything else into Europe and to the Pacific Rim and they revived them.

But now you look and you find out you have got over $420-some billion in the deficit in the balance of trade last year, and now it is inching up to over $500 billion this year, and I am looking at different items—well, I've already lost, don't worry about my questions being about textiles. They are Republican and they have gone anyway, so it is a sort of twofer for me.

Senator GREGG. They left New Hampshire a long time ago to go to South Carolina.

Senator HOLLINGS. Over two-thirds of the clothing I am looking at is imported, over 86 percent of the shoes on the floor are imported, but then I look at the list that you made of critical items to our national security, and you list about some 500, and we have a $5 billion deficit in the balance of trade in those critical items.

We have got a deficit in the balance of trade in semiconductors. I know I have got a deficit in the balance of trade in cotton. I am riding through the cotton fields politicking down home, but I am importing Chinese cotton because we do not produce enough in this country, and then I looked and found that we made finally a deficit in the balance of trade in farm products for the second time in the history of the country.

Free trade is fine in the textbooks, and fine for England when she was in control of the world's empire. In other words, when old Alexander Hamilton got the note that what we ought to do, having won our little freedom as a colony, we ought to trade back what we produced best, and they in Britain would trade back what they produced best, the doctrine of comparative advantage, David Ricardo, old Hamilton said bug off—we are not going to remain your colony, just shipping our timber and our coal and our iron ore and farm products. We are going to build up our own manufacturing.

So he introduced, and by gosh, old Madison supported him in the second bill. The first bill was for the U.S. Seal as a Nation. The second bill that passed the Congress was the 50-percent tariff bill, protectionism, on about 60 articles, and we started rebuilding, and in fact we financed the country with protectionism until 1913, when we finally got the income tax.

Other countries are doing the same thing, after World War II, the Japanese, the Koreans and everybody coming right on down the road, and they do not practice free trade, they practice protectionism.

One of the big reasons behind my Advanced Technology Program was to try to compete with the subsidization, the financing of the industry, the banking, and not only that, but also protecting in every respect the retail markets, and the pricing by our foreign competitors. My Lexus cost me $30,000. In downtown Tokyo, that same car, I priced it, is $45,000.

So my point is, I am trying to bring around our administration to where even Ronald Reagan was. He was long on common sense. We were losing out on semiconductors and still are, but he put in a voluntary restraint agreement on semiconductors and they instituted at the congressional level, Senator Danforth and myself, Sematech. We had VRAs in steel and automobiles and machine tools, and it worked, and it saved those industries.

Now, we have got to start competing here. I am looking at the Ambassador from Singapore, Frank Levin. He recently concluded this United States-Singapore free trade agreement, and Levin said in the long run, and I quote him, the most significant economic aspect of this FTA, free trade agreement, could be provisions allowing products assembled in the two Indonesian outer islands to be counted as Singaporean in origin for the purpose of the FTA. This would allow U.S. electronics manufacturers to take advantage of low wage rates on those islands to assemble components from Singapore and then the electronic products can enter the United States duty free. Do you agree with that?

Secretary EVANS. Well, I have not seen the statement. You read the statement. I have not seen it before. I mean, I must say that I think that when you have a free trade agreement with Singapore, you have a free trade agreement with Singapore. You do not have a free trade agreement with some other country, or some other island. That is who the free trade agreement is with.

And so I think there is a basic principle, and it is products and services that come from that country, not from some other sovereign nation or country to that country and into the United States, but I must admit, I do not know the exact relationship of those islands with Singapore. Are they separate countries or separate sovereign nations, or are they a part of Singapore? I do not think they are.

Senator HOLLINGS. Well, it is not the technicality of the thing, it is the actual tenor and thrust of low wage rates. That is what happened—58,000 textile jobs have gone from my little State of South Carolina down to Mexico. If your competition leaves, you have got to leave, so that swishing sound that old Ross talked about, I am telling you right now, we can hear it loud and clear in the Piedmont section of South Carolina, I can tell you.

That is the whole point. What we have got to do is start competing, and we have done everything for that export administration. Your Commerce Department has commercial attachés around the world, and we have done everything to help our businesses compete.

One other thing that we do is just that, the Advanced Technology Program. The distinguished Secretary talks growth, growth, growth. That is the buzzword around here. You get everybody on the message, so the growth thing is the Advanced Technology Program. That gives the growth. There is not any question.

We have got I do not know how many studies. I think there were 14 studies, the Department of Commerce Inspector General, the National Academy of Sciences, the National Research Council, and go right on down the list, and they found that, quote, ATP could use more funding effectively and efficiently, and we cut and eliminated that and the Manufacturers Extension Partnership Program, but we give money to the Bureau of Economic Analysis to get more analysis. That is not going to hire any more people, except pointy-headed intellectuals, as George Wallace would say.

We give money to the Patent and Trademark Office——

Senator GREGG. We don't quote from George Wallace.

Senator HOLLINGS. That's right. Well, I thought I'd get you. I like to stick the Chairman every now and again.

We give money to the International Trade Administration for promoting U.S. exports and all those things, they are not going to get growth. The one thing that is going to get the growth, and it has proved out, and they are not pork, they have got to be vetted by the National Academy of Engineering, like you said, and NIST.

I got together—we had a fellow over there, Craig Fields in DARPA, and he found out the Navy program for research was rapid manufactured parts. We got it going through the Department of Commerce, because a boat would break down in the gulf and the destroyer is 30 years old, or whatever it is, and the part, they have to languish there in the gulf for 2 months and then go back. We have got a system now where they do not languish over 24 hours.

So we have got DARPA, we have got NIST, we have got the Advanced Technology Program, and why do we eliminate it?

Secretary EVANS. Well, again, like I said, those are good programs, no question about it.

Senator HOLLINGS. That is all. You do not have to explain any more. I am going to quote you.

Secretary EVANS. You can.

Senator HOLLINGS. Thank you. I would yield to the distinguished Senator from Wisconsin.

Secretary EVANS. Good.

MANUFACTURING EXTENSION PARTNERSHIP PROGRAM

Senator KOHL. Thank you, Mr. Chairman, and Secretary Evans, I would like to talk a little bit about the Manufacturing Extension Partnership Program.

I know this administration supports research and development to maintain American leadership and technology development and commercialization. To quote from the Commerce Department's Web site, "Americans will never win the game to see who can pay their workers less. We do not want to, and continued innovation means that we will not have to. Innovation excellence starts with research and development, and since taking office, the President has proposed record levels of Federal R&D."

So Mr. Secretary, I am concerned and puzzled by your proposed budget, which includes only $12.6 million for the Manufacturing Extension Partnership Program, called MEP. This program has always had bipartisan congressional support. By way of comparison for fiscal year 2003, we funded the program at well over $100 million. Given the current situation, I therefore cannot understand why you would virtually eliminate a program like this, which truly makes a difference.

The United States is losing hundreds of thousands of manufacturing jobs and production know-how to low-wage countries like China. We have our largest imbalance with China, an imbalance growing by 30 percent a year. In my State of Wisconsin, the jobs we are losing to overseas production are high-paying jobs.

To help counter this trend, my State MEP centers work directly with small manufacturers to help these companies compete by being more productive and more effective, and so my question is, why are you virtually gutting Federal support for this program? Virtually half of the program's costs and expenses come from the Federal Government. Small manufacturers in my State have said this program is important to them, and so I do not know what I should be telling them with respect to what I know is your commitment to the development of small manufacturing innovation, efficiency, technology, and your apparent opinion that the MEP program is not all that important. I just give you this map for you to peruse.

Secretary EVANS. Sure, thanks Senator.

Senator KOHL. Those MEP centers, as you can see, are all over the country. There are hundreds and hundreds of MEP centers, and without Federal support they may well evaporate.

Senator GREGG. Aren't they called Hollings centers?

Senator KOHL. Pardon me?

Senator GREGG. No, I think they're called Hollings centers, aren't they?

Senator KOHL. Hollings centers?

Secretary EVANS. You know, I will say what I said earlier, I think, that there are certainly some very good stories from ATP that one can look to and can say were successes. I think the same thing applies to MEP, the Manufacturing Extension Partnership Program. I travel all across the country on university campuses, from time to time, talk to universities and how they are participating in these MEPs with the Federal Government, with other cities, with counties and so I am very much aware of the programs.

First of all, I would just say it is a matter of priorities, and understanding at some point you have to draw the line, and we are not all going to draw the line at exactly the same place, and I know that and you know that, and so I am more than happy to work through the budget process with the committee and talk about our differences with respect to these programs, but when you look at the MEP program, what confuses me is why this program would not be a success in the private sector, and the reason I say that is because the studies people show me and want to give to me in the way of results are the sizeable returns that people enjoy by participating in the MEP.

Well, having been somebody that was out there in the private sector for some 26 years of my life, that looks like to me a pretty good opportunity to start a business, because if I can give those kinds of returns to some of the small businesses in the area, then it seems like they would be willing to pay me for that service I am providing to them.

You know, I had the same kind of issue, the same related issue with ATP, and that I really felt like if we were going to provide funding for seed capital, or venture capital for research, and if it is successful, then maybe some of that ought to come back to the American taxpayer that funded it to begin with.

So I think it is good programs that—what I see opportunity for, I see some opportunity for the private sector to step in and provide the same kind of service. And I also see an opportunity, if it is successful, if it works, then maybe there is an opportunity to return some of the benefits, not all of them, but some of those benefits back to the American taxpayer to help pay for the program, if the program were to continue.

Senator KOHL. I do not totally disagree with what you are saying, but my response is that this is not entirely a Federal program. This is a 50–50 partnership between the Federal Government and private industry, and so the question is not really why does the Federal Government have to fund this program entirely. It is that, what is wrong with the partnership concept?

I mean, if this were 100 to nothing, or 100 to zero in terms of percent of funding, I would understand what you are saying, but it is 50–50. It seems to me that is reasonable—reasonable, and I guess my question is, why would you all take the position that on your list of priorities, in terms of funding, that almost comes down to zero?

Secretary EVANS. Well, again I guess I would say, Senator, it is priorities. I mean, like you, we think about the Federal debt and the deficit, and there are lots of worthwhile programs that we would like to see funded, but the resources are not there to fund all of the programs that we would all like to see funded, and so you have to draw the line some place. You have to make tough choices, and I understand that, we will have differences of opinion as to where the line should be drawn, and this is one of those areas where we have a difference of opinion.

I am not here saying that these programs have not provided a service. I am not here saying that there is not some good results to point to historically, but I am saying that one, particularly at this moment in our history, we have some priorities of homeland security and national security that we are all certainly very focused on, and these are just some tough choices that have to be made, but certainly, as I mentioned, I look forward to working through the process, working with the committee and working through our differences of opinion.

Senator KOHL. Well, thank you. I will keep on badgering if I can, and see if we cannot get something.

Secretary EVANS. Sure, sure.

Senator GREGG. The Senator from Wisconsin is a very good badger.

Secretary EVANS. Very good, very good. Not bad. Very good, Chairman.

Senator GREGG. Mr. Secretary, following up on the Senator's point, your comment that maybe there should be a greater return to the taxpayer when these MEPs produce a commercial event that has profitability, do you have language that you would insert to change the programs to create that atmosphere?

Secretary EVANS. No, Mr. Chairman, I have not. It is something that we would be glad to look at and would be glad to think about. It just seems that if you have a company that enjoys some 25 percent return or 35 percent return from the services they have been provided, then maybe they would want to return some funding back to the center to help some other small manufacturer who comes along.

Senator GREGG. I'm attracted to the idea, so if we end up refunding these as a result of the Senator from Wisconsin's energies, I would be interested if you had language that could accomplish that as a part of the exercise.

Secretary EVANS. I know if I was out there running a small business and I had this available to my company, and it was successful, and we had great results from it, I would feel some kind of responsibility to support that program in a pretty direct kind of way, and so that the program could benefit other small, or other manufacturing companies that come along behind.

Senator KOHL. They do. I say, the program is supported 50 percent by these companies, so it is not as though they are only taking. They are also giving to the program.

Senator GREGG. On ATP, we really do not have any place in the Government right now where people who are coming up with creative ideas on the issue of counterterrorism, technology ideas, can go and get a grant quickly that would allow them to expand their efforts, and I do not know about other offices. Maybe once a month somebody comes in with some fairly unique idea as to how they are going to screen somebody, or what they can do, or how they are going to develop something.

RESEARCH AND DEVELOPMENT FOR COUNTERTERRORISM

Would it make sense if we reauthorized or refunded ATP to redirect it into an exercise of being more focused on counterterrorism, producing technology for counterterrorism, experimental or commercial?

Secretary EVANS. I guess what has been called to my attention is, Homeland Security is requesting some $900 million in this area of R&D for counterterrorism.

Senator GREGG. How are they going to oversee that? Well, we will have Secretary Ridge. We will ask him.

We have been joined by the chairman of the full committee.

Senator STEVENS. Good morning, Mr. Secretary.

Senator GREGG. Do you have anything more?

Senator HOLLINGS. Yes, I will, but for example, from 1992 to 2004, the ATP funded $270 million in projects with primary relevance to the detection of and protection from and response to potential terrorist activity. They have been coming to my office, too,

and I have been sending them over there and it is working. You are helping Secretary Ridge.

Senator GREGG. I think it makes a lot of sense.

Senator Stevens, do you have any questions?

Senator STEVENS. No, I had no questions this year. I just stopped by to see our friend and say hello.

Senator HOLLINGS. Well, I have a few more questions, and I am like Senator Stevens and I am going to work with the chairman. Your budget is in good shape, and I will work with Chairman Gregg for what he thinks we ought to do.

But frankly, I am worried about this war, and I have moved from the military to the trouble we have in the world community. If the President asked me to come over in the next 10 minutes and asked me what to do, I would say, I would get that best friend of yours, Secretary Evans, up to Canada. You cannot just get everybody—I see on my TV this morning the President is on the phone trying to still get support. Isn't that a hell of a note? But he is on the phone this morning trying to get support.

Now, we all support it, we are committed, but in my war, World War II, the first in was Canada. So we have got to get you back involved. You come with the calling card of President Bush—and you know how to talk to people. You can help us with Vicente Fox. You know him down there in Mexico.

When you start an engagement of this kind, and can't even get Mexico and Canada, we have got to start working back upstream now to get some help from the United Nations and everything else like that, and do not worry about budgets and ATP and MEP and all that other stuff. Right now, let us get going on this war. Yes, sir.

Senator GREGG. Senator Stevens.

Senator STEVENS. Mr. Secretary, we lost a big one yesterday as far as my State is concerned, but I know we have had talks about the Alaska gas pipeline. We have a new hybrid proposal we want to discuss with the administration, and I hope we can get some time on your schedule to discuss that sometime soon.

Secretary EVANS. We can.

Senator STEVENS. We will be coming in this week and next week to talk about it. It's not an immediate project—it won't run gas to our system before 2011, but it is an 8-year project at a minimum. If we can get it off the ground this year it will be very meaningful. I hope you are both familiar with that project.

All of the gas that is produced with 17 billion barrels of oil we produce and send down the Alaska pipeline was separated out and put right back in the ground right there at Prudhoe. We do not have to explore for it. All we have to have is a mechanism to transport it, and it is a substantial amount of gas.

Secretary EVANS. I would be glad to come by at your calling. Just give me a call and I will be there.

Senator STEVENS. Maybe we can arrange for you to come back up to our State again this summer and take a look at it.

Secretary EVANS. Good. Thank you, Senator.

Senator GREGG. While we are here, I do want to acknowledge and thank the chairman of the committee for returning a hearing room to its rightful spot.

Senator HOLLINGS. I thank you, Mr. Chairman.

Senator GREGG. We very much appreciate it.

Senator HOLLINGS. I was chairman of legislative appropriations. I walked in here and it was just a pile of wood and paint cans and everything else, and the Architect of the Capitol was using this just as a storeroom to do repair work all over, and we cleaned it up.

Senator GREGG. I believe this was the room that the Dartmouth College case was argued in by Daniel Webster.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. And *Marbury* v. *Madison*.

[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

HOMELAND SECURITY

Question. Mr. Secretary, BIS' work towards controlling the proliferation of sensitive dual-use technologies is critical to our national security. We are now faced with a restless nuclear power on the Korean Peninsula that has already acquired the necessary technologies to create weapons of mass destruction. There are many more regimes in the world that are hostile to the United States and are aggressively pursuing these technologies. How is BIS adapting to this rapidly changing global security environment? How has its mission changed since 9/11? Have BIS' requirements changed?

Answer. The Bureau of Industry and Security (BIS) administers U.S. export controls for dual-use items, including items that may be used for the development of weapons of mass destruction, delivery vehicles for these weapons, and advanced conventional arms. Its mission remains, as before, to advance U.S. national security, foreign policy, and economic interests. Since September 11, 2001, BIS has been actively working with its counterparts in the Departments of State, Energy, and Defense to ensure that export controls address current global security challenges and, in particular, are adequate to prevent the acquisition of such items and use by hostile nations or terrorist groups. To that end, we have advocated proposals to strengthen export controls and procedures in all four multilateral export control regimes (the Nuclear Suppliers Group (NSG), the Australia Group (AG), the Missile Technology Control Regime (MTCR), and the Wassenaar Arrangement).

For example, in the NSG, the United States has proposed a "watch list" of non-controlled commodities that could be of use to North Korea's nuclear program. This list would be shared with non-regime partners to make them more aware of the commodities that could aid North Korea's nuclear program. The AG has accepted U.S. proposals to tighten the controls on small fermenters that terrorists could use to produce biological warfare agents. The AG also has agreed to a U.S. proposal to tighten controls on technology transferred through intangible means such as the Internet. In the MTCR, the United States has advocated expanding the controls to include small unmanned aerial vehicles that could have applicability in spreading chemical and biological weapons agents. In the Wassenaar Arrangement, the United States advocated amending the "Initial Principles" to include, as a core regime objective, the prevention of terrorism.

These regime changes support BIS efforts to address security concerns originating not only from hostile nations but also from terrorist groups and individuals.

Question. Your fiscal year 2004 request for the Bureau is only $3.5 million above the fiscal year 2003 enacted level. Is this amount adequate to meet all of the new requirements you will surely face in the upcoming months and years?

Answer. BIS is comfortable with the funding request contained in the President's budget. In order to address new requirements, BIS believes that the budget request should be funded in full.

Question. Is BIS' technology infrastructure adequate? From high-powered data warehousing at headquarters to satellite phone capability in the field, does BIS have the tools it needs to do its job?

Answer. BIS currently has an adequate technology infrastructure to perform its mission-critical functions. BIS is in the process of modernizing its Export Control Automated Support System (ECASS), which was developed in the mid-1980s, from

a mainframe-based system to a modern server-based system with a relational database. BIS also has upgraded all personal computers, desktop software, and telecommunications links to provide its users with up-to-date technology and to improve productivity. BIS continues to seek ways to modernize its technology infrastructure to empower its employees to deliver critical services to its customers.

To that end we note that in the President's fiscal year 2004 budget proposal, additional resources are requested to support BIS's Seized Computer Evidence Recovery System (SCERS) program. This program, which uses evidence seized from computer disk drives, has a significant backlog of evidence awaiting analysis. This delay has hindered the processing of cases and the completion of time-sensitive investigations. In the President's fiscal year 2004 budget, BIS seeks additional personnel (one agent and two technical analysts) to staff a modern SCERS lab, thus alleviating the burden placed on SCERS agents in the field currently performing this work.

Question. To what extent will BIS be working with the Department of Homeland Security? In your opinion, what is the appropriate relationship between BIS and Homeland Security? To what degree will the new Department influence BIS' mission, policies, and agenda?

Answer. BIS has an excellent working relationship with various agencies now located in the Department of Homeland Security, and we anticipate that we will continue to work well with those agencies. BIS has long had an excellent working relationship with the U.S. Customs Service in the administration and enforcement of dual-use export controls. BIS also maintains a good working relationship with the Information Analysis and Infrastructure Protection Directorate of DHS, to which BIS's Critical Infrastructure Assurance Office was transferred earlier this year. The creation of the Department of Homeland Security has not altered BIS's mission, policies, or agenda.

Question. To what extent is the Bureau of Industry and Security working with the Department of State, which has responsibility for regulating weapons exports? Could you describe how this relationship has evolved since September 11? Are State and BIS sharing information and lessons-learned? Are State and BIS collaborating their efforts overseas, for example, sharing information about end-use checks, monitoring, enforcement, and the like?

Answer. BIS continues to have a close working relationship with the Department of State on the implementation of U.S. export controls. BIS has been involved with the Departments of State, Defense, and Energy, and the National Security Council in a comprehensive review of goods and technologies on the U.S. Munitions List (USML). The State Department implements export controls under the USML. In addition, by Executive Order, State reviews export license applications submitted to BIS and BIS-promulgated regulations concerning exports of U.S. dual-use goods and technologies. BIS also works closely with State on changes to the multilateral export control regime lists. Through these various processes, State and BIS share information about countries and end-users of concern. Moreover, since the mid-1990s, BIS has worked closely with State to share information relevant to each other's watch lists and end-use checks. Finally, BIS works closely with the State Department in rendering technical assistance to other countries to assist the development of strong indigenous export control systems and improve cooperation in export controls, under the State Department administered Export Control and Border Security program.

CRITICAL INFRASTRUCTURE PROTECTION

Question. Mr. Secretary, CIAO was created within the Department of Commerce in fiscal year 1999. A conscious decision was made to put CIAO at Commerce because of Commerce's strong ties to the private sector, which controls the lion's share of our national critical infrastructure (the Internet and utilities, to name just two examples). This month, CIAO began its transition to the Department of Homeland Security.

How do you think CIAO's mission will change once it is incorporated into the new Department? Will CIAO continue to have primary responsibility for liaising with the private sector on matters relating to critical infrastructure protection and for ensuring that the private sector does not inadvertently create weaknesses in our national critical infrastructure, or will this responsibility remain at Commerce?

Answer. CIAO's mission consisted of three main functions related to critical infrastructure protection when it transferred into the Department of Homeland Security (DHS): national outreach and awareness, planning and policy coordination, and critical asset and interdependency identification for federal government agencies (Project Matrix). Consistent with the requirements of the Homeland Security Act of 2002, these functions were fully integrated into the Information Analysis and Infrastructure Protection Directorate. Since private industry owns and operates 85–90

percent of the nation's critical infrastructures, we anticipate that DHS will need to continue to work closely with U.S. industry, and has primary responsibility for doing so. The Planning and Partnerships Office of the new Directorate retains CIAO's core public-private partnering competencies and previously-built contacts with the private sector. Commerce stands ready to assist where appropriate.

Question. Do you think Homeland Security is well-suited to handle the task of liaising with the private sector, as CIAO did while it was at Commerce? How do you think companies will react to having DHS—which is essentially a law enforcement agency—involved in their internal efforts to strengthen their systems against attack?

Answer. Our experience suggests that U.S. industry generally cooperates well with government agencies on issues of national security and homeland defense. As we all have seen since September 11, 2001, national and economic security depends on homeland security. Private industry in general recognizes this new reality. We are optimistic that industry and the Department of Homeland Security will have a productive and mutually beneficial relationship with respect to critical infrastructure protection. The Commerce Department stands ready to assist in this effort as appropriate.

Question. With the transfer of CIAO, will the Bureau of Industry and Security have any role in critical infrastructure protection?

Answer. The Department of Commerce generally, and the Bureau of Industry and Security specifically, will continue to carry out programs and activities relating to the economic security component of critical infrastructure protection—as they did before CIAO was created in the Department of Commerce. For example, the National Telecommunications and Information Administration has responsibility for spectrum management and chairs the interagency Internet Protocol version 6 (IPv6) task force. The Technology Administration's National Institute for Standards and Technology will continue its leading role in developing standards relating to the physical and cyber security of products, services, and processes, which are shared internationally as well as domestically.

The Bureau of Industry and Security (BIS) continues to have significant defense industrial base responsibilities. The defense industrial base was recognized as one of the fourteen critical sectors in the National Homeland Security Strategy. BIS administers the priorities and allocations authority under Title I of the Defense Production Act to ensure the timely delivery of industrial products, equipment, materials, and services for approved national defense and homeland security programs. Under that authority, BIS has assisted the Transportation Security Administration and the FBI in acquiring products and equipment needed for the war on terrorism. BIS also conducts assessments of the viability of various critical industry sectors. Finally, consistent with its mission of furthering U.S. national security and economic security, BIS continues to advocate the importance of protecting the country's critical infrastructures and assets.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST)/HOMELAND SECURITY

Question. It is clear that NIST and the Department of Homeland Security (DHS) must develop a close working relationship. Have you had any preliminary talks with Secretary Ridge on this subject? Do you believe the Director of NIST has a clear understanding of what will be expected of NIST under the new homeland security framework? Does he have the resources he needs to meet these requirements?

Answer. There have been extensive discussions between the Department of Commerce (DoC) and the Department of Homeland Security (DHS) on the need to develop a close and effective collaboration. Such discussions led to the signing of a Memorandum of Understanding (MOU) on May 22, 2003, between the Technology Administration (TA) of DoC and the Science and Technology (S&T) Directorate of DHS. The MOU allows the S&T Directorate to leverage TA's, and specifically NIST's, expertise in measurement science and standards to accelerate the development, testing, evaluation, and deployment of homeland security technologies. S&T and TA seek to collaborate on research and planning activities, and share where appropriate facilities, personnel, and scientific information. This MOU builds on the long history of collaboration between NIST and the various agencies incorporated into DHS, such as the Federal Emergency Management Agency (FEMA), and the Office for Domestic Preparedness (ODP). To further improve ties between NIST and DHS in the areas of measurements and standards, NIST has detailed on a full-time basis the Division Chief from its Ionizing Radiation Division and a staff member (part time) from its Computer Security Division to the Office of Standards in the DHS S&T Directorate.

The Director of NIST has a clear understanding of NIST's role in homeland security. This role is defined by NIST's unique mission to develop and promote measurement, standards, and technology to enhance productivity, facilitate trade, and improve the quality of life. Because of the overwhelming importance of homeland security to the quality of our life, NIST will work with the new DHS to ensure that the appropriate measurements and standards are in place to support the efforts of DHS in chemical, biological, radiological, nuclear, and explosive detection and defense, cybersecurity, critical infrastructure protection, first responders, etc. NIST's partnership with DHS will build upon years of experience working with a number of the agencies making up the new Department.

NIST is also building upon its experience in consensus standards and its partnerships with standards development organizations (SDO's) to address the needs for homeland security standards. The Chief of NIST's Standards Services Division is the government co-chair of the ANSI Homeland Security Standards Panel that is coordinating the efforts of standards development organizations (SDOs) in developing standards required for homeland security technologies.

Because of the importance of homeland security to our citizens, NIST has redirected resources to develop the critical measurements and standards in this area. When appropriate, NIST homeland security efforts are supplemented by funds from other government agencies. When sufficient funding is not available through these approaches, the Administration has proposed budget initiatives for NIST in the area of measurements and standards for homeland security. For fiscal year 2004 the following homeland security budget initiatives have been proposed: Homeland Security: Standards, Technology, and Practices for Buildings and First Responders ($4.0 million, 7 permanent positions, and 5 FTE); Measurement Infrastructure for Homeland Security ($5.3 million, 12 permanent positions, and 9 FTE); and Standards for Biometric Identification Systems ($1.0 million, 4 permanent positions, and 3 FTE).

NIST/LAW ENFORCEMENT TECHNOLOGIES STANDARDS

Question. Mr. Secretary, a great deal of funding has been earmarked during the last two years to help first responders purchase the equipment they need to effectively combat terrorism. Justice has been doing some work in the area, but standards-development is really NIST's bailiwick.

The President's budget does not request any direct funding for the Office of Law Enforcement Standards at NIST. Are you planning to request funds for OLES in the fiscal year 2005 budget request? Wouldn't you agree that there is a significant need in this area and that NIST is uniquely qualified to fill it?

Answer. In response to your statement, developing performance standards for communication and personal protection equipment for first responders is very important and the National Institute of Standards and Technology (NIST) has an important role to play here. For several years, NIST's Office of Law Enforcement Standards (OLES) has been working with the Department of Justice's National Institute of Justice (NIJ) and other government agencies developing performance standards for first responders.

The ability of law enforcement and public safety agencies to communicate and exchange data in critical situations is fragmented by equipment incompatibilities and the lack of standards to provide a common, nationwide approach to telecommunications and information sharing. In its efforts to resolve this issue, NIST's OLES has been working hard on a Public Safety Communications Standards program geared toward solving public safety interoperability and information sharing problems by developing and adopting NIJ standards for voice, data, image, and video information transfers for first responders. In addition, OLES has been holding discussions with end users about their requirements and evaluating commercial devices instrumental to ensure that the equipment and technologies currently being used by the U.S. first responders community are interoperable, safe, dependable, and effective.

In addition, OLES has been managing a program since 1999, to develop CBRNE (chemical, biological, radiological, nuclear, and explosive) protective equipment standards for emergency first responders. This program, initially funded by NIJ, will continue with funding provided by the Office for Domestic Preparedness (ODP). An Interagency Agreement has been signed between the ODP, formerly of the Office of Justice Programs, now part of the Borders and Transportation Security Directorate, Department of Homeland Security, to continue the program managed by OLES for the development of a national suite of CBRNE protective equipment standards for emergency first responders. This program led to a National Institute of Occupational Safety and Health (NIOSH) standard for Self-Contained Breathing Apparatus (SCBA) and Air Purifying Respirators (gas masks) and produced an im-

portant set of guides and databases to help emergency first responders in the evaluation and purchase of chemical and biological detection, personal protective, and communications equipment. The continuation of this program under ODP will be significantly expanded beyond development of personal protective equipment standards to address radiological threats, decontamination standards, and explosive detection standards.

Yes, the National Institute of Standards and Technology (NIST) believes there is a significant need in the criminal justice and public safety area and NIST is uniquely qualified to fill it. NIST has successfully filled these needs over the past 32 years through a number of reimbursable agreements with other agencies, such as the Department of Justice's National Institute of Justice, the Department of Transportation, and most recently with the Department of Homeland Security's Office of Domestic Preparedness.

The $3 million funding for NIST's Office of Law Enforcement Standards (OLES) provided in the fiscal year 2003 Omnibus Appropriations Act will go a long way in helping NIST to ensure that NIST has the critical personnel with the expertise to implement law enforcement standards initiatives proposed by their partner federal agencies as specifically stated in the Act itself. This funding supports NIST with an appropriation in fiscal year 2003 for the staff and administrative costs related to the Office of Law Enforcement Standards, giving NIST the means to independently hire, maintain and manage the appropriate technical expertise to perform its responsibilities to the law enforcement community. In addition, it allows NIST to devote the entirety of its funding from reimbursable sponsors to the technical needs of those sponsors, without diverting any funding from sponsors to cover staff and administrative costs at NIST.

At the time the fiscal year 2004 President's budget request was submitted, the fiscal year 2003 Omnibus Appropriations Act had not been enacted. Therefore, the fiscal year 2004 President's budget request builds from the fiscal year 2003 President's budget request, which did not include any direct appropriated funding for NIST's OLES. Decisions on the funding priorities to be included in the President's fiscal year 2005 budget have not been finalized, and we will bear your concerns in mind as we evaluate the many competing requests for funding.

NIST/WORLD TRADE CENTER INVESTIGATION

Question. Before NIST took over the World Trade Center investigation, there was a huge controversy over whether too much of the structural steel from the Twin Towers had been sold to scrap yards, creating an impossible situation for NIST's scientist and engineers. Now that NIST is seven months into the investigation, has it been able to gather enough evidence including structural steel to conduct the investigation? Could you report on NIST's progress or any preliminary findings from the investigation?

Answer. Yes, the National Institute of Standards and Technology (NIST) is basing its review, analysis, modeling, and testing work for the World Trade Center (WTC) investigation on a solid foundation of technical evidence.

NIST has in its possession nearly 250 pieces of WTC steel. The vast majority of the pieces are of significant size and include perimeter prefabricated column-spandrel elements, rectangular box beams, wide flange sections, truss sections, channels and several smaller pieces, such as bolts. As of March 28, 2003, NIST has catalogued 235 pieces of WTC steel which includes a database with photographic records and member markings. In addition, NIST has examined additional steel stored by the Port Authority at JFK airport and has transported 12 specimens to NIST. NIST believes that this collection of steel from the WTC towers is adequate for purposes of the investigation.

NIST has also received considerable cooperation and large volumes of information from a variety of organizations and agencies representing the building designers, owners, leaseholders, suppliers, contractors, and insurers.

Local authorities providing information include the Port Authority of New York and New Jersey (PANYNJ or Port Authority) and its consultants and contractors; the Fire Department of New York (FDNY); the New York Police Department (NYPD); the New York City Department of Design and Construction (DDC); the New York City Department of Buildings (DOB); and the New York City Office of Emergency Management (OEM). In addition, the Occupational Safety and Health Administration (OSHA) provided correspondence sent to it regarding the evacuation experience of WTC occupants on September 11, 2001.

NIST also has received information from Silverstein Properties (Silverstein) and its consultants and contractors; the group of companies that insured the WTC towers and its technical experts; Nippon Steel; Laclede Steel; Isolatek International,

formerly known as U.S. Mineral Products; Marsh & McLennan (a tenant of WTC 1), and Roger Morse Associates. The information from Silverstein and the insurance companies includes the large body of technical work completed by both parties as part of the insurance litigation involving the WTC towers, such as reports on the structural collapse, fire spread and severity, and wind tunnel test results for the WTC towers. In addition, technical experts for both parties independently provided extensive briefings to the WTC investigation team and discussed the tenability environment and the evacuation procedures in the buildings.

Solid progress has been made by the investigation team at the one-third mark of the ongoing 24-month effort. On May 7, 2003, NIST released a progress report (http://wtc.nist.gov/) on the WTC investigation, its second since the effort began in August 2002. This interim report does not include any conclusions or make any recommendations, since the investigation is still in its early stages.

Key points in the progress report included:

—a status update on efforts to collect critical data about the WTC disaster of September 11, 2001, such as building documents, video and photographic records, emergency response records and oral histories (a complete listing of materials collected to date and those items still needed are included in the report);

—an interim report that documents the procedures and practices used to provide the passive fire protection (fireproofing) for the floor system of the WTC towers (nothing in the interim report based on a review of factual data in documents obtained by NIST should be taken to imply that the floor trusses played a critical role in the collapse of the WTC towers);

—a detailed description of the key factors that NIST is considering in its analysis of the various collapse scenarios hypothesized for the WTC buildings, including fire endurance testing of a typical WTC floor system and individual steel members;

—a look at the integrated approach for identifying the most probable of the technically possible collapse sequences for WTC 1 and 2 (the Twin Towers) and WTC 7; and

—a review of NIST plans originally presented in April 2003 for studying the WTC evacuation and emergency response by collecting first-person data from survivors (both WTC occupants and first responders), families of victims, and individuals with operational and command authority during the WTC disaster.

NIST/WARWICK, RHODE ISLAND FIRE INVESTIGATION

Question. Mr. Secretary, in January, we in New England suffered a horrible tragedy when 96 people were killed in a nightclub fire in West Warwick, Rhode Island. Was the National Construction Safety Team Act successful in helping avoid confusion over responsibility for the investigation into this tragedy? How is the Administration proposing to fund this and future investigations? If NIST is going to be responsible for investigating these events when they occur, should funds be set aside within NIST for this purpose to avoid the delay in starting the investigation?

Answer. The tragic fire in West Warwick, Rhode Island, is the type of event that the National Institute of Standards and Technology (NIST) would have investigated under its existing authority prior to the passage of the National Construction Safety Team (NCST) Act. What the Act has done, however, is to allow us to respond immediately and to raise the awareness and appreciation of our activities in the eyes of local officials and the other Federal agencies that are conducting investigations. The Act provides for the criminal investigation to have priority over NCST activities. We have briefed local and state authorities on the role and objectives of the NCST investigation, and established liaisons with the Rhode Island State Fire Marshal's office, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the U.S. Fire Administration. The NCST is gathering evidence, to the extent possible, independent of any criminal investigations.

The Rhode Island investigation plan was issued based upon the redirection of base funds. The plan targets completion of the investigation by the end of calendar year 2003.

NIST has not been appropriated any additional funding for activities associated with the NCST Act. Where appropriate, NIST will continue to undertake investigations of major building disasters as authorized by law.

PATENT AND TRADEMARK OFFICE, INCREASE IN USER FEES

Question. PTO's fiscal year 2004 budget request includes a 15 percent increase in user fees. This fee increase will mean an additional $300 million in fee revenue for the PTO that it would otherwise not collect. How is a 15 percent increase in user

fees justified when, under the current plan, PTO does not expect to significantly decrease patent pendency?

Answer. The fee legislation currently pending in Congress will generate additional revenues and ensure the implementation of the USPTO's 21st Century Strategic Plan. If the fee legislation is not implemented for fiscal year 2004, the USPTO's projection of fee collections is $1,302.7 million and if the fee legislation is implemented before fiscal year 2004, the USPTO's projection of fee collections is $1,503.8 million in fiscal year 2004. This equates to an additional $201.1 million, or a 15 percent increase. The proposed Fee Modernization Act of 2003 is a critical component to the successful implementation of the strategic plan. The strategic plan aims to modernize the agency for the 21st century by addressing patent pendency as well as quality, workload, and e-Government. As Under Secretary James E. Rogan has testified before Congress, without the additional fees secured by passage of a fee bill this year, average patent pendency will climb to more than 40 months by 2008.

The USPTO has been responsive to concerns that it continually attempts to address workload demands by hiring increasingly more patent examiners. The 21st Century Strategic Plan addresses this concern through a number of initiatives that will enable patent examiners to focus on the core mission of the organization—the examination of patent applications. These initiatives include the multi-track patent examination process, the mutual exploitation of search results, competitive sourcing of search, and the proposed fee restructuring. These initiatives, plus Under Secretary Rogan's top-to-bottom review resulted in a plan that reduces patent examiner hires through fiscal year 2008 by 2,400 compared to the fiscal year 2003 Business Plan.[1] As noted in the strategic plan, average patent pendency time will increase over the short-term and be at 27 months in 2008. The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of the strategic plan.

[ATTACHMENT]

CONSEQUENCES OF FAILING TO ENACT FEE LEGISLATION IN 2003

Inability to Hire Needed Examiners.—In fact, patent pendency will increase dramatically because of our inability to hire 2,900 new patent examiners. An inability to hire patent examiners beginning in fiscal year 2003 and the out years will increase processing delays and severely impact USPTO's ability to bring down pendency. Over 140,000 patents will not issue over the next five years if the USPTO is held to current fees and funding levels.

Unexamined Patent Applications Skyrocket.—If recommended funding levels are not appropriated in future years, the inventory of unexamined patent applications would skyrocket to over 1,000,000 applications by 2008 (more than double the current amount).

Average Patent Pendency Skyrockets.—As measured from the time of filing, pendency would jump to over 40 months in 2008, the highest pendency rate in more than four decades.

Delaying Full e-Government.—Inability to meet the stated goals of a fully electronic, e-Government environment for patent and trademark applications.

PTO/FIVE YEAR STRATEGIC PLAN

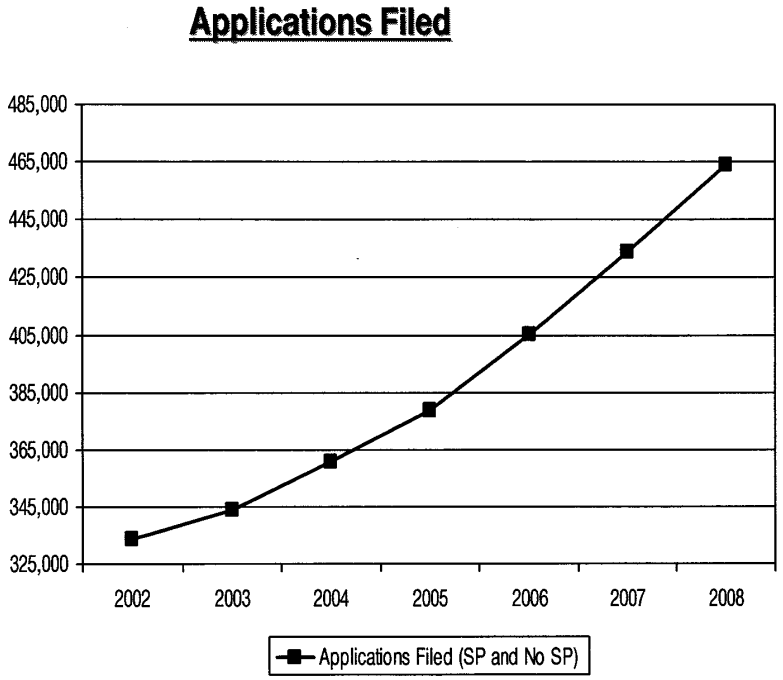
Question. Mr. Secretary, I understand the PTO is now placing a higher priority on goals like quality assurance and e-government initiatives (the latter goal being driven primarily by OMB). While I agree that these are valid goals, I remain concerned about the issue of patent pendency. I understand that there is currently a 400,000 patent backlog. How will the Five Year Strategic Plan help decrease patent pendency? Will the PTO remain committed to the goal of 18 months for patent pendency? When can we realistically expect PTO to meet this goal?

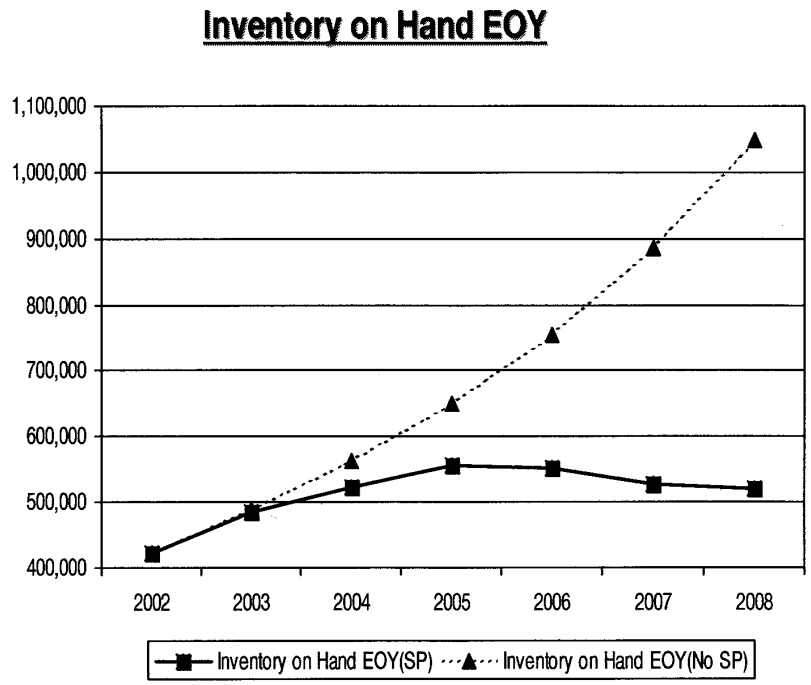
Answer. As you know, there is general agreement among the nation's CEOs, the inventor community, throughout lawyers in the bar, and people in the capital equity markets that issuing U.S. patents faster (vis-a-vis reducing pendency) without adequate quality assurance behind them would lead to uncertainty for the tech community and be a terrible mistake overall. Further, if we do not complete our e-government initiatives to electronically process patent applications, we would remain less able to respond quickly to changes in workloads.

As Under Secretary Rogan has also testified before Congress, without the passage of the Fee Bill, the USPTO's patent application backlog is predicted to rise to

[1] The 2003 Business Plan was submitted to the Congress in February 2002 as part of the USPTO's fiscal year 2003 Budget.

1,000,000 by 2008 and more than 140,000 patents will not issue in that time frame. We continue to work on all of these agency goals—pendency, backlog, quality assurance—through the 21st Century Strategic Plan and its initiatives. [See following graphs.]





While the USPTO is making quality and e-Government initiatives an immediate priority, it continues to implement initiatives to support the USPTO's long-term pendency goals. The 21st Century Strategic Plan has aggressive timeliness goals: to make available, on average, a first Office action for first-filed U.S. non-provisional patent applications, at the time of 18 month publication, and a patent search report for other patent applications in the same time frame—by far the fastest in the world. This will be accomplished by redesigning the entire patent search and examination system based upon multiple-examination tracks, greater reliance on qualified patent search services, and variable, incentive-driven fees.

Upon enactment of the Fee Modernization Act of 2003, the USPTO will move from a "one-size-fits-all" patent examination process to a multi-track examination process that leverages search results of other organizations and permits applicants to have freedom of choice in the processing of their applications. The new process will eliminate duplication of effort, encourage greater participation by the applicant community and the public, and improve the quality of patents and decrease processing time. For example, the proposed fee legislation contains significant authorities needed to implement the strategic plan, such as providing refundable search and examination fees rather than the composite fee currently charged. This change will provide patent applicants with the opportunity to terminate the application process because an invention does not have sufficient commercial viability and obtain a refund. This would abandon the application and obviate the need for the USPTO to proceed with the examination of the application. The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of the strategic plan. Their best estimate is that it will take at least a decade to achieve the 18-month goal.

Under a new paradigm, the USPTO will concentrate Office expertise as much as possible on the core government function of examination, and over the five-year horizon of the strategic plan, expects to hire 2,400 fewer patent examiners than originally envisioned. However, they will make available, on average, a first Office action for first-filed U.S. non-provisional applications at the time of 18 month publication, and a patent search report for other patent applications in the same time frame which industry acknowledges is a highly beneficial interim pendency solution.

PAPERLESS PATENT APPLICATION PROCESS

Question. Could you describe PTO's progress towards instituting a paperless patent application process? How high a priority is this for the PTO? How is this related to PTO's implementation of the various e-government initiatives?

Answer. The USPTO's priorities in the 21st Century Strategic Plan are to (1) improve patent and trademark quality, (2) aggressively implement e-Government to handle workload associated with the 21st Century economy, and (3) reduce patent and trademark pendency. One of the USPTO's highest priority e-Government initiatives is delivering an operating pipeline to process patent applications electronically by October 1, 2004, including electronic capture of all post-filing paper correspondence. At the center of the e-Government strategy is the collaboration with the European Patent Office (EPO) to use their ePHOENIX system, and collaboration with the Trilateral Offices (EPO and the Japan Patent Office) to achieve common goals and share systems already in use or development. The USPTO's Tools for Electronic Application Management (TEAM) project will also continue to support the e-Government strategy.

The USPTO is on schedule to meet its October 1, 2004 planned electronic patent application processing date as follows:

In May 2003, a prototype Image File Wrapper (IFW) system was installed in five Patent Examining Pilot Art Units, and more than 100 patent examiners and support staff were trained on the use of the system.

In June 2003, the USPTO will begin scanning all newly filed patent applications into the IFW system, and the digital copy replaces paper as the official patent file.

In July 2003, the USPTO will begin full production roll-out of the IFW system. Seven Art Units, comprised of about 100 employees, will be added to the system each week. Upwards of 7,000 applications will be scanned per week resulting in adding over 8 million pages to the database each month.

In December 2003, all working patent application files of the three Technology Centers moving to the USPTO's new Carlyle facility in Alexandria, Virginia, will be operating on the IFW system. At this time, there will be over 2,000 total users of the system.

In January 2004, the USPTO will begin the final phase of full deployment of the IFW system throughout the Patent Examining Corps.

In October 2004, all patent application processing will occur in a totally electronic environment that will be used by over 4,000 patent examiners and 2,500 support staff.

Beginning in fiscal year 2004, the USPTO will collaborate with the European Patent Office to initiate an effort to process captured patent application images into text and associated images. This effort will use an eXtensible Markup Language (XML)-based data representation enabling text-based patent application processing (e.g., document navigation, document searching) by fiscal year 2006.

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 investigations? 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? Is there going to be any opportunity for these companies to present their case and thus rectify this situation?

Answer. After complex and thorough investigations, antidumping and countervailing duty orders on softwood lumber from Canada were issued in May 2002.

I am aware of the issue involving duties being imposed on U.S. lumber shipped to Canada for processing and re-imported into the United States. In fact, in February 2003, based on comments we received, the Department issued a scope ruling to address this very issue. In essence, we clarified that U.S.-origin softwood lumber that is further processed in Canada may re-enter the United States free of antidumping and countervailing duties so long as, at the time of importation, the Bureau of Customs and Border Protection (BCBP) can be satisfied that the lumber was first produced in the United States. We believe that this matter has now been resolved. Since the Department issued its scope clarification, we have heard of no instances of BCBP collecting duty deposits on U.S. lumber processed in Canada and returned to the United States.

In addition, during May 2003, we received numerous requests for administrative reviews of both the antidumping and countervailing duty orders. We will be initiating the administrative reviews by the end of June 2003.

WORKING CAPITAL FUND

Question. Mr. Secretary, what would be the advantages and disadvantages of directly appropriating funds for central administrative services, rather than depending upon the Working Capital Fund?

Answer. The Department's Working Capital Fund (WCF) was established on June 28, 1944, pursuant to 5 U.S.C. 607 (15 U.S.C. 1521). The Working Capital Fund is a no-year revolving fund established to support departmental services delivered more efficiently, economically, or advantageously on a centralized basis. Although activities and services have changed over the years of operation, the WCF continues to display full costing of services in bureau budgets. We see no advantages to directly appropriating funds for central administrative services.

The disadvantages of directly appropriating funds for central administration services include the loss of:

—*Responsiveness/Flexibility for Bureaus*.—The WCF provides a mechanism where Bureaus can request additional services based on their needs and funding availability, which varies year to year. For example, additional guard service and security investigations are requested as needed by Bureaus. If directly appropriated, bureaus would lose this flexibility.

—*Flexible Cost Sharing Mechanism*.—As a result of the 9/11/01 tragedy, applications for government jobs through the Postal Service were significantly delayed throughout the federal government. Hiring came to a halt in most federal agencies. However, DOC job applications continued to be processed through Commerce Opportunities On-Line (COOL), an automated job application system. Individual DOC Bureaus may not have been able to fund this initiative alone, but collectively through the WCF this on-line job application system was developed and is being used successfully by all participating Bureaus.

—*Economies of Scale*.—The WCF provides a better vehicle to manage inventory accounts and purchase large equipment or quantities of items in which the Bureaus share in expenses and cost savings. For example, we consolidate buying power and management of services through large orders for administrative services such as janitorial and printing. The WCF serves as a better vehicle to realize volume cost savings.

—*Full Cost in Bureau Budgets*.—Costs charged through the WCF ensure that the Bureau's full cost of doing business is reflected in Bureau budgets, not in a general administration budget.

QUESTION SUBMITTED BY SENATOR PETE V. DOMENICI

PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND CONSTRUCTION

Question. Secretary Evans, public television stations all across the country are facing a federal mandate to convert to digital broadcasting. Approximately 192 stations out of 355 have filed with the Federal Communications Commission for a waiver because they are not going to meet the May 2003 deadline due to lack of funding. These stations are counting on the Public Telecommunications Facilities Program (PTFP), which provides grants to public radio and TV stations for equipment, to help them cross the digital TV finish line with a federal matching grant.

The President's fiscal year 2004 budget submission doesn't request funding for this important matching grant program. Can you please explain the thinking behind this decision?

Answer. The President's fiscal year 2004 Budget proposes to suspend funding for the PTFP grant program in fiscal year 2004. The President's fiscal year 2004 Budget also proposes that Federal support of public television's digital television conversion be funded through monies previously appropriated to the Corporation for Public Broadcasting (CPB). As you probably are aware, CPB is funded through a two-year advance funding procedure. CPB's fiscal year 2004 appropriation of $380 million was enacted into law on January 10, 2002, as part of the Labor/HHS/Education appropriation, Public Law 107–116.

The Administration proposes that up to $80 million in funding for digital conversion grants be made available from within CPB's $380 million appropriation. The President's fiscal year 2004 budget recognizes that the FCC digital conversion requirement should be addressed in the next fiscal year.

To date, public television stations have kept pace with their commercial counterparts in the digital conversion. PTFP's 2003 funding will assist approximately 109 stations meet the FCC's 2004 deadline. In addition, CPB has been appropriated $48 million for the digital transition as part of its fiscal year 2003 appropriation. NTIA has been in contact with CPB officials and understands that CPB will award these

funds later in the year. Given competing national budget priorities and the availability of funds within CPB, the Administration believes that suspending PTFP grants for a year is prudent.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

TOURISM

Question. Our country's engagement with Iraq has begun. The apprehension caused by this military conflict and terrorist incidents within the United States has led to a decline in air travel. This, coupled with weak economic conditions, has led to a decline in tourism such as we saw after September 11, 2001, and Desert Storm.

Has the Commerce Department developed a strategy to reduce the effects on the tourism industry from this decline in business? Does the fiscal year 2004 budget request the necessary resources to shore up this important industry?

Answer. In the fiscal year 2003 Omnibus Appropriation, Congress appropriated $50 million to market and promote the United States as a tourism destination. We are working with industry to implement this program and expect the tourism promotion campaign to commence in fiscal year 2004.

The Department of Commerce is working in a number of ways to support the travel and tourism industry and to assist in its recovery. Immediately after 9/11, I reconvened the Tourism Policy Council (TPC) to coordinate throughout government the programs and policies that impact travel and tourism. The TPC provides the private sector with a forum for making known to the Federal government the industry's ideas and concerns. The TPC also ensures that the various Federal programs are coordinated to maximize support for the industry.

The Department has launched a public-private partnership between the United States and Japan to restore travel and tourism between our two countries. Through promotional programs and events, this "Tourism Export Expansion Initiative" also seeks to address Japanese concerns about security and to convey that the United States is a safe destination—key to restoring travel from this market.

The Department provides support to the travel and tourism industry through its Market Development Cooperator Program (MDCP). The MDCP is a competitive, matching grants program that seeks to leverage limited Federal support for expanding exports of small and medium-sized businesses. The Western States Tourism Policy Council received an award to focus on a cooperative strategy to restore international tourism in gateway communities in and around the federal public lands.

The Department also provided a $788,000 grant to the State of Hawaii to help offset some of its losses attributable to the lack of tourism resulting from 9/11. The project was awarded to the Hawaii Visitor and Convention Bureau (Hawaii VCB) for a marketing campaign to attract visitors. Marketing will be multi-media and focused on mainland cities. The Hawaii VCB is based in Honolulu County but the project will benefit all counties of Hawaii.

The Department provides support to the travel and tourism industry through its market research program. The Department is responsible for collecting and disseminating international traveler statistics, including arrival statistics and visitor expenditures.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

Question. Support for NOAA activities and resources in Hawaii. I am concerned with what appears to be a lack of Administration support for NOAA's commitment to address critical needs in Hawaii and the American Flag Territories. I have two items of particular concern. First, the NOAA ship VINDICATOR (to be renamed HI'I ALAKAI) will be converted this fiscal year to support the National Ocean Service's activities in the Pacific including coral reef research. I understand that while the vessel will be ready for deployment during fiscal year 2004, the Administration's budget proposal does not include any funding for the operations of this vessel. Please explain in full detail why funds were not requested by the Administration for the operation of the VINDICATOR?

Answer. At the time the fiscal year 2004 budget was being formulated, NOAA was still defining the multi-disciplinary mission requirements that would be used to develop the specification package to convert HI'I ALAKAI to meet the requirements. The likely date for award of the shipyard conversion contract was still unknown as was the expected amount of time that would be required for conversion and shakedown of new or modified systems. Considering those unknowns, it seemed unlikely the ship would be ready for operations early enough to require fiscal year 2004 operating funds.

Second, the National Marine Fisheries Service will finally establish the new Pacific Islands Region next month. I am informed that NOAA does not have the two SES positions needed to provide the new Region with its top level managers: a Regional Administrator and a Science Director. In addition to the SES positions, I have not received any credible confirmation that there will be adequate FTE positions to staff the new Region.

Question. Please explain how you plan to address these personnel problems and when we can expect these problems to be resolved.

Answer. With respect to the two Senior Executive Service (SES) positions, the National Marine Fisheries Service has requested authority from the Department of Commerce to recruit for a Pacific Islands Regional Administrator and Science Center Director. We expect to receive approval shortly and have these positions filled permanently by the end of the year. To fully staff the Pacific Islands Region and Science Center, we have projected a long term requirement (2010) of 187 FTE positions in addition to approximately 70 contract employees to primarily assist in carrying out science related activities. Currently, there are 117 funded FTE positions (including the two SES positions) and 70 contract employees located in Honolulu that constitute the initial staff for the Pacific Islands Region.

Question. Streamlining Fisheries Management. According to your written statement, one of your Department's strategic goals is to "improve and streamline the Nation's fishery management system to better meet commercial, recreational, and conservation objectives." How do you plan to implement this goal on a national scale, and how far will the Administration's request of $29.8 million in fiscal year 2004 go toward meeting this goal?

Answer. The National Marine Fisheries Service (NOAA Fisheries) has responsibility for the management of sustainable fisheries, the recovery and protection of marine mammals and endangered and threatened species, and the conservation and restoration of marine habitat. NOAA Fisheries works closely with regional fishery management councils, states, and other constituents to carry out these mandates. The regulatory process affects not just marine resources but also the associated people, businesses, and communities.

The goal of the Regulatory Streamlining Project (RSP) is to improve the efficiency and effectiveness of regulatory operations and decrease NMFS's vulnerability to litigation. While the RSP initiative highlights the National Environmental Policy Act (NEPA) as a critical component of the regulatory process, there are many other requirements that must be addressed to ensure compliance with all of the agency's mandates. Extensive analyses and documentation are required to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other associated mandates such as the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Administrative Procedure Act (APA), Regulatory Flexibility Act (RFA), Paperwork Reduction Act (PRA), Coastal Zone Management Act (CZMA), and Executive Orders 12612, 12630, and 12866. NOAA's fiscal year 2004 budget request for NOAA Fisheries includes $1.5 million specifically to implement RSP during fiscal year 2004, as well as requests for additional resources for increasing the number of stock assessments around the country and the collection of comprehensive biological, economic, and sociological data on an increasing number of species and the environmental factors that influence their health and abundance. Current and improved analyses are critical to front-loading the management and regulatory process.

There are a number of other initiatives that are critical to regulatory streamlining on a national level. These include electronic rulemaking and information systems, improvements to the regulatory process, professional training to ensure compliance with all relevant laws and executive orders, and quality control/quality assurance.

Fiscal year 2004 funding would support the development of an electronic web-based system for all regulatory and information collection activities, including rule development, the maintenance of administrative records or dockets that support rulemaking, and rule-related communications with stakeholders. This initiative will directly support the RSP by expanding constituent participation, facilitating information dissemination, encouraging a more transparent decision making process, fostering better collaboration with stakeholders, and contributing to problem-solving early in the rulemaking process. NOAA Fisheries' performance will be greatly enhanced as the time required to review and process rules and regulations is reduced and long-term cost savings are generated. NOAA Fisheries is developing a training program specific to our rulemaking needs. The program will ensure that all appropriate staff are fully conversant with Federal Register documentation requirements, Agency documentation standards, compliance with all legal requirements, etc. Existing internal and external training opportunities will be utilized to the extent possible. Nevertheless, it will be necessary to develop specialized training which incor-

porates all applicable requirements relative to the fishery management context. These needs will be assessed and addressed in conjunction with development of revised Operational Guidelines. As additional responsibility is transferred to the Regions under the RSP, the Regional staff will need specialized training to able to fulfill their changing responsibilities. In addition, during 2004, NOAA Fisheries will undertake a retrospective bench-marking of past performance dealing with litigation, timeliness, and the need for Federal Register corrections.

As part of RSP, NOAA Fisheries delegated signature authority for Endangered Species Act (ESA) section 7 consultations to Regional Administrators, except for those that are national in scope (i.e., programmatic, multi-Regional, etc.) or for permits issued by the Office of Protected Resources. In NOAA Fisheries Headquarters, the consultation program must conduct national consultations, provide guidance, training, expertise and program review to the Regional Offices, as well as all Federal agencies, Congress, and constituents. Regional Offices require additional resources to conduct a variety of consultations and to provide expert advice to fishery management councils and constituents. One important goal of the RSP is to have NOAA Fisheries alert fishery management councils and others early in their planning process of potential endangered species-fisheries interactions.

A centerpiece of successful ESA section 7 delegation will be NOAA Fisheries' continued commitment to train managers and consulting biologists to ensure that they maintain the knowledge, skills, and abilities that are necessary to implement the agency's section 7 program consistently, efficiently, and effectively. In particular, the following programs would be supported by fiscal year 2004 funding: Develop and implement basic and advanced section 7 training; develop and implement section 7 training for managers and Senior Executives; develop and implement annual regional section 7 workshops; and develop and implement training sessions for special topics.

Question. You have highlighted the climate change request of $295.0 million for fiscal year 2004. However, $266 million, or 89 percent of that figure, is listed as "other programs," which are maintained at fiscal year 2003 level funding. Please explain how the majority of NOAA's $16.9 million increase for the Climate Change Research Initiative shows a commitment to "fully funding climate research" when no new funds are being requested for long standing, well respected, NOAA climate programs?

Answer. The $16.9 million request for the Climate Change Research Initiative (CCRI) represents a single NOAA climate request that is targeted toward the highest priority national needs as described in this Presidential initiative and in the National Academy of Sciences 2001 report Climate Change Science: An Analysis of Some Key Questions. This is on top of providing full funding for NOAA's long-standing climate programs, including provision of inflationary costs and planned pay raises in the President's fiscal year 2004 budget. The request makes full use of NOAA's long-standing climate programs. In particular, of the $16.9 million request, we are using existing programs and laboratories as follows:

—*Global Ocean Observing System (+$6.3 million request)*.—This effort will be managed by NOAA's Office of Global Programs (OGP) and is expected to include support for Scripps Institution of Oceanography, University of Miami, Woods Hole Oceanographic Institution, and University of Hawaii, among others.

—*Carbon Cycle Observing System ($5.0 million)*.—This system, focused on determining the amount of carbon dioxide taken up by North America, is to be operated by NOAA's Climate Monitoring and Diagnostics Laboratory (CMDL) in conjunction with the Climate and Global Change Program. CMDL has substantial experience in operating large-scale atmospheric observing systems, having operated the Baseline Observatories (including Mauna Loa) that document the global rise in greenhouse gases. The Climate and Global Change Program will ensure university involvement in modeling and data analysis.

—*Aerosol-Climate Interactions ($1.0 million)*.—This increase builds on an existing program aimed at one of the most prominent uncertainties in climate projection, namely the impacts of fine airborne particles on climate. This will be administered through NOAA's Office of Global Programs and the Aeronomy Laboratory.

—*Supercomputing ($3.5 million)*.—This will support an increase in climate computational ability at NOAA's Geophysical Fluid Dynamics Laboratory, which originated the modeling of climate in the 1960's.

The remaining $1.1 million in NOAA's fiscal year 2004 requested CCRI increase would be to fund the Climate Change Science Program Office, which would provide coordinated national leadership for the President's interagency climate and global change program, including the coordination for CCRI among the Departments of Commerce, State, Interior, Health and Human Services, Energy, Agriculture, and Defense, and the Environmental Protection Agency, the National Science Founda-

tion, the National Aeronautics and Space Administration, the Smithsonian Institution, the Office of Management and Budget, and the Office of Science and Technology Policy.

In addition, fiscal year 2003 CCRI funding is also being used in existing programs. CCRI supports expansion of the Regional Integrated Science and Assessments Program (RISA) of OGP, which focuses on developing pilot projects for using climate information and enhancing collaboration among researchers, decision-makers, and the public. This year, a new RISA project will be started in Hawaii at the East-West Center looking at the options, risks, and uncertainties in mitigating and adapting to year-to-year climate variability and long-term climate change.

TRADE ADJUSTMENT ASSISTANCE

Question. The Commerce Department administers a small program, Trade Adjustment Assistance for Firms, that is authorized to be funded at $16 million, but is currently operating at $10.4 million. Small companies in my state have benefited from expertise provided through this program and have improved their competitiveness against imports. I was pleased that the fiscal year 2004 budget request includes funding of $13 million, but am concerned by reorganization proposals. It is my understanding that the Trade Adjustment Assistance Centers (TAACs) may be moved into the Economic Development Administration regional offices providing another level of bureaucracy to this small and successful program. I am aware that discussions have been initiated to keep the TAACs as free-standing programs under the International Trade Administration. It is also my understanding that the formula is being recalculated in a manner that would be unfavorable to the Western Region TAAC. Could you discuss these proposed changes and the effect they may have on the program?

Answer. EDA's transition to a decentralized program delivery structure was begun during the last Administration. Current EDA leadership is simply completing the process. EDA's Public Works, Economic Adjustment and Local Technical Assistance (including University Centers) programs are all administered by EDA's six regional offices. The Trade Adjustment Assistance (TAA) for Firms program is the only regional program activity that is administered by EDA headquarters rather than by the EDA regional offices.

The realignment of the TAA for Firms program to mirror the decentralized structure of EDA's other programs will simply transfer TAA for Firms processing functions, currently being performed in EDA headquarters, to the regional offices. The requirements and basic processes for the TAA for Firms program will remain unchanged. As with EDA's other programs that have been successfully decentralized to the regional level for many years, this action will bring the TAA for Firms program closer to the firms it serves and in line with the President Management Agenda. This change will not affect the structure of the 12 Trade Assistance Adjustment Centers (TAAC).

Under this structure, the TAACs will interact with new, more locally-based EDA personnel, but the structure will not result in an additional level of bureaucracy. In fact, the more robust program delivery capability of EDA regional offices is expected to improve EDA's overall administration of the TAA for Firms program.

EDA funding allocations for the TAACs for fiscal year 2003 were calculated following the same methodology used in fiscal year 2002 and previous years. EDA is presently working with the TAAC community to establish a formalized and quantifiable funding formula that can be replicated year-to-year, allocating funding based on various factors, including TAAC performance levels. EDA has not yet proposed a funding formula for 2004 and beyond. On March 5, 2003, EDA staff met with representatives of the TAACs to seek input and to discuss possible funding formulas. On May 29, 2003, the TAAC community responded with a suggested funding formula, which EDA currently is considering. In addition, some TAACs, including the Great Lakes TAAC (Ann Arbor, MI) and the Western TAAC (Los Angeles, CA) expressed concerns about the overall TAAC community's recommendations to EDA. These minority opinions are also being considered by EDA. EDA intends to proceed with the development of a formalized and quantifiable funding formula, in consultation with the TAAC community, that will not only provide each TAAC with a base level of funding but will also reward those TAACs with the highest performance levels.

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

TRADE AGREEMENTS—IMPACT ON SUGAR

Question. Mr. Secretary, the Administration has sought to move the WTO and FTAA negotiations into a more serious phase, concluded negotiations on free trade agreements (FTA's) with Chile and Singapore and launched four new FTA negotiations—with Central America, Morocco, the South Africa Customs Union, and Australia. And more such FTA initiatives may be on the way.

I am concerned that negotiations pursued piecemeal, with inadequate attention to industry-specific problems, as they seem now headed, could bring disastrous results to American sugar beet and cane producers and refiners.

Do you share my concern that inclusion of sugar trade provisions in bilateral or regional trade agreements could leave the U.S. sugar industry vulnerable to increased competition without opening European and other consumer markets?

Answer. The U.S. Department of Agriculture has jurisdiction over this issue and therefore is the appropriate agency to respond to this question.

Question. Every other major sugar producing country excludes sugar from their regional and bilateral trade agreements, even so-called "free trade agreements." Why would the United States include sensitive products like sugar in FTA's if other countries do not?

Answer. The U.S. Department of Agriculture has jurisdiction over this issue and therefore is the appropriate agency to respond to this question.

Question. Should trade in sugar therefore be addressed only in the multilateral negotiations of the World Trade Organization (WTO)?

Answer. The U.S. Department of Commerce, primarily through its International Trade Administration unit supports bilateral and multi-lateral trade negotiations and monitors the results of signed trade agreements. However, in relation to sugar trade issues the U.S. Department of Agriculture has jurisdiction and therefore is the appropriate agency to respond more fully to these questions.

Question. How do you plan to address other countries' policies distorting trade in sugar, which create a "dump" in the market with prices averaging barely half the world average cost of production for the past two decades? Do you seek to impose restrictions on sugar trade-distorting policies on developing and developed countries alike?

Answer. In general, the Department of Commerce is examining the role of market distortions and their effect on trade in the context of the Doha Round. We note that in their mandate for negotiations on Rules in the Doha Round, the Trade Ministers included disciplines on "trade-distorting practices" as an explicit area for further clarification and improvement. Accordingly, the United States has addressed this issue already in our submissions to the Rules Negotiating Group. For example, in our October 22, 2002 Basic Concepts and Principles paper, we noted that:

"A government's industrial policies or key aspects of the economic system supported by government inaction can enable injurious dumping to take place. Although these policies take on many different forms, they can provide similar artificial advantages to producers. For instance, these policies may allow producers to earn high profits in a home 'sanctuary market,' which may in turn allow them to sell abroad at an artificially low price. Such practices can result in injury in the importing country since domestic firms may not be able to match the artificially low prices from producers in the sanctuary market." (TN/RL/W/27, at 4)

We believe that addressing market- and trade-distorting practices is essential to a rules-based multilateral trading system where U.S. domestic producers and U.S. exporters can compete on a level playing field, and we will press strongly throughout these negotiations for strengthened disciplines in this area.

More specifically, the Department of Commerce vigorously enforces the unfair trade laws, and has three outstanding antidumping duty orders covering sugar from Belgium, France, and Germany. There is also a countervailing duty order covering sugar from the European Community in effect. As you know, our antidumping and countervailing duty laws apply to developed and developing countries alike.

TRANSPARENCY IN TRADE NEGOTIATIONS

Question. Representatives of American workers and industries report that they have not been consulted or even briefed sufficiently on ongoing trade negotiations, including Free Trade Agreements and the U.S.-Mexico sweetener agreement. What measures are you taking to improve transparency of trade negotiations with key American constituencies?

Answer. Transparency throughout the negotiating process significantly strengthens the ability of U.S. negotiators to craft trade agreements that will benefit the U.S. economy. The Department of Commerce makes every effort to consult with American constituencies before, during, and after trade negotiations on all aspects of trade negotiations in which the Department is involved. The U.S.-Mexico sweetener agreement has been handled by the Department of Agriculture and the U.S. Trade Representative.

At the launch of negotiations, and when major policy issues arise, the Administration issues a Federal Register notice. After carefully reviewing and cataloging the responses, we draw on this material to inform our positions throughout the negotiation. We also participate in public hearings to get additional input.

During the negotiations, Department staff regularly brief industry groups on the status of trade negotiations. It is extremely important to share as much information as possible, as early as possible, with interested parties. One of the ways we seek private-sector input is through the Industry Consultations Program, which is jointly administered by Commerce and the United States Trade Representative, and includes 21 industry sector and functional advisory committees and approximately 345 industry executives as members.

We also brief other industry groups, associations, and individual companies as requested. We coordinate with broad industry associations, such as the National Association of Manufacturers, to seek input on trade negotiations. Industry-specific trade specialists within the Department's Trade Development Unit canvass their sectors for input regarding all relevant policy decisions. Staff regularly draft material that contributes to trade negotiation summaries which are posted on USTR's public website. We also hold public hearings at important junctures in negotiations so interested parties can hear first-hand from the negotiators or from more senior U.S. officials how negotiations are proceeding. The Department uses other avenues such as World Trade Week and our export assistance centers to try to reach a broad spectrum of interests.

After the negotiations are concluded, we prepare user-friendly summaries and industry-by-industry reports that are posted on our web site.

STEEL TARIFFS—WTO DECISION

Question. Are the temporary tariffs on steel, imposed under section 201 of the Trade Act, having the desired effect?

Answer. In March 2002, following a thorough U.S. International Trade Commission (ITC) investigation and after reviewing the ITC recommendations, the President implemented the steel safeguard remedy to provide the temporary relief the industry needed to facilitate the adjustment and rationalization of the U.S. steel industry.

The U.S. steel industry has experienced an unprecedented level of consolidation and restructuring, with additional consolidation likely in the near future. The International Steel Group led the way by acquiring and reorganizing the integrated production facilities of LTV and Acme Steel and last month bought Bethlehem Steel. US Steel recently acquired National Steel. These and other companies have negotiated more flexible labor agreements that are expected to generate significant cost savings. In the mini-mill sector, Nucor is investing heavily to modernize the mills it purchased from Trico Steel and Birmingham Steel. A number of smaller companies have closed and others have emerged from bankruptcy, downsized and under new ownership.

Any decision regarding modification of the Section 201 remedy will follow submission of the ITC's mid-term review to the President and Congress on September 20, 2003. Our trade law requires the ITC to prepare this report, which will document the efforts of the domestic industry to adjust to import competition.

After the President receives the mid-term report, the statute gives him greater authority to "reduce, modify, or terminate" the safeguard. A decision under this authority will be taken by the President, and we cannot prejudge what his decision may be.

Question. What progress has been achieved in reducing excess steel-making capacity abroad?

Answer. Since September 2001, the steel initiative at the Organization of Economic Cooperation and Development (OECD) has engaged in a serious review of the world steel capacity situation in light of the adverse impact on world steel markets from excess inefficient capacity. To this end, the OECD established the Capacity Working Group to examine approaches that could be used to monitor and encourage the closure of inefficient excess capacity and restructuring developments in the industry through market forces. The primary tool for the Capacity Working Group is

the periodic peer review of the reports from the participating countries on their respective steel industry. These reports describe capacity and production levels, likely closures and new capacities. Information on significant legal and policy changes that affect the steel making capacity are also contained in these reports. The peer reviews are conducted at OECD among the participating countries. When the governments present their reports, the participating countries ask any questions they might have on the reports. The purpose of the peer review to highlight any significant problems related to inefficient excess capacities in the global steel market.

As of May 2003, the participating countries have reported 107.07 million metric tons of crude steel capacity that have been closed during 1998 to 2002. The United States accounts for approximately 14 million metric tons of this reduction. They also forecasted an additional 29.00–35.60 millions of closures for the period of 2003–2005. However, some countries are also estimating some increase in new capacity or replacement of old capacity. On an aggregate level, we expect 16.75–17.05 million metric tons of new capacity for 2003–2005.

Question. When can we expect to achieve a better balance between steel-making capacity and global demand?

Answer. Global production and consumption of steel reached 902 and 812 million metric tons respectively in 2002. While analysts generally agree that the figure for global capacity is about 1 billion metric tons, there is no definitive number. In 2002, production and consumption of steel products significantly increased from 2001, and most of the increase in demand and production has been from China. In some ways, the increase in demand for steel products in 2002 has diminished the need to reduce capacity in many regions. For example, there is no evidence that significant elimination of capacity or decreases in production have taken place in Russia and Ukraine, both countries which analysts cite as having significant amounts of inefficient excess capacity. Similar to the situation in China, these governments are reluctant to face the social cost of dismantling steel mills in towns where the steel mills are the major employment source. Meanwhile, we believe that Russia, Ukraine, Japan, Korea and India have all increased exports to China in 2002. Many analysts wonder how long China's growing economy will sustain this frantic pace of demand. China, which became the largest steel importer in the world in 2002, importing close to 30 million metric tons, is responsible for much of the increase in worldwide demand. Without continued import demand from China, countries that count on exports to sustain their production levels might become sources of excess supply. The OECD Capacity Working Group's peer review process will allow us to quickly detect excess capacity. It is therefore difficult to predict when we can achieve a better balance of capacity and demand. However, we do know that eliminating subsidy and other market-distorting practices from the world steel market is the key to permanently removing inefficient excess capacity.

Question. Is the Administration prepared to continue the temporary steel tariffs, for as long as necessary, even if the World Trade Organization dispute settlement panel rules against the United States?

Answer. The United States disagrees with many of the WTO panel's preliminary conclusions, but we are pleased that the panel rejected some of the complainants' claims. The WTO dispute settlement process regarding the steel safeguard measures is not yet complete, so it is premature to discuss any response to the panel report. In the WTO dispute settlement system, a report from either a panel or the Appellate Body is not final unless formally adopted. The steel panel report has not yet been publicly released in final form, and the appeal has not even begun.

In the meantime, the steel safeguards measure will remain in place. From the beginning, we planned to reduce the supplemental tariffs by one-fifth each year. We made the first such reduction in March of this year. The panel report does not affect this process.

Under our domestic safeguards laws, the International Trade Commission issues a report on domestic producers' condition midway through the term of a safeguard measure, which will occur toward the end of September 2003 in the steel case. The President may reduce, modify, or terminate a safeguard measure after receiving this report.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

BYRD AMENDMENT

Question. U.S. Trade Ambassador Zoellick assured me, personally, and publicly, that the Bush Administration would defend the Byrd Amendment against the case brought by our trade competitors before the World Trade Organization. Imagine my

surprise, then, to learn that the Administration had recommended a repeal of the law in its fiscal year 2004 budget request. In fact the press apparently was notified by the Administration of its intent to recommend a repeal of the Byrd Amendment the day before the WTO Appellate Body issued its final determination of the case.

Why would the Administration advise me and recipients of Byrd Amendment funds across the nation that it strongly supported the Byrd Amendment, if, at the same time, the Administration was planning to request its repeal in the fiscal year 2004 budget?

Answer. The Administration vigorously defended the Byrd Amendment at the WTO. Unfortunately, the WTO ruled against the United States on this issue. The Administration continues to believe that the decision on the Byrd Amendment (Continued Dumping and Subsidy Offset Act of 2000) was not inconsistent with WTO rules.

We look forward to working with USTR, Treasury and Congress to develop a response to the WTO's decision. We recognize that the ultimate response to the WTO decision lies with Congress, and your constitutional authority to determine whether, when, and in what way to comply. There may be a number of ways in which U.S. law could be amended to address the issues raised by the WTO Appellate Body without sacrificing our goal of providing effective assistance to companies and workers that have been injured by unfair trade.

Question. On February 4, 2003, I sent a letter to the President signed by 70 Members of the U.S. Senate, urging the Administration to negotiate a solution to the Appellate Body's ruling on the Byrd Amendment, and to consult closely with the Congress on the particulars of these negotiations. Obviously, there is no support in Congress for a repeal of this law.

How does the Administration intend to resolve this issue in WTO negotiations? When will the United States put this issue on the agenda of the WTO negotiations?

Answer. The Office of the United States Trade Representative is the agency primarily responsible for developing the U.S. agenda for these negotiations. We would look forward to working with Congress in crafting a strategy that would allow us to comply while at the same time ensuring the effectiveness of our trade laws.

EMERGENCY STEEL LOAN GUARANTEE PROGRAM

Question. Last year, in its fiscal year 2003 budget request, the Bush Administration recommended rescinding $96 million from the Emergency Steel Loan Guarantee Program. In its fiscal year 2004 budget request, the Administration again recommended rescinding whatever monies for the program remained in the budget. Congress rightfully rejected the Administration's recommendation for fiscal year 2003, and I fully anticipate it will reject the Administration's recommendation with respect to the fiscal year 2004 budget, as well.

How can the Administration continue to tell America's steelworkers that it is doing all it can to support the U.S. steel industry on the one hand, while, at the same time, seeking to eliminate this program?

Answer. Due to the lower than anticipated demand for steel loan guarantees, the Emergency Steel Loan Guarantee Program has been subject to proposed rescissions in both fiscal year 2003 and fiscal year 2004. The Administration believes that this program has not been an effective method of supporting the U.S. steel industry.

Question. What do you say to families like the 25,000 in the Ohio River Valley, who, right now, are looking to the Emergency Steel Loan Guarantee Program to save their jobs and preserve their pensions?

Answer. The Emergency Loan Guarantee Board has approved, with conditions, a loan guarantee for a loan amount of $250 million to Wheeling-Pittsburgh Steel Corporation, which is located in the Ohio River Valley.

Question. Can you provide me with the names of any steel industry consultants that were recommended by Bush Administration officials to advise members of the Emergency Steel Loan Guarantee Program about the validity of the application submitted by Wheeling-Pittsburgh Steel?

Answer. Bush Administration officials did not recommend steel industry consultants to advise members of the Emergency Steel Loan Guarantee Board or loan program staff concerning the application submitted by Royal Bank of Canada on behalf of Wheeling-Pittsburgh Steel Corporation. The loan program staff chooses and retains steel industry consultants to assist with review and analysis of applications for loan guarantees. Choices are made based on factors such as specific related prior experience, recommendations from third parties involved in the steel industry, general reputation, satisfactory performance on prior applications, and absence of conflicting relationships.

IMPORT MONITORING PROGRAM

Question. What is the Administration's position regarding instituting a program to monitor surges of all [steel] imports into the United States, not just those steel imports that were originally subject to the 201 investigation of steel products? If the Administration will not support such an import monitoring program, why not?

Answer. The Administration currently monitors steel imports through two steel import monitoring programs administered by the Department of Commerce's Import Administration. These two import monitoring programs differ in scope of coverage and source of information.

One program, which was instituted as part of the safeguard remedy, applies only to products subject to the safeguard, and draws upon aggregate information collected from proprietary information reported on steel import licenses. Information on these imports is collected and reported by product category and country of origin. The primary purpose of this program is to provide early identification of import surges, particularly those from excluded developing countries, that could undermine the relief provided to the industry by the President.

The other steel import monitoring program, which is much broader in scope, covers all imports of steel mill products. This monitoring program was established prior to the safeguard remedy, and is based on the early release of steel import data collected by the Census Bureau. It has been expanded over the past year to provide detailed monthly statistical information on steel imports including import quantity, value and unit values. This early release data is the most timely and reliable monthly data available on U.S. steel imports and is issued roughly three weeks after the close of the import month. Import volume and value data are collected and reported by AISI category as well as section 201 remedy category and by country of origin.

To increase the usefulness of the monitoring programs, detailed information on steel imports compiled from both steel import monitoring programs is available to interested members of the domestic steel industry, government and public through the steel import monitoring website—www.ia.ita.doc.gov/steel/license/. The data is reviewed continuously and is updated on a regular basis—the day of release for monthly Census import data; each week for import license data.

Expansion of the current import monitoring programs, particularly the extension of the licensing requirement to products beyond the scope of the section 201 remedies, would require additional authorizing legislation. Depending upon the scope of the expansion and the number of new product categories and additional Harmonized Tariff Schedule's (HTS) to be added to the system, the expanded monitoring system could entail a considerable outlay of new resources, particularly if the same level of detailed reporting is to be maintained.

Currently, more than 25,000 licenses are issued each month and the website generates approximately 7,000–8,000 tables and graphs which must be reviewed and updated each week. Expansion to all steel mill products would more than double the number of licenses. The number of covered tariff numbers would almost triple and depending upon the number of steel categories added, the number of tables and graphs would likely triple as well. This is far beyond the capabilities of the existing database and monitoring program and would likely cause a decrease in service, timeliness and/or accuracy. Expansion to all tariff numbers in HTS Chapters 72 and 73 would greatly increase the number of licenses, covered tariff numbers and reported product categories and further tax the system.

201 MID-TERM REVIEW

Question. The ITC has begun its mid-term review of the remedies that were imposed last year on imported steel under section 201. What criteria will the Bush Administration use to decide whether to lift the tariffs and other remedies that were imposed as a result of last year's investigation under section 201? Does the Administration plan to base its decision this fall on information gathered by the ITC during mid-term review, and on advice offered by the entities referenced in 19 U.S.C. section 2254, or on additional input, including extraneous comments submitted to the White House, or the U.S. Commerce Department, by foreign countries or foreign exporters, or by U.S. importers of steel products otherwise subject to the 201?

What impact will foreign policy concerns have on the Administration's decision in this respect?

Answer. The President implemented the steel safeguard remedy to provide the temporary relief needed to facilitate the adjustment and rationalization of the U.S. steel industry. Since the implementation of the steel safeguard remedy, the U.S. steel industry has experienced an unprecedentedly high level of consolidation and restructuring, with additional consolidation likely in the near future.

As required by section 201, the International Trade Commission (ITC) recently initiated a mid-term review of the effectiveness of the steel safeguard remedy and the restructuring efforts undertaken by the industry. The ITC will collect information from a broad range of U.S. steel producers, foreign steel producers, and steel importers. Based on a request from the House Ways and Means Committee, the ITC will also review the impact of the safeguard remedies on steel consumers. The ITC will issue its report to the President in September.

The President may reduce, modify or terminate the section 201 remedies imposed in March 2002; he may also leave the measures unchanged. In accordance with the statute, the President will take into account the report and advice of the ITC, as well as the advice of the Secretaries of Commerce and Labor, in reaching a decision under section 204. In addition, the President may consult with the House Ways and Means Committee or the Senate Finance Committee.

However, the statute does not limit the President to consider only these sources in his decision. As it does in every section 201 proceeding, the Administration will consider any information that is potentially relevant to an evaluation of the statutory factors, including information or advice from members of Congress, U.S. steel producers, U.S. steel consumers, U.S. importers and other interested parties. The Administration will also consider any information presented to it by foreign governments or foreign parties that is relevant to the inquiry under section 204.

DEDUCTING 201 DUTIES FROM AD/CVD MARGINS

Question. In a recent case, the Department considered but made no final determination regarding whether to deduct from the U.S. price of a dumped or countervailable product the amount of 201 duties that had already been imposed on an imported steel product. 201 duties reflect a decision by the President to increase normal customs duties, temporarily, and such duties can be deducted from the U.S. price in determining the margin in an antidumping or countervailing duty case. What is the Department's position concerning the deduction of 201 duties from U.S. price in determining the margin in an antidumping or countervailing duty case?

Answer. To date we have not made a decision concerning this important issue. We intend to address it in the context of upcoming antidumping case decisions after we have received comments from interested parties.

The issue of how to treat section 201 duties in our dumping margin calculations was raised in the final weeks of our statutory time period in our recent investigation on steel wire rod from Trinidad and Tobago. In that case, the foreign respondent, the domestic producers and the United Steelworkers of America submitted comments on this issue, but the domestic producers and the United Steelworkers of America requested that the Department allow more time for broader comment on this far-reaching policy determination. Since the adjustment in the steel wire rod from Trinidad and Tobago case would have had an insignificant effect, we did not address the treatment of section 201 duties in that case.

We have a few cases currently pending in which this issue has been raised. We are allowing all interested parties to comment fully on this issue, including parties not involved in these specific proceedings. We will carefully consider all comments before reaching a decision.

IMPORT ADMINISTRATION

Question. My office has been advised that the Office of Policy within the Department's Office of Import Administration has been steadily expanding over the past several years. There is a concern that available resources within Import Administration are being diverted to the Office of Policy at the expense of the other offices within Import Administration that actually conduct the antidumping and countervailing duty investigations and administrative reviews. Could you please provide me with detailed information how the Office of Policy within Import Administration has expanded over the past five years? And for what purpose?

Answer. At no time has the Office of Policy been expanded at the expense of the Operations offices. With the additional fiscal year 2001 funding, management also increased the funding of the three Operations offices within IA that conduct AD/CVD cases. The growth of the Office of Policy resulted directly from increases in the annual appropriations, and represents a conscious decision of both the Executive and Legislative branches during the past two Administrations to develop tools for supporting and supplementing the enforcement of U.S. trade laws to address foreign unfair trade practices. There were no reductions in the budgets of the Operations during this period for the purpose of expanding the Office of Policy, nor was funding diverted to support Office of Policy growth.

IMPORT ADMINISTRATION STAFFING OFFICE OF POLICY VS. OPERATIONS OFFICES FISCAL YEAR 1999–2002

Fiscal Year	Policy	DAS Groups (I, II, III)
1999	27	222
2000	27	222
2001	55	222
2002	65	[1] 222

[1] Does not include miscellaneous overhires to work on steel issues.

(Source: IA Staffing Plans).

During the past five years, IA received two budget increases through the annual appropriations process in fiscal year 1999 and fiscal year 2001. The fiscal year 1999 appropriation included a funding increase for IA to conduct new AD/CVD program activities set forth in the Uruguay Round Agreements Act (URAA). IA management directed the Office of Policy to assume responsibility for the new activities described below.

—AD/CVD Sunset Reviews

—Subsidies Enforcement

The fiscal year 2001 appropriation included a funding increase to support the Trade Compliance Initiative (TCI) first proposed by the Clinton Administration and subsequently supported by the Bush Administration. IA's new TCI program activities were assigned to the Office of Policy and included the following new activities:

—Overseas Compliance Program

—China Trade Compliance and Japan Trade Compliance

—Import Surge Monitoring, Expedited Investigations & Subsidies Enforcement

—IA Senior Official Stationed in Geneva, Switzerland.

In particular, a significant portion of these funds and increased staffing were used to support Import Administration's increasing activity on three fronts—(1) steel issues, (2) pre-petition support to potential users of the AD/CVD laws, and (3) WTO negotiations on rules. Of the new policy analysts hired in the past two years, more than half have been dedicated to these new areas.

IMPORT ADMINISTRATION: CUSTOMS INSTRUCTIONS

Question. I learned of possibly misallocated resources when my office was advised that certain companies have been unable to obtain funds from the special accounts that have been established at the Treasury Department under the Byrd Amendment. It is my understanding that certain companies cannot access funds in the relevant accounts because investigators in Import Administration have been too short-staffed to send necessary instructions regarding certain cases to the U.S. Customs Service. Consequently, some U.S. companies that have been eligible to receive funds under the Byrd Amendment have been told by Customs that there is simply no money in relevant accounts at the U.S. Treasury Department. Are you aware of this problem and can you tell me whether there has been any effort by the Department to address this issue?

Answer. As explained below, it is true that, in some instances, there has been a delay at the Department of Commerce in issuing liquidation instructions. It should be understood, however, that the DOC does not maintain the special accounts established under the Byrd Amendment and cannot, therefore, speak to the reason(s) why any particular claimant has been unable to receive distributions.

DOC conducts administrative reviews of antidumping (AD) and countervailing duty (CVD) orders where a request for review is timely filed by an appropriate interested party. If a review is initiated, the entries covered by the review remain suspended until the Department completes the review (typically 12 to 18 months from initiation). If the Department's final results are not challenged (in either the Court of International Trade or NAFTA), Import Administration issues liquidation instructions, whenever possible, within 15 days of the issuance of the final results of the administrative review. However, if parties challenge our final results and obtain an injunction against liquidation of the entries covered by the review, those entries will be suspended until the litigation is resolved. If the Department does not receive a request for administrative review, or if a review request covers only entries from certain producers/exporters, the Department advises the Department of Homeland Security's Bureau of Customs and Border Protection (BCBP) to liquidate the entries for which a review was not requested.

The Department's liquidation instructions indicate to the BCBP how much in the way of special duties to assess on entries of merchandise subject to an AD and/or CVD order. BCBP then assesses duties on the entries and places the proceeds in special accounts pursuant to the Byrd Amendment. When claims are made for the funds in the special accounts, BCBP determines whether—and to what degree—the claims will be satisfied.

The Department takes a proactive approach to ensure that liquidation instructions are properly issued. Despite these efforts, given the sheer volume of cases and instructions that must be issued by the Department to the BCBP, there may be instances where entries have inadvertently not been liquidated. Typically, the Department is notified of these instances by the BCBP or private parties (such as the domestic producer or the U.S. importer). Import Administration makes every effort to work with parties and the BCBP to identify the problem, and to address it as expeditiously as possible. We closely monitor the accuracy and the timeliness of our issuance of instructions to BCBP and immediately address any problem that we identify or is brought to our attention. We are not aware of any instances in which customs instructions were not sent due to staffing issues.

Finally, we note that, to address concerns that there had been significant delays in the issuance of liquidation instructions in certain cases, the Department conducted a review of all completed proceedings to ensure that BCBP has been issued appropriate instructions. Import Administration officials reviewed more than 200 final decisions in the course of this project, which took several years to complete. As a result, the Department ensured that all liquidation instructions had been issued for all entries subject to the orders/findings involved.

VALIDITY OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. Why does the PTO trust that an outside contractor with no relevant patent experience would conduct a valid patent search in the same thorough and learned manner as a patent examiner with years of experience?

Answer. The USPTO is confident that a certified outside contractor can conduct a valid patent search in the same thorough manner as an experienced patent examiner. The USPTO's decision to split the search and examination functions—a key component of the 21st Century Strategic Plan—is not an unprecedented or untested approach. The USPTO and its sister patent offices throughout the world have considerable experience in splitting the two tasks of search and examination. For example, search and examination have been separated within the European Patent Office (EPO) for more than twenty years without any detriment to quality. Indeed, search quality will actually improve under a Contractor Search Service (CSS) system, as the examiner will be acting as a second pair of eyes relative to the search contractors.

The USPTO will provide detailed search guidelines and quality measures to ensure the quality and uniformity of prior art searches performed by a CSS. Prior to contract award, all offerors will be evaluated to ascertain the technical background and skills of their employees and their abilities to provide a high quality search.

The USPTO plans to have multiple levels of Quality Control/Review and will promptly terminate its contract with any provider whose searches and search reports do not meet the standards. Furthermore, patent examiners can always request a further search or perform a supplemental search with approval of their supervisor if the examiner feels the search supplied is inadequate.

With these quality assurance measures, there should be no adverse effects on the presumption of validity or the public confidence in patents. In fact, this collaborative effort in prior art searching will improve both efficiency and substantive focus in the preparation, examination, and prosecution of patent applications in a more cost effective and expeditious manner. It will, with the implementation of the quality measures outlined in the 21st Century Strategic Plan, strengthen the validity of patents, thus providing a more substantive and valuable end product for our customers.

COST OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. Why is the PTO not concerned that outsourcing this function could increase, rather than a decrease agency costs?

Answer. The USPTO believes that, overall, it will be cost effective to competitively source patent searches. The USPTO has been criticized for "hiring its way out" of its growing patent workload problem. For example, in 2002 the Senate Appropriations Committee stated, "PTO management has not been sufficiently innovative. Although patent filings have increased dramatically over the past decade, PTO man-

agement chose to remain wedded to an archaic patent process and attempted to hire its way out of its workload problems."

Competitive sourcing of searches is part of the USPTO's effort to address incoming work and an inventory of pending applications by allowing patent examiners to concentrate on patentability determinations rather than spending time on searching. The removal of search functions will allow examiners to process more patent applications, assisting the USPTO in lowering pendency and reducing backlogged applications.

Competitive-sourcing of the search will be validated by a proof of concept before we proceed to full implementation.

RELIABILITY OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. How does the PTO plan to address the issue that searches conducted by an outside firm could prove faulty or unreliable and, as a result, could undermine the validity of patents issued by the PTO?

Answer. In addition to the steps outlined in response to the question above regarding confidence in contractor abilities to conduct prior art searches, the USPTO has benchmarked models that other intellectual property organizations have used for many years. For example:

—The Japan Patent Office (JPO) also has experience in splitting the two tasks of search and examination. The Japanese government established the Industrial Property Cooperation Center (IPCC) in 1985 for such purposes as providing search reports on patent applications pending before the JPO, indexing patents according to the F-term classification scheme used by the JPO, and assigning classifications to patents according to the International Patent Classification system. Since then, more than one million prior art searches have been conducted by IPCC for JPO's patent examiners and more than two million F-term assignments have been made to JPO's searchable database. The IPCC is now staffed with about 1,100 engineers, only 40 of whom were previously employed as patent examiners. Based on such an extensive base of empirical data, together with on-site benchmarking reviews that have been conducted with JPO officials over the past decade, we have no doubt that searches can be done with high quality by experienced and skilled engineers.

—Closer to home, the USPTO has allowed examiners to elect the services of searchers to search non-patent literature and foreign patents in the Office's Electronic Information Centers for the last decade. Thus far this year, examiners have requested 13,011 searches. These searches are conducted by contract staff or Government employees who have extensive knowledge of the database content, search strategy formulation, and command language of several commercial online providers, such as Dialog and Lexis-Nexis. They also have knowledge of internal search systems, such as the Examiner's Automated Search Tool (EAST) and the Web-based Examiner Search Tool (WEST), and are adept at searching the Internet.

—The European Patent Office (EPO) serves as another benchmark. The EPO has extensive experience that clearly demonstrates that a high quality search can be generated by someone other than the substantive patent examiner with no diminution in the quality of the patentability determination or the patent examiner's ability to keep current with his or her understanding of, or currency with, the technology and/or state of the art. Since 1978, EPO searchers in The Hague and Berlin (and more recently, Munich) produced almost 1.8 million searches of which half were for EPO's substantive patent examiners in Munich. In fact, the USPTO has already received more than 75,000 patent search reports from the EPO over the past few years pursuant to the Patent Cooperation Treaty (PCT). While that is not a direct "contractor" model, conceptually there is virtually no difference with the IPCC model described earlier.

The EPO, where the search was carried out by an examiner in The Hague or Berlin and the examination was conducted by a three-man examining division in Munich, currently is moving towards combining the search and examination functions to improve productivity, not because there are quality issues associated with the separation of search and examination. Survey data collected from U.S. patent attorneys over the past five years show that the EPO's searches and patentability decisions are consistently of high quality.

As Director Rogan explained in his April 3, 2003, testimony before the House Judiciary Committee's Subcommittee on Courts, the Internet and Intellectual Property, the USPTO and its sister patent offices throughout the world have considerable experience in splitting the two tasks of search and examination, as described above. Contrary to the assertion that quality suffers under such a structure, the re-

verse is true. During the hearing, Director Rogan entered into the record a letter from the President of the EPO, Dr. Ingo Kober, which discusses Europe's experience in this area. See attachment.

While the EPO does not competitively source the search function, search and examination have been separated within the EPO for more than twenty years without any detriment to quality.

For firms that would like to offer search services, the USPTO will follow the Federal procurement process to enter into contractual arrangements with them. The USPTO would maintain the authority to certify that a private firm, individual, or commercial entity was capable of providing a valid, thorough, and complete search of the prior art for patent examination processes.

[ATTACHMENT—EUROPEAN PATENT OFFICE LETTER]

MARCH 4, 2003.

Mr. JAMES E. ROGAN,
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, 2121 Crystal Drive, Suite 906, Arlington, VA 22202 USA.

DEAR MR. ROGAN, I understand that some organisations and individuals in the United States have recently expressed certain misconceptions concerning a program of the European Patent Office, namely, Bringing Examination and Search Together or BEST. I would like to clarify some basic facts about this program to ensure it is properly understood.

Any characterisation that the European Patent Office chose to "adopt" the American system of searching and examining patent applications is simply not true. Our decision to combine the search and examination functions was based on the need to increase examiner productivity. As you know, these changes occurred during a time of transition to a more automated environment and a significant expansion of our staff.

Indeed, the previous arrangement was initially dictated by historical and geographical reasons which no longer apply. However, this separate search and examination program, where the search was carried out by an examiner in The Hague or Berlin and the examination was conducted by a three-man examining division in Munich, produced high quality results and served us very well over a period of more than 25 years. In fact, feedback we have received from our interested circles has consistently indicated high satisfaction levels with our searches.

Finally, all major industrial property offices in the world currently confront a workload crisis that demands creative solutions. That is why I agreed to sign a bilateral record of discussion with you to explore the potential of exploiting searches generated by our respective Offices for counterpart patent applications. I am convinced that this will help improve patent quality, increase efficiency and productivity, and reduce operating costs.

It is unfortunate that recent statements made by commentators on the EPO's current and future plans as well as on the USPTO's plans have characterised our processes as diverging, when in fact they are indeed converging.

Should you wish further clarification of my views on this matter, I shall be glad to provide additional details.

Yours sincerely,

DR. H.C. INGO KOBER,
President.

VALIDITY OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. Why does the PTO trust that an outside contractor with no relevant patent experience would conduct a valid patent search in the same thorough and learned manner as a patent examiner with years of experience?

Answer. The USPTO is confident that a certified outside contractor can conduct a valid patent search in the same thorough manner as an experienced patent examiner. The USPTO's decision to split the search and examination functions—a key component of the 21st Century Strategic Plan—is not an unprecedented or untested approach. The USPTO and its sister patent offices throughout the world have considerable experience in splitting the two tasks of search and examination. For example, search and examination have been separated within the European Patent Office (EPO) for more than twenty years without any detriment to quality. Indeed, search quality will actually improve under a Contractor Search Service (CSS) system, as the examiner will be acting as a second pair of eyes relative to the search contractors.

The USPTO will provide detailed search guidelines and quality measures to ensure the quality and uniformity of prior art searches performed by a CSS. Prior to contract award, all offerors will be evaluated to ascertain the technical background and skills of their employees and their abilities to provide a high quality search.

The USPTO plans to have multiple levels of Quality Control/Review and will promptly terminate its contract with any provider whose searches and search reports do not meet the standards. Furthermore, patent examiners can always request a further search or perform a supplemental search with approval of their supervisor if the examiner feels the search supplied is inadequate.

With these quality assurance measures, there should be no adverse effects on the presumption of validity or the public confidence in patents. In fact, this collaborative effort in prior art searching will improve both efficiency and substantive focus in the preparation, examination, and prosecution of patent applications in a more cost effective and expeditious manner. It will, with the implementation of the quality measures outlined in the 21st Century Strategic Plan, strengthen the validity of patents, thus providing a more substantive and valuable end product for our customers.

PILOT OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. If the PTO plans to test these searches in some sort of "pilot program," what assurances are there that such a pilot program will actually be undertaken? How will the PTO measure success? Who will measure success? Will the Congress be involved?

Answer. To meet the requirements of their customers and to determine the feasibility of competitively sourcing search functions, the USPTO will implement a proof of concept through a pilot program. The Office will assure quality of contractor performance through continuous monitoring of the pilot and the conduct of a formal evaluation. The planned proof of concept will be widely vetted with USPTO's key stakeholders and the Patent Public Advisory Committee. The results of the pilot will also be widely shared. USPTO will conduct a formal review of the pilot prior to making a final decision as to whether or not to proceed with full implementation. The Congress will be kept informed throughout the process. Although the specifics of the pilot and evaluation have not been finalized, the USPTO is considering using an outside contractor to validate the quality of the searches.

The USPTO already has obtained public comment on its plans and posted on its website for many months the answers to questions or suggestions they have received from the public, patent examiners, and the professional associations with whom it has worked extensively. The Office recently published on its website a detailed action plan which describes the implementation approach. What follows are the highlights of the administrative structure and processes USPTO is fully prepared to implement, including a description of the proof of concept.

The USPTO will use the contractors to prepare complete and accurate search reports for patent applications. One or more contracts would be awarded. It is anticipated that there will be at least one contract specializing in each discipline. The contractor may be a private or commercial search entity with demonstrated expertise and search skills. The request for a search and the resulting search report are activities between the USPTO and the contractor.

The USPTO would administer the same preliminary processing procedures currently established for new application filings. A copy of the application would be forwarded to the contractor approximately three months prior to the examination. The contractor would perform a prior art search and prepare a report using Patent Cooperation Treaty (PCT) guidelines and USPTO search guidelines for additional nonpatent literature (NPL) resources as stated above.

Upon completion of the report, the application would be forwarded to the Patent Technology Center to await review by the examiner. The examiner would then review the report and prior art cited. If the report was inadequate or if the examiner was personally aware of other prior art, the examiner could request time to search them, or have the report sent back to the contractor with an explanation of the deficiency and a request for supplemental information.

The USPTO would maintain the authority to certify that a private firm, individual, or commercial entity was capable of providing a valid, thorough, and complete search of the prior art for patent examination processes. A certification process would be done at the USPTO. The process could be given to firms or individuals or a combination thereof. The certification process may be based on industry specific criteria and be given on an individual basis based on the firm's or individual's qualifications. Similar to the Primary Examiner at the USPTO, a senior member of the firm could sign off on an "assistant's" search. Thus, while there are multiple options

available, a preferred one would be to certify the "firm" which, in turn, would be responsible for certifying their individual searchers.

The critical measures of success would be determined based on the contractors' ability to: (1) determine if disclosed invention is subject to an international search; (2) identify a field of search that would cover the disclosed invention; (3) select the proper tools and art collections to perform the search; (4) determine the appropriate search strategy for each of the selected search tools and art collections; (5) search the art collections using the selected search tools and search strategy, and using any additional strategy suggested by the art that is found; (6) retrieve sufficient information from art that is identified during the search to evaluate the pertinence of the art; (7) select the prior art that is most pertinent to the claimed subject matter; (8) record the results of the art that is selected according to the criteria set forth in the guidelines; and (9) determine if certain claims are found to be searchable subject matter and/or lack clarity or distinctness.

The contractor would have to prove that it has ready access to the appropriate industry-specific search tools. Much of the work in developing industry-specific search tools is either in the process of being done or has already been published on the USPTO intranet in the form of Search Guidelines. These guidelines were developed by Quality Action Teams and represent a listing of appropriate search tools and databases for each technology. The guidelines include PCT Minimum Document requirements, appropriate text search systems, as well as the pertinent commercially available databases. In addition to using the established guidelines, a classified search using the U.S. Patent Classification (USPC) system would also need to be performed, if appropriate.

Another requirement would be the technical qualifications of the contractors' staff. Just as in examining, varying levels of technical expertise are required for searching different technologies. In addition, the contractor would have to provide proof of a thorough understanding of the patent examining procedures and patent statutes. It is essential that any contractor have the ability to read and analyze claims, as well as broadly apply the prior art to produce a PCT-type search report, which would be submitted to USPTO. The contractor would need to be aware of patent law and practice and be able to understand such concepts as "motivation" for example. This could be ensured through testing requirements. Finally, the contractors' ability to provide timely reports would be essential to the program's success. Special attention would be paid to ensure treaty deadlines were enforced.

For proper examination and quality comparisons, a search submission would be expected to include, at a minimum, a listing for every search including: (1) text search systems; (2) commercial databases; (3) USPC classified search, if appropriate; (4) the complete search statement and logic; and (5) a statement regarding the teachings and applicability of each reference against each claim.

The USPTO also would have to maintain a "search quality review process" in order to "sample" the quality of searches submitted by the certified search authorities. A component of the in-process review activity is to evaluate the quality of the search results for each contractor. A statistically valid sample of cases would be reviewed using criteria such as whether the search was based on what is claimed and reasonably expected to be claimed. Additionally, an experienced examiner will conduct a separate search on the same application, to ensure the contractor used the proper search procedures.

The Office would retain the ability to terminate any contract and "de-certify" authorities that submit a number of poor searches from either the test sample or from other sources such as examiner reports, requests for re-examination or post-grant opposition that show clear errors.

It is possible that separate contractor support would be needed to set up, implement, and maintain the necessary certification procedures, along with a dedicated staff of search and examination experts.

Contractors may be required to supply certified translations or English language equivalents, with valid dates, for any non-English language prior art references cited, which would also eliminate the need for examiners requesting certified translations, partial translations and/or on-the-spot translations of non-English documents.

Proof of Concept: The USPTO recognizes that the use of contractors to provide prior art search and/or opinion reports for patent applications is a major change to current patent examination processes. The USPTO also understands customer concerns for excellence in a prior art search. To ensure quality art searches are maintained and that there is uninterrupted service to all USPTO customers, the Office would use the results of the PCT pilot as its foundation for competitively sourcing all other search activities within the Office. By using the pilot study, the USPTO will be able to assess accurately the feasibility of competitively sourcing prior art

searches. Performance and product will be reviewed to ensure the highest quality is maintained, using both an in-process review procedure and separate searches performed by experienced examiners.

The PCT competitive sourcing pilot will be implemented in multiple arts to ensure the contractors can provide a quality search report for any technology. Between three and six different art areas, all with generally high backlogs, would be selected as pilot areas. The results of the PCT pilot will provide the Office with the information necessary to implement the best possible transition from examiner searches to contractor searches. Prior to full-scale implementation, a final report would be developed that identifies the strengths, weaknesses, costs and benefits. This report would be published and made available for general review prior to a decision on whether to further implement competitive-sourcing in other areas of the Office.

There would be multiple evaluations of the search and reports prepared by the contractors. Examiners would complete an evaluation every time a contracted search is used in the examination of a U.S. application. There would also be independent evaluations both during in-process reviews, and by independent third parties (similar to a quality review of the examination). Failure of a contractor to maintain the high quality expectations could result in the "forfeit" of the contract to the contractor.

Regarding the costs of the commercial search, the USPTO's stakeholders' view is that quality has not been properly emphasized in recent years. Accordingly, the USPTO has listened to patent applicants and the consistent message they have conveyed is that quality must be improved and the cost of improving quality is something for which they are prepared to pay.

STOPPING PILOT OF COMPETITIVE-SOURCING

Question. Is there any certainty that the outsourcing will stop if the pilot program proves that the experiment is not working?

Answer. Yes. First, the planned proof of concept will be vetted in advance with the USPTO's key stakeholders and the Patent Public Advisory Committee.

Second, the USPTO has committed to developing a final report documenting the strengths, weaknesses, costs and benefits. The report will be published and made available for general review prior to a decision on whether to implement further competitive-sourcing.

The final decision to implement further competitive-sourcing will rest with the Director, based on the recommendation of the Management Council, which is chaired by the Deputy Director and comprised of senior managers from all USPTO divisions. The Management Council has responsibility for monitoring implementation of the 21st Century Strategic Plan. Once the proof of concept has been completed and the results documented, the Management Council will be responsible for making a final recommendation to the Director.

SEARCH CONTRACTORS OWNING PATENTS

Question. Finally, what safeguards are in place to make sure that the contractors who are chosen to conduct these patent searches do not, themselves, have a financial stake in the patent system?

Currently, by law, patent examiners may not own patents with narrow exceptions such as by inheritance. Will the PTO likewise bar search contractors from owning patents?

Answer. The Federal Acquisition Regulation ("FAR"), 48 C.F.R. § 9.5 et seq., provides guidance and prescribes responsibilities and procedures for identifying, evaluating and resolving organizational conflicts of interest ("OCOI"). In particular, FAR § 9.504 requires the contracting officer, before issuing a solicitation, to prepare an analysis and a recommendation for avoiding, neutralizing, or mitigating organizational conflicts of interest. Pursuant to this guidance, the USPTO is presently considering various plans and methods to avoid and neutralize actual and potential OCOIs that may occur as a result of contracting out patent search services. At a minimum, the USPTO will require patent search firms not only to disclose actual or potential OCOIs, such as past or present associations with major patent application filers, but also to submit suitable OCOI mitigation plans as an integral part of the evaluation of proposals to conduct patent search services. PTO will also seek to ensure that any personal conflicts of interest by employees of the search firms are minimized to the maximum extent practicable. The USPTO plans to award multiple contracts to fulfill its needs and require that all applicable OCOI requirements flow-down to any subcontractors and employees as well.

The USPTO will include in all solicitations and contracts for patent search services clauses that: (1) invite the offerors' attention to FAR part 9.5; (2) state the na-

ture of the OCOI or potential OCOI; (3) require the prompt disclosure of actual and potential OCOIs; and (4) state the proposed remedies available to the government upon discovery of an OCOI. As part of the procurement process, the Office also plans to solicit comments and suggestions on how the Agency can best mitigate actual or potential OCOIs.

The USPTO also plans to include in its contracts for patent search services clauses which reference 35 U.S.C. § 122 and prohibit the disclosure of information contained in patent applications as well as requirements to safeguard patent applicants' proprietary and trade secret information.

Although the USPTO has not yet made a decision to impose a total ban on the ownership of patents, if ownership of patents creates an impermissible organizational or personal conflict of interest, which cannot be neutralized or mitigated, the USPTO may disqualify that firm from competing for the search contracts. In addition, the USPTO may structure the resulting contracts to allow for termination of the contracts for impermissible conflicts of interest.

As described above, the USPTO fully intends to obtain early exchanges of information from all interested parties through a variety of means, such as additional Requests for Information or draft solicitations, to determine whether a total ban on the ownership of patents will be required from search firms. Further, on May 22, 2003, the USPTO will be holding an "Industry Day," a vendor conference whereby USPTO will be showcasing existing and new agency initiatives. During Industry Day, the Office will be soliciting comments regarding the initiatives from vendors who conduct or will conduct business with the USPTO. The Office will include the issue of OCOI among search firms as a topic for discussion at that time.

SUBCOMMITTEE RECESS

Senator GREGG. Thank you, Mr. Secretary.

[Whereupon, at 10:40 a.m., Thursday, March 20, 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 2004

TUESDAY, APRIL 1, 2003

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

The subcommittee met at 10 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, Domenici, Campbell, Hollings, and Kohl.

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

STATEMENT OF HON. JOHN ASHCROFT, ATTORNEY GENERAL OF THE UNITED STATES

OPENING STATEMENT OF SENATOR JUDD GREGG

Senator GREGG. Welcome to this hearing. Senator Hollings is headed in this direction. It was kind of the Attorney General to arrive early, which we appreciate. And we thank him for that.

This is obviously a time of acute sensitivities on a lot of issues. And we appreciate the Attorney General taking time out of his day to testify before the Appropriations Committee which has jurisdiction over the Justice Department. We also have jurisdiction over the Commerce Department, State Department, Judiciary, and a variety of independent agencies. But the Justice Department is the largest account in this subcommittee's jurisdiction and one of the most complicated.

There is a lot going on that deals with the question of our national security and how we protect Americans and America. The Attorney General is at the center of that.

So rather than my going on for an extended period of time about those concerns, we would like to hear from the Attorney General. And then we will proceed with questions.

Mr. Attorney General.

ATTORNEY GENERAL'S OPENING STATEMENT

Attorney General ASHCROFT. Thank you very much. Good morning, Chairman Gregg and members of the subcommittee.

We are at war. And I know that as we watch the events unfolding overseas, that our thoughts and prayers are with the young men and women who are defending our freedom. We pray also for the families who have lost loved ones or whose loved ones have been captured or are missing in action or wounded. Their efforts in the defense of freedom, which is a noble, if not the most noble of causes, will never be forgotten. We will honor their sacrifice with an ever-vigilant commitment to our war on terrorism.

Indeed, the first and overriding priority of this budget and of the Department is to protect America from acts of terrorism and bring terrorists to justice. I am pleased to be here to present the President's fiscal year 2004 budget request for the Department of Justice. I thank you for your continued assistance in providing the Department of Justice with the resources to detect, disrupt, and dismantle terrorist activity.

IRAQI TASK FORCE PLAN

The Justice Department's terrorism prevention efforts have included planning for the possibility of intensified conflict with Iraq. Last spring, the FBI began developing an action plan to address any related threats that might face us in the event of this intensification of the conflict. An Iraqi Task Force Plan was developed, in addition to the integrated prevention security framework put in place after September 11, 2001. The Iraqi Task Force Plan includes: around-the-clock operations at FBI headquarters and field offices, since the escalation of hostilities with Iraq and outreach to Middle Eastern and Islamic communities in the United States. The plan includes an analysis of prior cases involving Iraq and/or supporters of Iraq to identify potential intelligence targets or persons of interest. The plan includes stepped-up monitoring of individuals suspected of links to the Iraqi hostile forces or other terrorist organizations. The plan also includes voluntary interviews of 11,000 U.S.-based Iraqis to obtain counterterrorism information and intelligence information, as well as to identify any backlash threats to Iraqis in the United States. When I say backlash threats, I mean that we do not want Iraqi individuals in the United States to be the subject of discrimination, intimidation, harassment, or injustice. Those individuals of Iraqi origin are entitled to the same kind of security, freedom, and liberty as are other citizens in the United States. The voluntary interviews include inquiries about whether or not their well-being has been threatened.

We appreciate the valuable information we have gained from the voluntary interviews and the cooperation of the Iraqi community in the United States. This cooperation has assisted us in our efforts in Iraq, as well as in our own domestic antiterrorism efforts. We have gathered intelligence about such things as Iraqi bunkers, tunnel systems, telecommunications networks, manufacturing plants, and Iraqi military officials. This information is being shared and analyzed by our law enforcement, military and intelligence officials.

2003 SUPPLEMENTAL BUDGET REQUEST

On March 25, 2003, the President submitted a supplemental budget request for fiscal year 2003 to address the continuing threat to the national security of the United States posed by Iraq. For the

Department of Justice, the request includes $500 million for the Counterterrorism Fund to meet terrorism-related prevention and response requirements. Among our top priorities for the use of this funding is critical funding for the FBI that addresses response capabilities, security enhancements, language translation services, operational field expenses, and surveillance support.

We also anticipate using a small portion of this funding to meet increased U.S. Marshal Service security requirements for the Federal judiciary and to upgrade the capability of the Office of Intelligence Policy and Review for its role in the Foreign Intelligence Surveillance Act warrant process.

2004 BUDGET REQUEST

The President's overall Justice Department budget request I am discussing today will strengthen our capacity to fulfill all of the Department's top priorities. The President's budget requests $23.3 billion for the Department of Justice, including $19 billion in discretionary funding and $4.3 billion for the Department's mandatory and fee funded accounts.

TERRORISM PREVENTION

The September 11 attacks made it clear that America's defense requires a new culture, a culture of prevention, nurtured by cooperation, built on coordination, and rooted in our constitutional liberties. The Justice Department is battling terrorism by integrating our law enforcement effort, not separating it, and by integrating, not separating, our intelligence capabilities.

Our integrated terrorism prevention strategy is having an impact on terrorist threats. Listen to this recorded conversation between charged terrorist cell member Jeffrey Battle and an FBI informant on May 8, 2002, in Portland, Oregon. In this conversation, which was unsealed by the Court, Battle explained why his threatening enterprise was not as organized as he thought it should be. I will quote Mr. Battle now.

"Because we don't have support. Everybody's scared to give up any money to help us. You know what I'm saying? Because that law that Bush wrote about, you know, supporting terrorism, whatever, the whole thing. Everybody's scared. He made a law that says, for instance, I left out of the country and I fought. Right? But I wasn't able to afford a ticket. But you bought my plane ticket. You gave me the money to do it. By me going and me fighting and doing what they can by this new law, they can come and take you and put you in jail."

Mr. Chairman, terrorists clearly recognize the effectiveness of the laws passed by Congress and utilized by the Department to disrupt terrorist activity by interdicting the funding of terrorism. It is a credit to our new investigative tools, the hard work of the law enforcement community, and our intelligence agencies, as well as a vigilant public, that we have not suffered another major terrorist attack in this country.

The FBI indicates that since September 11, 2001, over 100 terrorist plots have been disrupted and some, no doubt, disrupted, delayed, or abandoned because funding was not available as the intercepted conversation between two individuals involved in terrorism clearly indicates.

Nevertheless, as the President recently stated, "There is no such thing as perfect security against a hidden network of cold-blooded killers. Yet abroad and at home we are not going to wait until the worst dangers are upon us." Therefore, we will continue to seek the assistance of Congress as we enhance a culture of prevention and ensure the resources of our Government are dedicated to defending Americans.

INTEGRATED PREVENTION STRATEGY

Now, I would like to give you a brief overview of the results to date of our integrated prevention strategy to fight the war on terrorism.

First, we are gathering and cultivating detailed intelligence on terrorism in the United States. Hundreds of suspected terrorists have been identified and tracked throughout the United States. Our human sources of information intelligence have doubled. Our counterterrorism investigations have doubled in the last year. In 2002, over 18,000 subpoenas and search warrants have been issued. Over 1,000 applications were made to the Foreign Intelligence Surveillance Act (FISA) court targeting terrorist spies, foreign powers that threaten our security, including 170 emergency FISA applications. These are emergency requests for surveillance activity based on our belief and information that there are threatening circumstances requiring us to implement coverage immediately. Those calls come to me at virtually any time of the day or night; and it is my responsibility to approve those, when appropriate.

Second, we are arresting and detaining potential terrorists. Four alleged terrorist cells were broken up in Buffalo, Portland, Detroit, and Seattle. Two hundred twenty-eight criminal charges have been brought to date. One hundred thirteen individuals have been convicted or pled guilty, including shoe bomber Richard Reid, American Taliban John Walker Lindh, three of the six members of the Buffalo cell, two more of whom pled guilty just last week, joining another defendant who was already cooperating, and there are 478 deportations linked to the September 11 investigation.

Third, we are dismantling the terrorist financial network. Thirty-six terrorist organizations have been designated as terrorist organizations, $125 million in assets have been frozen, and over 660 accounts frozen around the world; 70 investigations into terrorist financing, with 23 convictions or guilty pleas to date related to terrorist financing.

Fourth, we are disrupting potential terrorist travel. Nine major alien smuggling networks have been disrupted. Hundreds of terrorist criminals have been stopped through the National Security Entry-Exit Registration System, called NSEERS. Among those individuals stopped, 11 suspected terrorists with at least one known member of Al-Qaeda; 649 stopped at the border who were wanted criminals, who had committed past felonies or violated other laws; and 77 felons identified through domestic enrollment, who were in the country illegally. They were not stopped at the border but asked to come in and register as part of the NSEERS program. These included a murderer, a cocaine trafficker, child molesters, and individuals convicted of assault with a deadly weapon.

Fifth, we are building our long-term counterterrorism capacity. A near threefold increase in the counterterrorism funds devoted by the Department, over 1,000 new and redirected FBI agents dedicated to counterterrorism and counterintelligence, 250 new assistant U.S. attorneys, 66 joint terrorism task forces, a 337 percent increase in the joint terrorism task force staffing, and fly-away expert teams for rapid deployment to hot spots around the world.

We have made progress, but there is always additional work to be done. And to that end, the budget request includes an increase of $598.2 million for programs that support our mission to prevent and combat terrorism, including $516 million to enhance or complement the FBI's counterterrorism program.

Even as the men and women of the Justice Department fight the war on terrorism, we do so within a framework that upholds our other crucial responsibilities. Let me briefly review these other core missions.

CORPORATE FRAUD TASK FORCE

First, the Department of Justice has taken decisive action to combat corporate corruption and punish corporate lawbreakers. The relentless work of the Corporate Fraud Task Force, chaired by Deputy Attorney General Larry Thompson, has resulted in over 200 investigations opened into suspected corporate fraud, over 200 people charged to date, and 70 convictions have been obtained. To date $20 million in assets have been frozen, $14 million in forfeitures, and we are seeking to forfeit more than $2.5 billion to restore to the creditors and investors the resources, which were lost as a result of the corporate fraud.

The Department is committed to ensuring a marketplace of integrity and restoring the confidence of American investors and protecting their assets. And to that end, the fiscal year 2004 budget requests $24.5 million to support the Corporate Fraud Task Force.

DRUG ENFORCEMENT

Second, the Department of Justice has continued to fight the scourge of illegal drugs. Thanks to the tireless efforts of the Drug Enforcement Administration and the Organized Crime Drug Enforcement Task Force, we have increased the seizures of drug assets from major drug trafficking organizations by 20 percent. We have dismantled 305 drug trafficking organizations in 2002 alone. We have more than doubled the amount of heroin seizures from 2000 to 2002. We have reached a 9-year low in student drug use.

We have attacked the nexus, the connection between drug trafficking and terrorism, including bringing charges in San Diego against individuals for conspiring to trade heroin and hashish for anti-aircraft missiles, which they allegedly intended to sell to Al-Qaeda forces in Afghanistan. The fiscal year 2004 budget request includes $117.9 million to augment our efforts to reduce the availability of illegal drugs, to identify and dismantle drug trafficking organizations, and support drug treatment.

CRIMES AGAINST CHILDREN

Third, the Department of Justice has prevented and prosecuted crimes against children. It allocated $2.5 million to develop an effective nationwide Amber Alert Network. We have reassigned three FBI investigative analysts to work full-time at the National Center for Missing and Exploited Children. We are supporting Internet Crimes Against Children Task Forces across the Nation with technology and capacity. We are dedicating a total of $15.2 million to the FBI's Innocent Images National Initiative, a $3.6 million increase, to keep pace with the nearly 2,000 percent increase in investigations since 1996, investigations to combat the proliferation of child pornography and child sexual exploitation via the Internet.

PROJECT SAFE NEIGHBORHOODS

Fourth, the Department of Justice has provided increasing protection to Americans from gun crime. In the first 2 years of this administration's Project Safe Neighborhoods Initiative to combat gun crime, we have increased Federal gun crime prosecutions by 36 percent, which has helped lock up repeat offenders and lower crime in cities across America.

For example, in Philadelphia, robberies at gunpoint dropped 11 percent, and the homicide rate is the lowest it has been since 1985. In Kansas City, the murder rate dropped 23 percent to its lowest level in three decades. This reduction translates to 27 more people alive today who might not have been alive if the previous trend had continued.

U.S. attorneys have charged 10,634 defendants for violating gun statutes, and they have convicted and taken 7,747 gun criminals off the street with those prosecutions. In 2002, the conviction rate for those charged with Federal gun crimes—which may include other non-gun related charges as well—was near 90 percent. More than half of those charged were sentenced to more than 5 years in Federal prison. Our success in these areas would not be possible without the diligence and hard work of State and local law enforcement agencies who are partners in the Project Safe Neighborhoods endeavor.

FIRST RESPONDERS

To that end, the administration is requesting $8.5 billion for first responders and state and local law enforcement in the budget and in the supplemental appropriation; $2 billion in the current war supplemental that is pending; and $6.5 billion in the fiscal year 2004 budget request for both the Justice Department and the Department of Homeland Security providing funding for State and local law enforcement and first responders.

CIVIL RIGHTS

Fifth, the Department of Justice has protected vigorously the civil rights of all Americans. The Department has strengthened our Civil Rights Division with an approximately 10 percent increase in both full-time attorneys at 355 and total employees at 709, enforcing the Nation's civil rights laws since the beginning of this administration; a 12 percent increase in successful prosecutions of crimi-

nal civil rights violations from the previous 2 years; a 100 percent increase in settling pattern or practice police misconduct cases during the first 2 years of the Bush administration than during the final 2 years of the previous administration; a $500 million amount obtained for traditional black colleges through settlement of a 25-year-old desegregation lawsuit.

The Department has prosecuted more than 80 discriminatory backlash hate crimes in the wake of September 11, for example, by securing the conviction of Zachary Rolnik for violating the civil rights of Dr. James J. Zogby, the president of the Arab American Institute, by securing the guilty plea of Earl Leslie Krugel for conspiracy to manufacture and detonate bombs at a mosque and at a field office of United States Congressman Darrell Issa of California.

The Department has prosecuted 43 non-September 11-related hate crimes cases in the last 2 years and initiated over 600 non-September 11 hate crimes investigations.

The Department has coordinated the Voting Rights Initiative to ensure access, honesty, and integrity at the polls on election day that resulted in a smooth election with far fewer complaints than were reported in recent years.

The Department has investigated, prosecuted, and convicted record numbers of human trafficking and sex trafficking cases, doubling the number of trafficking prosecutions and the number of convictions over the previous 2 years.

Now, obviously, our Department has other vital missions I have not been able to address here fully, but I would be happy to address them during the questions. For example, the Department's Antitrust Division successfully settled the *Microsoft* case, receiving praise from Judge Colar Catelli for, and I quote her now, "The clear, consistent, and coherent manner" in which the Division reached this historic settlement.

On the criminal enforcement front last year, individuals convicted for antitrust violations and related criminal offenses received a record average sentence of greater than 18 months.

PREPARED STATEMENT

Mr. Chairman, ranking member, and other members of the subcommittee, as we work to achieve our Department's objectives, I want you to know that none of these are possible without the funding and the support and the framework of law, which is provided through the Department into the Nation by the Congress. And I want to express my appreciation to you for your conscientious devotion to your duties of protecting America and providing the resources through which the administration can join you in that effort to protect this Nation.

I would be pleased to respond to questions.

[The statement follows:]

PREPARED STATEMENT OF JOHN ASHCROFT

Mr. Chairman and Members of the Subcommittee: It is an honor to appear once again before this Subcommittee to present the President's budget request for the Department of Justice. For fiscal year 2004, the Budget seeks $23,334,844,000 for the Department of Justice, including $19,001,955,000 in discretionary funding and $4,332,889,000 for the Department's mandatory and fee-funded accounts. In total, the fiscal year 2004 request is $259,513,000 over the comparable fiscal year 2003

Budget Request. The fiscal year 2004 Budget reflects the transfer of the Immigration and Naturalization Service, the Office of Domestic Programs, and a portion of the FBI's National Infrastructure Protection Center (NIPC) and other Departmental resources to the new Department of Homeland Security. It also reflects the transfer of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from the Department of the Treasury to the Department of Justice.

On March 25, 2003, the President submitted a supplemental budget request for fiscal year 2003 to address the continuing threat to the national security of the United States posed by Iraq. For the Department of Justice, the request includes $500,000,000 for the Counterterrorism Fund to meet immediate or emerging terrorism-related prevention and response requirements. Among our top priorities for the use of this funding are critical items for the FBI that address response capabilities, security enhancements, language translation services, operational field expenses, and surveillance support. We would also anticipate using a small portion of this funding to upgrade the capability of the Office of Intelligence Policy and Review for its role in the FISA warrant process, and to meet increased U.S. Marshals Service security requirements for the Federal Judiciary. The use of the Counterterrorism Fund provides the Department with the flexibility to allocate resources among components and priorities to meet unanticipated requirements. The Department, of course, will apprise the Committee through existing notification procedures of proposed allocations.

The ongoing support of this Subcommittee for the Department's critical mission—the prevention and disruption of terrorist attacks—is recognized and deeply appreciated. You have worked with us to stand up the Foreign Terrorist Tracking Task Force; reorganize the Federal Bureau of Investigation and the Criminal Division; improve security at our Nation's borders; improve inspections at our air and seaports; enhance our information technology infrastructure; increase information sharing among federal agencies and with our state and local partners; and undertake the largest criminal investigation in U.S. history. America is now more secure, more prepared, and better equipped to defeat the continued threat of terrorism.

PREVENTING AND COMBATING TERRORISM, INCLUDING COUNTERINTELLIGENCE

The fiscal year 2004 Budget places a high priority on securing additional resources needed to fight the nation's war on terrorism, while at the same time being sensitive to the overall economic picture that confronts our Nation. Our budget increases overall counterterrorism resources, while also reprioritizing some current resources to supplement requests for new program enhancements.

In the days following the September 11th attacks, we initiated a comprehensive review and wartime reorganization in order to identify and redirect appropriate resources to our primary mission: counterterrorism. With the submission of the fiscal year 2004 Budget, the resources devoted to counterterrorism and homeland security have increased by approximately $1.9 billion over the Department's fiscal year 2001 Budget, representing an increase of 10 percent in the share of the Department's resources devoted to counterterrorism prior to September 11. Our budget request includes increases of $598,258,000 for programs supporting our mission requirements for preventing and combating terrorism.

For the Federal Bureau of Investigation, the Budget requests $516,258,000 in enhancements above the fiscal year 2003 request that support or complement the FBI's Counterterrorism Program. Of the total, $189,107,000 is focused exclusively on the FBI's counterterrorism investigative capabilities. These increases will permit the FBI to continue its efforts to identify, track and prevent terrorist cells from operating within the United States and overseas and, where necessary, to investigate terrorist acts.

To prevent terrorist attacks, the FBI must recognize and understand worldwide economic, political, social, and technological changes that have occurred over the last decade, and it must leverage existing intelligence in support of ongoing cases and operations. Following September 11th, with the support of this Subcommittee, Director Mueller restructured the FBI's Counterterrorism Division to implement a nationally-managed and centrally-driven Counterterrorism program (CT). The program seeks to improve intelligence coordination and analysis, enhance technical capabilities, and build a national response capability that is more mobile, agile, and flexible and provides a more proactive orientation toward meeting the terrorism threat. The fiscal year 2004 Budget requests 430 support positions and $27,381,000 to improve the FBI's capacity to manage this program, including:

—62 positions and $3,641,000 to build a national level of expertise and knowledge that can be accessed by and deployed to all field offices;

—115 positions and $7,081,000 to facilitate the collection, analysis, exploitation, and dissemination of intelligence gathered through the lawful interception of e-mail traffic of known and suspected terrorists;
—61 positions and $3,605,000 to provide a centralized and coordinated financial investigative component to identify, disrupt, and dismantle terrorist financing operations;
—72 positions and $4,430,000 to significantly enhance the capacity of the Terrorist Reports and Requirements Section to establish policies and to develop and disseminate Intelligence Information Reports;
—19 positions and $1,056,000 to improve the capability of the FBI's National Threat Center to evaluate terrorist threats for credibility and disseminate intelligence reports to the appropriate intelligence and law enforcement communities;
—15 positions and $844,000 to support a robust analytical capacity that will enable the FBI to better predict national security vulnerabilities or targets;
—86 positions and $5,224,000 to provide additional support to FBI Headquarters to expand the centralized management capacity of its counterterrorism mission; and
—$1,500,000 to fund operational travel and to coordinate FBI investigative efforts.

For Counterterrorism field analytical support, the Budget requests 214 positions and $14,603,000 to develop a comprehensive intelligence program that can identify emerging threats and patterns, find relationships among individuals and groups, and provide useful information to investigators in a timely manner.

To support the FBI's prevention mission in the field, the fiscal year 2004 Budget includes an additional 248 positions (149 agents) and $28,046,000. These additional resources will expand the Bureau's ability to identify terrorist operatives and their targets, penetrate terrorist organizations, and neutralize or disrupt the threats posed by terrorist activities.

New funding of $4,600,000 is requested for a communications application tool capable of conducting sophisticated link analysis on high volumes of telephone call and other relational data.

On October 29, 2001, President Bush directed the establishment of the Foreign Terrorist Tracking Task Force (FTTTF), a multi-agency endeavor, whose mission is to prevent admission to the United States of foreign terrorists and their supporters and to identify and locate known and suspected terrorists who have gained entry to this country. This Subcommittee has supported the Administration's efforts to stand up the Task Force and to ensure a sufficient level of funding for its critical mission. We recognize the difficulty you faced with your allocation constraints and we deeply appreciate your support of the FTTTF in the fiscal year 2003 Omnibus Appropriations Act. The fiscal year 2004 Budget includes a total of $72,607,000 for on-going support of the FTTTF.

The Joint Terrorism Task Forces (JTTTF) are the cornerstone of a coordinated Federal, State, and local law enforcement effort for conducting international and domestic terrorism investigations. The JTTFs promote an atmosphere of immediate transparency between the FBI and its other law enforcement partners that encourages and ensures the sharing of intelligence information among participating agencies. The fiscal year 2004 Budget requests an increase of $11,548,000 in non-personnel funding to support the JTTF Program, of which $5,000,000 will support an Information Sharing Initiative.

The FBI's Computer Intrusion Program targets cyber matters affecting our national security and our economic security. The FBI provides deterrence to disruptive intrusions by foreign powers, terrorists, and criminal elements through the successful identification, investigation, and prosecution of illegal computer intrusion activity. The proposed increase of 113 positions (53 agents) and $41,113,000 includes 66 positions (45 agents) and $11,128,000 to combat computer intrusions and 47 positions (8 agents) and $29,985,000 for the Special Technologies Application Section to enhance technical analysis capabilities in support of cyber investigations.

In response to the September 11th attacks, the FBI modified its public information system infrastructure to establish a means for the general public to report suspected terrorist activity via the Internet. Located in the FBI's Strategic Information and Operations Center (SIOC), the Internet Team has received 375,000 tips, resulting in 40,000 investigative leads. The fiscal year 2004 budget proposes an additional 19 positions and $1,209,000 to provide 24/7 coverage for tip review and analysis.

Complementary Terrorism Support Programs

The fiscal year 2004 Budget also requests an increase of $409,151,000 for the Department's counterintelligence, national security and criminal enterprise programs,

all of which provide complementary counterterrorism support. Of this total, $327,151,000 is for programs and initiatives of the FBI and $82,000,000 supports initiatives in other DOJ components. With your support in December 2002, the FBI reprogrammed $28,736,000 to counter the growing national security threats around the country and strengthen the central management of its counter-intelligence program. This was the first step in an ongoing effort to implement the FBI's counter-intelligence strategy. The fiscal year 2004 budget requests an additional 583 positions (94 agents) and $69,880,000 for the FBI's counter-intelligence mission.

FBI Director Mueller has identified the need for upgraded technology as one of the top 10 priorities of the FBI, recognizing that over the years, the FBI failed to develop a sufficient capacity to collect, store, search, retrieve, analyze and share information. As this Committee is aware, the FBI has embarked on a comprehensive overhaul and revitalization of its information technology infrastructure. We appreciate your support of those efforts. The fiscal year 2004 Budget provides enhanced funding for the FBI's information technology programs of 3 positions and $82,247,000. Included in the request is an additional $61,689,000 for operation and maintenance costs associated with Trilogy hardware, $18,558,000 for recurring hardware and software upgrades over the next several years to avoid a gradual return to a technological state of obsolescence, and $2,000,000 for costs associated with operations and maintenance of the FBI's Top Secret/Sensitive Compartmentalized Information Local Area Network (TS/SCI LAN).

To enhance the FBI's response to crisis situations worldwide, including secure, remote communications networks, specialty vehicles and equipment, and helicopter support for hostage rescue, the fiscal year 2004 Budget requests an additional 35 positions (7 agents) and $24,187,000. The request includes 27 positions (6 agents) and $14,984,000 to enhance Crisis Response Unit capabilities; $850,000 for automation equipment in support of rapid deployment team operations; 6 positions (1 agent) and $2,226,000 for the Hostage Rescue Team (HRT) to provide aviation support during a terrorist or criminal act directed against the United States, its citizens, or interests; and 2 positions and $6,127,000 to provide Weapons of Mass Destruction (WMD) equipment and supplies, staff, and training, for HRT and the SWAT teams to ensure an appropriate state of preparedness to respond to counterterrorism threats and other assigned tasks.

The investigation of the attacks on the World Trade Center and the Pentagon underscores the global nature of terrorism and the ability of terrorists to plan, finance, and conduct operations in a variety of countries around the world. Terrorist organizations such as Osama Bin Laden's Al Qaeda have a presence throughout the Middle East, Europe, and Asia. The FBI's Legal Attaché (Legat) Offices continue to be critical to our ongoing efforts to deny Al-Qaeda the ability to mount future attacks by building and maintaining effective international partnerships. For fiscal year 2004, the President's Budget includes an additional 82 positions (19 agents) and $61,755,000 to expand and support the Legal Attaché (Legat) Program and the Visa Identification Terrorist Automated Lookout (VITAL) System. Legats and VITAL will provide a coordinated defense against terrorists seeking entry to the United States or threatening our interests and citizens abroad. The requested enhancements to the Legat Program of 30 positions (17 agents), and $47,527,000 will add personnel and upgrade the communications capacity of the FBI's overseas offices, bringing the technology infrastructure of Legats in line with the Trilogy Project. Five new Legat Offices are requested in Sarajevo, Bosnia; Kuwait City, Kuwait; Tashkent, Uzbekistan; Kabul, Afghanistan; and Belgrade, Serbia. The requested funding will also expand five existing offices in Ottawa, Seoul, London, Berlin, and Moscow.

The FBI's VITAL project will improve the Nation's security by providing the United States embassies and consulates with the ability to identify individuals who are threats to our national security before they can gain entry into the United States via air and seaports. When fully implemented, consular and immigrant officials will be able to electronically process fingerprint-based criminal history checks of visa applicants against the records in the Integrated Automated Fingerprint Identification System (IAFIS) and authenticate identities of travelers through biometrics prior to the issuance of visas. The budget request of 52 positions (2 agents) and $14,228,000 lays the groundwork for this important program by providing the necessary personnel and funding to develop and manage the VITAL project and to modify the IAFIS to provide the additional storage capacity needed to retain and store embassy and consulate fingerprint submissions.

With the proliferation of information technology and the increased availability of computers, criminal and terrorist activity has shifted from a physical dimension in which evidence and investigations are described in tangible terms, to a cyber dimension. The role of the FBI's Computer Analysis Response Team (CART) is to provide assistance to FBI field offices in the search and seizure of computer evidence and

in the conduct of forensic examinations where computers and storage media are required as evidence. It is anticipated that more than 60 percent of the FBI's caseload will require at least one computer forensic examination. To meet this growing demand, the fiscal year 2004 Budget includes an additional 45 positions (1 agent) and $18,040,000. Resources will be used to maintain existing and establish new Regional Computer Forensic Laboratories and to provide funding for rapid deployment teams. This Subcommittee has led the support for the FBI's CART program in the past and we look forward to continuing to work with you on this important initiative in the future.

Since his appointment as FBI Director, Bob Mueller has made significant changes in the organizational structure at the FBI in an effort to make the agency more flexible, agile, and mobile in its capacity to respond to the many challenges it faces. The Director recognizes that the FBI must better shape its workforce and develop core competencies if it is to effectively respond to the array of national security and criminal threats facing our nation. Additional training resources are a necessary component of reshaping the FBI. The fiscal year 2004 Budget requests an additional 111 positions (76 agents) and $17,559,000 to improve training in the fields of intelligence analysis ($2,450,000), counterterrorism ($14,027,000), and cyber crime ($1,082,000).

The National Security Law Unit provides legal advice on all matters relating to the national security responsibilities of the FBI, including foreign counterintelligence, international terrorism, domestic security/terrorism, and computer intrusion/infrastructure protection matters. With the FBI's shift in focus to preventing future terrorist attacks, the workload of the National Security Law Unit has increased substantially. In fiscal year 2004, an additional 14 positions and $1,405,000 is requested to meet the expanded workload of this office.

Mr. Chairman and Members of the Subcommittee, you have been instrumental in the elevation of the role of security within the FBI through the establishment of a new Security Division that for the first time in FBI history is responsible for ALL FBI security matters. As the premier domestic agency conducting criminal, counterintelligence, and counterterrorism investigations, the FBI is an attractive target for individuals and organizations that seek to impede investigations, or obtain sensitive national security information. The fiscal year 2004 budget requests 120 positions (32 agents) and $37,146,000 for continued security improvements. The request includes:

—$5,050,000 to conduct additional contract background investigations of on-board personnel and others with access to FBI information and facilities;
—5 positions and $968,000 for an enhanced adjudication program aimed at ensuring that security clearances are granted as necessary and appropriate;
—24 positions and $6,888,000 for additional technical and physical security improvements;
—54 positions and $15,821,000 for Police Force and Guard Services to meet increased security requirements at FBI Headquarters, the Washington Field Office, the FBI Academy, the Criminal Justice Information Services Facility in Clarksburg, WV; and the New York Field Office;
—37 positions (32 agents) and $6,419,000 to expand the polygraph program, which is aimed at assuring that national security information is not compromised by an FBI employee, contractor or other individual; and
—$2,000,000 for the Defensive Programs Unit to develop technical surveillance countermeasures.

The final fiscal year 2004 budget enhancement for the FBI relates to its critical need for additional staff support for field investigations. An increase of 300 positions and $14,932,000 is requested for essential personnel to focus on the administrative tasks associated with investigations, thereby allowing field agents, field investigators, and technical support personnel to focus exclusively on terrorist and criminal threats.

The war against terrorism cannot be won without the support and assistance of our State and local partners. Our successes will depend on our ability to share information and intelligence in a timely manner with state and local law enforcement agencies. At its inception the OJP-funded Regional Information Sharing System (RISS) supported State and local law enforcement efforts to combat drug trafficking and organized criminal activity. However, the regional information-sharing concept has expanded and now more law enforcement agencies routinely reach out to share intelligence across jurisdictional boundaries. Section 701 of the USA Patriot Act authorizes RISS to operate secure information sharing systems to enhance the investigative and prosecutorial abilities of participating law enforcement agencies in addressing terrorism.

A significant achievement in the last year has been the successful effort undertaken to link the various databases used by State and local law enforcement. We

have connected the RISS with the FBI's Law Enforcement Online (LEO) system developing a backbone for further information sharing improvements. The fiscal year 2004 Budget seeks an additional $12,000,000 to further expand RISS' accessibility to state and local public safety agencies for the purpose of sharing terrorism alerts and related information.

The Office of Justice Programs also provides significant assistance to State and local law enforcement and public safety entities through the training and technical assistance provided by its program experts. OJP's training and technical assistance programs provide direct assistance to state and local jurisdictions in developing and implementing comprehensive, system-wide strategies and in demonstrating and documenting programs that work. The fiscal year 2004 Budget requests an enhancement of $3,000,000 to provide training to state and local law enforcement, prosecution, and intelligence agency personnel at the command level in the areas of domestic anti-terrorism and extremist criminal activity. This funding will be combined with existing funding of $1,238,000 for the hate crimes training and technical assistance program to form one Bureau of Justice Assistance-administered training program totaling $4,238,000.

The President's fiscal year 2004 Budget for the Department of Justice includes $851,987,000 for the Bureau of Alcohol, Tobacco, Firearms, and Explosives, which became a component of the Department of Justice on January 24, 2003, pursuant to the Homeland Security Act of 2002, Public Law 107–296.

The Homeland Security Act authorized the Safe Explosives Act, establishing a new program of explosives licenses and permits, expanding the number of individuals required to have licenses and permits, requiring fingerprinting and background checks for all applicants, and mandating the establishment of a National Explosives Licensing Center. The provisions of this new Act will aid in the fight against terrorism. The fiscal year 2004 Budget requests 88 positions and $10,000,000 for ATF to carry out this new initiative. This budget request will build upon the efforts being undertaken by the ATF to implement these new responsibilities during fiscal year 2003.

As we succeed in the arrest, prosecution, and conviction of terrorists, we must also provide for the safe incarceration of those individuals. An increase of 2 positions and $23,000,000 is requested for the Bureau of Prisons' Salaries and Expenses Account to provide physical security upgrades at an existing facility that will house terrorist inmates. The upgrades include enhancements to the perimeter security of the facility and construction of maximum isolation cells to ensure minimal exposure to other inmates.

The ability of law enforcement and public safety agencies to communicate effectively is essential to our ability to respond to future terrorism incidents. The Department's Narrowband Communications Program is responsible for developing the Integrated Wireless Network, a joint initiative with the Department of the Treasury, and several agencies of the Department of Homeland Security. The fiscal year 2004 Budget requests an increase of $32,000,000 to continue the narrowband investment in radio infrastructure and radio investments principally along the Northern and Southern land borders and in key operational areas such as New York City.

The Office of Intelligence Policy and Review (OIPR) in the Department of Justice plays a critical role in terrorism prevention by providing operational support to the FBI in its investigation of terrorism, primarily through the application for warrants under the Foreign Intelligence Surveillance Act of 1978 (FISA). OIPR prepares and files all applications for electronic surveillance and physical search under FISA, assists government agencies by providing legal advice on matters of national security law and policy, and represents the Department of Justice in a variety of inter-agency forums related to counterintelligence. The fiscal year 2004 Budget requests an increase of 12 positions and $2,000,000 to increase the operational support provided to the FBI through the application of FISA warrants and for information technology improvements.

COMBATING CORPORATE FRAUD

Since the exposure of the corporate fraud scandals, the Department of Justice has taken decisive action to combat corporate fraud and punish corporate wrongdoers. To restore confidence in the integrity of our markets, President Bush created the Corporate Fraud Task Force, chaired by Deputy Attorney General Larry Thompson, to bring the maximum combined force of the Federal Government to investigate and prosecute corporate fraud. In addition to the Deputy Attorney General, the Department's Corporate Fraud Task Force members include the Director of the FBI, the Assistant Attorneys General of the Criminal and Tax Divisions of the Department, and several United States Attorneys from around the Nation. We appreciate this

Committee's support for the Department's corporate fraud efforts and the $23,000,000 in additional funding provided in fiscal year 2003 for the FBI and the U.S. Attorneys.

The Department of Justice is working closely in coordination with the Securities and Exchange Commission and other agencies through the Corporate Fraud Task Force to ensure a marketplace of integrity. The goal of our law enforcement efforts is clear: Information cannot be corrupted; trust must not be abused; confidence must be maintained in the markets; and the jobs, savings, investments, and pension plans of hard working Americans must be protected.

For fiscal year 2004, our budget requests enhancements of 212 positions (56 agents and 22 attorneys) and $24,538,000 to continue these efforts. For the FBI, we are requesting 118 positions (56 agents) and $16,000,000 for staff and resources to target corporate fraud cases. These resources will fund the immediate development or improvement of existing liaison with other agencies, increased corporate fraud training for agents and financial analysts and fund the establishment of corporate fraud "Reserve Teams" of financial experts dispatched to major fraud investigations. The budget also seeks $8,538,000 for additional prosecutors, financial analysts and other staff for the U.S. Attorneys, Criminal Division, and Tax Division to enhance prosecutorial capacity in this arena.

DRUG ENFORCEMENT AND TREATMENT

Combating illegal drug trafficking and the continued wave of violent crime associated with it remains among the Department's highest priorities. The drug threat we face is not a new one, nor is the priority we place on ending the toll that illegal drugs take on the lives of Americans. The growing combination of drug trafficking and terrorism serves to call us even more urgently to action. In March 2002, I announced a strategy to reduce the availability of illegal drugs. The centerpiece of this strategy is the reorganization, revitalization and restoration of the Organized Crime Drug Enforcement Task Force (OCDETF) program. It is a strategy that recognizes illegal drugs as both a destructive force in the lives of individuals and a destructive force to the security of this nation.

OCDETF's cadre of experienced and talented federal agents and prosecutors, with support from state and local law enforcement, exemplifies the government's collaborative capabilities to disrupt and dismantle drug trafficking organizations and their related enterprises. For 2004, the Administration has proposed to once again consolidate all OCDETF funding for participating agencies from the Departments of the Treasury, Homeland Security, and Justice within the Department of Justice's Interagency Crime Drug Enforcement appropriation. The reconsolidation of this funding will support the OCDETF program's refocused mission and removes bureaucratic barriers to improved accountability and resource management throughout the program. Moreover, the reconsolidation supports the Department's strategy for OCDETF to lead the charge in disrupting and dismantling the most significant drug trafficking and money laundering organizations.

To establish the automated capacity to analyze and disseminate OCDETF investigative information, our budget proposes an enhancement of $22,000,000. By leveraging existing Foreign Terrorist Tracking Task Force (FTTTF) technology, OCDETF would analyze the drug investigative information stored in existing database systems and, more importantly, provide crucial capacity needed to rapidly ingest, conduct cross-case analysis, and disseminate drug investigative information. Ultimately, this system would expand the capability of OCDETF to use both existing and new drug investigative information to make nationwide connections among the sophisticated, compartmentalized components of major drug trafficking and money laundering organizations.

In addition, our budget proposes an additional 192 positions and $26,000,000 to enable OCDETF participants to mount comprehensive attacks, in multiple national and international locations, on the highest-level drug traffickers and drug organizations identified on the Department's Consolidated Priority Organization Target (CPOT) List. By concentrating our efforts on the top 53 command and control targets, our resources will have the most profound impact on the overall drug supply. Drug organizations are driven by the desire for profit; as these organizations develop into larger enterprises, they employ illegal financial techniques to transfer or transport drug proceeds, to obtain and conceal assets, and to reinvest profits to promote ongoing illegal activity. To combat these efforts, our budget proposes an enhancement of 83 positions and $10,000,000 to expand the capability of OCDETF agencies to conduct meaningful investigations of the financial infrastructure supporting major drug organizations.

As the world's leading drug enforcement agency and the only single-mission federal agency dedicated to drug law enforcement, the Drug Enforcement Administration (DEA) continues to target aggressively the Nation's illegal drug threats in the post-September 11, 2001 environment. Our budget proposes an enhancement of 329 positions (including 123 agents and 20 Diversion Investigators) and $38,880,000 for the Priority Targeting Initiative. Through this initiative, DEA will target Priority Drug Trafficking Organizations involved in the manufacture and distribution of illegal drugs as well as those involved in the diversion of precursor chemicals used for manufacturing illegal drugs. International partnerships are critical to our Nation's efforts to combat the threat of illegal drugs. To continue the DEA's drug law enforcement training to our counterparts overseas, our budget proposes an enhancement of 20 positions (16 agents) and $1,500,000. Our fiscal year 2004 budget also proposes an increase of 20 positions and $2,500,000 to improve DEA's financial and asset management programs and $7,847,000 in prior-year unobligated balances to design and construct a state-of-the-art laboratory in the Southeast region (Miami, Florida). This request will provide DEA's highly skilled and specialized chemists with a modern, state-of-the-art facility.

The Department's fiscal year 2004 budget requests additional funding for drug treatment programs in the Office of Justice Programs and the Bureau of Prisons. To expand the Drug Courts Program, our budget proposes an enhancement of $16,614,000 for fiscal year 2004. The Drug Courts Program provides alternatives to incarceration to encourage abstinence and alter behavior with a combination of escalating sanctions, mandatory drug testing, treatment and strong aftercare. For the Bureau of Prisons, our budget proposes an enhancement of 12 positions and $467,000 to support drug treatment for approximately 16,500 inmates. This will bring the BOP to its treatment threshold as required by the Violent Crime Control and Law Enforcement Act of 1994.

PREVENTING CRIMES AGAINST CHILDREN

A critical focus of the fiscal year 2004 Budget and a primary objective of Goal II of the Department's Strategic Plan is to Combat Crimes Against Children and Other Vulnerable Victims of Violence and Exploitation. Children today face dangers wholly new to any generation. The rapid expansion of the Internet into our homes, libraries and public institutions has brought boundless opportunity within reach, but the same vehicle that serves young people also aids those who would harm them. The fiscal year 2004 Budget includes enhancements totaling $19,094,000 to support efforts to reduce child abductions and firearms violence.

The impact of firearms violence is particularly severe on our children and young adults. Of the approximately 1,400 juveniles murdered in 2001, 44 percent were killed with a firearm; and over 2,800 students were expelled in 1999–2000 for bringing firearms to school. The Youth Crime Gun Interdiction Initiative of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is a model partnership between ATF and local law enforcement designed to reduce firearms violence by investigating illegal trafficking to youth. The fiscal year 2004 Budget proposes to expand this initiative, begun in 17 cities in 1996, to an additional 10 cities. The enhancement of 118 positions (62 agents) and $13,000,000 will bring the total number of participating cities to 70.

Nothing hits home more than a missing child and nothing galvanizes law enforcement and the communities they serve more than finding that missing child and returning that child home safely. AMBER—America's Missing: Broadcast Emergency Response—was created in 1996 as a legacy to 9-year-old Amber Hagerman, who was kidnapped while riding her bicycle in Arlington, Texas and then brutally murdered. After this heinous crime, Dallas-Fort Worth broadcasters teamed with local police to develop an early warning system to help find abducted children. I am pleased that the fiscal year 2004 Budget includes $2,500,000 to develop an effective, coordinated AMBER Alert program nationwide. The Department's AMBER Coordinator, Assistant Attorney General Deborah Daniels, will use these funds to train law enforcement and others in operating an effective AMBER Alert system and to give radio stations the software to upgrade their emergency alert systems so they can broadcast an AMBER Alert. A sound AMBER plan is vital to the swift recovery of a child in imminent danger of physical harm.

The Innocent Images National Initiative, a component of the FBI's Cyber Crime Program, combats the proliferation of child pornography and child sexual exploitation facilitated by on-line computers. The Innocent Images National Initiative focuses on individuals who indicate a willingness to travel interstate for the purposes of engaging in sexual activity with a minor and on major producers and/or distributors of child pornography. In the last six years, the FBI has seen a 20-fold increase

in the number of Innocent Images cases opened. The fiscal year 2004 Budget requests an additional 32 positions (19 agents) and $3,594,000 to increase investigations and keep pace with the rising trend of child pornography and sexual exploitation via the Internet.

ENHANCING DNA PROGRAMS

The fiscal year 2004 Budget includes increases of $106,220,000 in expanded funding for DNA analysis. Forensic DNA analysis has rapidly developed into a vital tool used to support an increasing number of investigative efforts. Increased demand and limited processing capability has created a significant backlog in cases requiring forensic DNA analysis. The FBI's Nuclear DNA Program has examined evidence from terrorist activities such as the U.S.S. *Cole* bombings, assaults on the World Trade Center and the Pentagon, the anthrax-laced mailings and numerous hoax anthrax letters. On the State level, DNA analysis has proved invaluable by instantly identifying repeat offenders, as well as narrowing the field of potential suspects. The fiscal year 2004 Budget will provide continued support to this indispensable investigative tool for both State and Federal programs.

The FBI's Combined DNA Index System (CODIS) and National DNA Database utilize forensic sciences and computer technology as an effective tool for solving violent crimes. CODIS and the National Database enable Federal, State, and local crime laboratories to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders. The FBI's DNA effort began as a pilot project in 1990 serving 14 State and local laboratories. Today, the FBI's National DNA Index System includes 42 States, two Federal laboratories and the Commonwealth of Puerto Rico. It has produced more than 6,000 hits, assisting in more than 6,400 criminal investigations. Ultimately, the number of crimes it helps to solve measures its success.

In fiscal year 2004, the Budget is proposing an increase of 32 positions and $3,283,000 to expand the FBI's capacity to collect, analyze, and store DNA forensic evidence. The FBI plans to double the processing rate of nuclear DNA cases by 2005, by increasing the number of Forensic DNA Examiners and Biologist Technicians by two-thirds and developing Rapid DNA Analysis Systems to replace manual processing. The Budget requests 28 positions and $2,692,000 for this purpose. In addition, 4 positions and $591,000 is requested to staff, supply and equip the Federal Convicted Offender Program to collect DNA samples and produce DNA profiles for CODIS. These resources will enable the FBI to keep pace with the expanded terrorism-related offenses authorized by the USA Patriot Act.

The fiscal year 2004 Budget also proposes a consolidated DNA effort in the Office of Justice Programs (OJP) to assist state and local laboratories to reduce backlogs of DNA samples and improve their capabilities through increased information and research to make DNA tests faster and cheaper. The Budget request proposes funding this consolidated effort at a level of $177,000,000, an increase of $102,937,000 above the fiscal year 2003 Budget request level.

Many of our Nation's crime labs lack the capacity to analyze all of the DNA evidence collected by police. While all 50 States collect DNA from their convicted felons, many lack the resources to enter these samples into the national DNA database. As a result, there are some 500,000 samples awaiting analysis in laboratories across the country. Reducing this backlog by entering these samples in State and national DNA databases will assist law enforcement in linking offenders already in custody to unsolved crimes. As of March 2002, the FBI's DNA database had identified 610 offenders and produced 193 "forensic hits" in which cases not known to be related were found to have been committed by the same offender. The proposed enhancements for fiscal year 2004 will be used to—

—Reduce the DNA backlog through formula-based grants to expedite the entry of DNA samples from convicted felons and unsolved crimes into the national database;

—Improve the capacity of DNA crime labs through grants to state and local crime labs for the acquisition of DNA analysis equipment that will process samples more quickly and accurately; and

—Support continuing research on forensic DNA technology and provide assistance for pilot projects.

PROTECTING THE JUDICIAL SYSTEM AND MANAGING FEDERAL DETENTION AND INCARCERATION CAPACITY

The Department's fiscal year 2004 budget request seeks significant resources to improve courtroom security, to detain the accused in Federal custody and to protect the American public by providing for the safe, secure and humane incarceration of

sentenced offenders. Security associated with terrorist-related court proceedings requires an unprecedented level of protection for all trial participants because of the global interest and intense media attention. These high-security, high profile proceedings require extensive operational planning and support from specially trained and equipped law enforcement personnel. The United States Marshal Service (USMS) is responsible for safely transporting accused individuals to and from judicial proceedings and ensuring the safety of the judicial participants, the public, and USMS personnel. To meet better the security needs of these proceedings; our budget seeks 275 positions (231 Deputy United States Marshals) and $26,599,000. The budget request for USMS also seeks $2,000,000 from the Department's Working Capital Fund for courthouse security equipment. This additional funding is sought to fund security systems, relocation, and telephone and data lines for four new courthouse facilities opening during fiscal year 2004.

During 2002, the Nation's prison population rose 4.4 percent, by over 6,800 inmates. The Department's fiscal year 2004 budget request seeks additional resources for the Bureau of Prisons to manage this growth, including activation costs for seven new facilities. Our budget seeks a total of 2,727 positions and $251,978,000 to activate 7 new facilities including United States Penitentiary (USP)—Hazelton, West Virginia, USP—Canaan, Pennsylvania, and USP—Terre Haute, Indiana, Federal Correctional Institution (FCI)—Victorville, California, FCI—Forrest City, Arkansas, FCI—Herlong/Sierra, California, and FCI—Williamsburg, South Carolina. These facilities will add 8,000 critically needed beds to reduce overcrowding.

To provide adequate space to detain individuals in the custody of USMS, our budget seeks an increase of $34,705,000. These resources will fund additional bed space in state, local and private facilities for Federal detainees.

MANAGING THE DEPARTMENT'S FINANCIAL AND INFORMATION RESOURCES, INCLUDING ENHANCING INFORMATION SECURITY

The Congress has entrusted a significant level of resources to the Department of Justice to enable it to carry out its important mission. Our budget seeks additional funding to ensure that resources entrusted have sufficient oversight. To strengthen the Department's management and oversight of information technology security, including the continued implementation of a Department-wide security architecture and security standards, and the development and initial implementation of a Public Key Infrastructure, the Department seeks an enhancement of 13 positions and $9,000,000. For fiscal year 2004, the Department also seeks an enhancement of $15,000,000 for the Department's Unified Financial Management System that will improve financial management and oversight with standardized core functions across the Department.

To continue the deployment of the Department's Justice Consolidated Office Network (JCON), our fiscal year 2004 budget seeks an enhancement of $17,000,000 and $33,000,000 from the Department's Working Capital Fund. These resources will continue to enable the United States Marshals Service to increase the JCON-architecture deployment to 92 percent.

OTHER IMPORTANT ACTIVITIES

Our budget seeks $40,730,000, including $35,030,000 in appropriated resources and $5,655,000 from the Department's Working Capital Fund, to enhance several items of critical importance to the Department's continued efforts. For the United States Attorneys, we are seeking 145 positions and $15,862,000. Of this amount, $10,207,000 in appropriated resources would enable the United States Attorneys throughout the Nation to address critical areas including civil defensive litigation needs arising from greater demands associated with the implementation of anti-terrorism programs after September 11, 2001, expanding civil defensive case loads, and increased complexity of employment discrimination and tort cases; and to provide for much needed litigation support and enhanced timeliness of financial reporting. In addition, $5,700,000 from the Department's Working Capital Fund would enhance the United States Attorneys' information technology infrastructure.

Our budget also seeks additional resources for the Environment and Natural Resources and Civil Divisions of the Department. Requested enhancements totaling 32 positions and $4,188,000 would enable the Environment and Natural Resources Division to address its Tribal Trust Fund docket and to further implement a critically needed initiative to seek out and prosecute violators of hazardous material transportation and handling laws. Additional resources of 30 positions and $4,500,000 for the Civil Division would enable the Division to continue to address high-profile immigration cases which implicate the integrity of the September 11, 2001 investigation and the Federal Government's response and to fund additional costs generated

by the 2000 amendments to the Radiation Exposure Compensation Act (RECA), which triggered a nearly five-fold increase in the number of RECA claims filed. An additional 28 positions and $2,000,000 are also sought for the Executive Office for Immigration Review (EOIR). These additional resources would enable EOIR to keep pace with workload increases as a direct result of increased interior and border enforcement.

For fiscal year 2004, we are seeking $5,500,000 for the Office of Justice Programs to fund additional Public Safety Officers Educational Assistance payments and to begin converting the National Crime Victimization Survey conversion from primarily a paper-and-pencil operation to a fully automated data collection process.

The United States National Central Bureau continues to facilitate international law enforcement cooperation as the United States representative with the International Criminal Police Organization (INTERPOL). Our fiscal year 2004 budget seeks an additional $932,000 to fund increased dues payments on behalf of the United States to INTERPOL. Additional funds are needed to replenish depleted reserve accounts, while at the same time expanding operations and personnel to focus on combating international terrorism.

We are proposing additional resources to provide enhanced building security. In fiscal year 2004, our budget request seeks $6,517,000 for improved perimeter security and guard services. This request builds upon the fiscal year 2002 reprogramming proposal submitted by the Department. In addition, for the United States Trustee Program, we seek an additional $1,104,000 to enhance the information technology infrastructure of the Program.

CONCLUSION

Chairman Gregg, Senator Hollings, and Members of the Subcommittee, I have outlined for you today the principal focus of the fiscal year 2004 budget request for the Department of Justice. The Department continues to evaluate its programs and operations with the goal of achieving both component-specific and departmental economies of scale; increased efficiencies; and cost savings. Aided by ongoing reviews of business practices, we are beginning a comprehensive, multi-year process to implement a wide range of streamlining and efficiency measures that will result in substantial savings. Many of these proposals have been incorporated into our fiscal year 2004 budget proposal.

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 GREGG. Thank you, Mr. Attorney General, for that extensive opening statement. It does remind me a bit of a fellow I used to represent when I was practicing law named Oscar Payne. He was about 78 years old, and he worked on a farm up in Acworth, New Hampshire. He went to church once, and it appeared he was the only one at church. And the minister spoke, and did three readings from the Bible. He sang four hymns and did a sermon, a full sermon. It was a very good sermon. They even had the offering. They passed the plate.

And at the end of the service, the minister went to the front door and said to Oscar, as he walked out, shook his hand, "Oscar, what did you think?" And Oscar said, "Well, when I go down in my field, if I only find one stalk of corn, I don't dump the whole load of manure on it."

We certainly appreciate that extensive statement.

And as is the tradition of this committee, we always defer to the chairman when he comes.

Senator STEVENS. I left my truck behind today, Mr. Chairman.

Nice to see you, John. And you are doing a wonderful job. We thank you very much for what you are doing. I have to go get ready for the supplemental today and just dropped by briefly. Thank you very much.

Attorney General ASHCROFT. It is an honor to serve with you, sir.

Senator GREGG. I also want to say you are doing an exceptional job. And we——

Attorney General ASHCROFT. You could have at least——

Senator GREGG. As an old friend, I enjoy you.

Senator Hollings.

CORPORATE FRAUD

Senator HOLLINGS. Thank you, Mr. Chairman.

General, I was listening to that litany of the various prosecutions, indictments, convictions, and what have you, and particularly with respect to corporate fraud. At the time that you put the Deputy Attorney General Larry Thompson in charge of corporate fraud, at that particular time the question arose that his firm represented Enron, Kenny-boy, Ken Lay.

Now 1½ years later, with all of those convictions that you talk about, prosecutions and indictments and everything else like that, we have not heard anything about Kenneth Lay. Specifically, we see now in the news what we heard the first couple of months before our Commerce Committee from California, that it was a total fraud the way Enron was taking more than their shortage of so-called allocation. And then with the more or overage of that particular shortage, they were sending a note, shipping it back in with the increased price, defrauding the State of California. Now that has been verified in several news stories here in the last 2 weeks.

At that time, there was a witness from the California Public Service Commission or Authority or whatever. And I asked him, I said, "Wait a minute here now. That morning, Mrs. Lay appeared on my television before I came to work, said that her husband did not know anything about it. And the witness testified he knew everything about it. He knew all the details."

With that in the public sector, what happens? You have everybody but Kenneth Lay. And that is where it all started. Can you tell the committee?

Attorney General ASHCROFT. Senator, the corporate fraud investigations are ongoing. As it relates to the Enron Corporation, I am not informed about that. I am not a part of it, because I was recused from those investigations as a result of a determination that was reached that recusal would be appropriate for me in regard to Enron. I do not want to be non-responsive, but it would be inappropriate for me to comment on something in which I am not involved, which is an ongoing investigation, and something from which I am recused.

Senator HOLLINGS. Well, as the Attorney General, you should be curious, just as this Senator is curious. Suppose you get a report from Deputy Attorney General Larry Thompson for you and for me on the status of the *Kenneth Lay* case.

Attorney General ASHCROFT. I would be happy to instruct the Department to give you a complete report, to the extent it is appropriate, on that investigation. It is something about which I cannot give you a report.

[The information follows:]

ENRON TASK FORCE

As of June 19, 2003, the Department's Enron investigation has resulted in the convictions of Arthur Andersen and 5 individuals, as well as the indictment of 15 other individuals, including both the Chief Financial Officer and Treasurer of

Enron. The investigation into possible additional criminal activity is active and ongoing.

NATIONAL SECURITY COUNCIL

Senator HOLLINGS. Very good. Now let me ask with specificity with respect to the National Security Council. Now that we have changed over to domestic threats, at the time President Truman organized the National Security Council, you had the Vice President, the Secretary of State, and the Secretary of Defense, and everything else of that kind. We came within a vote of really asking that the Attorney General and that the FBI and others also be a part of that.

My concern is that the President gets a complete report from his National Security Council. Do you meet with him every day and give him a report intelligence-wise, or what is the score on that? Because the old rule was that the FBI just handled domestic crime; the CIA handled intelligence abroad. Now we have got to doing or developing as you are doing, a domestic intelligence. And you have to coordinate the two. And I have some questions about the coordination. But I am wondering if the President gets a complete report on the domestic intelligence. What is the setup?

Attorney General ASHCROFT. Well, every morning at just about 7 o'clock, I begin my day meeting with FBI officials, as we prepare to go and brief the President of the United States. On a daily basis, we brief the President of the United States, and we do so in the presence of those individuals who brief the international intelligence.

One of the things that is very apparent to us is that there is no longer a discontinuity or a break between things that might be happening in the United States and things that might be happening overseas. It is important that a complete picture be given and that the FBI knows what is happening internationally, and that the CIA knows what is happening as a result of the domestic thing, and that the President hears it all and be able to respond to it all.

The President devotes himself to that with a discipline and an intensity which is very, very impressive to me. He does it on a daily basis, and I witness it personally.

TERRORISM THREAT INTEGRATION CENTER

Senator HOLLINGS. Good. What about the status of the TTIC, the Terrorism Threat Integration Center? Is that developed?

Attorney General ASHCROFT. The Terrorism Threat Integration Center, TTIC as some folks are calling it, is being stood up at this time. It will go into effect on the first of May in a formal sense, as a way of integrating intelligence that comes from virtually all the sources that generate intelligence for the country. It will provide access to participants in the TTIC operation, meaning both the intelligence sources from overseas and from at home, and the intelligence that is gathered, say, by agencies that are not thought of as being intelligence agencies but uncover information. For example, the Immigration authorities who encounter information or Customs authorities, who hear about potential smuggling and the like.

The Terrorist Threat Integration Center, which would have the means of examining the intelligence information from all agencies by virtue of having search engines, could harmonize this information so it is all available. It is an attempt to have it in a format which would provide easy processing, so that information from different agencies, which has previously been assembled in different ways, would be comparable.

The TTIC will first come into existence and be stood up, as I said, on the first of May. It is later expected to be housed at an independent location, directed by an individual chosen by the Director of the CIA in consultation with the Attorney General and the Director of the FBI and others. It will also be at a location which will house the counterterrorism effort of the FBI and the CIA. But they will be separately administered.

I believe it is important that the output of these intelligence-gathering agencies be available broadly to both sides. They have separate gathering operations, primarily because the CIA has a culture of gathering outside the United States, where the rules are far different than the culture of gathering information inside the United States where we have to have strict adherence to the laws and to the Constitution of the United States.

Once information has been gathered by each of these agencies and by the other contributing agencies, it is available in this Terrorist Threat Integration Center. The intelligence of these various agencies that participate is available through a search engine function in the center that should make intelligence available to the FBI, which was developed originally by CIA, or vice-versa, and the other agencies, so that we should have a far more comprehensive understanding.

We should be able to integrate our understanding, rather than having the right hand maybe have some substantial assets the left hand does not know about. These assets should be jointly understood, although they are independently developed. The techniques for developing information in the United States, as opposed to abroad, follow a different set of protocols, guidelines, rules, which follow our Constitution, as opposed to a variety of other rules which are available and imposed in different settings overseas.

TERRORIST THREAT INTEGRATION CENTER BUDGET

Senator HOLLINGS. The budget for TTIC, do you have it? Who appropriates for that?

Attorney General ASHCROFT. Well, I believe TTIC is not provided for in our Department. I turned to make an inquiry because funding associated with the TTIC will be for the entire counterterrorism section of the FBI, which is part of our budget. The $50 million to stand this project up was provided originally in the Defense area. But I am not—I would have to get back to you on the specifics.

[The information follows:]

TERRORIST THREAT INTEGRATION CENTER

The fiscal year 2003 Department of Defense appropriation included $104 million for the Terrorist Threat Integration Center (TTIC), of which no less than $50 million is to be used for FBI costs associated with TTIC.

Senator HOLLINGS. Let us get a hold of it, so we can follow it.

Now the distinguished chairman, Senator Stevens, just left for the supplemental. I note that you have some $500 million for the Department of Justice in that particular supplemental. Can you give the committee a breakdown on what that $500 million will be expended for?

Attorney General ASHCROFT. Included in the $500 million are resources that relate to the terrorist threats, and retaliatory actions that might be taken against the United States. Counterterrorism funds are requested to reimburse departmental components for extraordinary costs, security enhancements, language translation services, operational field expenses, including overtime and surveillance support.

The Office of Intelligence Policy and Review has been the subject of very serious demands recently and needs——

Senator HOLLINGS. Do you have amounts for each one of those items?

Attorney General ASHCROFT. We do not have a specific amount for each of those items listed in the request that went to the Congress.

Senator HOLLINGS. Can you furnish that for the committee?

Attorney General ASHCROFT. Pardon?

Senator HOLLINGS. Could you furnish the committee with the itemized amounts?

Attorney General ASHCROFT. We will be happy to discuss these needs with the committee. I do not know that I am prepared to provide a detailed list. But as monies would be spent, we would expect to be conferring with the committee about the way in which they are spent. I can read the list of the kinds of things, as I was beginning to do, that the funds would be used for. It goes on to include the United States Marshals Service courthouse security, which had to be elevated as a result of a number of our law enforcement efforts in terrorism.

We would be happy to be very collaborative about this particular set of resources and understand the desire of the Congress to watch carefully the expenditure.

Senator HOLLINGS. Let me yield to——

Senator GREGG. Okay. I have some questions.

On that point, Senator Hollings and I expect, to offer language to the markup which would require that we reintroduce the transfer language and make it applicable to this account, this extra $500 million, which does not sound to be inconsistent with what you are suggesting you would be willing to do anyway.

Senator Campbell, do you have some questions?

Senator CAMPBELL. Thank you, Mr. Chairman. I have listened very carefully and read the Attorney General's statement, too. And I found it very detailed, a lot of information in there. I was even interested in your analogy concerning the volume of his testimony.

I do not want to know your reaction to that, Mr. A.G.

Attorney General ASHCROFT. Well, could I please——

Senator CAMPBELL. Yes. Why do you not go ahead?

Attorney General ASHCROFT [continuing]. Just personally note that this is April Fool's Day. And I was hoping——

Senator CAMPBELL. Oh, okay. That explains it.

Attorney General ASHCROFT [continuing]. That he would at least follow that remark with the words "April Fool."

CIVIL RIGHTS

Senator CAMPBELL. Well, in any event, I just want to tell you, I think you are in a very, very tough job. You are really in unchartered waters. And I want to associate my words with the brief remarks that Senator Stevens said before he left. I know that you are getting some accusations from different civil libertarians about, you know, sort of a punitive agenda or infringing on civil rights. And I do not see that at all.

We are facing a time in the United States that we have never faced before. And from my perspective, I think you are doing just about as good a job as a person can do, fully recognizing that in America anybody gets to accuse anybody of anything. And being at sort of the top of that ladder, you are going to be the recipient of a lot of accusations.

But I noted with interest the number of people you have increased in the Civil Rights Division, 709 employees now, I believe you said. And the number of hate crimes that you have prosecuted, and I did not remember the number of the 9/11-related crimes you have also prosecuted, but I know that is going up considerably, too.

And I think, very frankly, the numbers that you use would do all of us well, because we get questions in our town meetings and we get questions in our different forums about what we are doing when we hear some of these accusations. And I just wanted to commend you and say that you are setting an example, I think, for all of us to try to find that balance between preserving civil liberties and making sure that this is a safer Nation.

I just wanted to put that in the record, Mr. Chairman. Thank you.

TERRORIST THREAT

Senator GREGG. Thank you, Senator Campbell.

In regard to the expanded war, Hosni Mubarak made an interesting comment yesterday about the expansion of the terrorist threat that the war is creating from his perspective. Do you see an expansion of terrorist activity within the United States?

Attorney General ASHCROFT. We have expanded our efforts dramatically. I think it is fair to say that there was intelligence that indicated that an elevated and escalated military presence by the United States and escalated activity in Iraq might occasion additional activity by terrorists. And we have acted to do that.

I think in my opening statement, it may have been somewhere in the middle although it was less distinguishable, we have had a very substantial presence in seeking to curtail the activities of anyone who might be associated with terrorism, including the interviews that would help us learn about terrorist activities.

So, frankly, in the United States to date, we have an increased effort by law enforcement and by the Department to make sure that we are not placed at higher risk. And to date, I must thank

the hard work of the FBI and other law enforcement agencies, State and locals, who have worked very diligently with us to make sure that we have not seen specific terrorist acts carried out in the United States.

Senator GREGG. Is there higher activity, however, that you are trying to interdict?

Attorney General ASHCROFT. As I indicated before, the intelligence indicated that there were levels of threats that were high. We believe that—and very frequently the level of threats that you have is related to the level of activity. That is what we are seeking to interdict. We hope that we can continue to do it successfully.

TERRORIST THREAT INTEGRATION CENTER

Senator GREGG. Now when you were talking with Senator Hollings about TTIC, I am wondering how this coordinates with all the other activities that we have. We have the Foreign Terrorist Tracking Task Force. Homeland Security has a task force. You have the National Theater Center—the National Threat Center, and the FBI's analytical operations on counterterrorism. Are these all going to be moved out to the TTIC building?

Attorney General ASHCROFT. No, I do not believe they are. The FBI will maintain its own analysis. But it will also contribute its information intelligence on terrorism to the combined Terrorist Threat Integration Center. I think we anticipate that the FBI will continue to make its own independent evaluations but do so with the ability to gain the information that is available to TTIC and contribute the information it has to TTIC.

DEPORTED INDIVIDUALS

Senator GREGG. When you deport 436 people, do you keep track of them after you deport them? It is sort of like putting the sharks back in the ocean, is it not?

Attorney General ASHCROFT. We maintain a list of those individuals who have been deported and seek to make sure that they do not come back into the United States. There are times when individuals are deported and, depending upon the nature of the situation, we alert the countries to which they are deported. Frequently individuals in this setting are individuals that we believe the receiving country ought to be aware of and interested in. And we try and make sure that happens.

We have not deported individuals when we have felt that we had a valid basis for pursuing them for violations of the law in the United States. Generally, if persons have violated the law here in the United States in ways that are provable in the Article III Courts—and, you know, we have standards in that respect—for those individuals, we seek to prosecute them.

Senator GREGG. Senator Domenici.

Senator DOMENICI. Thanks very much, Mr. Chairman. I have three or four questions.

It is good to see you——

Senator GREGG. Excuse me, Senator Domenici. Senator Domenici, I apologize. Senator Kohl was here before you. I apologize.

Senator KOHL. I would be pleased to yield. Go ahead, Senator.

Senator DOMENICI. Thank you.

It is good to see you. We are neighbors, but we still do not see each other very much.

Attorney General ASHCROFT. We sure do not.

Senator DOMENICI. It looks like you are doing all right, though. You look healthy.

Attorney General ASHCROFT. Thank you.

Senator DOMENICI. Is everything going all right, as well as possible?

Attorney General ASHCROFT. We are grateful for the successes we have. And we are going to keep working as hard as we can.

ALIEN ASSISTANCE PROGRAM

Senator DOMENICI. Well, I have a few questions, I think three or four. My first one has to do with the Alien Assistance Program, SCAAP, and the Border Prosecutors Initiative. The President's budget eliminates funding for the State Criminal Alien Assistance Program, as it did last year, a $565 million reduction from 2002. I am concerned about the impact that cutting this program is going to have on struggling counties in States like mine, as they shoulder the significant cost burden created by illegal immigration, which obviously is a Federal responsibility.

I am also concerned that this cost burden may damage localities' abilities to address other homeland security needs that they may have. 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 poverty level than any other region, making them the least able to foot the cost of services for criminal illegal aliens.

In this time of heightened security in the border regions, I think it is imperative to ensure the effective processing of criminal illegal aliens, including incarceration by local law enforcement agencies. So in the past years, I have fought to increase SCAAP resources to relieve some of these costs for local communities for detaining these aliens.

The State of New Mexico received a small amount, but important, $2.3 million in 2002 for funding this program. A recent New Mexico border county coalition study detailing the costs associated with processing criminal illegal aliens estimates that New Mexico's three counties will spend an estimated $5 million annually on criminal justice, law enforcement, and emergency medical care for illegal aliens. This is a small amount in your very large budget, but it is very important for these rural impoverished counties.

So in view of this tremendous burden on border criminal justice systems, how does the Department of Justice propose to meet the costs of the Federal responsibilities that are currently shouldered by States, if not through this program?

Attorney General ASHCROFT. Well, first, Senator, let me be the first to recognize that the incarceration of individuals who come into the United States and commit crimes falls inordinately heavily on those States that are on the border. And the States of Texas, New Mexico, Arizona, California, Florida, Illinois as well, have relied heavily on this program, which is designed to undertake some of the costs of incarcerating individuals who commit crimes after coming to the United States illegally, and therefore are detained.

The administration has sought to improve our performance at the borders, stop people from coming here illegally, and has focused its resources on doing that, so as to diminish the need to have people who come here illegally incarcerated because they commit crimes. We want to stop them before they get here. I think it is debatable as to how successful we are in all of that. We have a Border Assistance Initiative that related to the Southwest border that we are requesting that relates to prosecution. But I understand that if you prosecute, you need a place to put individuals, and that does not address the detention of those individuals.

Ideally, we need to do a better job and continue to improve our performance at preventing those individuals from coming, so that later on we do not have to seek to remediate the problem by detaining them in our prison systems at great expense.

As you mentioned, in the 2003 omnibus appropriation bill, Congress provided $250 million for the State Criminal Alien Assistance Program (SCAAP). The administration is seeking to address those issues by improving our border performance and providing the other assistance in the Border Initiative Program.

Senator DOMENICI. Well, I bring it up because I think in the preparation of the budget it is so easy to eliminate and forget about these programs because of the bigger ones. But actually, when you have a border State, and especially one which is a broad area, not very much population in just a few communities, this is a tough area. A couple million dollars is pretty tough for those systems to try to accommodate. We will try to see what we can do in the process to be helpful.

STATE JUSTICE INSTITUTE

There is an institute called the State Justice Institute. Are you aware of that within the Department, the State Justice Institute? It has $6 million in the past——

Senator GREGG. I believe that is independent of the Justice Department.

Attorney General ASHCROFT. I am not aware of it. I think it may be in the court system.

Senator DOMENICI. It is not in their budget?

Senator GREGG. No, it is not. It is an independent agency.

AMERICA'S LAW ENFORCEMENT AND MENTAL HEALTH PROJECT ACT

Senator DOMENICI. I am sorry.

Let me leave you a question with reference to the kind of court system that is evolving called the mental health courts. I am very aware of them, and had something to do with starting them. They are beginning to mature. I personally believe that they can have a great deal of positive impact on alleviating overcrowding and creating greater judicial economy within our court systems.

Are you aware of any steps that the DOJ is taking to distribute the $3 million to implement America's Law Enforcement and Mental Health Project Act?

Attorney General ASHCROFT. We, in this fiscal year, have a $4 million appropriation for distribution to assist about 23 different mental health courts around the country. As you have indicated, this is something sort of on the cutting edge, new.

Senator DOMENICI. Yes.

Attorney General ASHCROFT. In addition to working with them, we are trying to develop a set of guidelines, procedures, develop the information that would be valuable to other groups that might seek to start such courts. The grant program is underway. The awards are in the process of being made. There are a couple dozen that appear to be most likely to be the beneficiaries of the $4 million of grant money.

Senator DOMENICI. Well, I thank you for being empathetic toward them. Some people seem to think they are a bother. But essentially, when you look around the country and find that so many individuals occupying prison space are actually mentally ill. They are put there either in county courts or others because of their mental illness, and nobody knows what else to do, so they throw them in jail for a while. It does not really work. Setting these courts up is a very good intermediary process to do a better job in that regard.

Attorney General ASHCROFT. Well, Senator, last year you asked me at this hearing if I would get a briefing on these so that I could become aware——

Senator DOMENICI. That is right.

Attorney General ASHCROFT [continuing]. Of the value. And I did get that briefing. And I have asked that the Department work carefully to make sure that the grant resources are properly made available.

RADIATION EXPOSURE COMPENSATION PROGRAM

Senator DOMENICI. My last observations and a few questions, which I will submit for the record, have to do with the Radiation Exposure Compensation Program. Now that program has been a difficult one. We have gone back and forth as to how it will be funded. But eventually we made it a mandatory program and put $172 million in law. The Department has $172 million to pay claims in 2002 and $143 million for claims in 2003.

I would like you to submit for the record a status report on the payment of these claims. How many claims has the Department approved, and how much has been spent, and what is the average amount of the claims approved? This has become over time a program that got bounced back and forth. It became somewhat scandalous when people with claims could not get the money because they were given IOUs, because we did not have the appropriated funds.

Between the chairman and others, we have attempted to fund it properly. It has been a terribly difficult program, not only for me as one who helped start it, but for the chairman. I have about five questions that will get this on the record so everybody will know exactly where we are. I would appreciate it if you would answer them as early as the chairman expects the responses to the committee.

FEDERAL JUDGES—NEW MEXICO

And my last question has to do with New Mexico judges. The latest reports on the need for Federal judges would indicate that the area of the judiciary, Federal judiciary, that is most in need are

those courts along the borders of the United States. And my State, while it is a small one, continues to be one that needs judges because of the enormous criminal caseload. I believe there is an indication in the latest study that New Mexico needs three additional judges.

Are you aware of the last report? And are you going to do something to recommend that there be compliance and an effort to fill the need, as recommended, with reference to the Federal judges?

Attorney General ASHCROFT. Well, Senator, last year in the reauthorization of the Department, there were judges created, additional judges. The Department supported that. And the Department supports the additional judges' specific numbers in a particular report. Regional allocations are not something that I am focused on at this time. I have been made aware of the need, and I think that it is a need that this administration understands and is willing to address.

Senator DOMENICI. Well, I will ask you for some specific answers as to what would help alleviate this, if you would answer those, also. We need some indication from you about them so we can pursue it with a little more vigor to get the positions filled. Thank you.

Thank you, Mr. Chairman.

Senator GREGG. Okay. Senator Kohl. I apologize, Senator Kohl, for the mixup in the order.

Senator KOHL. Good morning.

Attorney General ASHCROFT. Good morning.

CHEMICAL WEAPONS

Senator KOHL. Mr. Attorney General, within the past month the FBI has warned law enforcement agencies nationwide that terrorists could build a simple but very deadly chemical weapon out of readily available materials. Specifically, the FBI cited hydrogen cyanide, or chlorine gas, as easy to make chemical weapons created by combining liquid and solid materials. In the case of hydrogen cyanide, which was once used as a war gas, one need only to combine cyanide and salt—cyanide salt and acid. Pardon me.

What is so disturbing is how easy it is to obtain cyanide. It is readily available at chemical weapon supply houses, from mail order catalogs, or even via the Internet. Even more disturbing is evidence that terrorists could use cyanide in a future terrorist attack.

Has the Department of Justice reviewed the potential use of these poisons as a terror weapon? Do you think that Congress needs to consider regulating the sale of toxic substances like cyanide through a permit system to ensure that it does not fall into the wrong hands?

Attorney General ASHCROFT. Well, first let me say, Senator, that this is a matter of real concern. I know that this is a matter that the terrorist community is aware of, that among the kinds of evil chemistry and other threats that they deal in, this is among those kinds of circumstances.

And I would be very happy to work with individuals in the Senate, and in the House for that matter, if they were to choose to seek to address this problem, just as we have been very pleased to work with you as it related to the Bureau of Alcohol, Tobacco, Fire-

arms and Explosives (ATF). The new explosives regulatory format, which is being implemented—and I must commend your staff for working with the Justice Department closely to iron out the difficulties there. The ATF has become a part of the Department of Justice. This new regulating responsibility for explosives is something they are working together on and, I think, productively.

We would be happy to confer in regard to efforts in the Congress that might relate to improving our safety and the security of the country when threatened by evil chemistry from terrorists or others.

TOBACCO SMUGGLING/TERRORIST FINANCING

Senator KOHL. Thank you. I would like to work with you on that. Mr. Attorney General, recent ATF investigations reveal that tobacco smugglers are using the profits they make from their illegal operations in the United States to fund terrorist groups, like Hezbollah, among others. Furthermore, the GAO estimates that State governments are losing billions of dollars in tax revenue because of cigarette smuggling and Internet sales of cigarettes. This is a serious problem that is not getting the attention it deserves as a funding source for terrorism.

I am considering introducing legislation to increase the penalties associated with tobacco smuggling. Do you agree that this is a serious terrorism-related concern? And will you pledge to work with me and my staff on this legislation?

Attorney General ASHCROFT. I certainly do agree that it is a serious terrorist concern. Last fall, in Charlotte, North Carolina, the Joint Terrorism Task Force of the FBI, together with the ATF, dismantled the terrorist financial support cell which operated there, which was funding terrorism, according to the allegations, out of the smuggled cigarettes which are bought in a low tax jurisdiction, transported to a high tax jurisdiction, and sold. The money which would have otherwise been available as tax revenue in the higher tax jurisdiction is diverted either into criminal activity or terrorist activity.

And in the case last fall, 26 individuals were charged with various crimes, including racketeering, money laundering, immigration fraud, credit card fraud, marriage fraud, visa fraud, bribery, and providing materials to support terrorist organizations. Now that is not a litany of good things.

So we are concerned about the problem and would be happy to work with you in regard to legislation that might help remediate the capacity of criminals generally, and terrorists as well, to fund their activities that threaten the security of our people through the use of these kinds of resources in smuggling.

LOCAL LAW ENFORCEMENT FUNDING

Senator KOHL. Thank you. I would like to ask a question about local law enforcement funding. This budget slashes funding for State and local law enforcement. For example, the following programs are either drastically reduced or just plain eliminated. The Burne Memorial Grant Program, the Local Law Enforcement Block Grant Program, the Juvenile Accountability Incentive Block Grant Program, and State Criminal Alien Assistance Program, the COPS

Universal Hiring Program, COPS and School Program, and the COPS Technology Program. Combined, these important programs delivered more than $2.9 billion to police departments across the country last year.

The fiscal year 2004 DOJ proposal rolls most of these programs into a $559 million Justice Assistant Grant Program. And only the COPS Technology Program has survived, although even that program had a reduced funding level. This is a startling cutback of law enforcement assistance of more than $2 billion.

What does not make sense about this huge reduction is that we are asking State and local law enforcement, as you know, to devote even more time and resources in the fight against terrorism. Many of our law enforcement agencies' budgets are dependent on Federal aid, as you well know. And if we abandon them, then they will have a very tough time doing what we are asking them to do with even less funding. It does not seem to make too much sense. What are your comments?

Attorney General ASHCROFT. Well, first of all, if you combine the supplemental request and the request for this appropriation year, it is clear that the money that goes to local law enforcement through the Justice Department and through the Department of Homeland Security is far more than it has ever been before; so while the justice portion of the resources may not be what it once was, the development of new resources through the Department of Homeland Security provides a much greater resource. For example, the President's 2004 budget request, plus the supplemental transmitted last week, totals $8.5 billion, which is a very, very substantial sum of money.

Now as it relates to the COPS Hiring Program and a number of the other programs, some of them are discontinued because this administration believes that they have fulfilled their purpose. Others, like the resources available under the Justice Assistance Program, which is right at $600 million, are not earmarked for specific programs to provide for greater flexibility on the part of law enforcement to meet the needs that they have. This administration believes flexibility is more valuable.

I understand that there is a difference between the administration and the Congress, as it relates to earmarks and that is probably going to be something that there is continuing discussion on. But overall, when you put together the supplemental and the budget request, it totals far in excess of anything we have ever done to assist State and local first responders and law enforcement personnel. And we believe that it should help them be the kind of excellent partners they have turned out to be.

If I could just take this moment again to commend our colleagues in State and law enforcement. They have risen to the challenge of defending America with the kind of team work that is very, very gratifying.

TERRORISM THREAT WARNING SYSTEM

Senator KOHL. I appreciate your comment. And I am sure you are aware of the many complaints across the country in terms of our asking them to do more and their contention that we are, in

fact, providing fewer dollars while at the same time asking them to do more.

I would like to ask a question about the orange terror threat level alert. For the second time in the last 2 months, the country is again at the orange terror threat level. Last month we talked about these warnings. And I asked whether they could be reorganized or regionalized or made more specific. And you gave a very thoughtful answer at that time.

That said, the threat level was raised when the war began in Iraq. Was the war the rationale for raising the threat level, or had there been particular threats to certain cities or industries? My concern is that when we put the entire Nation at a heightened sense of alert for extended periods of time, then vigilance will fade. And we will become perhaps even numb to the orange alert.

Is there any better way to target this alert system so that local law enforcement agencies or particular States and localities that really need to be on the lookout are alerted, and other places in our country which are much less at risk are not put at the same high level of alert?

Attorney General ASHCROFT. Senator, when we last spoke about this, a migration was underway, which has been underway for some months now, of moving that from the Department of Justice, in terms of primary responsibility, to the Department of Homeland Security. I am pleased to make a response.

I think when we talked last, we talked about understanding that, I think as everyone can, there are many areas in the country that are not as likely as other areas to be the subject of major attacks. That is one of the reasons why the alert system is an advisory system that does not mandate specific activities on the part of people, but suggest things that might be done based on the kinds of assets, infrastructure, or otherwise that exist there.

At that time, I did comment as well, and I thank you for reflecting on my comments then. We have learned, however, that preparations for terrorist attacks tend to take place in a wide variety of settings that are not likely to be the ultimate attack locations, or at least were not on September 11. We saw terrorist preparations all across America, in towns small and large, from Portland, Maine, to Oklahoma City, I believe it was, to the west coast, across the Southwest, Minneapolis, a wide variety of places.

So one of the things we want to ask Americans to do is not just to be alert to the fact that there might be an attack there, but be alert to the kinds of circumstances that might be preparatory for an attack or individuals who might be involved in the developing of the skills or assets necessary to launch an attack.

I have said all this now to say that the Department of Homeland Security is now the final arbiter of whether we change. I would just add this one final remark, which I believe is in direct answer to your question. I know of no instance when the risk, when the level was raised that it was not raised in response to an understanding of the risk being higher. I know of no instance when the level was lowered when it was not lowered in response to the fact that we believed that we had digested some of the risk, and we could go back to the lower level.

So that threat warning system is a risk-related system. It is designed to reduce risk and that is sort of strange. As you know, weather reporting is not designed to reduce or change the weather. But this system is designed to actually reduce the risk because if we get on a higher alert, it is very likely that we can, by being more active, reduce the likelihood that we will be hit. And that is an anomaly, but it is the truth.

I hope that when we elevate our sensitivity and we take extra steps, we displace and disrupt terrorism. So it is risk-driven. It is information-driven, not aspiration-driven. We do not put the risk where we want it to be. We take a look at the information, and we make the determination. I am kind of reporting historically now, since this is not my final call anymore, but that is the way I believe it is run.

And when we do it properly, we report a risk, we diminish the risk by reporting it and enlisting the American people in working to make sure the risk never materializes.

ROCKET LAUNCHERS AND AIRLINE SECURITY

Senator KOHL. All right. Thank you. One last question on rocket launchers and airline security: Recent news reports have highlighted the danger that shoulder-mounted rocket launchers pose to commercial aircraft. In fact, there was an attempted rocket attack on an Israeli airliner in Kenya last November. Fortunately, it was not successful. News reports suggest that Federal authorities are concerned about the issue with regard to airports, or particular airports, around our country.

Given that these weapons are widely available, cheap, and easy to make, should not the American flying public be justifiably concerned that what happened in Kenya could happen here? Are you doing anything to assess this risk? Do you have any activities that you have undertaken to help prevent such an attack here in this country?

Attorney General ASHCROFT. This is a matter of concern. I believe that the airline industry provides secure air traffic in the United States. My family and I are in the planes on a regular basis. My wife will be flying today.

So we believe that this is a matter that is appropriate for our attention, and it is a matter that we consider and are carefully assessing.

RISK OF INTERNATIONAL TERRORISM IN THE UNITED STATES

Senator KOHL. One last question, if I might ask: Was 9/11 the watershed moment in terms of all the terrorism that we are trying to prevent in this country? Was the risk as great before 9/11, but we were not aware of it? I guess many of my constituents back home are trying to understand and figure out why it is today we are so, so concerned, justifiably, about terrorism, doing so much and spending so much to prevent terrorism.

What happened before 9/11, or were we fortunate, you know, and perhaps somewhat naive, and we are much more sophisticated now? In your mind, this is just a judgment, but——

Attorney General ASHCROFT. Well, frankly, Senator, I think 9/11 was a watershed event. I think if the water did anything, it washed

our eyes so that we could see that America was not as isolated as we had once thought and hoped. We had relied on oceans to defend us and to make us different.

Terrorism had been significant around the world, but it had only really reached America in one previous setting where it was an American terrorist who had killed almost 170 people in Oklahoma City, a very serious event. But we had not seen terrorism as international. We had seen terrorism in other settings, in other countries, but the international terrorists had never reached into America.

And while we were concerned about things that were happening overseas and happening to our assets overseas, no relation, but the U.S.S. *Cole* bombing was one of those things. The bombings of our Embassies were things like that, but they were overseas.

We were introduced to the idea of international terrorism actually having very serious impacts here, and I do not want to disregard the fact that there was the attempt on the World Trade Center in the early 1990s, which was a bombing attempt, and that should be understood. But we saw it entirely differently after 9/11, and we should. And if I could do it over again, I would. If I could relive the 1990s, I would spend some of these resources in the 1990s to see if we could have prevented what happened in 2001.

It is clear from what we know, having survived 9/11, and what we have learned in the intelligence community, that there are still very serious individuals with capacity, who would continue to hurt the United States, at a level as great as or greater than the injury to the United States on 9/11. We take that very seriously and are addressing those threats as intensely as we possibly can, respecting the framework of freedom which we have the responsibility to defend, and without which we would not care about defense. The only thing worth securing is liberty, and we are not going to trample on liberty in order to develop security.

Senator KOHL. Thank you. Thank you, Mr. Attorney General, Senator Gregg.

OPERATION TOP OFF

Senator GREGG. That was an interesting question, Senator Kohl. I would just note that this committee, prior to 9/11, did a lot in the area of terrorism and had a lot of trouble getting the attention of the community out there on that issue. We held two operations, called Operation Top Off, which was a chemical attack and a major bomb attack. One was held in Denver, and one was held in Portsmouth, New Hampshire. They were held over the strongest objection of the community out there that was supposed to be doing the exercises. And finally this community had to actually force those communities to pursue that.

In addition, we held a joint hearing with this committee, the Defense Committee, the Intelligence Committee, where we asked all the agencies to come up and testify before us. The Attorney General was kind enough to do that prior to 9/11. And what was highlighted there was once again our lack of readiness.

I think our culture has a lot of trouble dealing with issues until we have an event. And that is just the nature of the American culture, I am afraid. We have had the event, and we are certainly ag-

gressively dealing with it. And the Attorney General, I think, is doing a superb job, as is the FBI, to try to deal with it.

Senator Hollings.

Senator HOLLINGS. Senator Gregg is too modest. Actually he, long before any kind of hearing or finding by Hart and Rudman, this subcommittee, under his leadership, had hearings on terrorism. He instituted a training course. Several hundred were lost at 9/11 that had been trained. And 80,000 at that time, I will never forget it, had already been trained in terrorism work that was an initiative by Senator Judd Gregg. So we have been working on it.

On your successes, and I speak only from experience having served with the Hoover Commission some 50 years ago, investigating the CIA and the FBI, amongst other intelligence agencies, I was inculcated by Alan Dulles and J. Edgar Hoover on this need to know discipline. And yes, everybody has to be proud of the successes. But in your game in antiterrorism and otherwise, a lot of them should not be even announced.

Specifically, I will never forget when we got that hit in Yemen, that car full of terrorists, the FBI participated in leads for that particular hit. The Yemenites covered for us. They said there must have been explosives in the car. They do not know what happened. No, no. Big mouth, "Oh, no. We have a drone. We run them down with a drone."

We got Mohammed in Pakistan. We followed him for 6 months. We could not keep our mouths shut for 6 hours so the FBI could follow the leads we got from him.

And on top of it, we bragged about, "Oh, we got the computer, we got this, we got that." Lies, so you got nothing. You just got the fellow, but he just did not give you any information. But use the leads to enforce law.

I find too much braggadocio. "You are either with us or against us here. Now is the time. The time has run out. You are irrelevant." Now, ha-ha, we are running around saying, "You are very relevant, and we need your help." I mean, this crowd has been bragging too much.

STATE AND LOCAL FUNDING

Other than that, let us get back to Senator Kohl's question because, General, you said that none of this was possible without the funding. Yes, the Office of Domestic Preparedness was transferred to Home Security. And I am on that subcommittee. But that did not supplant the $500 million of the Burne Formula Grants. That does not supplant the $397.4 million that you cut out of local law enforcement block grants. You eliminated COPS Hiring Programs, the COPS interoperability, the $139.9 million in the COPS Law Enforcement Technology Program. Just when crime is on the way up, you cut out the money and give us a Mitch Daniel put-off, that "Oh, well, we have a lot more money in the other budget." We are here on all the budgets.

And you had the successes. And now you are cutting it out. Well, in the DEA, that is under you, you changed the FBI to 567 FBI agents that were working on drug enforcement that are now working on terrorism. So what happens to the DEA? That was like the hearing we just had last Thursday. You had both Governor Ridge

and Secretary Rumsfeld up here, and they are fighting over the same people. These first responders, policemen and firemen and the National Guard, and all my crowd had cleared out. They are out in the Persian Gulf now and in Iraq. And we look around, and we find out that we just do not have enough.

I told Secretary Rumsfeld rather than a money supplemental, he needed a manpower supplemental. You have 12 of these peacekeeping. You have a war in Iraq. You have a war in Afghanistan. And you have a terrorism war here. And you are still trying to do it. And everybody is fighting over the same manpower. And we cannot afford to cut these particular grants, cops hiring programs and different other things of that kind, the DEA. A war in Iraq is not going to be shortchanged money. You cannot shortchange the terrorism war. We need way more cops. We need way more effort and everything else.

Last week, when they had that other alert that you folks put out, the Governor of South Carolina had to take and put parole officers around the Port of Charleston. He just ran out of personnel. And that is the same with the airports and everything else.

I just want you to get a grasp of this thing, because this is a grasp that you can, Senator Kohl, Chairman Gregg, all of us have. I mean, the buck stops here. And we are not going to shortchange Iraq. You do not have to worry about the money for Iraq. We would be falling over each other. Support the troops. Support the troops. We are running around with the flag. Of course, we are not going to pay for it. We are going to borrow for the troops.

This is some crowd. But then to go even further and cut out the working programs when crime is on the increase and everything else of that kind, I just want to register that observation.

TRILOGY

Let me ask about Trilogy. Where is that? What is the final price tag? What is the status of it, you know? So everybody in the FBI is talking to everybody. We had the Arizona agent, that somehow it fell between the cracks. The Minnesota young lady who had to travel all the way, and they then would not listen to her, and everything else. So we gave Mueller, Director Mueller, millions and millions of dollars. This committee had a program transfer November a year ago, a year and a half ago now. So what is the program? Do we have it? Is it working? Do you need more money? We are going to get it done.

Attorney General ASHCROFT. We are going to get Trilogy done. It was a project started several years ago, before 9/11. It has been upgraded on the basis of several things, including 9/11. The first big deadline was to get all the computers talking to each other. That was to take place by March 31, yesterday. I am happy to report to you that we came in 3 days early on that. We met the deadline. By March 28 Trilogy was operational.

The Trilogy Wide Area Network connects computers throughout the FBI, except for a couple crucial computers that were involved in specific matters that were ongoing and could not be disrupted in order to make the switch-over at this time.

The next big deadline, which is scheduled for completion, is the upgrade of software for desktop computers by November 2003. And by the end of this year, December——

Senator HOLLINGS. Do you have the money for that, for the November time line?

Attorney General ASHCROFT. The money is in the request. The original request was short $137.9 million. It was short for two reasons: 20 percent of that, about $27 million, close to $30 million, was underestimated. The other 80 percent, $111 million, has gone up as a result of the *Hanssen* case. We learned we did not have the security in our computer system we needed, if you remember the case.

Senator HOLLINGS. Oh, yes.

Attorney General ASHCROFT. We cannot forget it, and we should not forget it.

In the *McVeigh* case, you will remember, that was the first execution the Federal Government had undertook in about 25 years. We found out that we needed, according to the Inspector General, additional capacity to track evidence and the like in the computer system. Trilogy was upgraded as a result of 9/11.

All of these things are accommodated in the budget. And we expect to have the virtual case file capacity in place by December of 2003. The virtual case file addresses the idea that you raised in your question about whether people in one part of the organization can know about information that is developed in another part of the organization. As a case oriented organization, when it was a paper system, the paper file of a case was where the case was prosecuted. The rest of the organization did not necessarily know about the facts and circumstances in that setting.

The electronic file, of course, can be transferred and replicated without expense, once you have an electronic system. That is known as the Virtual Case File Program of the Trilogy effort. That is on schedule to be implemented by December of 2003 so we will no longer have disparities between what is known about a circumstance in one part of the country and another part of the country.

When case information is available on a broader basis, the information which comes out of these cases and investigations is also intelligence. It has intelligence value. And it appropriately can be fed into TTIC, so that the Terrorist Threat Integration Center, can be aware of that as well.

The work in this respect is very important. We just met the March 31 deadline. We are on schedule to meet the other deadlines. And the resources are in the budget to achieve that, according to my best information from the Department, which is making major progress in this respect.

[The information follows:]

CLARIFICATION OF FISCAL YEAR 2004 TRILOGY REQUEST AND REPROGRAMMING

The fiscal year 2004 President's Budget includes $82.2 million and 3 positions for Information Technology (IT) Projects, including funds to continue the Trilogy initiative and other critical IT projects. Funds include $18.5 million for recurring hardware and software upgrades and replacement over the next several years to preserve the gains made through the Trilogy program and avoid gradual erosion of the FBI's upgraded technology. These funds also include $61.7 million for costs associ-

ated with completing the communications circuit installation; hardware and software acquisition and maintenance; and contractor support for the Enterprise Operations Center. Finally, $2 million of the fiscal year 2004 President's Budget is to upgrade the Top Secret/Sensitive Compartmented Information Local Area Network at FBI Headquarters.

In addition, the Department of Justice transmitted a reprogramming request to Congress on May 21, 2003, proposing to redirect $137.9 million in existing resources to the Trilogy program. This proposal represents an increased level of funding to complete Trilogy, from a total project cost of $457.8 million to $595.7 million. Additional funding is needed to ensure Trilogy addresses all identified requirements related to the network/infrastructure and applications components, as well as program management support and component integration issues. The reprogramming reflects the Department's response to changing requirements resulting from events such as the World Trade Center and Pentagon attacks, as well as the *Hanssen* and *McVeigh* cases, most notably expanding the scope and adding risk mitigation to ensure success of the Trilogy project.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Great.

Thank you, Mr. Chairman. I will submit some other questions.

Senator GREGG. Mr. Attorney General, we have a variety of questions, especially dealing with technical aspects of the budget and dealing with capital costs specifically and personnel, that we will submit to you in writing and would appreciate your staff getting back to us with some answers, if they have the opportunity.

And we appreciate you taking the time to come and thank you for your courtesy.

Attorney General ASHCROFT. We will make the answers to the questions a matter of priority. And thank you very much for your help.

[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 PETE V. DOMENICI

SCAAP AND SOUTHWEST BORDER

Question. Mr. Attorney General, as you are aware, the President's Budget completely eliminates funding for the State Criminal Alien Assistance Program, as it did last year, a $565 million reduction from fiscal year 2002. I am highly concerned about the impact cutting this program would have on many struggling counties in New Mexico, as they shoulder the significant cost burden created by illegal immigration, a federal responsibility. I am also concerned that this unbearable cost burden may damage localities' ability to address other homeland security needs.

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 this time of heightened security in our border regions, it is imperative to ensure the effective processing of criminal illegal aliens, including incarceration by local law enforcement agencies.

In past years, I have fought to increase SCAAP resources to relieve the significant costs imposed on local communities by the costs of detaining criminal aliens. The state of New Mexico received $2.3 million in fiscal year 2002 funding through this program. However, a recent U.S.-Mexico Border Counties Coalition study detailing costs associated with processing criminal illegal aliens estimates that New Mexico's three border counties alone spend an estimated $5.0 million annually on criminal justice, law enforcement, and emergency medical care for illegal immigrants.

In view of the tremendous burden on border criminal justice systems in the border region, how does the Department of Justice propose to meet the costs of the federal responsibilities currently shouldered by states and localities, if not through SCAAP?

Answer. The State Criminal Alien Assistance Program (SCAAP) is a payment program designed to provide federal assistance to states and localities that incur costs for incarcerating certain criminal aliens held as a result of state convictions. In fis-

cal year 2004, the Office of Justice Programs (OJP) requests no funding for SCAAP for the following reasons:

—SCAAP does not advance the core mission of the Department of Justice (DOJ). 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 purpose. Expenditures are 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 necessarily support efforts to develop the nation's capacity to prevent and control crime, administer justice, or assist crime victims. Further, funds awarded are not linked to overall performance or evaluation data as is now required for other DOJ programs.

—Redirecting resources from SCAAP will provide funding for Congressional and Administration initiatives. These initiatives include increasing resources available to stem the tide of illegal immigration as well as the funding of programs such as OJP'S Southwest Border Initiative (SWBI), a $50 million program that provides targeted assistance to southwestern state and local jurisdictions, including those in New Mexico, that prosecute referred Federal drug cases. The Administration has already begun to prioritize and move resources among programs that are competing for scarce federal dollars in order to ultimately fund those programs that provide the most cost-effective and direct support to jurisdictions for addressing pressing national crime problems.

—Finally, since the Bureau of Justice Assistance (BJA) began administering SCAAP in fiscal year 1995, there has been only marginal improvement in the technical ability of the Immigration and Naturalization Service to positively identify those offenders being held in the nation's prisons and jails who are undocumented aliens. Yet, the number of jurisdictions claiming they are housing undocumented aliens has increased to more than 800 applicants as of the fiscal year 2003 cycle. The vast majority of these applicants will receive some funds, and many of these awards will be quite small, some falling below $1,000. Without better individual verification of offender identity and a clearer link between payments and relieving the burden of detention costs, this trend toward more jurisdictions sharing each new appropriation dilutes the impact of these program funds and fails to address the purpose for which this program was initiated. That purpose was to help relieve an unfair financial burden on a limited number of states and localities that were seriously inundated with undocumented alien offenders who should have been prevented from crossing the nation's borders.

In fiscal year 2002, funds distributed to New Mexico under the SCAAP program totaled approximately $2.33 million of the total of $540 million awarded. Only 14 of New Mexico's 33 counties received awards, which ranged from $402 to $250,610; the state's award was approximately $1.77 million. In contrast, more than $1.5 million had been requested under SWBI by New Mexico jurisdictions through June 2003. More funding is available, and there will be another funding opportunity to cover costs incurred in the second half of fiscal year 2003 later this year. Thus, while the scope and coverage of these two programs are not identical and not all cases for which payments will be provided will involve illegal aliens, both the offender populations involved and the goals of the program are very similar. And, more importantly, for the state of New Mexico specifically, SWBI will generate proportionally more funding that will go to directly reimburse local jurisdictions affected by illegal crime than will SCAAP.

NEED FOR ADDITIONAL PERMANENT JUDGESHIPS IN NEW MEXICO

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 ranks fifth in the nation in weighted filings per judgeship. Two weeks ago the Judicial Conference of the United States asked Congress for 57 new Judgeships, including 3 more for the District of New Mexico (only Northern California, Eastern California, Southern Florida, and Eastern New York have need for a greater number of judgeships).

Based upon the experiences of the U.S. Attorney practicing in this district, would you agree that the judicial system in the district of New Mexico is in a state of cri-

sis? What would help to alleviate the problems that are making the administration of justice so difficult?

Answer. The District of New Mexico has seen a marked increase in criminal case filings over the last ten years. In fiscal year 1992, 602 criminal cases were filed against 905 defendants. In contrast, during fiscal year 2002, 2,232 criminal cases were filed against 2,570 defendants. Clearly the heavy workload in this area 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. Further refinements of the court's case processing procedures might have similar benefits for the courts.

The Las Cruces United States Attorney's Branch Office has an area of responsibility that includes 15 counties comprising more than 60,000 square miles including a 180-mile border with Mexico. The 180-mile Mexico/New Mexico border is highly porous, remote, and unpopulated. The increase in criminal immigration cases has been particularly striking. In fiscal year 1992, 76 cases were filed involving 92 defendants. In fiscal year 2002, 1,339 cases were filed against 1,401 defendants.

Virtually 100 percent of the immigration related offenses prosecuted in Las Cruces are generated by the U.S. Border Patrol, now a part of the Department of Homeland Security. El Paso Sector Border Patrol encompasses West Texas and all of New Mexico. In 1993, El Paso Sector inaugurated an operation called "Hold the Line." The preliminary concept of "Hold the Line" was to move undocumented immigrant traffic to areas that were less populated and would be more manageable. This endeavor appears to be continuing successfully.

Undocumented immigrant apprehensions dropped dramatically (72 percent) in El Paso at the initiation of "Hold the Line" in fiscal year 1994. Apprehensions then increased for the next two fiscal years until the implementation of the Illegal Immigration Reform and Immigrant Responsibilities Act (IIRIRA) on April 1, 1997.

Though the number of illegal alien apprehensions dramatically declined after enactment of the IIRIRA, the "Hold the Line" stations that bordered the Rio Grande River continued to apprehend the largest number of illegal aliens. As time went on, "Hold the Line" stations' apprehensions declined and apprehensions in New Mexico began to increase. In 1998, Border Patrol stations in the New Mexico sector began to apprehend more aliens than the El Paso sector stations in Texas.

The Las Cruces Office expects this trend to continue. As the enforcement presence remains highly visible in and around central El Paso and as the Border Patrol's presence continues to escalate in southern Arizona. The number of aliens apprehended in southern New Mexico will continue to skyrocket.

Another factor in the continued rise is prosecution cases for the State of New Mexico is the IDENT system at all the New Mexico Stations and the Integrated Automated Fingerprint Identification System (IAFIS) in Deming, New Mexico. These systems identify fugitive aliens and aliens who are prior deportees and aggravated felons. When the prior deportees and aggravated felons are located, we are required by law to federally prosecute these aliens. In the near future the IAFIS system will be deployed in all the Border Patrol Stations in New Mexico and will again increase the prosecution load for the USAO in New Mexico.

To put this into context, the El Paso Border Patrol Sector Prosecutions Program has seen dramatic increases in New Mexico cases prosecuted. In fiscal year 1999 the average number of cases prosecuted per month for New Mexico was 53. Currently for fiscal year 2003 the average number of cases prosecuted per month is 131. That is a 147 percent increase in four years.

There are currently no resident district judges in Las Cruces, even though more than 70 percent of the criminal cases in the District of New Mexico are prosecuted here. The active district judges, augmented by senior district and circuit judges as well as an array of visiting judges, take turns coming to Las Cruces. A given case can easily pass to three or four district judges prior to trial. The assignment of two or more district judges to Las Cruces would help our ability to appropriately service our caseload.

RADIATION EXPOSURE COMPENSATION PROGRAM

Question. Attorney General Ashcroft, I want to congratulate the Department of Justice for its hard work to ensure that claimants under the Radiation Exposure Compensation Act are receiving claims payments instead of IOUs as was the case a couple of years 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 give the Subcommittee a status report on this program?

Answer. The July 2000 Amendments to the Radiation Exposure Compensation Act (RECA) markedly expanded the scope of the Program. Major changes include new categories of beneficiaries; expansion of eligible diseases, geographic area, and time period; and a reduction in the radiation exposure threshold for miners.

It has been nearly three years since the Amendments were enacted. Since that time, the level of activity has increased dramatically:

—The approval rate increased from 49 percent—before enactment—to 83 percent, since enactment.

—Nearly 9,800 claims have been received since enactment—compared with some 1,200 claims received in the three fiscal years preceding the Amendments.

—More than 6,200 claims, valued at over $380 million, have been approved since enactment—compared with 574 approvals valued at less than $42 million in the three fiscal years preceding the Amendments.

Our most current estimates for fiscal year 2003:

WORKLOAD SUMMARY

	Fiscal year—			
	2000	2001	2002	2003 est.
Pending, Beginning of Year	353	728	2,936	2,679
Received	854	3,828	3,416	3,200
Approved	316	1,561	2,807	2,480
Denied	163	59	866	620
Pending, End of Year	728	2,936	2,679	2,779

To address this sharp rise in workload, we are doing all we can to ensure the program is being administered to provide timely and accurate compensation for all eligible claimants. Currently, there are 20 staff on board, including 11 claims examiners. With nearly 2,800 claims pending, each examiner is responsible for an average of 252 claims. Thus, while the program is able to process a huge volume—some 3,100 projected this fiscal year, the backlog is growing: we will end the year with a greater number of pending claims than the number pending at the year's outset.

So that we may reduce the number of pending claims significantly, the Department seeks Congressional approval to reprogram funds for RECA administration this fiscal year. In addition, the President's fiscal year 2004 budget includes an increase of $1 million for RECA Administrative Expenses. This increase will provide examiners with much needed support to review claims, assist claimants in providing information that will complete claims, and perform many of the time-consuming administrative tasks that detract from the primary mission—resolving claims.

As you know, the Fiscal Year 2002 National Defense Authorization Act (Public Law 107–107) made the Trust Fund a mandatory account and provided $665 million, setting annual spending caps for 2002–2011. We applaud Congress' decision to make the RECA Trust Fund mandatory. We are monitoring spending under the caps and can report the following with respect to the current status:

—In fiscal year 2002, the cap provided $172 million and the Department obligated the full amount.

—The fiscal year 2003 cap is $143 million. To date, an average of $12.3 million has been obligated per month. To stay within the cap, obligations will have to drop to about $9.5 million per month for the remainder of this fiscal year.

—No "IOU's" will be necessary this fiscal year. However, compensation for some current claims will be paid from fiscal year 2004 funds.

Question. Would you please provide for the record an updated breakdown of the number of claims paid by state and by category of beneficiary?

Answer. The table at Attachment 1 displays the number of claims approved through June 11, 2003, by state and by type of claim. Residents of Utah, Arizona, Colorado, and New Mexico have been awarded 79 percent of the compensation approved. However, RECA awards have been made to residents of all 50 states and the District of Columbia.

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 June 11, 2003, a total of 9,588 claims have been approved, with a value of $631,323,282.

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. Over the 11-year history of the Program, the average amount approved is $65,845. However, since enactment of the Amendments, the average has declined from $74,000 to $61,000—due to the predominance of downwinder awards.

Through June 11, 2003, the RECA Program has denied 4,866 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 table on the following page provides the requested information as of June 11, 2003.

RADIATION EXPOSURE COMPENSATION PROGRAM APRIL 1992-JUNE 11, 2003

	Value of Awards	Claims Received	Approved	Denied	Pending
Childhood Leukemia	$1,200,000	44	24	19	1
Downwinder	309,170,000	9,723	6,184	1,981	1,558
Onsite Participant	42,461,782	1,808	589	955	264
Uranium Miner	251,391,500	5,096	2,520	1,861	715
Uranium Miller	21,700,000	419	217	40	162
Ore Transporter	5,400,000	106	54	10	42
TOTAL	631,323,282	17,196	9,588	4,866	2,742

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 801 claims, with a total value of $76,277,799 through June 11, 2003. The following table provides the requested information.

RADIATION EXPOSURE COMPENSATION PROGRAM: NEW MEXICO APRIL 1992-JUNE 11, 2003

	Value of Awards	Claims Received	Approved	Denied	Pending
Childhood Leukemia	$50,000	1	1	0	0
Downwinder	3,300,000	151	66	38	47
Onsite Participant	993,299	55	14	33	8
Uranium Miner	66,334,500	1,706	664	753	289
Uranium Miller	5,300,000	109	53	10	46
Ore Transporter	300,000	16	3	4	9
TOTAL	76,277,799	2,038	801	838	399

Question. How many claims are projected to be filed and processed under current law in the upcoming year?

Answer. For fiscal year 2004, we estimate that 2,900 claims will be filed and 3,100 claims will be processed. Of the 3,100 that may be processed, at an estimated 2,215 claims would be approved, valued at $135 million. This assumes that the approval rate will fall from 80 percent in fiscal year 2003 to 71 percent in fiscal year 2004, while the average value of awards holds at $61,000. Based on these conservative assumptions, the value of approvals would exceed the $107 million cap by more than $28 million—exclusive of unfunded awards from the end of fiscal year 2003.

To stay within the $107 million cap set for fiscal year 2004, while paying for awards made in the final weeks for fiscal year 2003, the approval rate would have to fall to 48 percent.

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) developed cost estimates for a bill that became the Radiation Exposure Compensation Act Amendments of 2000 (Public Law 106–245). CBO roughly estimated that about 15,600 claims might be filed over the 22-year lifetime of the Act. CBO projected that about 11,700 claims would be filed in the first five years—or, roughly 2,340 per year. These estimates appear to be low. In less than three years, nearly 9,800 claims have been filed—more than 3,200 annually. Based on a three-year track record with the expanded program, we have developed detailed projections through fiscal year 2005. The following chart includes these projections, along with our "guesstimates" regarding the fiscal year 2006–2011 period—bearing in mind that the farther we delve into the future, the greater is the uncertainty we attach to our estimates. These projections suggest that (1) more people are responding more quickly then CBO anticipated and (2) the amount that may be approved in a given year may exceed existing caps.

OUT YEAR WORKLOAD AND FUNDING ESTIMATES

[Dollars in millions]

	Fiscal year—		
	2004	2005	2006–2011
Pending, Beginning of Year	2,779	2,579	2,179
Received	2,900	2,300	5,200
Approved	2,215	1,625	3,235
Denied	885	1,075	3,240
Pending, End of Year	2,579	2,179	904
Value of Approvals	$135	$99	$197
Public Law 107–107 Cap	$107	$65	$168

ATTACHMENT 1—AWARDS APPROVED BY STATE AND BY CATEGORY

	Downwinder	Onsite Participant	Uranium Miner	Uranium Miller	Ore Transporter	Total Awards	Value of Awards
Alabama	4	9	3			16	$1,081,344
Alaska	10	1	7			18	$1,275,000
Arizona	2,386	38	292	10	3	2,729	$152,502,016
Arkansas	15	5	12	2		34	$2,495,490
California	198	80	33	1	1	313	$19,135,196
Colorado	67	11	869	87	28	1,062	$102,575,000
Connecticut	1	2				3	$200,000
Delaware	1	3				4	$275,000
D.C.	2	1				3	$175,000
Florida	12	35	6			53	$3,692,507
Georgia	5	8	1			14	$927,181
Hawaii	3	16	1		1	21	$1,473,334
Idaho	60	8	22	1		91	$5,870,000
Illinois	5	10	6			21	$1,585,511
Indiana	3	3	9			15	$1,275,000
Iowa	3	4	3	1		11	$822,503
Kansas	12	6	3			21	$1,350,000
Kentucky	1	4	1			6	$395,319
Louisiana		8				8	$549,170
Maine		2				2	$150,000
Maryland	10	19	1			30	$1,945,180
Massachusetts	1	6				7	$500,000
Michigan	4	8				12	$800,000
Minnesota	8	6	2	1		17	$1,150,000
Mississippi		1	1	1		3	$275,000
Missouri	11	7	12	1		31	$2,375,000
Montana	15	4	8	1		28	$1,909,872
Nebraska	4	3	6			13	$1,025,000
Nevada	619	94	45	2	1	761	$42,775,000
New Hampshire	1	1	1			3	$225,000
New Jersey	2	3				5	$325,000
New Mexico	67	14	664	53	3	801	$76,277,799
New York	9	9	1			19	$1,212,608
North Carolina	3	10	4			17	$1,253,241
North Dakota	1			1		2	$150,000
Ohio	2	6	3	2		13	$1,050,000

Oklahoma	13	4	24	2		43	$3,509,500
Oregon	41	10	23			74	$5,097,234
Pennsylvania	7	10				17	$1,072,054
Rhode Island		2				2	$150,000
South Carolina	1	5				6	$411,328
South Dakota	2	2	5	4	1	14	$1,235,174
Tennessee	7	8	1			16	$981,133
Texas	40	20	17	2		79	$5,298,097
Utah	2,473	35	350	37	13	2,908	$165,719,850
Vermont		1	1			2	$175,000
Virginia	9	17				26	$1,656,302
Washington	42	20	26	1	1	90	$6,278,077
West Virginia		1	22			23	$2,275,000
Wisconsin		7	1			8	$561,262
Wyoming	27	2	34	6	2	71	$5,700,000
Subtotal	6,207	589	2,520	216	54	9,586	$631,173,282
Canada	1			1		2	$150,000
TOTAL	6,208	589	2,520	217	54	9,588	$631,323,282

MENTAL HEALTH COURTS

Question. Attorney General Ashcroft, as you are aware, the fiscal year 2003 Omnibus Appropriations Bill contained $3 million for Mental Health Courts. The funding is the result of the Americas Law Enforcement and Mental Health Project Act, enacted into law three 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 simple 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. Mental Health Courts can help alleviate overcrowding, to a degree, by employing problem-solving approaches that use alternative sentencing options to reduce the demands on correctional institutions while offering approaches that address the underlying issues of these mentally ill offenders. These courts use several critical elements as part of their comprehensive case management approach, such as complete individualized mental assessments as soon as possible after interface with law enforcement, judicial supervision, immediate mental health services as needed, and a plan for longer-term services. They can alleviate prison overcrowding by segregating a population whose minor criminal misbehavior is likely to be a function of their illness and providing the treatment they need. In doing so, it is hoped that communities with mental health courts will see reduced recidivism, and a reduction in the recurring costs to the system of continued criminal behavior by this population.

This approach ensures a coordinated response between the service providers and community supervision that reinforces accountability and access to the critical services needed for the offenders to gain stability in their mental health and uses sanctions and incentives that are meaningful to the mentally ill offenders to help keep them crime free.

Question. What steps are being taken by DOJ to distribute the $3 million appropriated to implement Americas Law Enforcement and Mental Health Project Act?

Answer. The competition for the fiscal year 2003 funds has taken place. The Bureau of Justice Assistance received 44 applications. The peer review process is underway, and 14 awards are expected to be made by the end of this fiscal year. These 14 sites will be in addition to the 23 sites awarded during the first cycle (fiscal year 2002 funding). Site awards in both cycles were for up to $150,000 each, varying according to the applicant's request and budget clearances, and have grant periods of 18 months. Additional funding will be used for technical support. An evaluator is assessing and documenting a sample of the courts in sites funded with fiscal year 2002 resources.

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. Approximately $500,000 from the initial earmark in fiscal year 2002 was used to support non-site work related to examining the mental health courts approach. The Crime and Justice Research Institute received a grant to provide an update of an overview of the issues related to mental health courts and reported in May 2002 in *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload*. The Bureau of Justice Assistance also funded the Criminal Justice/Mental Health Consensus Project. This national scope, 2-year effort prepared specific recommendations for local, state and federal policymakers and criminal justice and mental health professionals on how to improve the criminal justice system response to people with mental illness. The Council of State Governments coordinated this effort, working with the Association of State Correctional Administrators, Bazelon Center for Mental Health Law, Center for Behavioral Health, Justice and Public Policy, National Association of State Mental Health Program Directors, Police Executive Research Forum, and the Pretrial Services Resource Center.

This year, approximately $750,000 will be set aside for technical assistance support to the sites, primarily to bring professionals involved in the courts to the funded sites. It is anticipated that several organizations will be involved, each bringing to the table expertise in reaching constituencies in different areas, including law en-

forcement, prosecutor, judges, community correctional personnel, and treatment coordinators. This technical assistance will be available to the courts selected and, to the extent feasible, to other jurisdictions attempting this approach without federal funding. Courts will be assisted at least through the initial startup phase.

QUESTIONS SUBMITTED BY SENATOR TED STEVENS

VILLAGE OF CHICKALOON AND VILLAGE FORESTRY DEPARTMENT OF ALASKA

Question. The Office of Community Oriented Policing Services (COPS) was created to meet the needs of law enforcement in Native American Communities. According to DOJ records, the Village of Chickaloon and the Village of Forestry Department (of Alaska) have received $1,473,250.00 in funding from COPS from 1994–2002. In addition, eight officers have been funded through COPS. However, the Village of Chickaloon is not a sovereign entity and the State Troopers monitor the Village. Please describe each grant proposal submitted by the Village of Chickaloon and explain how each grant proposal meets the requirements for funding under the COPS program.

Answer. The Village of Chickaloon and the Chickaloon Village of Forestry Department have received a total of 8 grant awards, totaling $1,723,238, from the COPS Office.

The first award to the Village of Chickaloon, in 1995, was awarded through COPS FAST program. The FAST program provided jurisdictions serving fewer than 150,000 persons to hire new officers to engage in community policing. The Village of Chickaloon was eligible to apply under the FAST program, along with other state, local, and tribal law enforcement agencies serving populations less than 150,000.

The following seven awards, to the Village of Chickaloon and the Chickaloon Village of Forestry Department, were awarded through COPS Tribal Resources Grant Program. Under this program federally recognized tribes may apply to receive funding for training and equipment for new and existing officers as well as salary and benefits for new community policing officers. As a federally recognized tribe, Chickaloon was eligible to apply for federal assistance through COPS Tribal Resources Grant Program.

Details of the eight grants are provided in the following answers as well as in the supplemental documentation provided.

Question. For each grant given to the Village of Chickaloon under the COPS program, detail the funds given for each year and describe the purpose of each grant.

Answer. The Village of Chickaloon and the Chickaloon Village of Forestry Department have received a total of 8 grant awards, totaling $1,723,238, from the COPS Office.

1. The Village of Chickaloon was awarded one full-time position through the COPS FAST grant program (COPSFAST). COPSFAST provided funding to jurisdictions serving populations of less than 50,000. The program provided funding for the payment of salaries and approved fringe benefits for sworn entry-level officers, lateral transfers, or rehired officers. The FAST grant provided a maximum federal contribution of 75 percent of the salary and benefits for each officer position over three years, up to $75,000 per officer. Chickaloon's FAST grant, which began March 1, 1995, and expired August 31, 1998, totaled $75,000.

2. The Village of Chickaloon was awarded two full-time positions through the Universal Hiring Program (UHP). The UHP grant provided funding for the payment of salaries and approved fringe benefits for newly hired entry-level officer positions with a maximum federal contribution of 75 percent of the salary and benefits for each officer position over three year, up to $75,000 per officer position, unless a waiver of the matching local funds was granted. Chickaloon's UHP grant, which began December 1, 1995, and expired December 31, 2000, totaled $252,084—the grantee received a full waiver of the local match.

3. The Village of Chickaloon was awarded equipment and training through the Tribal Resources Grant Program 1999 (TRGP99), the specifics of the departments's award are detailed in the attached Final Funding Memo. The TRGP99 grant provided funding to federally recognized tribes for salaries and benefits for newly hired entry-level officer positions, and training and equipment for new and existing with a maximum federal contribution of 75 percent of the approved costs, unless a waiver of the local matching funds is granted, up to $75,000 per officer for salary and benefits, $3,000 for background investigations, $1,200 to $6,000 per type of training, $3,000 per officer for basic equipment, $75,000 per department for technology, and/or $20,000 per vehicle. Chickaloon's TRGP99 grant, which began September 1, 1999,

and expired May 31, 2001, totaled $90,810—the grantee received a full waiver of the local match.

4. The Village of Chickaloon was awarded equipment and training through the Tribal Resources Grant Program 2000 (TRGP00), the specifics of the department's award are detailed in the attached Final Funding Memo. The TRGP00 grant provided funding to federally recognized tribes for salaries and benefits for newly hired entry-level officers positions, and training and equipment for new and existing officers. The TRGP00 grant provided a maximum federal contribution of 75 percent of the approved costs, unless a waiver of the local matching funds is granted, up to $75,000 per officer for salary and benefits, $3,000 for background investigations, $1,200 to $6,000 per type of training, $3,000 per officer for basic equipment, $75,000 per department for technology, and/or $20,000 per vehicle. Chickaloon's TRGP00 grant, which began August 1, 2000, and expired on July 31, 2003, totaled $14,251—the grantee received a full waiver of the local match.

5. The Village of Chickaloon was awarded two full-time positions through the Tribal Resources Grant Program 2000 (TRGP00). The TRGP00 program parameters are detailed in the above paragraph (#4). Chickaloon's TRGP00 grant, which began August 1, 2000, and is scheduled to expire January 31, 2005, totals $281,172—the grantee received a full waiver of the local match.

6. The Chickaloon Village Forestry Department was awarded equipment and training through the Tribal Resources Grant Program 2000 (TRGP00), the specifics of the department's award are detailed in the attached Final Funding Memo. The TRGP00 grant provided funding to federally recognized tribes for salaries and benefits for newly hired entry-level officer positions, and training and equipment for new and existing officers. The TRGP00 grant provided a maximum federal contribution of 75 percent of the approved costs, unless a waiver of the local matching funds is granted, up to $75,000 per officer for salary and benefits, $3,000 for background investigations, $1,200 to $6,000 per type of training, $3,000 per officer for basic equipment, $75,000 per department for technology, and/or $20,000 per vehicle. Chickaloon Village Forestry Department's TRGP00 grant, which began August 1, 2000, and is scheduled to expire July 31, 2003, totaled $207,177—the grantee received a full waiver of the local match.

7. The Chickaloon Village Forestry Department was awarded two full-time positions through the Tribal Resources Grant Program 2000 (TRGP00). The TRGP00 program parameters are detailed in the above paragraph (#6). Chickaloon Village Forestry Department's TRGP00 grant, which began August 1, 2000, and is scheduled to expire January 31, 2005, totals $421,756—the grantee received a full waiver of the local match.

8. The Village of Chickaloon received funding through the Tribal Hiring Renewal Grant Program (THRGP) to renew two full-time positions. The THRGP grant provides funding to federally recognized tribes that were unable to retain the previously awarded COPS-funded positions with tribal, state, or BIA funding and have received an exemption from the COPS Office's retention requirement. The THRGP grant is a two-year grant, which funds fourth and fifth year salaries and benefits for the renewal of COPS-funded police officer positions, there is not a local match requirement for this program. Chickaloon's grant, which began September 1, 2002, and is scheduled to expire August 31, 2004, totals $249,988.

Question. Has the Village of Chickaloon submitted any periodic reports to the COPS office in Washington regarding the use of the grant funds and/or the effectiveness of the grant funds? If so, detail the results of said studies?

Answer. All COPS grantees, including the Village of Chickaloon, are required to submit programmatic progress reports and quarterly financial status reports. The COPS Office has not conducted an on site visit to the Village of Chickaloon, however COPS is aware of their program progress through the grantee's submission of programmatic progress reports and quarterly financial status reports.

Question. Has the DOJ conducted any studies regarding the effects of the COPS programs in Alaskan communities? If so, detail the results of said reports.

Answer. The COPS Office has not funded a study to evaluate the effect of COPS grants specifically in Alaskan communities. However, independent evaluations of COPS programs have been conducted by the University of Nebraska and the Urban Institute to evaluate the effect of COPS funding.

Question. Please submit a copy of each application received from Chickaloon or its Forestry Department.

Answer. The COPS Office has submitted a binder containing grant information received from the Village of Chickaloon and the Chickaloon Village Forestry Department.

Question. Have any official (or officials) of your Department visited Chickaloon?

Answer. No, the COPS Office has not conducted a formal site visit to the Village of Chickaloon.

Question. Did your office receive any letters of support for the applications of Chickaloon or the Department of Forestry pertaining to any applications?

Answer. The COPS Office did not receive any letters of support for the Chickaloon or the Department of Forestry applications.

Question. Please provide a copy of any report pertaining to Chickaloon received by your office from any official source Federal or state pertaining to Chickaloon's eligibility for these grants, or the need for the grants, or the use of these grants.

Answer. The need for federal funding is demonstrated in each of the eight applications requesting federal assistance. Under COPS statutory authority and programmatic guidelines, the Village of Chickaloon and the Chickaloon Village Forestry Department were eligible for the grant funding received from the COPS Office. The Village of Chickaloon is a federally recognized tribe according to the Department of the Interior Bureau of Indian Affairs.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

SAFE EXPLOSIVES ACT

Question. It is my understanding that the Safe Explosives Act, enacted last year, requires tighter security for explosives materials and increased security measures for purchasers and possessors of explosives and that this new law will assist the Bureau of Alcohol, Tobacco, and Firearms (ATF) in helping to ensure that terrorists and criminals do not have access to explosives.

In testimony before the House Appropriations Subcommittee on the Departments of Commerce, Justice and State, the Judiciary and Related Agencies on March 20, 2003, Acting ATF Director Bradley Buckles stated that the Safe Explosives Act represents a significant additional workload for ATF.

I understand that, currently, the initial processing and issuance or denial of explosive licenses or permits is handled out of ATF's National Licensing Center in Atlanta, Georgia, which also handles the processing of Federal Firearms Licenses and is, consequently, overburdened, as well as overcrowded.

In addition, Mr. Buckles stated in his testimony that the fiscal year 2004 budget request of $10,000,000 for the continuation of the implementation of the Safe Explosives Act "* * * would continue the implementation of the Act and specifically, would be used to create the National Explosives Licensing Center (NELC) in an existing ATF facility in Martinsburg, West Virginia * * *."

I fully support the establishment of the NELC at the ATF facility in Martinsburg, West Virginia.

Can you provide more details regarding the creation of the National Explosives Licensing Center (NELC) in West Virginia, including a detailed timeframe and cost estimate, including the costs of renovations needed to accommodate the NELC at the Martinsburg ATF facility, space and equipment needs, as well as the number of federal and contractor personnel that would be employed at the center?

Answer. The requirements of the Safe Explosives Act (SEA) became fully effective on May 24, 2003. In part, the SEA increased the number of entities required to obtain an explosives permit from ATF. Also, the SEA enhanced the license/permit qualification requirements to include the submission of additional documentation (fingerprints and photographs) of individuals responsible for explosives operations and additional identifying information for employee possessors of explosives. This additional information is needed so that ATF can conduct, with the assistance of the FBI, more thorough background checks of these individuals. This increase in responsibility resulted in a need for a National Explosives Licensing Center (NELC). Since ATF currently houses the National Tracing Center in West Virginia and space was available at this location, the proposal was made to also house the NELC at the same location in Martinsburg, West Virginia.

Renovations needed at the West Virginia site would not start any earlier than fiscal year 2004 and span into fiscal year 2005 due to other renovations taking place at the site. A minimal amount of funds (approximately $268,000) have been allocated in fiscal year 2003 for this purpose of filling two full time positions. Approximately $4 million is estimated to establish the NELC in West Virginia. The following is a breakdown of the $4 million:

Computer system development/enhancement	$545,000
15 contractors	771,680
16 full time positions	1,258,151

2 pc moves	144,000
Space buildout/renovations/furniture	[1] 1,000,000
Annualization of 2 positions funded 2003	268,246
Grand total	3,987,077

[1] Recently revised to reflect current costs.

The NELC in West Virginia would employ 18 federal employees and 15 contractors.

Question. Does the President's fiscal year 2004 budget request provide sufficient funding to establish a fully operational NELC? If not, what additional funds would be needed in fiscal year 2004 for this purpose?

Answer. The President's fiscal year 2004 budget request includes $10 million for implementing the provisions of the Safe Explosives Act. A portion of this funding will be used to establish the NELC in West Virginia.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

USA PATRIOT ACT

Question. Last month, when you testified before the Judiciary Committee, you were asked about a secret bill entitled the "Domestic Security Enhancement Act of 2003," which was leaked to the press as a sequel to the USA PATRIOT Act. You responded, "there has been no bill decided on, no proposal decided on." That was on March 4th. Three weeks later, a Department spokesperson told the Village Voice that the bill was coming soon, and that it "will be filling in the holes" of the PATRIOT Act.

When will the Department share a draft of this bill with Congress?

Answer. The primary mission of the Department of Justice is to protect the American people from the threat of terrorist attacks, while respecting the constitutional rights and liberties that the birthright of every American. Department staff constantly are thinking about new ways to detect and prevent terrorism. In that process, Department staff continually ask our prosecutors and investigators in the field what tools they need in the fight against terrorism. That process of considering ideas is continuing. It would be inappropriate to comment on the status of the internal deliberations or to speculate about any future decisions. However, if the Administration moves forward with such a proposal, the Department will consult with Members of Congress and their staff at an appropriate time. If and when a final proposal is approved by the Administration, we will work closely with Members of the Congress and their staff in their review of the proposal.

Question. What legislative "holes" can we expect this bill to address?

Answer. Please see the answer above.

PRIVACY ACT EXEMPTIONS

Question. Please provide a detailed description of each of the three databases affected by the new rule, i.e., the National Crime Information Center (NCIC), Central Records System (CRS), and National Center for the Analysis of Violent Crime (NCAVC), including the types of records they contain and where these records originate.

Answer. These databases are described in the following notices, published by the FBI in accordance with the Privacy Act, 5 U.S.C. 552a(e)(4)(B) and (C). Each notice details the organization and categorization of the individuals and information in the database.

—National Crime Information Center (NCIC), 64 Federal Register 52343 (Sept. 28, 1999);

—Central Records System (CRS), 63 Federal Register 8659 (Feb. 20, 1998) and 66 Federal Register 17200 (March 29, 2001);

—National Center for the Analysis of Violent Crime (NCAVC), 58 Federal Register 51887 (Oct. 5, 1993);

—Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records (JUSTICE/FBI–BRU), 66 Federal Register 33558 (June 22, 2001).

Each database is summarized below. Copies of the Privacy Act notices are enclosed.

The NCIC system of records provides a computerized database for ready access by a criminal justice agency making an inquiry. It includes information on fugitives, missing persons, members of violent criminal gangs, members of terrorist organiza-

tions, and other persons of interest to law enforcement. The database also includes records on stolen property, vehicles, and guns. The attached Privacy Act notice provides an exhaustive list of the available data. The NCIC system provides prompt disclosure of information in the system from other criminal justice agencies about crimes and criminals.

The CRS maintains the FBI's investigative, personnel, applicant, and administrative case files. This system consists of one numerical sequence of subject matter files and an alphabetical index to the case files. The case file classifications used by the FBI in its basic filing system pertain primarily to Federal violations over which the FBI has investigative jurisdiction. The case file classifications include personnel, applicant, and administrative matters to facilitate information retrieval. As a part of the NCAVC, the Violent Crime Apprehensive Program (VICAP) maintains investigation reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnapping, incendiary arson or bombing, rape, physical torture, sexual trauma, or evidence of violent forms of death. VICAP records include, but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements. The data in the system consists of homicide, missing person, unidentified dead, sexual assault, and other criminal cases. State and local law enforcement agencies enter their case information, consisting primarily of victim information, offender information, and a description of the event, into the national database. In addition to entering data, law enforcement personnel can retrieve their own cases, run reports using their own data, and request query against the national database.

Copies of the Privacy Act system notices listed above for the NCIC, CRS, and NCAVC are attached.

[From the Federal Register, Vol. 64, No. 187, September 28, 1999]

DEPARTMENT OF JUSTICE

[AAG/A Order No. 170–99]

Privacy Act of 1974; Notice of Modified Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A–130, notice is given that the Department of Justice, Federal Bureau of Investigation (FBI), is modifying the following system of records which was last published in the Federal Register on April 20, 1995 (60 FR 19775):

National Crime Information Center (NCIC), JUSTICE/FBI–001.

Also being modified is the following system of records which was last published in the Federal Register on February 20, 1996 (61 FR 6386):

Fingerprint Identification Records Systems (FIRS), JUSTICE/FBI–009.

The FBI has made revisions to these systems of records to update information about these systems, make editorial adjustments to existing language, confirm in clearer language the categories of agencies that participate in the exchange of records through these systems, and add three new routine uses for both systems. A brief description of these changes is provided below.

The two systems of records are being modified to update the location of the systems and denote the exact street address of the system manager. Both notices are also being revised to clarify existing language through minor editorial adjustments and to confirm in clearer language the authorized participation in these systems, and the availability of system records, to tribal, foreign, and international agencies, in addition to local, state, and federal agencies. Three routine uses have been added to allow disclosure of information maintained in these systems: To criminal justice agencies to conduct background checks under the National Instant Criminal Background Check System (NICS); to noncriminal justice government agencies, subject to appropriate controls, performing criminal justice dispatching functions or data processing/information services for a criminal justice dispatching functions or data processing/information services for a criminal justice agency; and to a private entity, subject to appropriate controls and under a specific agreement with an authorized governmental agency to perform an administration of criminal justice function (privatization). (In addition to the above changes, the FBI is currently reviewing additional changes to better describe new capabilities and practices, to be promulgated in a future notice.) Revisions to 28 CFR parts 0, 16, 20 and 50 which underlie these changes are being implemented in the Rules section of today's Federal Register.

The Privacy Act (5 U.S.C. 552a (e)(4) and (11)) requires that the public be given 30 days in which to comment on any new or intended uses of information in a system of records. In addition, OMB, which has oversight responsibilities under the

Act, requires that OMB and the Congress be given 40 days in which to review major changes to the system.

Therefore, the public, OMB, and the Congress are invited to submit written comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place, Washington, DC 20530.

In accordance with Privacy Act requirements (5 U.S.C. 552a(r)), the Department of Justice has provided a report on the modified system to OMB and the Congress.

Dated: July 27, 1999.

STEPHEN R. COLGATE,
Assistant Attorney General for Administration.

JUSTICE/FBI 001

System name:

National Crime Information Center (NCIC).

System location:

Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Categories of individuals covered by the system:

A. Wanted Persons:

1. Individuals for whom federal warrants are outstanding.

2. Individuals who have committed or have been identified with an offense which is classified as a felony or serious misdemeanor under the existing penal statutes of the jurisdiction originating the entry and for whom a felony or misdemeanor warrant has been issued with respect to the offense which was the basis of the entry. Probation and parole violators meeting the foregoing criteria.

3. A "Temporary Felony Want" may be entered when a law enforcement agency has need to take prompt action to establish a "want" entry for the apprehension of a person who has committed, or the officer has reasonable grounds to believe has committed, a felony and who may seek refuge by fleeing across jurisdictional boundaries and circumstances preclude the immediate procurement of a felony warrant. A "Temporary Felony Want" shall be specifically identified as such and subject to verification and support by a proper warrant within 48 hours following the entry of a temporary want. The agency originating the "Temporary Felony Want" shall be responsible for subsequent verification or re-entry of a permanent want.

4. Juveniles who have been adjudicated delinquent and who have escaped or absconded from custody, even though no arrest warrants were issued. Juveniles who have been charged with the commission of a delinquent act that would be a crime if committed by an adult, and who have fled from the state where the act was committed.

5. Individuals who have committed or have been identified with an offense committed in a foreign country, which would be a felony if committed in the United States, and for whom a warrant of arrest is outstanding and for which act an extradition treaty exists between the United States and that country.

6. Individuals who have committed or have been identified with an offense committed in Canada and for whom a Canada-Wide Warrant has been issued which meets the requirements of the Canada-U.S. Extradition Treaty, 18 U.S.C. 3184.

B. Individuals who have been charged with serious and/or significant offenses:

1. Individuals who have been fingerprinted and whose criminal history record information has been obtained.

2. Violent Felons: Persons with three or more convictions for a violent felony or serious drug offense as defined by 18 U.S.C. 924(e).

C. Missing Persons:

1. A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting that person or others to personal and immediate danger.

2. A person of any age who is missing under circumstances indicating that the disappearance was not voluntary.

3. A person of any age who is missing under circumstances indicating that that person's physical safety may be in danger.

4. A person of any age who is missing after a catastrophe.

5. A person who is missing and declared unemancipated as defined by the laws of the person's state of residence and does not meet any of the entry criteria set forth in 1–4 above.

D. Individuals designed by the U.S. Secret Service as posing a potential danger to the President and/or other authorized protectees.

E. Members of Violent Criminal Gangs: Individuals about whom investigation has developed sufficient information to establish membership in a particular violent criminal gang by either:

1. Self admission at the time of arrest or incarceration, or

2. Any two of the following criteria:

a. Identified as a gang member by a reliable informant;

b. Identified as a gang member by an informant whose information has been corroborated;

c. Frequents a gang's area, associates with known members, and/or affects gang dress, tattoos, or hand signals;

d. Has been arrested multiple times with known gang members for offenses consistent with gang activity; or

e. Self admission (other than at the time of arrest or incarceration).

F. Members of Terrorist Organizations: Individuals about whom investigation has developed sufficient information to establish membership in a particular terrorist organization using the same criteria listed above in paragraph E, items 1 and 2 a–e, as they apply to members of terrorist organizations rather than members of violent criminal gangs.

G. Unidentified Persons:

1. Any unidentified deceased person.

2. Any person who is living, but whose identify has not been ascertained (*e.g.*, infant, amnesia victim).

3. Any unidentified catastrophe victim.

4. Body parts when a body has been dismembered.

Categories of records in the system:

A. Stolen Vehicle File:

1. Stolen vehicles.

2. Vehicles wanted in conjunction with felonies or serious misdemeanors.

3. Stolen vehicle parts including certificates of origin or title.

B. Stolen License Plate File.

C. Stolen Boat File.

D. Stolen Gun File:

1. Stolen guns.

2. Recovered guns, when ownership of which has not been established.

E. Stolen Article File.

F. Securities File:

1. Serially numbered stolen, embezzled, or counterfeited securities.

2. "Securities" for present purposes of this file are currency (*e.g.*, bills, bank notes) and those documents or certificates which generally are considered to be evidence of debt (*e.g.*, bonds, debentures, notes) or ownership of property (*e.g.*, common stock, preferred stock), and documents which represent subscription rights, warrants and which are of the types traded in the securities exchanges in the United States, except for commodities futures. Also included are warehouse receipts, travelers checks and money orders.

G. Wanted Person File: Described in "Categories of individuals covered by the system: A. Wanted Persons, 1–4."

H. Foreign Fugitive File: Identification data regarding persons who are fugitives from foreign countries, who are described in "Categories of individuals covered by the system: A. Wanted Persons, 5 and 6."

I. Interstate Identification Index File: A cooperative federal-state program for the interstate exchange of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies: Described in "Categories of individuals covered by the system: B. 1."

J. Identification records regarding persons enrolled in the United States Marshals Service Witness Security Program who have been charged with serious and/or significant offenses. Described in "Categories of individuals covered by the system: B."

K. Bureau of Alcohol, Tobacco, and Firearms (BATF) Violent Felon File: Described in "Categories of individuals covered by the system: B.2."

L. Missing Person File: Described in "Categories of individuals covered by the system: C. Missing Persons."

M. U.S. Secret Service Protective File: Described in "Categories of individuals covered by the system: D."

N. Violent Criminal Gang File: A cooperative federal-state program for the interstate exchange of criminal gang information. For the purpose of this file, a "gang" is defined as a group of three or more persons with a common interest, bond, or

activity characterized by criminal delinquent conduct. Described in "Categories of individuals covered by the system: E. Members of Violent Criminal Gangs."

O. Terrorist File: A cooperative federal-state program for the exchange of information about terrorist organizations and individuals. For the purposes of this file, "terrorism" is defined as activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state or would be a criminal violation if committed within the jurisdiction of the United States or any states, which appear to be intended to:

1. Intimidate or coerce a civilian population,
2. Influence the policy of a government by intimidation or coercion, or
3. Affect the conduct of a government by crimes or kidnaping. Described in "Categories of individuals covered by the system: F. Members of Terrorist Organizations."

P. Unidentified Person File: Described in "Categories of individuals covered by the system: G. Unidentified Persons."

Authority for maintenance of the system:

The system is established and maintained in accordance with 28 U.S.C. 534; 28 CFR part 20; Department of Justice Appropriation Act, 1973, Pub. L. 92–544, 86 Stat. 1115; Securities Acts Amendment of 1975, Pub. L. 94–29, 89 Stat. 97; and 18 U.S.C. 924 (e). Exec. Order No. 10450, 3 CFR (1974).

Purpose(s):

The purpose for maintaining the NCIC system of records is to provide a computerized data base for ready access by a criminal justice agency making an inquiry and for prompt disclosure of information in the system from other criminal justice agencies about crimes and criminals. This information assists authorized agencies in criminal justice objectives, such as apprehending fugitives, locating missing persons, locating and returning stolen property, as well as in the protection of the law enforcement officers encountering the individuals described in the system.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Data in NCIC files is exchanged with and for the official use of authorized officials of the federal government, the states, cities, penal and other institutions, and certain foreign governments. The data is exchanged most frequently, but not exclusively, through NCIC lines to federal criminal justice agencies, criminal justice agencies in the 50 states, the District of Columbia, Puerto Rico, U.S. Possessions, U.S. Territories, and certain authorized foreign and international criminal justice agencies. Criminal history data is disseminated to non-criminal justice agencies for use in connection with licensing for local/state employment or other uses, but only where such dissemination is authorized by federal or state statute and approved by the Attorney General of the United States.

Data in NCIC files, other than the information described in "Categories of records in the system: I, J, K, M, N, and O" is disseminated to:

(1) A nongovernmental agency or subunit thereof which allocates a substantial part of its annual budget to the administration of criminal justice, whose regularly employed peace officers have full police powers pursuant to state law and have complied with the minimum employment standards of governmentally employed police officers as specified by state statute;

(2) A noncriminal justice governmental department of motor vehicle or driver's license registry established by a statute, which provides vehicle registration and driver record information to criminal justice agencies;

(3) A governmental regional dispatch center, established by a state statute, resolution, ordinance or Executive order, which provides communications services to criminal justice agencies; and

(4) The National Insurance Crime Bureau (NICB), a nongovernmental nonprofit agency which acts as a national clearinghouse for information on stolen vehicles and offers free assistance to law enforcement agencies concerning automobile thefts, identification and recovery of stolen vehicles.

Disclosures of information from this system, as described in (1) through (4) above, are for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, or similar criminal justice objectives.

Information on missing children, missing adults who were reported missing while children, and unidentified living and deceased persons may be disclosed to the National Center for Missing and Exploited Children (NCMEC). The NCMEC is a nongovernmental, nonprofit, federally funded corporation, serving as a national resource and technical assistance clearinghouse focusing on missing and exploited

children. Information is disclosed to NCMEC to assist it in its efforts to provide technical assistance and education to parents and local governments regarding the problems of missing and exploited children, and to operate a nationwide missing children hotline to permit members of the public to telephone the Center from anywhere in the United States with information about a missing child.

System records may be disclosed to criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS).

System records may be disclosed to noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies.

System records may be disclosed to private contractors pursuant to a specific agreement with a criminal justice agency or a noncriminal justice governmental agency performing criminal justice dispatching functions or data processing/information services for criminal justice agencies to provide services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

System records may be disclosed to a Member of Congress or staff acting on the member's behalf when the member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and,

System records may be disclosed to the National Archives and Records Administration and the General Services Administration for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information maintained in the NCIC system is stored electronically for use in a computer environment.

Retrievability:

On line access to data in NCIC is achieved by using the following search descriptors:

A. Stolen Vehicle File:
1. Vehicle identification number;
2. Owner applied number;
3. License plate number;
4. NCIC number (unique number assigned by NCIC computer to each NCIC record.)

B. Stolen License Plate File:
1. License plate number;
2. NCIC number.

C. Stolen Boat File:
1. Registration document number;
2. Hull serial number;
3. Owner applied number;
4. NCIC number.

D. Stolen Gun File:
1. Serial number of gun;
2. NCIC number.

E. Stolen Article File:
1. Serial number of article;
2. Owner applied number;
3. NCIC number.

F. Securities File:
1. Type, serial number, denomination of security, and issuer for other than U.S. Treasury issues and currency;
2. Type of security and name of owner of security;

3. Social Security number of owner of security (it is noted the requirements of the Privacy Act with regard to the solicitation of Social Security numbers have been brought to the attention of the members of the NCIC system);
4. NCIC number.
G. Wanted Person File:
1. Name and one of the following numerical identifiers:
a. Date of birth;
b. FBI number (number assigned by the Federal Bureau of Investigation to an arrest fingerprint record);
c. Social Security number (it is noted the requirements of the Privacy Act with regard to the solicitation of Social Security numbers have been brought to the attention of the members of the NCIC system);
d. Operator's license number (driver's number);
e. Miscellaneous identifying number (military number or number assigned by federal, state, or local authorities to an individual's record);
f. Originating agency case number;
2. Vehicle or license plate known to be in the possession of the wanted person;
3. NCIC number.
H. Foreign Fugitive File: See G, above.
I. Interstate Identification Index File:
1. Name, sex, race, and date of birth;
2. FBI number;
3. State identification number;
4. Social Security number;
5. Miscellaneous identifying number.
J. Witness Security Program File: See G, above.
K. BATF Violent Felon File: See G, above.
L. Missing Person file: See G, above, plus the age, sex, race, height and weight, eye and hair color of the missing person.
M. U.S. Secret Service Protective File: See G, above.
N. Violent Criminal Gang File: See G, above.
O. Terrorist File: See G, above.
P. Unidentified Person File: The age, sex, race, height and weight, eye and hair color of the unidentified person.

Safeguards:

Data stored in the NCIC is documented criminal justice agency information and access to that data is restricted to duly authorized users. The following security measures are the minimum to be adopted by all authorized users having access to the NCIC.

Interstate Identification Index (III) File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

1. Computer Center.
a. The authorized user's computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data.
b. Since personnel at these computer centers can have access to data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a state control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel.
c. All visitors to these computer centers must be accompanied by staff personnel at all times.
d. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals.
e. Computers having access to the NCIC must maintain a record of all transactions against the criminal history file in the same manner the NCIC computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data.
f. Each State Control terminal shall build its data system around a central computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

2. Communications:

a. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels.

b. Physical security of the lines/channels must be protected to guard against clandestine devices being utilized to intercept or inject system traffic.

3. Terminal Devices Having Access to NCIC:

a. All authorized users having terminal on this system must be required to physically place theses terminals in secure locations within the authorized agency.

b. The authorized users having terminals with access to criminal history must screen terminal operators and restrict access to the terminal to a minimum number of authorized employees.

c. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of the data.

d. All remote terminals on NCIS III will maintain a manual or automatedlog of computerized criminal history inquiries with notations of individuals making requests for records for a minimum of one year.

Retention and disposal:

Unless otherwise removed, records will be retained in files as follows:

A. Vehicle File:

a. Unrecovered stolen vehicle records (including snowmobile records) which do not contain vehicle identification numbers (VIN) or Owner-applied number (OAN) therein, will be purged from file 90 days after date of entry. Unrecovered stolen vehicle records (including snowmobile records) which contain VINS or OANs will remain in file for the year of entry plus 4.

b. Unrecovered vehicles wanted in conjunction with a felony will remain in file for 90 days after entry. In the event a longer retention period is desired, the vehicle must be reentered.

c. Unrecovered stolen VIN plates, certificates of origin or title, and serially numbered stolen vehicle engines or transmissions will remain in file for the year of entry plus 4. (Job No. NC1–65–82–4, Part E. 13 h.(12)

B. License Plate File: Unrecovered stolen license plates will remain in file for one year after the end of the plate's expiration year as shown in the record. (Job no. NC1–65–82–4, Part E. 13 h. (2))

C. Boat file: Unrecovered stolen boat records, which contain a hull serial number or an OAN, will be retained in file for the balance of the year entered plus 4. Unrecovered stolen boat records which do not contain a hull serial number or an OAN will be purged from file 90 days after date of entry. (Job No. NC1–65–82–4, Part E. 13 h. (6))

D. Gun File:

a. Unrecovered weapons will be retained in file for an indefinite period until action is taken by the originating agency to clear the record.

b. Weapons entered in file as "recovered" weapons will remain in file for the balance of the year entered plus 2. (Job No. NC1–65–82–4, Part E. 13 h. (3))

E. Article File: Unrecovered stolen articles will be retained for the balance of the year entered plus one year. (Job No. NC1–65–82–4, Part E. 13 h. (4))

F. Securities File: Unrecovered stolen, embezzled or counterfeited securities will be retained for the balance of the year entered plus 4, except for travelers checks and money orders, which will be retained for the balance of the year entered plus 2. (Job No. NC1–65–82–4, Part E. 13 h. (5))

G. Wanted Person File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record (except "Temporary Felony Wants", which will be automatically removed from the file after 48 hours". (Job No. NC1–65–87–114, Part E. 13 h. (7))

H. Foreign Fugitive File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record.

I. Interstate Identification Index File: When an individual reaches age of 99. (Job No. N1–65–95–03)

J. Witness Security Program File: Will remain in file until action is taken by the U.S. Marshals Service to clear or cancel the records.

K. BATF Violent Felon File: Will remain in file until action is taken by the BATF to clear or cancel the records.

L. Missing Persons File: Will remain in the file until the individual is located or action is taken by the originating agency to clear the record. (Job No. NC1–65–87–11, Part E 13h (8))

M.U.S. Secret Service Protective File: Will be retained until names are removed by the U.S. Secret Service.

N. Violent Criminal Gang File: Records will be subject to mandatory purge if inactive for five years.

O. Terrorist File: Records will be subject to mandatory purge if inactive for five years.

P. Unidentified Person File: Will be retained for the remainder of the year of entry plus 9.

System manager(s) and address:

Director, Federal Bureau of investigation, J. Edgar Hoover Building, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001.

Notification procedure:

Same as the above.

Record access procedures:

It is noted the Attorney General has exempted this system from the access and contest procedures of the Privacy Act. However, the following alternative procedures are available to a requester. The procedures by which an individual may obtain a copy of his or her criminal history record from a state or local criminal justice agency are detailed in 28 CFR 20.34 appendix and are essentially as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the III System, it is available to that individual for review, upon presentation of appropriate identification and in accordance with applicable state and federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that the individual is who the individual purports to be. The record on file will then be verified through comparison of fingerprints.

Procedure:

1. All requests for review must be made by the subject of the record through a law enforcement agency which has access to the III System. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry through NCIC to obtain the III System record or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Clarksburg, West Virginia, by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate the prints to an existing record by having the identification prints compared with those already on file in the FBI, or, possibly, in the state's central identification agency.

The procedures by which an individual may obtain a copy of his or her criminal history record from the FBI are set forth in 28 CFR 16.30–16.34.

Contesting record procedures:

The Attorney General has exempted this system from the contest procedures of the Privacy Act. Under the alternative procedures described above under "Record Access Procedures," the subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in subject's record or provide the information needed to make the record complete. The subject of a record may also direct his/her challenge as to the accuracy or completeness of any entry on his/her record to the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.

Record source categories:

Information contained in the NCIC system is obtained from local, state, tribal, federal, foreign, and international criminal justice agencies.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsection (c)(3) and (4); (d); (e)(1), (2), and (3); (e)(4)(G) and (H), (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(3). Rules have been promulgated in accordance with the

requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[From the Federal Register, Vol. 63, No. 34, February 20, 1998]

DEPARTMENT OF JUSTICE

[AAG/A Order No. 146–97]

Privacy Act of 1974; Notice of Modified Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department proposes to modify the following Privacy Act systems of records:

Antitrust Information Management System (AMIS)—Matter Report, Justice/ATR–006 (previously published on October 17, 1988 at 53 FR 40502)

Central Civil Rights Division Index File and Associated Records, Justice/CRT–001 (previously published on May 17, 1993 at 58 FR 28896)

Central Criminal Division Index File and Associated Records, Justice/CRM–001 (previously published on December 11, 1987 at 53 FR 47186)

Civil Division Case File System, Justice/CIV–001 (previously published on October 17, 1988 at 53 FR 40504)

Civil Case Files, Justice/USA–005 (previously published on January 22, 1988 at 53 FR 1864)

Criminal Case Files, Justice/USA–007 (previously published on January 22, 1988 at 53 FR 1861)

FBI Central Records System, Justice/FBI–002 (previously published on October 5, 1993 at 58 FR 51858)

Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases, Justice/TAX–001 (previously published on September 30, 1977 at 42 FR 53389)

Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases, Justice/TAX–002 (previously published on September 30, 1977 at 42 FR 53390)

The Department proposes to add a new routine use disclosure to all of the above-named systems of records. The routine use will permit disclosure of health care-related information obtained during health-care related investigations. In addition, the Department proposes to add an additional routine use disclosure to the Central Civil Rights Division Index File and Associated Records system to permit the disclosure of information regarding the progress and results of investigations to the complainants and/or victims involved. The proposed disclosures have been italicized for the reader's convenience. The modified systems of records are printed below.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the new routine uses.

Therefore, please submit any comments by March 23, 1998. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: December 31, 1997.

STEPHEN R. COLGATE,
Assistant Attorney General for Administration.

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JUSTICE/FBI–002

System name:

The FBI Central Records System.

System location:

a. Federal Bureau of Investigation, J. Edgar Hoover Building, 10th and Pennsylvania Avenue, NW, Washington DC 20535; b. 56 field divisions (see Appendix); c. 16 Legal Attache (see Appendix).

Categories of individuals covered by the system:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to subjects, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or other personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, and contacts with other agencies, businesses, institutions, clubs; the public and the news media.

e. Individuals associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto. (All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "CATEGORIES OF RECORDS IN THE SYSTEM." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files.)

Categories of records in the system:

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

The 281 classifications used by the FBI in its basic filing system pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the 281 classifications are personnel, applicant, and administrative matters to facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters: FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.

2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958 962; Title 22, United States Code, Sections 1934 and 401.

3. Overthrow or Destruction of the Government. Title 18, United States Code, Section 2385.

4. National Firearms Act, Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801–5812; Title 18, United States Code, Sections 921–928; Title 18, United States Code, Sections 1201–1203.

5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.

6. Interstate Transportation of Strikebreakers. Title 18, United States Code, Section 1231.

7. Kidnapping. Title 28, United States Code, Sections 1201 and 1202.

8. Migratory Bird Act. Title 18, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.

9. Extortion. Title 18, United States Code, Sections 876, 877, 875, and 873.

10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.

11. Tax (Other than Income). This classification covers complaints concerning violations of Internal Revenue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Service.

12. Narcotics. This classification covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the headquarters of the Drug Enforcement Administration (DEA), or the nearest district office of DEA.

13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles of An Army Camp, 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, selling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription Act) were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jurisdiction in the detection and prosecution of cases within the purview of that Section.

14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.

15. Theft from Interest Shipment. Title 18, United States Code, Section 859; Title 18, United States Code, Section 660; Title 18 United States Code, Section 2117.

16. Violations of Federal Injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".

17. Fraud Against the Government, Department of Veterans Affairs, Department of Veterans Affairs Matters. Title 18, United States Code, Section 287, 289, 290, 371, or 1001, and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.

18. May Act. Title 18, United States Code, Section 1384.

19. Censorship Matter (obsolete). Pub. L. 77th Congress.

20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale. Shipment of Interstate Commerce, Section 5, U.S. Grain Standards Act.

21. Food and Drugs. This classification covers complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act; Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration of the field component of that Agency.

22. National Motor Vehicle Traffic Act, 1922–27 (obsolete). Subjects were possible violators of the National Motor Vehicle Theft Act, Automobiles seized by Prohibitions Agents.

23. Prohibition. This classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.

24. Profiteering 1920–42 (obsolete). Subjects are possible violators of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.

25. Selective Service Act; Selective Training and Service Act. Title 50, United States Code, Section 462; Title 50, United States Code, Section 459.

26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircraft. Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.

27. Patent Matter. Title 35, United States Code, Sections 104 and 105.

28. Copyright Matter. Title 17, United States Code, Sections 104 and 105.

29. Bank Fraud and Embezzlement. Title 18, United States Code, Sections 212, 213, 215, 334, 655–657, 1004–1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).

30. Interstate Quarantine Law, 1922–25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals, Act of February 2, 1903. Referrals were made to Public Health Service and the Department of Agriculture.

31. White Slave Traffic Act. Title 18, United States Code, Section 2421–2424.

32. Identification (Fingerprint) Matters. This classification covers general information concerning Identification (fingerprint) matters.

33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.

34. Violation of Lacy Act. 1922–43. (obsolete) Unlawful Transportation and shipment of black bass and fur seal skins.

35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.

36. Mail Fraud. Title 18, United States Code, Section 1341.

37. False Claims Against the Government. 1921–22 (obsolete). Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.

38. Application for Pardon to Restore Civil Rights. 1921–35 (obsolete). Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.

39. Falsely Claiming Citizenship (obsolete). Title 18, United States Code, Sections 911 and 1015(a)(b).

40. Passport and Visa Matter. Title 18, United States Code, Sections 1451–1546.

41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacturer, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture, Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States, Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; Title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (includes stowaways on boats and aircraft). Title 18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government (includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies), Anti-Kickback Statute; Department Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; Unemployment Compensation Statutes; Economic Opportunity Act, Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Sections 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearest Postal Inspector.

49. Bankruptcy Fraud. Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, Sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum 781, dated November 9, 1972. These investigations can be conducted only upon such request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, United States Code, Section 1632.

53. Excess Profits on Wool. 1918 (obsolete). Subjects possible violators of Government Control of Wool Clip Act of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and secu-

rities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, and 591–607; Title 42, United States Code, Section 1973; Title 26, United States Code, Sections 9012 and 9042; Title 2, United States Code, Sections 431–437, 439, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89—77th Congress.

58. Corruption of Federal Public Officials. Title 18, United States Code, Sections 201–203, 205–211; Public Law 89–4 and 89–136.

59. World War Adjusted Compensation Act of 1924–44 (obsolete). Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust, Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or Misprision of Treason. Title 18, United States Code, Sections 2381, 2382, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States Code, Sections 321, 332, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the public which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI and folders for current and former employees.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becoming a State.

69. Contempt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code. Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act, Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations: Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code. Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and request for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner. Escape and Rescue; Probation Violator, Parole Violator, Mandatory, Release Violator. Title 18, United States Code, Sections 751–757, 1072; Title 18, United States Code. Sections 3651–3656; and Title 18, United States Code. Sections 4202–4207, 5037, and 4161–4166.

77. Applicants (Special Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Division's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, Corporations, the news media and other outside organizations.

81. Gold Hoarding. 1933–45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service.

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigations of cases pending in the Court of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12, United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1906, 1907, and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or Confinement; Unlawful Flight to Avoid Giving Testimony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, Crimes Against Family Members, Congressional Assassination Statute, Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary, Bank Larceny; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeer Enterprise Investigations. Title 18, United States Code. Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act. Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611–621; Title 50, United States Code, Sections 851–857.

98. Sabotage. Title 18, United States Code, Sections 2151–2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program wherein the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domestic security field, e.g., Smith Act violations.

101. Hatch Act (obsolete). Public Law 252, 76th Congress.

102. Voorhis Act, Title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock, Title 18, United States Code, Sections 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Public Law 625, 77th Congress, Sections 115–119.

105. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees, 1944–55 (obsolete). Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigation concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S. Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by county.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolete). Title 50, United States Code, Sections 1 through 38. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146–3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011–2281; Public Law 93–438.

118. Applicant, Intelligence Agency (obsolete). This classification covers applicant background investigations conducted of persons under consideration for employment by the Central Intelligence Group.

119. Federal Regulation of Lobbying Act. Title 2, United States Code, ections 261–270.

120. Federal Tort Claims Act, Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolete). Executive Order 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176–178 and 186.

123. Section inquiry, State Department, Voice of America (U.S. Information Center) (Public Law 402, 80th Congress) (obsolete). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program Administration, formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D. Agency for International Development (obsolete). This classification covers security and loyalty investigation of personnel employed by or under consideration for employment with the European Recovery Program, Public Law 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act Title 45, United States Code, Sections 151–163 and 181–188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board.

127. Sensitive Positions in the United States Government, Public Law 266 (obsolete). Public Law 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individ-

uals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Public Law 886, 80th Congress.

130. Special Inquiry. Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741–752 and 781–799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act, Applicant (obsolete). Public Law 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force (obsolete). This classification covered contacts with individuals with the aim to develop information useful to protect bases of the Strategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contracts with American Legion offices.

137. Informants. Other than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a continuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Office of Personnel Management wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, Section 501; Title 18, United States Code, Sections 2510–2513.

140. Security of Government Employees; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United States Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United States Code, Section 1.

143. Interstate Transport of Gambling Devices. Title 15, United States Code, Sections 1171 through 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United States Code, Section 1301.

145. Interstate Transportation of Obscene Materials. Title 18, United States Code, Sections 1462, 1464, and 1465.

146. Interstate Transportation of Prison-Made Goods. Title 18, United States Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United States Code, Sections 657, 709, 1006, and 1010; Title 12, United States Code, Sections 1709 and 1715.

148. Interstate Transportation of Fireworks. Title 18, United States Code, Section 836.

149. Destruction of Aircraft or Motor Vehicles. Title 18, United States Code, Section 31–35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space Administration; National Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrals from the Office of Personnel Management where an allegation has been received regarding an applicant's loyalty to the U.S. Government. These referrals refer to applicants from Peace Corps; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the International Communications Agency.

152. Switchblade Knife Act. Title 15, United States Code, Sections 1241–1244.

153. Automobile Information Disclosure Act. Title 15, United States Code, Sections 1231–1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code, Sections 1211–1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021–1029, 1111, 1131, and 1141; Title 18, United States Code, Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsibility is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter) (obsolete). Public Law 86–257, Section 504.

159. Labor-Management Reporting and Disclosure Act of 1959 (Investigative Matter). Title 29, United States Code, Sections 501, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18, United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House. Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Transmission of Wagering Information. Title 18, United States Code, Section 1065.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernalia. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Public Law 87–637.

170. Extremist Informants (obsolete). This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88–201, 80th Congress.

172. Sports Bribery. Title 18, United States Code, Section 244.

173. Public Accommodations. Civil Rights Act of 1964 Public Facilities; Civil Rights Act of 1964 Public Education; Civil Rights Act of 1964 Employment; Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code, Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601–3619 and 3631.

178. Interstate Obscene or Harassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Sections 891–896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act. Title 15, United States Code, Section 1611.

182. Illegal Gambling Business: Illegal Gambling Business, Obstruction; Illegal Gambling Business Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations. Title 18, United States Code, Sections 1961–1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duty constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117, and 1201.

186. Real Estate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, United States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.
188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Action of 1968.
189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.
190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information—Privacy Acts.
191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements' efforts to create false identities.
192. Hobbs Act—Financial Institutions; Commercial Institutions Armored Carrier. Title 18, United States Code, Section 1951.
193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; Title 47, United States Code, Section 506.
194. Hobbs Act—Corruption of Public Officials. Title 18, United States Code, Section 1951.
195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.
196. Fraud by Wire. Title 18, United States Code, Section 1343.
197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.
198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.
199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.
200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.
201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.
202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.
203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.
204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.
205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.
206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (supra) for a statutory authority for this and the four following classifications.)
207. Fraud Against the Government—Environmental Protection Agency, National Aeronautics and Space Administration, Department of Energy, Department of Transportation.
208. Fraud Against the Government—General Services Administration.
209. Fraud Against the Government—Department of Health and Human Services (Formerly Department of Health, Education, and Welfare).
210. Fraud Against the Government—Department of Labor.
211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591–596).
212. Foreign Counterintelligence—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.
213. Fraud Against the Government—Department of Education.
214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code, Section 1997).
215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.
216. thru 229. Foreign Counterintelligence Matters. (Same authority as 215.)
230. thru 240. FBI Training Matters.
241. DEA Applicant Investigations.
242. Automation Matters.
243. Intelligence Identities Protection Act of 1982.
244. Hostage Rescue Team.
245. Drug Investigative Task Force.

246 thru 248. Foreign Counterintelligence Matters. (Same authority as 215.)

249. Environmental Crimes—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1395).

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, section 2118).

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy; Quantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738—Mailing Private Identification Documents Without a Disclaimer).

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365) relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of State and Corporate Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of what is loosely interpreted as securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refrain from doing any act.

257. Trademark Counterfeiting Act (Title 18, United States Code, section 2320) covers the international trafficking in goods which bear a counterfeited trademark.

258. Credit Card Fraud Act of 1984 (Title 18, United States Code, section 1029) covers fraud and related activities in connection with access devices (credit and debit cards).

259. Security Clearance Investigations Program. (Same authority as 215.)

260. Industrial Security Program. (Same authority as 215.)

261. Security Officer Matters. (Same authority as 215.)

262. Overseas Homicide (Attempted Homicide—International Terrorism). Title 18, United States Code, Section 2331.

263. Office of Professional Responsibility Matters.

264. Computer Fraud and Abuse Act of 1986. Electronic Communications Privacy Act of 1986. Title 18, United States Code, Section 1030; Title 18, United States Code, Section 2701.

265. Acts of Terrorism in the United States—International Terrorist. (Followed by predicate offense from other classification.)

266. Acts of Terrorism in the United States—Domestic Terrorist. (Followed by predicate offense from other classification.)

267. Drug-Related Homicide. Title 21, U.S. Code, Section 848(e).

268. Engineering Technical Matters—FCI.

269. Engineering Technical Matters—Non-FCI.

270. Cooperative Witnesses.

271. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

272. Money Laundering. Title 18, U.S. Code, Sections 1956 and 1957.

273. Adoptive Forfeiture Matter—Drug. Forfeiture based on seizure of property by state, local or other Federal authority.

274. Adoptive Forfeiture Matter—Organized Crime. (Same explanation as 273.)

275. Adoptive Forfeiture Matter—White Collar Crime. (Same explanation as 273.)

276. Adoptive Forfeiture Matter—Violent Crime/Major Offenders Program. (Same explanation as 273.)

277. Adoptive Forfeiture Matter—Counterterrorism Program. (Same explanation as 273.)

278. Presidents Intelligence Oversight Board. Executive Order 12334.

279. Biological Weapons Anti-Terrorism Act of 1989. (Title 18, U.S. Code, Sections 175–179).

280. Equal Employment Opportunity Investigations.

281. Organized Crime Drug Investigations. Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, *e.g.,* pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these lists is necessitated by the needs of the Division to have immediate access to pertinent information duplicative of data found in the central records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Division. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(1) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but suspected of involvement in a particular criminal activity, for example, bank surveillance photographs:

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime:

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1950, December 15, 1953, and February 18, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants:

(5) Special indices duplicative of the central indices used to access the Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilitates access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when necessary to collate, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. It should be noted that this computerized investigative information, which is extracted from the main files or other commercial or governmental sources, is only maintained as necessary to support the FBI's investigative activities. Information from these internal computerized subsystems of the "Central Records System" is not accessed by any other agency. All disclosures of computerized information are made in printed form or other appropriate format, in accordance with the routine uses which are set forth below and in compliance with applicable security requirements.

Records also are maintained on a temporary basis relevant to the FBI's domestic police cooperating program, where assistance in obtaining information is provided to state and local police agencies. Also, personnel type information, dealing with such matters as attendance and production and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained, i.e., FBI Headquarters and/or Field Office. The number of field offices which maintain these indices is also indicated. The list indicates those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this list. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.)

1. Administrative Index (ADEX). Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, it was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. This index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978. This list is inactive at FBI Headquarters and 29 Field Offices.

2. Anonymous Letter File. Consists of photographs of anonymous communications and extortionate credit transactions, kidnapping, extortion and threatening letters. It is active at FBI Headquarters.

3. Associates of DEA Class I Narcotics Violators Listing. Consists of a computer listing of individuals whom DEA has identified as associates of Class I Narcotics Violators. It is active at FBI Headquarters and 56 Field Offices.

4. Background Investigation Index—Department of Justice. Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration of employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judges, or a high level Department position. It is active at FBI Headquarters.

5. Background Investigation Index—White House, Other Executive Agencies, and Congress. Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress. Active at FBI Headquarters.

6. Bank Fraud and Embezzlement Index. Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid. It is active in one Field Office.

7. Bank Robbery Album. Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices it will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office). Active in 47 Field Offices.

8. Bank Robbery Nickname Index. Consists of nicknames used by known bank robbers. The index cards on each would contain the real name and method of operation and are filed in alphabetical order. Active in one Field Office.

9. Bank Robbery Note File. Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The role is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects. Active at FBI Headquarters.

10. Bank Robbery Suspect Index. Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of a bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album. Active in 33 Field Offices.

11. Car Ring Case Photo Album. Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid. Active in one Field Office.

12. Car Ring Case Photo Album and Index. Consists of photos of subjects and suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fraudulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitious. But the photo album and card indexes are used as an investigative aid. Active in one Field Office.

13. Car Ring Case Toll Call Index. Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probable cause for a court-approved wiretap. Active in two Field Offices.

14. Car Ring Theft Working Index. Contains cards on individuals involved in car ring theft cases on which the FBI Laboratory is doing examination work. Active at FBI Headquarters.

15. Cartage Album. Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may request the offense. It is used in investigating the above violations. Active in three Field Offices.

16. Channelizing Index. Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of information reports to appropriate files. Active in nine Field Offices.

17. Check Circular File. Consists of fliers numerically in a control file on fugitives who are notorious fraudulent check passers and who are engaged in a continuing operation of passing checks. The fliers, which include the subject's name, photo, a summary of the subject's method of operation and other identifying data, are used to alert other FBI field offices and business establishments which may be the victims of bad checks.

18. Computerized Telephone Number File (CTNF) Intelligence. Consists of a computer listing of telephone numbers (and) subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoena, are matched with the telephone numbers on file to determine connections or associations. Active at FBI Headquarters.

19. Con Man Index. Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles. Active in four Field Offices.

20. Confidence Game (Flim Flam) Album. Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid. Active in one Field Office.

21. Copyright Matters Index. Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters. Active in one Field Office.

22. Criminal Intelligence Index. Consists of cards with name and file number of individuals who have become the subject of an antiracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is active in two Field Offices and one Resident Agency.

23. Criminal Informant Index. Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area. Active at FBI Headquarters.

24. DEA Class 1 Narcotics Violators Listing. Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.

25. Deserter Index. Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid. Active in four Field Offices.

26. False Identities Index. Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations. Inactive at FBI Headquarters.

27. False Identities List. Consists of a listing of names of deceased individuals whose birth certificates have been obtained after the person's death, and thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes. Inactive at 31 Field Offices.

28. False Identity Photo Album. Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities. Inactive in two Field Offices.

29. FBI/Inspector General (IG) Case Pointer System (FICPS). Consists of a computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity. Active at FBI Headquarters.

30. FBI Wanted Persons Index. Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives. Active at FBI Headquarters.

31. Foreign Counterintelligence (FCI). Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid on the FCI Asset program. Active at FBI Headquarters.

32. Fraud Against the Government Index. Consists of individuals who have been the subject of a "fraud against the Government"investigation. It is used as an investigative aid. Active in one Field Office.

33. Fugitive Bank Robbers File. Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location. Active at FBI Headquarters and in 43 Field Offices.

34. General Security Index. Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes. Active in one Field Office.

35. Hoodlum License Plate Index. Consists of cards with the license plate numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable is maintained by a resident agency. Active in three Field Offices.

36. Identification Order Fugitive Flier File. Consists of fliers numerically in a control file. When immediate leads have been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description. Active at FBI Headquarters and in 49 Field Offices.

37. Informant Index. Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military basis (discontinued), and potential criminal informants. Active in 56 Field Offices.

38. Informants in Other Field Offices, Index of. Consist of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that would also be included on the index card. Active in 15 Field Offices.

39. Interstate Transportation of Stolen Aircraft Photo Album. Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigative aid. Active in one Field Office.

40. IRS Wanted List. Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS. Active in 11 Field Offices.

41. Kidnapping Book. Consists of data, filed chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases. Active at FBI Headquarters and inactive in four Field Offices.

42. Known Check Passers Album. Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid. Active in four Field Offices.

43. Known Gambler Index. Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was destroyed and thus is not included in the total. Active in five Field Offices.

44. La Cosa Nostra (LCN) Membership Index. Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. The index is used solely by FBI agents for assistance in investigating organized crime matters. Active at FBI Headquarters and 55 Field Offices.

45. Leased Line Letter Request Index. Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid. Active at FBI Headquarters.

46. Mail Cover Index. Consists of cards containing a record of all mail covers conducted on individuals and group since about January 1973. It is used for reference in preparing mail cover requests. Active at FBIHQ.

47. Military Deserter Index. Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is used as an administrative aid. Active at FBI Headquarters.

48. National Bank Robbery Album. Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying

the subject, FBIHQ sends a flier to the field offices to help identify the subject. Active at FBI Headquarters and in 42 Field Offices.

49. National Fraudulent Check File. Contains photographs of the signature on stolen and counterfeit checks. It is filed alphabetically but there is no way of knowing the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect. Active at FBI Headquarters.

50. National Security Electronic Surveillance Card File. Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconsented physical entries in national security cases, previously toll billings, mail covers and leased lines. The inactive section also contains cards Attorney General approvals and denials for warrantless electronic surveillance in the national security cases. Inactive at FBI Headquarters.

51. Night Depository Trap Index. Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects. Active at FBI Headquarters.

52. Organized Crime Photo Album. Consists of photos and background information on individuals involved in organized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction. Active in 13 Field Offices.

53. Photospread Identification Elimination File. Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes. Active in 14 Field Offices.

54. Prostitute Photo Album. Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act. Active in four Field Offices.

55. Royal Canadian Mounted Policy (RCMP) Wanted Circular File. Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located. Active in 17 Field Offices.

56. Security Informant Index. Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area. Active at FBI Headquarters.

57. Security Subjects Control Index. Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source. Active in one Field Office.

58. Security Telephone Number Index. Contains cards with telephone subscriber information subpoenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security investigations. Active in one Field Office.

59. Selective Service Violators Index. Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act. Active at FBI Headquarters.

60. Sources of Information Index. Consists of cards on individuals and organizations such as banks, motels, local government that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources. Active in 10 Field Offices.

61. Special Services Index. Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility. Active in 28 Field Offices.

62. Stolen Checks and Fraud by Wire Index. Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid. Active in one Field Office.

63. Stop Notices Index. Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered. Active in 43 Field Offices.

64. Surveillance Locator Index. Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations. Active in two Field Offices.

65. Telephone Number Index—Gamblers. Contains information on persons identified usually as a result of a subpoena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards are filed by the last three digits of the telephone number. The index is used in gambling investigations. Active in two Field Offices.

66. Telephone Subscriber and Toll Records Check Index. Contains cards with information on persons identified as the result of a formal request or subpoena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, billing party's identity, subscriber's address, date of request from the telephone company, and file number. Active in one Field Office.

67. Thieves, Couriers and Fences Photo Index. Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid. Active in four Field Offices.

68. Toll Record Request Index. Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed. Active at FBIHQ.

69. Top Burglar Album. Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid. Active in four Field Offices.

70. Top Echelon Criminal Informer Program (TECIP) Index. Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes. Active at FBI Headquarters.

71. Top Ten Program File. Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive of the top 10 usually assures a greater national news coverage as well as nation-wide circulation of the flier. Active at FBI Headquarters and in 44 Field Offices.

72. Top Thief Program Index. Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid. Active in 27 Field Offices.

73. Truck Hijack Photo Album. Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases. Active in four Field Offices.

74. Truck Thief Suspect Photo Album. Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid. Active in one Field Office.

75. Traveling Criminal Photo Album. Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid. Active in one Field Office.

76. Veterans Administrative (VA)/Federal Housing Administration (FHA) Matters Index. Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used as an investigative aid. Active in one Field Office.

77. Wanted Fliers File. Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice. Active at FBI Headquarters and in 46 Field Offices.

78. Wheeldex. Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations. Active in one Field Office.

79. White House Special Index. Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight timeframe usually required. Active at FBI Headquarters.

80. Witness Protection Program Index. Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshals Service when information related to the safety of a protected witness comes to the FBI's attention. Active at FBI Headquarters.

Authority for maintenance of the system:

Federal Records Act of 1950, Title 44, United States Code, chapter 31, section 3101; and title 36, Code of Federal Regulations, chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government, title 28, United States Code, section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge. Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal, probation and parole, and the judiciary, where access is directly related to a law enforcement function of the recipient agency, e.g., in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enforcement employee or concerning a victim's compensation under a state statute. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any Federal, State, local, tribal, foreign, joint, international, or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information. Information in this system may be disclosed as a routine use in a proceeding before a court of adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is au-

thorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property. This would include releases of information in accordance with 28 CFR 50.2.

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, or the trademark statutes. Titles 15 and 17, U.S. Code, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles. The FBI has received inquiries from private citizens and Congressional offices on behalf of constituents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

Information contained in this system, may be made available to a Member of Congress or staff acting upon the member's behalf when the member of staff requests the information in behalf of and at the request of the individual who is the subject of the record.

A record from this system of records may be disclosed as a routine use to the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

Retrievability:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. Index records, or pointers to specific FBI files, are created on all manner of subject matters, but the predominant type record is the name index record. It should be noted the FBI does not index all individuals who furnish information or all names developed during the course of an investigation. Only that information considered pertinent, relevant, or essential for future retrieval, is indexed. In certain major cases, individuals interviewed may be indexed to facilitate the administration of the investigation. The FBI has automated that portion of its index containing the most recent information—15 years for criminal related matters and 30 years for intelligence and other type matters.

Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. Searches against the automated records are accomplished on a "batch off-line" basis for certain submitting agencies where the name search requests conform to FBI specified formats and also in an "on-line" mode with the use of video display terminals for other requests. The FBI will not permit any organization, public or private, outside the FBI to have direct access to the FBI indices system. All searches against the indices data base will be performed on site within FBI space by FBI personnel with the assistance of the automated procedures, where feasible. Automation of the various FBI field office indices was completed in 1989. This automation initiative has been on a "day-one" basis. This indices system points to specific files within a given field office. Additionally, certain complicated investigative matters may be supported by specialized computer systems or by individual microcomputers. Indices created in these environments are maintained as part of the particular computer system and accessible only through the system or through printed listings of the indices. Full text retrieval is used in a limited number of cases as an investigative technique. It is not part of the normal search process and is not used as a substitute for the General Index or computer indices mentioned above.

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to provide full accountability of FBI files and thus preserve the integrity of the filing system.

Safeguards:

Records are maintained in a restricted area and are accessed only by agency personnel. All FBI employees receive a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the jobs. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field offices involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, DC, and this computerized data is also transmitted in encrypted form.

Retention and disposal:

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. section 2104.

FBI record disposition programs relevant to this System are conducted in accordance with the FBI Records Retention Plan and Disposition Schedule which was approved by the Archivist of the United States and the U.S. District Court, District of Columbia. Investigative, applicant and administrative records which meet the destruction criteria will be destroyed after 20 or 30 years at FBI Headquarters and after 1, 5, 10 or 20 years in FBI Field Offices. Historical records will be transferred to the National Archives after 30 or 50 years, contingent upon investigative and administrative needs. The administrative indices and listings described within this System were appraised separately and disposition authority established. (Job No. NC1–65–82–4 and amendments)

System manager(s) and address:

Director, Federal Bureau of Investigation, Washington, DC 20535.

Notification procedure:

Same as above.

Record access procedures:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the

request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document of its file number. The requester will also provide a return address for transmitting the information. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, Washington, DC 20535. Requests for information maintained at FBI field divisions or Legal Attaches must be made separately and addressed to the specific field division or Legal Attache listed in the appendix to this system notice.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, DC 20535, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(8) (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e).

APPENDIX OF FIELD DIVISIONS AND LEGAL ATTACHES FOR THE FEDERAL BUREAU OF INVESTIGATION FIELD DIVISIONS; JUSTICE/FBI–999

5th Floor, 445 Broadway, Albany, NY 12201.
POB 25186, Albuquerque, NM 87125.
POB 100560, Anchorage, AK 99510.
POB 1683, Atlanta, GA 30370.
7142 Ambassador Road, Baltimore, MD 21207.
2122 Building, Birmingham, AL 35203.
One Center Plaza, Suite 600, Boston, MA 02108.
111 West Huron Street, Buffalo, NY 14202.
6010 Kenley Lane, Charlotte, NC 28217.
219 S. Dearborn St., Chicago, IL 60604.
POB 1277, Cincinnati, OH 45201.
1240 E. 9th St., Cleveland, OH 44199.
POB 137, Columbia, SC 29202.
1801 W. Lamar, Dallas, TX 75202.
POB 1229, Denver, CO 80201.
POB 2118, Detroit, MI 48231.
700 E. San Antonio Ave., El Paso, TX 79901.
POB 50164, Honolulu, HI 96850.
POB 61369, Houston, TX 77208.
POB 1186, Indianapolis, IN 45206.
100 W. Capitol St., Jackson, MS 39269.
POB 8928, Jacksonville, FL 32239.
POB 2449, Kansas City, MO 64142.
POB 10368, Knoxville, TN 37919.
POB 16032, Las Vegas, NV 89101.
POB 21470, Little Rock, AR 72221–1470.
11000 Wilshire Blvd., Los Angeles, CA 90024.
POB 2467, Louisville, KY 40201.
167 N. Main St., Memphis, TN 38103.
POB 592418, Miami, FL 33159.
POB 2058, Milwaukee, WI 53201.
111 Washington Ave. South S–1100, Minneapolis, MN 55401.
POB 2128, Mobile, AL 36652.
POB 1158, Newark, NJ 07101.
POB 2058, New Haven, CT 06521.

POB 51930, New Orleans, LA 70151.
POB 1425, New York, NY 10008.
POB 3828, Norfolk, VA 23514.
POB 54511, Oklahoma City, OK 73154.
POB 548, Omaha, NE 68101.
600 Arch St., Philadelphia, PA 19106.
201 E. Indianola, Phoenix, AZ 85012.
POB 1315, Pittsburgh, PA 15230.
POB 709, Portland, OR 97207.
POB 12325, Richmond, VA 23241.
POB 13130, Sacramento, CA 95813.
POB 7251, St. Louis, MO 63177.
125 S. State St., Salt Lake City, UT 84138.
POB 1630, San Antonio, TX 78296.
880 Front St., San Diego, CA 92188.
POB 36015, San Francisco, CA 94102.
POB BT, San Juan, PR 00936.
915 2nd Ave., Seattle, WA 98174.
POB 3646, Springfield, IL 62708.
POB 172177, Tampa, FL 33602.
Washington Field Office, Washington, DC 20535.
Federal Bureau of Investigation Academy, Quantico, VA 22135.
Legal Attaches: (Send c/o the American Embassy for the Cities indicated).
Athens, Greece (PSC 108, Box 45, APO AE 09842)
Bangkok, Thailand (Box 67, APO AP 96546).
Bern, Switzerland.
Bogota, Columbia (APO, Miami 34038).
Bonn, Germany (Box 310, APO, New York 09080).
Bridgetown, Barbados (Box B, FPO, Miami 34054).
Brussels, Belgium (APO, New York 09667).
Canberra, Australia (APO, San Francisco 96404–0001).
Caracas, Venezuela (Unit 4966, APO AA 34037).
Hong Kong, B.C.C. (FPO, San Francisco 96659–0002).
London, England (Box 2, FPO, New York 09509).
Madrid, Spain (PSC 61, Box 0001, APO AE 09642).
Manila, Philippines (APO, San Francisco 96528).
Mexico City, Mexico (POB 3087, Laredo, TX 78044–3087).
Montevideo, Uruguay (APO, Miami 34035).
Ottawa, Canada.
Panama City, Panama (Box E, APO, Miami 34002).
Paris, France (APO, New York 09777).
Rome, Italy (APO, New York 09794).
Tokyo, Japan (APO, San Francisco 96503).
Vienna, Austria (Unit 27937, Box 37, APO AE 09222).

[From the Federal Register, Vol. 66, No. 61, March 29, 2001]

DEPARTMENT OF JUSTICE

[AAG/A Order No. 223–2001]

Privacy Act of 1974; Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice proposes to modify the following systems of records:

ATR–006 Antitrust Information Management System (AMIS)—Matter Report	2–20–98	63 FR 8660.
CIV–001 Civil Division Case File System	2–20–98	63 FR 8665.
CRM–001 Central Criminal Division Index File and Associated Records	2–20–98	63 FR 8663.
CRM–012 Organized Crime and Racketeering Section, General Index File and Associated Records.	11–26–90	55 FR 49147.
CRT–001 Central Civil Rights Division Index File and Associated Records	2–20–98	63 FR 8661.
FBI–002 The FBI Central Records System	2–20–98	63 FR 8671.
TAX–001 Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases.	2–20–98	63 FR 8684.
TAX–002 Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases.	2–20–98	63 FR 8685.

USA–005 Civil Case Files	2–20–98	63 FR 8666.
USA–007 Criminal Case Files	12–21–99	64 FR 71499.

The Department has modified the above systems of records to include a new routine use that allows disclosure of information relating to health care fraud to private health plans, associations of private health plans, health insurers, and associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist victims of such fraud to obtain restitution; to enable private health plans to participate in health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans. It should be noted that with regard to taxpayer information, the addition of this routine use is not intended to affect the confidentiality of such taxpayer information as provided for in 26 U.S.C. 6103.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by [30 days after publication in the Federal Register]. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, United States Department of Justice, Washington, DC 20530–0001 (Room 1400, National Place Building).

A description of the modification to the Department's systems of records is provided below. In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: March 19, 2001.

STEPHEN R. COLGATE,
Assistant Attorney General for Administration.

DOJ Privacy Act Systems of Records

ATR–006 Antitrust Information Management System (AMIS)—Matter Report.
CIV–001 Civil Division Case File System.
CRM–001 Central Criminal Division Index File and Associated Records.
CRM–012 Organized Crime and Racketeering Section, General Index File and Associated Records.
CRT–001 Central Civil Rights Division Index File and Associated Records.
FBI–002 The FBI Central Records System.
TAX–001 Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases.
TAX–002 Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases.
USA–005 Civil Case Files.
USA–007 Criminal Case Files.

* * * * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: to promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans.

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[FR Doc. 01–7676 Filed 3–28–01; 8:45 am]

BILLING CODE 4410–14–M

[From the Federal Register, Vol. 58, No. 191, October 5, 1993]

DEPARTMENT OF JUSTICE

[AAG/A Order No. 79–93]

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JUSTICE/FBI–015

System name:

National Center for the Analysis of Violent Crime (NCAVC).

System location:

Federal Bureau of Investigation, Training Division, FBI Academy, Behavioral Science Unit, Quantico, Virginia 22135.

Categories of individuals covered by the system:

A. Individuals who relate in any manner to official FBI investigations into violent crimes including, but not limited to, subjects, suspects, victims, witnesses, close relatives, medical personnel, and associates who are relevant to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals who are the subject of violent crime research studies including, but not limited to, criminal personality profiles, scholarly journals, and news media references.

Categories of records in the system:

The National Center for the Analysis of Violent Crime will maintain in both manual and automated formats case investigation reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnapping, incendiary arson or bombing, rape, physical torture, sexual trauma, or evidence of violent forms of death. Less than ten percent of the records which are analyzed may not be directly related to violent activities.

A. Violent Criminal Apprehension Program (VICAP) case reports submitted to the FBI by a duly constituted Federal, State, county, *municipal, or foreign* law enforcement agency in any violent criminal matter. VICAP reports include, but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements.

B. Violent crime case reports submitted by FBI headquarters or field *offices, and case reports submitted to the FBI by a duly constituted Federal, State, county, municipal, or foreign law enforcement agency in any violent criminal matter.*

C. Violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to *NCAVC* personnel.

D. An index of all detected trends, patterns, profiles and methods of operation of known and unknown violent criminals whose records are maintained in the system.

E. An index of the names, addresses, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the FBI's NCAVC operation.

F. An index of public record sources for historical, statistical and demographic data collected by the U.S. Bureau of the Census.

G. An alphabetical name index pertaining to all individuals whose records are maintained in the system.

Authority for maintenance of the system:

44 U.S.C. Section 3101; 41 CFR subpart 101–11.2 and 28 U.S.C. Section 534.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Currently, the NCAVC is administered by the FBI through its Training Division, located at the FBI Academy, Quantico, Virginia. Its primary mission is to consolidate research, training, and operational support activities for the express purposes of providing expertise to any legitimate law enforcement agency confronted with unusual, bizarre, and/or particularly vicious or repetitive violent crimes.

Records described above are maintained in this system to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, the information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who need the information to perform their official duties.

Information in this system may be disclosed as a routine use to any Federal, State, local, or foreign government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking identification, and apprehension of persons believed to be engaged in repeated or exceptionally violent acts of criminal behavior.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or, if deemed necessary, to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example could be where the activities of an individual are disclosed to a member of the public to elicit his/her assistance in FBI apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest. Examples would include: To obtain public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of violent criminal behavior; to notify the public and/or media of arrests; to protect the public from imminent threat to life or property where necessary; and to disseminate information to the public and/or media to obtain cooperation with violent crime research, evaluation, and statistical programs.

Information in this system may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the record permits.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information in the system is stored manually in locked file cabinets, either in its natural state or on microfilm, at the NCAVC in Quantico, Virginia. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm.

In addition, some of the information is stored in computerized data storage devices at the NCAVC and FBI Computer Center in Washington, DC. Investigative information which is maintained in computerized form may be stored in memory on disk storage on computer tape, or on computer printed listings.

Retrievability:

On-line computer access to NCAVC files is achieved by using the following search descriptors:

A. A data base which contains the names of individuals, their birth dates, physical descriptions, and other identification numbers such as FBI numbers, if such have been assigned.

B. Summary variables contained on VICAP reports submitted to the NCAVC as previously described.

C. Key words citations to violent crime research studies. scholarly journal articles, textbooks, training materials, and media references.

Safeguards:

Records are maintained in restricted areas and accessed only by FBI employees. All FBI employees receive a complete pre-employment background investigation. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job.

Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of

the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices and to and from FBI Headquarters, is transmitted in encrypted form to prevent interception and interpretation.

Information transmitted in teletype form between the NCAVC in Quantico, Virginia and the FBI Computer Center in Washington, DC, is encrypted prior to transmission at both places to ensure confidentiality and security of the data.

FBI field offices involved in certain complicated, investigative matters may be provided with on-line access to the computerized information which is maintained for them on disc storage in the FBI Computer Center in Washington, DC. This computerized data is also transmitted in encrypted form.

Retention and disposal:

Records are proposed for destruction after 50 years or upon termination of the program, whichever is earlier. The disposition schedule is pending with NARA as Job No. N1–65–88–13.

System manager(s) and address:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC 20535.

Notification procedure:

Address inquiries to the System Manager.

Record access procedures:

Requests for access to records in this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." The request must provide the full name, complete address, date of birth, place of birth, and notarized signature of the individual who is the subject of the record requested. The request should also include the general subject matter of the document or its file number—along with any other known information which may assist in making a search of the records. The request must also provide a return addressing for transmitting the information. Access requests should be addressed to the Director, Federal Bureau of Investigation, Washington, DC 20535.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, DC 20535. The request should state clearly and concisely (1) the reasons for contesting the information, and (2) the proposed amendment to the information.

Record source categories:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and ensure the internal security of the United States, collects information from a wide variety of sources. Basically, information is obtained, as a result of investigative efforts, from other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e).

[From the Federal Register, Vol. 66, No. 121, June 22, 2001]

DEPARTMENT OF JUSTICE

[AAG/A Order No. 233–2001]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), is establishing ten

"blanket" routine uses to be applicable to more than one FBI system of records. Further, the FBI is modifying the following systems of records:

Bureau Mailing Lists, Justice/FBI–003 (previously published on October 5, 1993, at 58 FR 51846); and

Electronic Surveillance (ELSUR) Indices, Justice/FBI–006 (previously published on March 10, 1992, at 57 FR 8473).

Opportunity for Comment: The Privacy Act (5 U.S.C. 552a(e)(r) and (11)) requires that the public be given 30 days in which to comment on any new or amended uses of information in a system of records. In addition, in accordance with Privacy Act requirements (5 U.S.C. 552a(r)), the Department of Justice has provided a report on these modifications to OMB and the Congress. OMB, which has oversight responsibilities under the Act, requires that OMB and the Congress be given 40 days in which to review major changes to Privacy Act systems. Therefore, the public, OMB, and the Congress are invited to submit written comments on this modification.

Address Comments or Request for Further Information to: Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place, Washington, DC 20530.

EFFECTIVE DATE: These proposed changes will be effective August 1, 2001, unless comments are received that result in a contrary determination.

SUPPLEMENTARY INFORMATION: The FBI is proposing to establish ten blanket routine uses in order to: (1) Foster greater public understanding by simplifying and consolidating FBI Privacy Act issuances; (2) minimize through use of standardized wording the potential for misunderstanding or misinterpretation which might arise from unintended variations in different versions of common routine uses; and (3) reduce costs and duplication of effort in the publication and maintenance of FBI Privacy Act issuances. Unless this or other published notice expressly provides otherwise, these blanket routine uses will apply to existing FBI systems of records as indicated below and to all FBI systems of records created or modified hereafter. However, the FBI is not at this time applying blanket routine uses to the National DNA Index System (NDIS) (Justice/FBI–017) or to the National Instant Criminal Background Check System (NICS) (Justice/FBI–018). (Any blanket routine uses which the FBI may in the future propose to apply to these two systems will be implemented by express reference in revisions to the respective systems notices.)

In large part these blanket routine uses standardize wording of routine uses already promulgated for one or more FBI or DOJ systems. The wording of a blanket use may differ somewhat from the existing counterpart(s). These differences generally do not reflect substantially different uses; however, some uses are clarified or broadened as to when and to whom disclosures may be made. Furthermore, Blanket Routine Use 9 is a new use not now reflected in any FBI system.

Upon taking effect, these blanket routine uses will apply to the FBI systems indicated below:

National Crime Information Center (NCIC), JUSTICE/FBI–001 (last published in the Federal Register on September 28, 1999, at 64 FR 52343);

FBI Central Records System, JUSTICE/FBI–002 (last published in the Federal Register on February 20, 1998, at 63 FR 8671);

Bureau Mailing Lists, JUSTICE/FBI–003 (published in today's Federal Register);

Electronic Surveillance (ELSUR) Indices, JUSTICE/FBI–006 (published in today's Federal Register);

FBI Automated Payroll System, JUSTICE/FBI–007 (last published in the Federal Register on October 5, 1993, at 58 FR 51874);

Bureau Personnel Management System (BPMS), JUSTICE/FBI–008 (last published in the Federal Register on October 5, 1993, at 58 FR 51875);

Fingerprint Identification Records System (FIRS), JUSTICE/FBI–009 (last published in the Federal Register on September 28, 1999, at 64 FR 52347);

Employee Travel Vouchers and Individual Earning Records, JUSTICE/FBI–010 (last published in the Federal Register on December 11, 1987, at 52 FR 47248);

Employee Health Records, JUSTICE/FBI–011 (last published in the Federal Register on October 5, 1993, at 58 FR 51875);

Time Utilization Record/Keeping (TURK) System, JUSTICE/FBI–012 (last published in the Federal Register on October 5, 1993, at 58 FR 51876);

Security Access Control System (SACS), JUSTICE/FBI–013 (last published in the Federal Register on October 5, 1993, at 58 FR 51877);

FBI Alcoholism Program, JUSTICE/FBI–014 (last published in the Federal Register on December 11, 1987, at 52 FR 47251);

National Center for the Analysis of Violent Crime (NCAVC), JUSTICE/FBI–015 (last published in the Federal Register on October 5, 1993, at 58 FR 51877);

FBI/Counterdrug Information Indices Systems (CIIS), JUSTICE/FBI–016 (last published in the Federal Register on June 9, 1994, at 59 FR 29824);

The routine uses currently published for each system will also continue to apply to that system. As individual FBI system notices are hereafter revised, we will eliminate individual system routine uses which duplicate blanket routine uses and add express reference to the applicability of the blanket routine uses.

The Department is also modifying the Bureau Mailing Lists and the ELSUR systems of records in order to clarify and more accurately describe them. The Bureau Mailing Lists system notice is being modified to clarify the categories of individuals covered by the system, the categories of records in the system, and the record access procedures. The existing routine uses are modified to include a system specific routine use which permits the disclosure of system records to public and/or private entities where such disclosures may promote, assist, or otherwise serve law enforcement interests. The notice also provides that records can be disclosed in accordance with the blanket routine uses that are concurrently being established for FBI records systems.

The ELSUR notice is being modified to include a new category of records in the system, "reference records." Additionally, the ELSUR notice clarifies the record access procedures. The routine uses for the ELSUR system were also modified to reflect three additional system specific routine uses which permit the disclosure of system records to public and/or private entities where: (1) Such disclosures may promote, assist, or otherwise serve law enforcement interests; (2) the FBI deems it reasonable and helpful in eliciting information or cooperation from the recipient for use by the FBI in the performance of an authorized function; or (3) there is reason to believe that a person or entity could become the target of a particular criminal activity or conspiracy. In addition, the notice provides that records may be disclosed pursuant to the proposed blanket routine uses being published simultaneously herein.

Both the Bureau Mailing Lists and the ELSUR systems are being republished to reflect these and other minor changes, including the addition of a "Purpose" section to both notices.

A description of the proposed ten blanket routine uses and the modification to the Bureau Mailing Lists and the ELSUR systems of records is provided below.

Dated: June 11, 2001.

JANIS A. SPOSATO,
Acting Assistant Attorney General for Administration.

JUSTICE/FBI–BRU

SUBJECT:

Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records.

APPLICABILITY:

The following routine uses describe those types of disclosures which are common to more than one FBI Privacy Act system of records and which the FBI is establishing as "blanket" routine uses. Unless this or other published notice expressly provides otherwise, these blanket routine uses shall apply, without need of further implementation, to every existing FBI Privacy Act system of records and to all FBI systems of records created or modified hereafter. These blanket routine uses supplement but do not replace any routine uses that are separately published in the notices of individual record systems to which the blanket routine uses apply.

ROUTINE USES OF RECORDS MAINTAINED IN FBI SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System records may be disclosed to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (These routine uses are not meant to be mutually exclusive and may overlap in some cases.)

BRU–1. Violations of Law, Regulation, Rule, Order, or Contract. If any system record, on its face or in conjunction with other information, indicates a violation or potential violation of law (whether civil or criminal), regulation, rule, order, or contract, the pertinent record may be disclosed to the appropriate entity (whether federal, state, local, joint, tribal, foreign, or international), that is charged with the responsibility of investigating, prosecuting, and/or enforcing such law, regulation, rule, order, or contract.

BRU–2. Non-FBI Employees. To contractors, grantees, experts, consultants, students, or other performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function.

BRU–3. Appropriate Disclosures to the Public. To the news media or members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the FBI, e.g., to assist in locating fugitives; to provide notifications of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters or other matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy. (The availability of information in pending criminal or civil cases will be governed by the provisions of 28 CFR 50.2.)

BRU–4. Courts or Adjudicative Bodies. To a court or adjudicative body, in matters in which (a) the FBI or any FBI employee in his or her official capacity, (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, is or could be a party to the litigation, is likely to be affected by the litigation, or has an official interest in the litigation, and disclosure of system records has been determined by the FBI to be arguably relevant to the litigation. Similar disclosures may be made in analogous situations related to assistance provided to the Federal Government by non-FBI employees (see BRU–2).

BRU–5. Parties. To an actual or potential party or his or her attorney for the purpose of negotiating or discussing such matters as settlement of the case or matter, or informal discovery proceedings, in matters in which the FBI has an official interest and in which the FBI determines records in the system to be arguably relevant.

BRU–6. As Mandated by Law. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

BRU–7. Members of Congress. To a Member of Congress or a person on his or her staff acting on the Member's behalf when the request is made on behalf and at the request of the individual who is the subject of the record.

BRU–8. NARA/GSA Records Management. To the National Archives and Records Administration and the General Services Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

BRU–9. Auditors. To any agency, organization, or individual for the purposes of performing authorized audit or oversight operations of the FBI and meeting related reporting requirements.

BRU–10. Former Employees. The DOJ may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility. (Such disclosures will be effected under procedures established in title 28, Code of Federal Regulations, sections 16.300–301 and DOJ Order 2710.8C, including any future revisions.)

FBI RECORDS SYSTEMS TO WHICH THESE BLANKET ROUTINE USES DO NOT APPLY:

These blanket routine uses shall not apply to the following FBI Privacy Act systems of records (to which shall apply only those routine uses established in the records system notice for the particular system):

JUSTICE/FBI–017, National DNA Index System (NDIS) (last published in the Federal Register on July 18, 1996, at 61 FR 37495); and

JUSTICE/FBI–018, National Instant Criminal Background Check System (NICS) (last published in the Federal Register on November 25, 1998, at 63 FR 65,223).

JUSTICE/FBI–003

SYSTEM NAME:

Bureau Mailing Lists.

SYSTEM LOCATION:

Records may be maintained at all locations at which the Federal Bureau of Investigation (FBI) operates, including: J. Edgar Hoover Bldg., 935 Pennsylvania Ave., NW., Washington, DC 20535; FBI Academy, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV

26306; and FBI field offices, legal attaches, and information technology centers as listed on the FBI's Internet website, http://www.fbi.gov, including any future revisions to the website.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons appearing on mailing lists maintained throughout the FBI to facilitate mailings to multiple addressees in furtherance of FBI activities. These include persons who have requested Bureau material, persons who are routinely forwarded unsolicited Bureau material and who meet established criteria (generally law enforcement or closely related interests), and persons who may be in a position to furnish assistance in furtherance of the FBI's mission. These do not include persons on mailing lists not encompassed within this system as described in the section titled "Categories of Records in the System."

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name, address, business affiliation, and supplemental information related to addressees and relevant to a list's purpose. These do not, however, include mailing lists which have been incorporated into some other FBI records system, such as a mailing list supporting a particular investigation maintained as an investigative record within the FBI's Central Records System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, section 301; title 44, United States Code, section 3101; title 28, United States Code, section 533; and title 28, Code of Federal Regulations, section 0.85.

PURPOSE(S):

System records are used for mailing FBI material to multiple addressees, via hard copy, e-mail, or other means of distribution, in furtherance of FBI activities. For example, various fugitive alerts are furnished to local law enforcement agencies, investigations periodicals are provided to law enforcement professionals, and information on local law enforcement issues may be provided to community leaders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI may disclose relevant system records in accordance with any blanket routine uses established for FBI records systems. See Blanket Routine Uses Applicable for FBI records systems. See Blanket Routine Uses Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, as published today in the Federal Register (and any future revisions).

In addition, as a routine use specific to this system, the FBI may disclose relevant system records to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are comptiable with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

A. To a federal, state, local, joint, tribal, foreign, international, or other public agency/organization, or to any person or entity in either the public or private sector, domestic or entity in either the public or private sector, domestic or foreign, where such disclosure may promote, assist, or otherwise serve law enforcement interests. By way of example and not limitation, such disclosures may for instance include: Sharing names of law enforcement professionals receiving FBI periodicals with law enforcement agencies interested in reaching a similar audience; sharing information of intelligence value with other law enforcement on intelligence agencies to whose lawful responsibilities the information may be germane; or sharing information pertinent to victim/witness assistance with local government entities in furtherance of such assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most information is maintained in computerized form and stored in memory, on disk storage, on computer tape, or other computer media. However, some information may also be maintained in hard copy (paper) or other form.

RETRIEVABILITY:

Information typically will be retrieved by an ID number assigned by computer or by name of person or organization.

SAFEGUARDS:

System records are maintained in limited access space in FBI facilities and offices. Computerized data is password protected. All FBI personnel are required to pass an extensive background investigation. The information is accessed only by authorized FBI personnel or by non-FBI personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

FBI offices revised the lists as necessary. The records are destroyed, under authority granted by the National Archives and Records Administration, when administrative needs are satisfied (Job. No. NC1–65–82–4, part E, item 13 (I)).

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, 935 Pennsylvania Ave., NW, Washington, DC 20535–0001.

NOTIFICATION PROCEDURES:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly market "Privacy Act Request". Include in the request your full name and complete address. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, 935 Pennsylvania Ave., NW, Washington, DC 20535–0001. Requests for information maintained at FBI field offices, legal attaches, information technology centers, or other locations must be made separately and addressed to the specific field office, legal attache, information technology center, or other location as listed on the FBI's Internet website, http://www.fbi.gov, including any future revisions to the website.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the appropriate FBI office, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The mailing list information is based on information supplied by affected individuals/organizations, public source data, and/or information already in other FBI records systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI 006

SYSTEM NAME:

Electronic Surveillance (ELSUR) Indices.

SYSTEM LOCATION:

Records may be maintained at all locations at which the Federal Bureau of Investigation (FBI) operates, including: J. Edgar Hoover Bldg., 935 Pennsylvania Ave., NW, Washington, DC 20535; and FBI field offices and information technology centers as listed on the FBI's Internet website, http://www.fbi.gov, including any future revisions to the website.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who have been the targets of electronic surveillance coverage sought, conducted, or administered by the FBI pursuant to a court order or other authority; those who have been a party to a communication monitored/recorded electronically pursuant to a court order, consensual monitoring, or other authorized monitoring sought, conducted, or administered by the FBI; and those who own, lease, license, hold a possessor interest in, or commonly use the location subjected to electronic surveillance.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ELSUR Indices are comprised of four types of records:

1. Principal records identify, by true name or best known name, all persons, entities, and facilities who have been the targets of electronic surveillance coverage sought, conducted, or administered by the FBI pursuant to a court order or other authority. These records include, but are not limited to, persons, entities, and facilities named in an application filed by the FBI in support of an affidavit seeking a court order to conduct or administer an electronic surveillance. Principal records may also include descriptive data associated with the name appearing on the record.

2. Proprietary-interest records identify entities and/or individuals who own, lease, license, hold a possessory interest in, or commonly use the location subjected to an electronic surveillance. Proprietary-interest records may also include descriptive data associated with the name appearing on the record.

3. Intercept records identify, by true name or best known name, individuals who have been reasonably identified by a first name or initial and a last name as being a party to a communication monitored/recorded electronically by the FBI pursuant to an electronic surveillance. Intercept records also identify entities that have been a party to a communication monitored/recorded electronically by the FBI pursuant to an electronic surveillance. Intercept records may include descriptive data associated with the name appearing on the record.

4. Reference records identify, by partial name, such as a first name only, last name only, code name, nickname, or alias those individuals who have been a party to a communication monitored/recorded electronically by the FBI pursuant to an electronic surveillance, and may include descriptive data associated with the individual. If the individual is later identified by a more complete name, e.g., through further monitoring or normal investigative procedures, the reference record is re-entered as an intercept record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The ELSUR Indices were initiated in October, 1966, at the recommendation of the Department of Justice and relate to electronic surveillance sought, administered, and/or conducted by the FBI since January 1, 1960. The authority for the maintenance of these records is title 5, United States Code, section 301; title 44, United States Code, section 3101; title 18, United States Code, section 2510, et seq.; title 18, United States Code, section 3504; title 28, United States Code, section 533, title 50, United States Code 1801, et seq.; and title 28, Code of Federal Regulations, section 0.85.

PURPOSE(S):

These records are used by the FBI to maintain certain information regarding electronic surveillance sought, conducted or administered by the FBI in order to permit the agency to respond to judicial inquiries about possible electronic surveillance coverage of any individual or entity involved in Federal court proceedings and to enable the Government to certify, as requested by federal, state or local law enforcement agencies, whether or not an individual, entity, facility, or place on whom a court ordered authority is being sought for electronic surveillance coverage has ever been subjected to electronic surveillance coverage in the past.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI may disclose relevant system records in accordance with any blanket routine uses established for FBI records systems. See Blanket Routine Uses Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, as published today in the Federal Register (and any future revisions).

In addition, as routine uses specific to this system, the FBI may disclose relevant system records to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

A. To the judiciary in response to inquiries about possible electronic surveillance coverage of any individual or entity involved in Federal court proceedings.

B. To federal, state, and local law enforcement officers to enable the government to certify whether or not an individual, entity, facility, or place on whom a court ordered authority is being sought for electronic surveillance coverage has ever been subjected to electronic surveillance coverage in the past.

C. To a federal, state, local, joint, tribal, foreign, international, or other public agency/organization, or to any person or entity in either the public or private sector, domestic or foreign, where such disclosure may promote, assist, or otherwise serve law enforcement interests. By way of example and not limitation, such disclosures may for instance include: Sharing information of intelligence value with other law

enforcement or intelligence agencies to whose lawful responsibilities the information may be germane; disclosing information to another law enforcement or intelligence agency which may bear on the suitability of a person for employment or continued employment with that agency; disclosing information to a cognizant employer or clearance-granting authority which may bear on the trustworthiness of a person to obtain or retain a security clearance; or sharing information pertinent to victim/witness assistance with local government entities in furtherance of such assistance.

D. To any person or entity in either the public or private sector, domestic or foreign, if deemed by the FBI to be reasonable and helpful in eliciting information or cooperation from the recipient for use by the FBI in the performance of an authorized function, e.g., disclosure of personal information to a member of the public in order to elicit his/her assistance/cooperation in a criminal, security, or employment background investigation.

E. To any person or entity in either the public or private sector, domestic or foreign, where there is reason to believe that a person or entity could become the target of a particular criminal activity or conspiracy, to the extent the disclosure of information is deemed by the FBI to be reasonable and relevant to the protection of life, health, or property of such target.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

The majority of the records are maintained in an automated data base. Some records are maintained in hard-copy (paper) format or other form.

RETRIEVABILITY:

Information typically will be retrieved by the name of the individual or entity. Telephone numbers and other such serial or identification numbers are retrievable numerically. Locations targeted are retrievable by street name.

SAFEGUARDS:

System records are maintained in limited access space in FBI facilities and offices. Computerized data is password protected. All FBI personnel are required to pass an extensive background investigation. The information is accessed only by authorized FBI personnel or by non-FBI personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

A reference record is purged if the individual is later identified by a more complete name and re-entered as an intercept record. Remaining reference records are purged from the system as follows: Those relating to court ordered electronic surveillance are purged six months from the date the corresponding authorization for the surveillance expires. Reference records relating to consensual intercepts are purged one year from the last intercept date shown on the record. Until advised to the contrary by the Department, the courts, or the Congress, all other indices records will be maintained indefinitely and have been declared permanent by the National Archives and Records Administration (NARA) (Job No. NC1–65–82–4, Part E, item 2 (t)).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

A request for notification as to whether a record about an individual exists in the system and/or for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Act Request." Include in the request your full name and complete address. The requests must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW, Washington, DC 20535–0001. Requests for information maintained at FBI field offices, information technology centers, or other locations must be made separately and addressed to the

specific field office, information technology center, or other location as listed on the FBI's Internet website, http://www.fbi.gov, including any future revisions to the website.

Some information may be exempt from notification and/or access procedures as described in the section titled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of one or more records in this system may be notified of records that are not exempt from notification and may access those records that are not exempt from disclosure. A determination on notification and access will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

If you desire to contest or amend information maintained in the system, you should also direct your request to the appropriate FBI office, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Some information may be exempt from contesting record procedures as described in the section titled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of one or more records in this system may contest and pursue amendment of those records that are not exempt. A determination whether a record may be subject to amendment will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information in the indices is derived from electronic surveillance, public source information, and other FBI record systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and(H), (e)(5) and(8), (f), (g) and (m) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 01–15675 Filed 6–21–01; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences (NCMS): Advanced Embedded Passives Technology

Notice is hereby given that, on May 23, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences (NCMS): Advanced Embedded Passives Technology has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SAS Circuits, Inc., Littleton, CO has been added as a party to this venture. Also, HADCO Corporation, Salem, NH and Ormet Corporation, Carlsbad, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences (NCMS): Advanced Embedded Passives Technology intends to file additional written notification disclosing all changes in membership.

On October 7, 1998, National Center for Manufacturing Sciences (NCMS): Advanced Embedded Passives Technology filed its original notification pursuant to section 6(a) of the Act. The Department of justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 22, 1999 (64 FR 3571).

The last notification was filed with the Department on August 5, 1999. A notice was published in the Federal Register pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15176).

CONSTANCE K. ROBINSON,
Director of Operations, Antitrust Division.

[FR Doc. 01–15672 Filed 6–21–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—The National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on May 15, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Automated Precision Inc., Gaithersburg, MD; Cincinnati Machine Division of Unova, Inc., Cincinnati, OH; CoCreate Software, Inc., Fort Collins, CO; ComauPico, Inc., Southfield, MI; Defense Modeling and Simulation Office of the U.S. Department of Defense, Alexandria, VA; Electronic Data Systems, Inc, Troy, MI; Holagent Corporation, Gilroy, CA; Hydrogen Technology Applications, Inc, Clearwater, FL; Johann A. Krause Inc., Auburn Hills, MI; Johnson Controls, Inc., Plymouth, MI; LFX Technologies LLC, Bloom field Hills, MI; Manufacturing Resources, Inc., Cleveland, OH; Michigan Technological University, Houghton, MI; Sulzer Metco Inc., Westbury, NY; and Tecumseh Products Company, Tecumseh, MI have been added as parties to this venture.

Also, Aesop, Inc., Concord, NH; American Induction Heating Corporation, Fraser, MI; Ascent Logic Corporation, Northville, MI; Auto-Air Composites, Inc., Lansing, MI; Bencyn West LLC, North Highlands, CA; Center for Clean Industrial and Treatment Technologies (CenCITT), Houghton, MI; Corning, Inc., NY; Dow-United Technologies Composite Products, Inc., Wallingford, CT; Eaton Corporation, Cleveland, OH; FileNET Corporation, Denver, CO; The Federal Trchnology Center, North Highlands, CA; Flame Spray Industries, Inc., Port Wahington, NY; Gensym Corporation, Cambridge, MA; Hewlett-Packard Company, Kirkland, Quebec, CANADA; IBD, Inc., Winnetka, IL; Indium Corporation of America, Utica, NY; Information Transport Associates, Inc., Annapolis, MD; Iowa State University, Ames, IA; Michigan Virtual Automotive College, Ann Arbor, MI; Midwest Manufacturing Technology Corporation, St. Louis, MO; Minnesota Technology, Inc., St. Cloud, MN; MSC Software Corporation, Costa Mesa, CA; MSE Technology Applications, Inc., Butte, MT; Progressive Tool & Industries Company, Southfield, MI; Remmele Engineering, Inc., Big Lake, MN; Schafer Corporation, Albuquerque, NM; Setco Industries, Inc., Cincinnati, OH; Teknowledge Corporation, Palo Alto, CA; Trellis Software and Controls, Inc., Rochester Hills, MI; Trust Data Solutions, San Jose, CA; TRW Integrated SupplyChain Solutions, Reston, VA; University of New Hampshire, Durham, NH; and UNOVA-Industrial Automation Systems, Cincinnati, OH have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, the National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on December 20, 2000. A notice has not yet been published in the Federal Register.

CONSTANCE K. ROBINSON,
Director of Operations, Antitrust Division.

[FR Doc. 01–15673 Filed 6–21–01; 8:45 am]

BILLING CODE 4410–11–M

Question. With respect to each of the three databases, please explain how the timeliness requirement—which sought to ensure that computer records were as current as possible—interfered with effective law enforcement. Don't we want our records to be as current as possible, and don't we want to create incentives for agencies like the FBI to meet that standard?

Answer. As to each of these databases, the FBI continuously strives to keep all records as current as feasible. The exemption allows the FBI the necessary leeway

to collect information that may be crucial to the successful conduct of the FBI's mission.

In the collection of information for law enforcement purposes it may be impossible to determine in advance what information may still be of current utility. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by paragraph (e)(5) of the Privacy Act would limit the ability of investigators to exercise their judgment in acquiring and exploiting potentially significant information (during which information quality can be validated through links, relationships and other evidence discovered during investigative efforts.) Assessing the investigative utility of retention and use of even very old information should thus be left to the investigative discretion of the FBI.

Additionally, many records in the systems come from other federal, state, local, joint, foreign, tribal, and international agencies, and it is administratively impossible for the FBI to guarantee the records comply with paragraph (e)(5).

Because NCIC functions almost exclusively as a medium for information exchange, additional quality assurance procedures are in place. The exemption has not changed NCIC's program requirements for entry, audit, validation, and hit confirmation of NCIC records that are applicable to NCIC users. For instance, the NCIC 2000 manual explains the requirements of "timely entry" for NCIC 2000 files and explains records should be complete and include all information available on a person or property at the time of entry.

For CRS and NCAVC, in the course of an investigation, retained information is reviewed at reasonable intervals to determine its relevance. Analysts, case agents, task force members, supervisors, and legal counsel may perform reviews as necessary.

Specific to NCAVC's VICAP, there is no federal statute requiring reports of homicide or other, serial, violent crime to be sent to a central location or clearinghouse. On their own initiative, several states have enacted mandatory reporting laws requiring timely submission of homicide or violent crime data to a central state authority. Thus, submission of a case in the VICAP database is voluntary on the part of the law enforcement entity with original jurisdiction for the offense under investigation. Once submitted, cases are subject to initial quality control. Reports of additional investigation, including laboratory results, inclusion or elimination of suspects, or arrest and conviction of an offender, are forwarded to VICAP upon the initiative of the investigator. Periodically, VICAP staff members may contact submitting agencies or investigators and request updated information.

VICAP has demonstrated that prompt submission of cases produces valuable investigative results. An example is the Rafael Resendez-Ramirez investigation. Before Mr. Resendez was identified, and when only three of his offenses in Texas were linked to him (there would be a total of six murders allegedly committed in Texas by Mr. Resendez), the command post in Texas notified VICAP. A murder and sexual assault committed in Kentucky were located in the VICAP database, and information concerning them was relayed to the command post. DNA evidence linked the Texas murders and the Kentucky murder before Mr. Resendez was identified.

Question. With respect to each of the three databases, please explain how the other requirements that were lifted by the new rule—that is; accuracy, relevance, and completeness—interfered with the legitimate collection of information for law enforcement purposes.

Answer. See preceding response.

Question. The new rule states that the Justice Department is currently reviewing additional changes to 28 CFR Part 16 for possible promulgation in future rulemaking. Please describe the changes the Department is considering.

Answer. The FBI periodically reviews all systems and proposes amendments to the rule, as necessary, to further important FBI mission interests, implement clerical improvements, etc. For example, for ease of reference, the FBI may consider reorganizing the format of the rule, placing systems in a more logical order and eliminating the frequent cross-references within the rule.

DNA INITIATIVE

Question. Last month, the Administration unveiled a proposal to spend more than $1 billion over five years on forensic DNA programs. This proposal is overdue, but it is welcome, and it will make a difference. For two years, I have been urging the Administration and House Republicans to fully fund existing programs aimed at eliminating the DNA backlog crisis and, in particular, the inexcusable backlog of untested rape kits. Across the country, untested critical evidence has been piling up

while rapists and killers remain at large, victims continue to anguish, and statutes of limitation expire. It is about time that we made this a national priority.

The President's DNA Initiative includes $5 million a year for post-conviction DNA tests that can be used by inmates to prove their innocence. This proposal is also long overdue. Post-conviction DNA testing has already been used to exonerate more than 120 prisoners nationwide, including 12 awaiting execution. Last year the Justice Department cancelled plans to spend $750,000 on a post-conviction DNA testing initiative, and diverted the money to another program. When I wrote the Department about this development, I was informed—in a letter dated May 8, 2002—that "the Department does not plan to undertake a national effort to promote and fund post-conviction DNA testing." I am pleased that the Department has changed its position.

The Administration proposes spending $232.6 million in federal funding for fiscal year 2004, which includes $100.7 million in new funding. Are these amounts reflected in the President's official budget request for fiscal year 2004?

Answer. The President's DNA Initiative—*Advancing Justice Through DNA Technology*—calls for $232.6 million in federal funding for fiscal year 2004. This includes $100.7 million in new funding. Of the $232.6 million, $177 million is proposed for DNA initiatives to be administered by the Office of Justice Programs (OJP) and $42.1 million is to be administered by the Federal Bureau of Investigation. In addition, the $232.6 million includes $13.5 million in training resources from existing programs within OJP and the Community Oriented Policing Services that have been identified as complementary and supportive of the larger DNA Initiative.

The bulk of the $177 million proposed for OJP in the fiscal year 2004 DNA Initiative will be administered by the National Institute of Justice (NIJ), and will be used to assist state and local governments in eliminating their backlogs of crime scene and offender DNA samples, and to increase state and local forensic laboratory capacity to carry out DNA analysis. Rape kits and other crime scene evidence that sit for years in storage and cannot be analyzed because of inadequate resources or capacity are not solving crimes. The perpetrators may remain at large, free to commit more crimes, and the victims continue to live in fear.

By addressing these problems, the DNA backlog reduction and laboratory capacity programs will directly result in major benefits for law enforcement and increased security of the public against sexually violent crimes, homicides, and other offenses. In addition, the Justice Department expects to commit substantial funds through OJP for other measures to strengthen the DNA identification system, such as improved training in the collection and handling of DNA evidence, and DNA technology research and development.

The following chart displays a detailed funding breakdown of the fiscal year 2004 DNA Initiative.

[In millions of dollars]

Element of the DNA Initiative	2004 Budget Request
Using DNA To Solve Crimes:	
Eliminating Backlogs	92.9
State Casework Backlogs	76.0
State Convicted Offender Backlogs	15.0
Funding the Federal Convicted Offender Program	1.9
Strengthening Crime Lab Capacity	90.4
Increasing the Analysis Capacity of Public Crime Labs	60.0
Funding FBI Forensic Analysis Programs	20.5
Funding the Combined DNA Index System	9.9
Stimulating Research and Development	24.8
Improving DNA Technology	10.0
FBI Research and Development	9.8
DNA Demonstration Projects	4.5
The National Forensic Science Commission	0.5
Training the Criminal Justice Community	17.5
Law Enforcement	3.5
Prosecutors, Defense Attorneys, and Judges	2.5
Probation & Parole Officers, Corrections Personnel	1.0
Forensic Scientists	3.0
Medical Personnel	5.0
Victim Service Providers	2.5
Using DNA To Protect the Innocent	5.0

[In millions of dollars]

Element of the DNA Initiative	2004 Budget Request
Using DNA To Identify Missing Persons	2.0
Total Funding	232.6

Question. With respect to the proposal to spend $5 million a year for post-conviction DNA testing, how did the Department arrive at this amount? Will it cover the costs of post-conviction DNA testing nationwide?

Answer. The President's Initiative on DNA evidence, "Advancing Justice Through DNA Technology" calls for the appropriation to the Department of $5 million annually to be used by the Attorney General to establish a grant program to help states defray the costs of post-conviction DNA testing and, therefore, encourage states to adopt procedures that authorize post-conviction DNA testing in appropriate cases.

The President's Initiative was developed, in part, from the recommendations of a task force convened by the Department's National Institute of Justice (NIJ) at the request of Attorney General Ashcroft to assess existing DNA analysis delays and develop recommendations for eliminating those delays. In developing this aspect of the Initiative, the Department conferred with members of the NIJ task force, as well as other public and private laboratory directors across the United States, to ascertain the extent and cost of the post-conviction DNA testing currently on-going in those states that provide for convicted offenders to seek such testing.

Based on these discussions, the Department estimates that the cost of post-conviction DNA analysis in those states that have, or soon will authorize, a post-conviction DNA testing procedure will not exceed $5 million annually for at least the next five years. This estimate relates to the actual cost of testing the biological evidence at issue in those cases, as this program is not intended to pay for the operational costs of law enforcement personnel in locating any evidence that an offender requests or that a court orders be tested.

Question. In your remarks announcing the DNA initiative, you said that you looked forward to working with the "Chairmen" of the House and Senate Judiciary Committees to develop post-conviction DNA testing legislation. But at your confirmation hearing, you assured me that you would work on such legislation with "the Congress"—not just the Republican Chairmen. Are you willing to honor that commitment today by working with me to refine and pass the Innocence Protection Act, which has already garnered overwhelming bipartisan support?

Answer. The Department is committed to working with the Chairmen of the House and Senate Judiciary Committees, ranking minority members, and all of the members of the respective authorizing and Appropriations Committees in developing any legislation necessary to implement all aspects of the President's DNA Initiative, including the recommendation that "Federal law also should provide for post-conviction DNA testing in appropriate cases," and in appropriating the funds necessary to enable the Attorney General to establish a grant program to "help states defray the costs of post-conviction DNA testing."

FBI ENFORCEMENT OF IMMIGRATION LAWS

Question. Traditionally, we have not had the FBI enforce our civil immigration laws because we wanted to encourage maximum cooperation between illegal immigrants and the officers looking to prevent and solve crimes and acts of terrorism. Do you disagree with that logic?

Answer. Following the transfer of the Immigration and Naturalization Service from the Department of Justice, the new Department of Homeland Security is the primary immigration law enforcement agency. However, the safety of the American people is the primary concern for both the Department of Justice and the Department of Homeland Security.

Pursuant to the Attorney General's longstanding authority under the immigration laws, last year the Attorney General delegated immigration law enforcement authority to officers of the Federal Bureau of Investigation (FBI) and the United States Marshals Service (USMS). Under this delegation, in certain limited circumstances, the FBI may in the course of its counterterrorism investigations discover that an alien who poses a potential threat to national security is illegally present in the United States and find that DHS is unable to take custody immediately because agents are not available.

The FBI has issued field guidance to implement the delegation of authority in a manner that ensures that it is used only in appropriate situations, such as when

DHS immigration officials are not available or when the public safety requires prompt action without DHS.

As of April 15, 2003, in connection with Operation Liberty Shield, the FBI had interviewed 9,383 individuals and while there were 31 arrests for immigration violations, all arrests were made by BICE agents. The Department of Justice and the Department of Homeland Security have discussed this delegation and will continue to do so.

Question. At the same time that the FBI is now policing immigration violations, it is depending upon Iraqis in the United States to provide information of value to the U.S. war effort. Do you have any fear that this expansion of FBI authority will have a chilling effect on Iraqi cooperation?

Answer. Because the FBI has been mindful of the constitutional rights and sensitivities of the Iraqi population in the United States in the course of our interview program, we do not believe that the expansion of Department of Justice (DOJ) authority will have a chilling effect on future efforts to reach out to the Iraqi population.

From the beginning of the hostilities in Iraq, the FBI conducted approximately 10,000 interviews of Iraqis who might have knowledge of the Iraqi leadership, military facilities, or Iraqi activities in support of terrorism. These interviews were strictly voluntary and conducted within the confines of the Constitution:

—FBI agents were trained and given sensitivity training for conducting these interviews, and Iraqis being interviewed were informed of their civil rights.

—High-level FBI officials met with Arab-American civic leaders to explain the interview process and to enhance communication between the FBI and the Arab-American community.

The response of the interviewees and the Arab-American community was overwhelmingly positive, and the DOJ and the FBI would like to thank community leaders and those interviewed for their cooperation. As a result of the information derived from the interviews, the FBI disseminated over 250 reports to assist the military in conducting the war and locating Saddam Hussein's weapons of mass destruction. The military consumers of these reports, including CENTCOM, have indicated that the reports were highly useful.

Question. Considering this committee's obvious interest in both the FBI and the enforcement of our immigration laws, why did you fail to notify us of this regulation?

Answer. The Department appreciates the Committee's interest in its programs. The preceding answer explains the rationale and limited use of this delegation.

Question. According to the Washington Post, the FBI has drafted guidelines on how this new authority should be used. Would you provide a copy of those guidelines to the committee?

Answer. The information follows.

FEDERAL BUREAU OF INVESTIGATION,
02/26/2003.

To: All FBIHQ Divisions, All Field Offices
Attn: Assistant Director, ADIC, SAC, CDC
From: Office of the General Counsel, Investigative Law Unit
Contact: UC Elaine N. Lammert (202) 324–5640
Approved By: Mueller Robert S. III, Gebhardt Bruce J., Wainstein Kenneth L.
Drafted By: Rowan Patrick
Case ID #: 66F–HQ–A1085154–MISC Serial 85
Title: Delegation of Authority to the FBI to Exercise the Powers and Duties of Immigration Officers

Enclosure.—Memorandum summarizing the power to arrest under the Immigration and Naturalization Act (INA) and listing a number of INA violations the FBI may enforce pursuant to the delegation and guidance contained in this communication.

Synopsis.—This communication advises the receiving offices that the Attorney General has authorized Agents to exercise the functions of immigration officers in some circumstances and provides guidance on the implementation of this authority. This guidance was prepared in consultation with the Department of Justice, the SAC Advisory Committee and FBIHQ operational components.

Details.—The Attorney General recently issued an Order delegating authority to exercise the powers and duties of Immigration Officers to the FBI. The Order, which is no in effect, grants powers that will be particularly useful in the FBI's counterterrorism investigations. In pertinent part, the Order states as follows:

"I authorize the Director of the Federal Bureau of Investigation ("FBI") and, under this direction Special Agents of the FBI, to exercise the functions of immigra-

tion officers for the purposes of (1) investigating, determining the location of, and apprehending, any alien who is in the United States in violation of the Immigration and Nationality Act of 1952, as amended, or any other law or regulation relating to visas or the conditions of visas, admission of aliens or the conditions of admission, or the maintenance of status as an immigrant or nonimmigrant or in any category of nonimmigrant; or (2) enforcing any requirements of such statutes or regulations, including, but not limited to, nonimmigrant aliens subject to special registration under 8 C.F.R. § 264.1(f).

This communication is to provide guidance on the implementation of this Order.

Even prior to the issuance of the Attorney General's Order the FBI possessed broad authority to investigate criminal violations related to immigration offenses under both Title 18 and Title 8 of the United States Code and to arrest those who commit such criminal violations. There will be no change in the handling or the classification of those investigations. The Attorney General's Order expands the FBI's authority to include the investigation and arrest of aliens who have committed or are committing non-criminal, i.e., civil violations of the Immigration and Nationality Act of 1952 (INA) and related statutes. This guidance addresses the handling of aliens who are non-criminal violators.

At the outset, it should be understood that the Immigration and Naturalization Service and its successor within the Department of Homeland Security (referred to hereafter collectively as the "INS") will retain primary jurisdiction over the enforcement of immigration statutes, including both criminal and civil violations of the INA. the FBI will not create a separate investigative program to cover violations of the INA, as these violations will ordinarily be addressed only in support of existing investigative programs. Individuals detained or arrested for immigration violations should be turned over to INS' custody as soon as possible. The Attorney General's Order provides authority in those circumstances when agents of the INS are not immediately available to take custody of an alien violator. It also provides a basis for the apprehension of alien violators encountered in the course of the FBI's counterterrorism investigations.

In all instances, the Order should be employed in a manner that strengthens the FBI's ability to address its priorities, rather than diverting from them. Accordingly, as a general rule, when, during the course of an investigation, agents encounter an alien who is reasonably believed to be in violation of the INA, they should exercise their authority under the Order to detain, question, and, if justified, arrest the alien if the exercise of these powers will serve the objectives of the investigation. Conversely, if the exercise of these powers will harm or undermine the investigation, agents are under no obligation to do so. Even in the absence of an ongoing investigation, agents should exercise all appropriate authority under this Order when necessary to prevent serious bodily injury or destruction of property. With respect to counterterrorism investigations in particular, and keeping in mind the FBI's primary mission of preventing acts of terrorism against American interests, agents should not hesitate to exercise any or all of their lawful authority under the Order as appropriate to serve this vital mission, or to refrain from exercising these powers if, in the judgment of the agent, the FBI's investigative interests are best served by doing so.[1]

There may be instances, unrelated to ongoing investigations, in which the FBI will receive requests for assistance from state or local law enforcement who have detained aliens for immigration violations. Such requests should ordinarily be referred to the INS. In those instances in which the INS is unable to respond to the request, each ADIC or SAC should exercise his or her discretion, based on resources and other relevant considerations, as to whether to provide the requested assistance and, if so, to what extent.

The Order grants FBI agents the authority to exercise the powers to arrest an alien without warrant set forth in Title 8, U.S. Code, Section 1357. Under that sec-

[1] In furtherance of its mission to prevent acts of terrorism, the FBI has at its disposal the National Security Entry-Exit Registration System (NSEERS) database, maintained by the INS. This database contains comprehensive information on temporary visitors to the United States who are from countries designated by the Attorney General or who meet pre-existing criteria related to national security. Any NSEERS registrant who violates his requirements (e.g., by overstaying his visa, or by failing to verify his address and activities with the INS after violations are immediately identified by NSEERS, and, like other violations of the INA, the NSEERS violation may serve as a basic for arrest when arrest of the violator will advance an investigation and the FBI's operation priorities. In such cases, the INS should be notified and consulted as soon as possible. In addition, FBI personnel supervising counterterrorism investigations should regularly consult the NSEERS database to determine if aliens who have violated their requirements have any connection to terrorist suspects already under FBI investigation.

tion, agents may arrest an alien when they have reason to believe the alien is present in the United States in violation of an immigration provision of the INA, a standard that can be met by an admission from the alien, a review of immigration records, or other reliable information. In many cases, agents will be unable to make a determination that an alien is in violation without the assistance of the INS. Each Field Office should consult with their local INS office to develop a procedure for obtaining such assistance on a local level. In addition, the INS maintains a Law Enforcement Support Center that is staffed around the clock and can perform record checks and provide other assistance.

Each Field Office should also consult with their local INS office to formulate procedures for the prompt transfer to INS' custody of any alien arrested by the FBI under the authority of the Attorney General's Order. Any arrest made under the authority of this Order should be properly documented in an FD–302.

Attached hereto is a memorandum, prepared by the Office of General Counsel, summarizing a number of the commonly-encountered INA violations. In the near future, Headquarters personnel will be working with their counterparts at the INS and then the Department of Homeland Security to resolve issues arising from this Order. Training materials on immigration enforcement will soon be disseminated through the Chief Division Counsel of each Field Office, and additional training will be provided in the course of the upcoming counterterrorism training ordered by the Deputy Attorney General.

NATIONAL SECURITY ENTRY-EXIT REGISTRATION SYSTEM

Question. Under the National Security Entry-Exit Registration System (NSEERS), male nationals from 25 countries, all but one of which are overwhelmingly Muslim, must register with the government if they meet certain criteria. As of one week ago, more than 7,000 men who presented themselves for registration had been notified of the government's intention to deport them for various violations of our immigration laws. Many of those 7,000 are nationals of Pakistan, a U.S. ally in the war on terror that has informed the United States of its objections to NSEERS. Earlier this year, the Senate included language to end the NSEERS program in our omnibus appropriations bill, but agreed in conference instead to demand a report about the program, from you, by March 1. That deadline has come and gone, even though this report will be critical in determining whether we continue to fund NSEERS, and despite the serious domestic and international ramifications of this program. When will you submit this report?

Answer. The Department is continuing to assemble the materials required by Section 112 of Title I of Division B of Public Law 108–7. The material will be submitted to the Committee.

CRIME-FREE RURAL STATES PROGRAM

Question. Congress created the Crime-free Rural States program last year in the 21st Century Department of Justice Appropriations Authorization Act. This program authorizes $10 million for rural states to combat drug abuse and other crimes that increasingly affect rural states and have put mounting stress on rural law enforcement officers. Senator Hatch and I have written to the Chairman and Ranking Member of the subcommittee to request full funding for this program. Do you support our request for full funding?

Answer. In developing the fiscal year 2004 President's Budget, the Department faced the challenge of managing multiple competing priorities with limited resources. As a result, no resources were specifically requested for the Crime-free Rural States program.

However, I do appreciate the problems faced by rural law enforcement. In fact, the Department currently provides substantial resources to rural communities. For example, the Office of Justice Programs' (OJP) fiscal year 2004 President's Budget included $599.724 million for the Justice Assistance Grants program, a formula program designed to address a wide array of criminal justice issues that would provide resources directly to our nation's state and local jurisdictions, including those in rural areas. Other OJP programs included in the fiscal year 2004 President's Budget that provide resources to rural communities across the country include: $39.460 million for the Rural Domestic Violence program, which specifically targets rural communities, $47.683 million for the State and Local Gun Violence Assistance program, which will continue to support projects in rural communities; $49.387 million for the Southwest Border Initiative, which provides assistance to many rural prosecutors in the Southwest dealing with drug cases; and a total of $25.339 million in programs specifically requested for Tribal governments and communities, almost all of which are in rural areas.

OIG OVERSIGHT OF DEA AND FBI

Question. I have repeatedly expressed concern that the DOJ Inspector General's Office be as independent and strong as possible. Without accountability, which the Inspector General brings to the Department, our law enforcers will not be as efficient and as effective as they can be. For that reason, I sponsored bipartisan legislation, which was enacted as part of the landmark DOJ Authorization Act last Congress, that expanded the jurisdiction of the IG by statute to cover the FBI and DEA. In light of these important additions—and in light of the growth of the FBI itself as it fulfills its stated mission of protecting against terrorist attacks—we need to ensure that the IG's budget grows to meet its new responsibilities. The IG needs to have the resources required to examine an FBI that is retooling its computer systems and its entire culture. Unfortunately, however, I note that the President's budget request "flat lines" the IG's office even though the Republican-controlled Congress did not grant the President's entire requested increase for the IG in last year's Omnibus Appropriations bill. Please explain why the Administration is not seeking to provide the IG with the new resources it will need to oversee the FBI's efforts to modernize itself.

Answer. The Office of the Inspector General (OIG) received $5,000,000 and 63 positions in fiscal year 2002 to expand the Inspector General's authorities in investigating employee misconduct within the Federal Bureau of Investigation and the Drug Enforcement Administration, this allowed for an 18 percent increase in staff. In fiscal year 2003, the OIG received an additional $2.0 million and 17 positions, in part to address the FBI's growth in personnel and counterterrorism programs. These funds, coupled with the recent supplemental of $2,500,000 for fiscal year 2003/2004, provide sufficient funding for the OIG through fiscal year 2004.

IMPLEMENTATION OF USA PATRIOT ACT AND OTHER ISSUES RELATED TO WAR ON TERRORISM

Question. In a letter dated April 1, 2003, the Chairman and Ranking Member of the House Judiciary Committee requested extensive information from the Justice Department regarding the Department's implementation of the USA PATRIOT Act and other issues related to the war on terrorism. Please provide your responses to the 38 questions posed in that letter, a copy of which is attached. (Attachment 1)

Answer. In response to your letter of September 4, 2003, co-signed by Senate Judiciary Committee Chairman Hatch, the Department provided a copy of the Department's May 13, 2003, response to the April 1, 2003, letter from the Ranking Member of the House Judiciary Committee on September 9, 2003. As noted in our transmittal letter, while we made every effort to answer each question thoroughly and in an unclassified format, four of the questions required the submission of classified information. The answer to a portion of question 16(a), and questions 30 and 37 are classified and were delivered to the Senate Security Office for the Senate Judiciary Committee under separate cover. In accordance with longstanding Executive branch practices on the sharing of operational intelligence information with the Congress, the classified answers to question 1(c), and a further portion of question 16(a), were delivered to the Senate Select Committee on Intelligence.

QUESTIONS SUBMITTED BY SENATOR HERB KOHL

JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT PROGRAM

Question. Mr. Attorney General, even in a time of great domestic instability, we cannot forget about the important law enforcement functions of the DOJ. Among these responsibilities is juvenile delinquency prevention and enforcement. However, the fiscal year 2004 Department of Justice budget proposal eliminates the Juvenile Accountability Incentive Block Grant Program (JAIBG) a program that was funded at $140 million last year, and more than $200 million two years ago. The budget justification cites that the program was found "ineffective" by OMB.

However, when we reauthorized the Department of Justice last fall, we also reauthorized the JAIBG program at $350 million per year. More importantly, we dramatically improved the program. The program purpose areas have been significantly expanded to provide additional services and treatment for troubled youth, including graduated sanctions, substance abuse and mental health counseling, restitution, community service, and supervised probation.

Nonetheless, JAIBG has been zeroed out. The new and improved JAIBG has not even been given a chance by this Administration—the same Administration that reauthorized JAIBG just last year. I am aware that the Justice budget retains some

funding for juvenile justice programs. However, a new $43 million "Juvenile Delinquency Block Grant Program" still represents almost a $100 million cut from last year's JAIBG program—a program authorized at $350 million. Moreover, Title V juvenile crime prevention programs—cut in half in the fiscal year 2003 appropriation B are also under-funded and overly earmarked in this year's budget proposal.

Why are these programs being cut at a time when the latest statistics suggest an up tick in juvenile crime after a steady decrease throughout the nineties? Now is not the time to give up juvenile justice programs.

Answer. The fiscal year 2004 President's Budget request for juvenile justice delinquency and prevention programs focuses on those programs that work and provide states and local governments maximum flexibility. These programs include the $93.768 million Part B Formula Grants, the new $42.881 million Juvenile Justice Delinquency Prevention Block Grant Program created by the 21st Century Department of Justice Reauthorization Act, and the $82.255 million Title V Incentive Grants for Local Delinquency Prevention Program, which represents an increase of $36.1 million above the fiscal year 2003 enacted level. The request includes funding for two major activities: $69.755 million for Title V Delinquency Prevention Program Incentive Grants; and $12.5 million for the Tribal Youth Program, which awards grants directly to American Indian and Alaska Native communities for prevention, control, and juvenile justice system improvement. This is essentially the same level as requested in fiscal year 2001 through fiscal year 2003.

The Juvenile Accountability Block Grant Program (JABG) was reauthorized under the 21st Century Department of Justice Reauthorization Act, which was signed into law on November 2, 2002. Funding for the JABG, formerly the Juvenile Accountability Incentive Block Grant (JAIBG) Program, was not requested because in its recent Program Assessment Rating Tool (PART) evaluation, OMB ranked JAIBG as "ineffective." As OMB indicated in the evaluation, program managers have little information on the activities and outcomes of JABG, and cannot verify the need for or the results of this program.

According to the initial statutory guidance for JABG, the ultimate purpose of the block grants is to make juvenile offenders more accountable for their actions and to make the justice system more accountable for juveniles' safety. These stated goals make it difficult for managers to develop clear, outcome-based performance measures. Other than anecdotal evidence, the program has not demonstrated any measurable impact on either juvenile crime or the juvenile justice system to date.

There are purpose areas in the Juvenile Delinquency Block Grant program that overlap with JABG purpose areas. In addition, funds under the proposed $599.724 million Justice Assistance Grants (JAG) program can be used by state and local governments to address the areas funded through JABG. Thus, resources will still be available to address juvenile offender accountability.

IMPORTED EXPLOSIVES

Question. Federal explosives regulations require domestically manufactured explosives to include identifying information such as manufacturer, location, date, and shift of manufacture. This information is vital to criminal investigations when law enforcement authorities recover explosives. ATF can trace the purchase of explosives in much the same way that it traces firearms. Yet, imported explosives are not required to have any identification information.

How many pounds of unmarked imported explosives enter the country—say annually? I understand that millions of pounds of these unmarked explosives enter this country each year. If this is the case, should we not take immediate legislative action to close this loophole? Do you pledge to work with me on this?

Answer. Currently there are no regulations requiring the marking of explosive materials imported into the United States. Federal regulations at 27 CFR part 555, Commerce in Explosives, administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), require that licensed domestic manufacturers of explosive materials legibly identify all explosive materials manufactured for sale or distribution by placing the identity of the manufacturer and the location, date, and shift of manufacture on each cartridge, bag, or other immediate container. ATF; the Institute of Explosives Makers (IME); and the International Association of Bomb Technicians and Investigators (IABTI) recognized that these regulations do not extend similar requirements on importers of explosive materials. ATF; the IME; and the IABTI recognized that this loophole creates a major obstacle for tracing foreign manufactured recovered explosives, as well as results in an economic disadvantage by placing the marking requirement only on domestic producers. To that end, both the IME and IABTI petitioned ATF to pursue rulemaking to close this loophole. On October 16, 2002, ATF issued a notice of proposed rulemaking to require the mark-

ing of all explosive materials imported into the United States. The notice comment period ended January 14, 2003 and is in the final stages of review.

There is no federal requirement for reporting the amount of explosives materials imported into the United States. ATF is working with the U.S. Customs Service to obtain a reliable figure. However, information from the IME indicates that there are approximately 6 billion pounds of explosive materials used in the United States annually. Of that amount, approximately 2 million pounds of boosters (a high explosive) are imported into the United States annually. Additionally, industry sources have advised ATF that approximately 165 million pounds of Chinese fireworks enter the United States annually.

FISA (FOREIGN INTELLIGENCE SURVEILLANCE ACT)

Question. Press reports indicate that for the first time since FISA became law, surveillance requests under FISA outnumbered all of those under domestic law—the Washington Post reported last week that you personally signed more than 170 "emergency foreign intelligence warrants"—this is three times the number authorized in the preceding 23 years.

Mr. Attorney General, can you comment on whether that is true? In addition, given the much greater powers granted to the government under FISA, can you tell us whether we should be disturbed by this trend. After all, the secrecy that surrounds FISA provides very little accountability and oversight. Are we in danger of living in a country where secret wiretaps and extended surveillance are the norm?

Answer. While I cannot speak to the accuracy of press reports, as I have said previously, in 2002, using Foreign Intelligence Surveillance Act (FISA) tools, we targeted more than 1,000 international terrorists, spies and foreign powers who threaten our country's security. We requested 170 emergency FISAs. This is more than three times the total number of emergency FISAs obtained in the 23 years prior to September 11.

This is a reflection, in part, of the imminent need to protect the United States from potential acts of terrorism or other grave hostile acts from foreign powers or agents of foreign powers. I would disagree that the FISA provides little accountability and oversight. Every application that is presented to the Foreign Intelligence Surveillance Court (the Court) goes through a rigorous review on many levels. Before presenting an application to the Court, the Attorney General must approve the application based upon his finding that the application satisfies the criteria and requirements for such applications set forth in the FISA, including the requirement that the target of the surveillance or search is a foreign power or an agent of a foreign power. In addition, the application is certified by an appropriately designated official. Among other things, the official certifies that a significant purpose of the surveillance or search is to obtain foreign intelligence information. Finally, the application is presented to the Court for its independent judicial review. In the event that an application is denied by the Court, the Foreign Intelligence Surveillance Court of Review has jurisdiction to review such a case.

In addition, Congress plays an important role in oversight of the FISA process. The Attorney General submits, on a semi-annual basis, detailed reports concerning activities conducted pursuant to the FISA to the Senate Select Committee on Intelligence, the House Permanent Select Committee on Intelligence, and both the House and Senate Judiciary Committees.

In all cases, strict adherence to the Constitution, and observation of the responsibility of this government to safeguard the rights of all individuals regarding the Constitution, is the highest priority of the Department of Justice. Any surveillance or search conducted pursuant to the FISA is done in strict accordance with the law, and is conducted in ways which I believe fully respect the Constitution.

ANTITRUST—TELECOM

Question. A priority of the Antitrust Subcommittee has been promoting competition in the local and long distance phone markets. For many years, the Antitrust Division has had a task force—the Telecommunications and Media Section—devoted to monitoring competition in the telecom industry. Its principal responsibility has been to determine whether the local telephone market is open to competition when the incumbent Bell company applies for permission to provide long distance service. As you know, this is known as the Section 271 process. The 271 process has been conducted on a state-by-state basis and is now nearly complete.

With this process winding up, some observers wonder if the Telecommunications and Media Section is as active as it should be, and whether the Antitrust Division will continue to aggressively police anti-competitive practices in local phone mar-

kets. We must ensure that the markets deemed open to competition remain open, rather than backsliding into a monopoly environment.

What do you see as the role of the Antitrust Division in ensuring competitive local phone markets in the future? Would you favor giving, by statute, the Telecommunications and Media Section clearly established periodic responsibilities to examine local phone competition?

Answer. The Antitrust Division has played an important role in protecting competition in the telecommunications industry for decades and fully intends to continue doing so through vigorous antitrust enforcement. Following enactment of the Telecommunications Act of 1996, the Division has provided guidance to the FCC and the state regulatory agencies on the Section 271 process and has provided the FCC with an evaluation of each Section 271 application. Before that, the Division spent 14 years enforcing the 1982 antitrust consent decree that settled the enforcement action the Division brought against AT&T in 1974. Along with these responsibilities, the Division aggressively investigates proposed mergers and potentially anticompetitive conduct in a wide variety of communications and media markets.

With the Section 271 initial application process approaching completion, the Division intends to continue monitoring activities in the telecommunications industry across the country. In states where the Bell Operating Company has been granted Section 271 authority, the Division will continue to play its traditional roles of enforcing the antitrust laws against Sherman Act violations and anticompetitive mergers, as well as engaging in competition advocacy through participation in FCC and state regulatory proceedings where we can provide competitive analysis that would assist these agencies in promoting and maintaining the development of local competition.

The FCC will continue to have authority to enforce compliance with the specific market-opening provisions of the 1996 Act. The antitrust laws give the Antitrust Division sufficient authority to perform its broader role in protecting competition in this important marketplace, and the 1996 Act contains a savings clause that explicitly preserves the Division's antitrust enforcement authority in this area. Given our enforcement history and accumulated experience in telecommunications markets, we plan to remain fully engaged in monitoring these markets for possible antitrust violations. Additional authority is not needed in order for us to perform this role.

SLEEPER CELLS

Question. What is the current status of the investigation to root out more terrorist sleeper cells in this country? Are we on the right track or do we have a long way to go?

Answer. With the cooperation of the Joint Terrorism Task Force Program, the FBI successfully identified cells in Buffalo, Detroit, and Portland, Oregon. These investigations have resulted in convictions of subjects charged with offenses ranging from providing material support to terrorist organizations to misuse of identification documents.

The FBI is currently working jointly with all members of the Intelligence Community to identify additional terrorist sleeper cells within the United States. Although we have identified new cells within the United States, and we are on the right track, the war on terrorism is ongoing.

SUBCOMMITTEE RECESS

Senator GREGG. The next hearing will be on Tuesday, April 8, at 10 a.m., in the Dirksen Building at 124. The subcommittee will be hearing testimony of SEC Chairman William Donaldson. This is going to be in the Senate Office Building—we are going to hold it over in the Capitol.

Thank you.

[Whereupon, at 11:25 a.m., Tuesday, April 1, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, April 8.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2004

TUESDAY, APRIL 8, 2003

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

The subcommittee met at 10 a.m., in room S–146, the Capitol, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg and Hollings.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF WILLIAM H. DONALDSON, CHAIRMAN

OPENING STATEMENT OF SENATOR JUDD GREGG

Senator GREGG. The committee will come to order. It is great to have the Chairman of the SEC here today, William Donaldson.

First, I want to thank you on behalf of the Congress and the American people for being willing to come out of the private sector, with your tremendous experience and expertise, and take over this job. I consider it to be one of the most significant jobs we have in the Federal Government because it is the job which makes capital markets vibrant and reliable, and capital markets which are transparent and properly regulated are critical to the well-being of the American economy.

International confidence in our markets is essential to the survival of our Nation and our free market system, so having your leadership at the SEC is crucial, and we are excited you are there.

Senator, did you have any opening comments?

Senator HOLLINGS. I am equally excited and grateful that he would take this assignment. Thank you.

Senator GREGG. We would be happy to hear any thoughts you have to add. You can summarize your statement or read it, however you wish to proceed.

OPENING REMARKS

Mr. DONALDSON. Thank you for your comments, Senator. I am honored to be here and to be in the position I'm in. Let me just make a couple of brief comments, and then we can do whatever you would like in terms of carrying on from there.

I appreciate the chance to speak. Our request is for $841.5 million. That's the largest amount that's ever been requested for the SEC, and it comes on the heels of last year's appropriation, which was the largest single year percentage increase ever provided the Commission. I want to thank you and the subcommittee for the tremendous support and leadership you've shown in ensuring that the Commission receives the resources that are necessary to fulfill our mission.

Thanks to your efforts, the Commission has been appropriated $716.4 million to fund its operations this fiscal year as part of the omnibus appropriation. These funds will enable us to meet the remaining deadline for the Sarbanes-Oxley Act, hire over 800 new staff and advance the initial startup funds to the Public Company Accounting Oversight Board, improve our training efforts, and address our most pressing information technology needs.

Ensuring that our new resources are used to promote the effectiveness and support the modern mission of the SEC, rather than simply increasing our numbers, is one of my most important responsibilities as Chairman. During the next several weeks and months I intend to get more deeply into each program area to verify personally that this is the best, most effective and efficient use of our new staffing. I would therefore like to reserve my option to make changes. I have been at the Commission I think a total of almost 8 weeks now, and my staff and I hope to (a) examine our budgets carefully and (b) work closely with the subcommittee as we finalize our resource allocations.

PREPARED STATEMENT

As I said at the beginning, I'm honored to be Chairman of the SEC. I think it is the most important time in the history of the country to have this job, and I will be delighted to answer any questions you might have. Thank you.

[The statement follows:]

PREPARED STATEMENT OF WILLIAM H. DONALDSON

Chairman Gregg, Ranking Member Hollings, and Members of the Subcommittee: Thank you for inviting me to testify today on behalf of the Securities and Exchange Commission in support of the President's fiscal 2004 budget request. The fiscal 2004 budget request of $841.5 million is the largest amount ever requested for the SEC and comes on the heels of last year's appropriation, which was the largest single-year percentage increase ever provided to the Commission.

At the outset, I would like to take this opportunity to thank you for the tremendous support and leadership you have shown in ensuring that the Commission receives the resources and staff necessary to fulfill its mission. Your backing, along with the strong support of our authorizing committees, demonstrates convincingly that the Congress is dedicated to ensuring the financial integrity and vitality of our markets. While recent events have shaken investor confidence in the financial reporting by public companies and the integrity of our securities markets, your support of the SEC in both fiscal 2003 and 2004, and the landmark Sarbanes-Oxley Act, will help reinforce the foundations of our markets and demonstrate their resiliency.

Although I have been at the Commission only since February 18th, I look forward to continuing and building on the strong and cooperative relationship that our Agency has developed with you in the past as we work together on the SEC's resource needs to implement the Sarbanes-Oxley Act and fulfill all of our statutory duties. This is a critical time for the agency and the way we address the challenges before us will determine not only where we go tomorrow, but for years to come.

In many ways, it may be time for the SEC to go through a transition—much like the transition that the U.S. military has experienced in recent years—and evolve into a much more efficient force, becoming quicker, more agile, and more pro-active.

I am now reviewing with senior staff the Agency's operations and resource needs to determine appropriate changes to address both our internal and external needs. My hope is that the SEC can develop a new approach to our mission, as the military has done, so that we can play offense more often, be more pro-active, and anticipate the problems we may face.

FISCAL 2003

Although this hearing is for the Commission's 2004 appropriations request, I believe it is necessary to put this request in the context of our fiscal 2003 funding level. Thanks to your efforts, the Commission was appropriated $716.4 million to fund its operations this year as part of the recent omnibus appropriation. These funds will enable us to meet the remaining fast-approaching deadlines of the Sarbanes-Oxley Act, hire over 800 new staff, advance initial start-up funds to the Public Company Accounting Oversight Board, improve our training efforts, and address our most pressing information technology needs. We will continue each of these activities in fiscal 2004 and for that reason I would like to discuss them now.

Additional Staff

The new staff provided in fiscal 2003 will focus equally on the complex issues that we currently face and on the fundamentals upon which the Commission was built: full disclosure, fairness, transparency, and investor protection. Investor confidence is predicated on "minding our knitting" in these core areas. I believe that any budget increases we receive must be targeted to the programs and activities that will have the largest impact on our mission. In this regard, the budget that was prepared prior to my arrival calls for the following staffing increases in our major program areas:

Prevention and Suppression of Fraud	188
Full Disclosure	204
Investment Management Regulation	178
Regulation of Securities Markets	201
Legal and Economic Services	22
Program Direction	49

My initial review of these numbers suggests that overall this level of increase is warranted. However, during the next several weeks and months I intend to delve more deeply into each program area to verify personally that this is the best and most effective and efficient use of our new staffing. I would therefore like to reserve my option to make changes.

As discussed below, we will hire aggressively but thoughtfully, not just to increase head-count. As a result, these hiring targets may only be met over a longer period of time, but they will be met with people that we are sure can perform the vital tasks that we assign to them. And we are committed to train and integrate new staff as we bring them on. We are grateful that legislation has been introduced in both the House and Senate to help the Commission expedite and streamline the hiring process so that we can bring on additional, mission-critical securities industry accountants, compliance examiners and economists as quickly as possible to get on with the business of protecting America's investors.[1] The Commission strongly supports this legislation and hopes that it will be adopted at the soonest possible time and signed into law by the President. Without this expedited hiring authority, the Commission will not be able to hire the additional staff it needs—and which the Sarbanes/Oxley Act contemplates—in any responsive time frame.

Today, over half of all U.S. households are invested in our capital markets. Twenty years ago, that rate was less than 20 percent. Just to use one example: mutual fund investments today exceed by more than $2 trillion the amount on deposit at commercial banks and are approaching the approximately $7 trillion in total financial assets in the commercial banking system. The SEC has only 354 examiners to oversee these mutual funds and investment advisers. In addition, while there are over 7,800 registered broker-dealers—with more than 88,200 broker-dealer branch offices—in the United States, the SEC's broker-dealer examination program has only 218 staff to conduct inspections of these institutions. These facts, along with the accounting scandals that have plagued us, reinforce what we all know: our markets have changed, and grown, dramatically, investor confidence has been shaken, and the SEC must act decisively to deal with these challenges.

[1] See H.R. 658/S. 496, "The Accountant, Compliance, and Enforcement Staffing Act of 2003".

Equally important, I believe that the efficient functioning of the SEC is as much a part of investor protection as ushering in new rules and regulations. I have presided over similar management challenges while in the private sector and seen first hand what it takes to grow rapidly and responsibly and improve performance. The organizational and cultural changes that accompany the opportunity you have provided me are significant and require regular attention. Toward this end, the yardstick for measuring our success will be based both on the number and quality of immediate program improvements and on meeting the agency's long-term goals of investor protection and market strength. Two operational areas that play a significant role in this regard are staff training and management accountability.

Training and Management

New staff and the need for regular training go hand-in-hand. For this reason, the Commission will increase significantly its emphasis on frequent, in-depth staff training. Given the challenges we face, we need to ensure that staff continue to have the tools and skills necessary to fulfill their duties effectively. We cannot afford to have our most skilled employees leave the agency or be underutilized. Pay parity and the downturn in the economy have helped attract top talent, but there is more that we can do.

Management accountability is also central to our ability to perform our duties. I intend to enhance the Commission's operations by establishing a system to better train, evaluate, develop, and mentor managers and supervisors. This effort is consistent with the goals of the President's management agenda and is the right thing to do. We cannot expect SEC staff to successfully fulfill their duties if they do not have supervisors with the skills and tools to lead them. We must set expectations and reward our managers and staff accordingly.

Information Technology

The Commission's operational challenges also extend to our information technology program. Prior to enactment of our fiscal 2003 appropriation, our Office of Information Technology had been structured to maintain our existing information technology systems, undertake a few smaller projects each year, and complete only one large-scale initiative at a time. We have accomplished this level of activity primarily by developing a robust information technology capital planning program and relying heavily on contractors and outsourcing. This approach has been essential given past resource constraints, but it has left us with badly outdated IT capabilities. We must now be critically introspective, bring in broad IT expertise to evaluate our needs and further increase the involvement of our agency's divisions and offices in our information technology decisions. To meet our needs, program staff must work side-by-side with a reinforced information technology staff, and we must increase the number of information technology program managers we have available to assist the program offices in developing major applications to improve our effectiveness. While these hiring and cultural changes may not appear revolutionary, they are nonetheless significant and multi-year in nature, especially when viewed against our current inventory of major information technology needs.

The fiscal 2003 funding level allows the SEC to undertake three new major, multi-year information technology projects. The first one addresses the Commission's need to move away from paper documents. It is the development of a robust document management and imaging system that will make it easier for our attorneys, examiners, and others to cull through the tremendous volumes of information that they review and file as part of their investigative, inspection, and enforcement activities. This system will provide agency-wide electronic capture, search, and retrieval of all investigative and examination materials and will be designed to meet the demands of our document-intensive litigation program, and to assist our examination staff in analyzing the content of documents more effectively.

As an aside, one of the first things I noticed when I arrived at the Commission's headquarters and walked around was the extent to which the SEC is physically drowning in paper files. We need to make it easier for staff to do their jobs and to share information with each other. Document management and imaging are key components of this and, while it will be a multi-year effort, it is long overdue.

The second project holds equal potential to improve the efficiency and effectiveness of the Commission: a comprehensive change in our filing and disclosure processes, especially regarding financial reporting. The effort to improve the filing and transparency of public company disclosures is expected to lead to significant business process changes that will result in the elimination of confusing forms, the collection of uniform data from filers, and internal operations improvements that will allow staff to conduct more rigorous financial, industry-specific, and comparative analyses. Although this project will be carried out by issuers, their accountants and

their other advisors, under the leadership of the SEC, the principal beneficiaries of this initiative ultimately will be the nation's investors, who will have more understandable and reliable financial information upon which to base their investment decisions. This will result in a fundamental improvement in the transparency and comparability of firms' financial statements, which should significantly increase investor confidence.

When the agency's electronic filing system (EDGAR) was originally created, it did a terrific job of converting paper disclosures and filings into electronic documents and making more information available to the public. We now need to take the next step. As part of a comprehensive review of our business processes, we need to change how we work and alter EDGAR accordingly. We need to revisit what information staff must have readily available to conduct more intensive and robust disclosure reviews. For instance, while we receive and archive the EDGAR data, we cannot immediately analyze them. Instead, we depend on outside vendors to transfer the numbers in the text of the filings to machine-readable form that we can then analyze. We are in the process of designing tags for EDGAR filings that would allow anybody to extract machine-readable data from them. These initiatives will allow us to conduct analyses and monitor trends in real-time.

Our third major information technology requirement is to enhance our disaster recovery program. The SEC learned first-hand from the events of 9/11 and the experiences of its Northeast Regional Office, in New York, of the importance of keeping its data even more secure than it already is. In addition, we need to have the capacity to store and move large amounts of data from one regional or district office to another without first going through Washington. We need to move to a true "point to point" information technology system that allows us to mitigate the loss of data and to recover quickly in the event that we need to implement our continuity of operations plan. When this project is complete, the agency's critical files and information systems will be backed up daily and in multiple locations.

Sarbanes-Oxley Act

Since enactment of the landmark Sarbanes-Oxley Act last summer, the Commission has worked vigilantly to meet the Act's timeline and mandates. Within 30 days of the Act's signing, we adopted rules requiring CEOs and CFOs to certify their financial statements and accelerating insider transaction reporting to two days.

This past January was the busiest month of rulemaking in the history of the SEC. We adopted nine other Sarbanes-Oxley mandated rules relating to: Pro-forma financial information, codes of ethics for senior executives, financial experts on audit committees, trading during pension fund blackout periods, disclosure of material off-balance sheet transactions, retention of audit records, independence standards for public company auditors, standards of conduct for corporate attorneys, and the application of certain Sarbanes-Oxley certification and disclosure requirements to registered investment companies.

In addition, we sent four separate studies to Congress related to: Penalties and disgorgements in our enforcement cases, securities professionals who have "aided and abetted" federal securities law violations, commission enforcement actions involving reporting violations and restatements, and the role and function of credit rating agencies.

We met these deadlines without sacrificing our other work or obligations—including our robust enforcement program and numerous regulatory initiatives unrelated to Sarbanes-Oxley. For example, in January we also adopted rules regarding proxy voting by investment companies and investment advisers, and in February we adopted rules regarding analyst certification of research reports. And we're hard at work on other rules and studies, including rules related to: Improper influence on auditors, listing standards related to audit committees, governance of the Public Company Accounting Oversight Board, investment adviser and investment company compliance policies, public company internal control reports, critical accounting policies, and expanded current reporting.

Public Company Accounting Oversight Board

Selection of a new chairman

The Commission recently announced that it adopted a plan to select a Chairman of the Public Company Accounting Oversight Board established pursuant to the Sarbanes-Oxley Act of 2002.[2] The plan calls for the Chairman, the Commissioners, and the staff to reach out and solicit input from a variety of sources, including key mem-

[2] See "Statement of the Commission Regarding Selection Process for Chairperson of the Public Company Accounting Oversight Board (PCAOB)" March 4, 2003, http://www.sec.gov/news/press/2003–28.htm.

bers of Congress, investor advocates, academics, and members of the business community.

As I said in my confirmation hearing before the Senate Banking Committee, the selection of a Chairperson for the Public Company Accounting Oversight Board is my number one priority, and I am pleased that the Commission has been able to build upon the recommendations of the General Accounting Office and quickly devise a thorough and expeditious process to identify and vet potential candidates.

The SEC staff will incorporate new suggestions, update the list of qualified candidates and circulate it to the members of the Commission. The Chairman and the Commissioners will narrow that list based on the criteria in the Sarbanes-Oxley legislation, additional criteria that the Commission finds desirable, but not mandatory, and the individual's willingness to serve.

Each candidate on the narrowed list will undergo a preliminary vetting process. Upon completion, each member of the Commission will interview the leading candidates and a thorough background review will be completed. Following this review and consultation with the Chairman of the Federal Reserve and Secretary of the Treasury, as required, the Commission will vote to approve the appointment of a Chairperson.

The Commission will be looking for an individual who has experience running a dynamic and innovative organization; is well recognized by those participating in the financial markets and possesses a keen understanding of those markets; is independent from any particular constituency; has experience that demonstrates an understanding of the role of auditors in the Commission's financial accounting and disclosure system; has no known impediments or controversies that might impair his or her ability to lead, or the public's ability to rely on the individual to lead; and is willing and able to serve a five-year term.

In addition, we are seeking a person who has the ability to consider impartially ideas, information, and data from all sources, to seek additional input whenever it appears necessary, and to make timely decisions, as well as the ability to absorb complex information, analyze it objectively, and make rational decisions. Of course, we want someone who has the ability to communicate effectively, has a demonstrated commitment to public service and to the PCAOB's mission, as well as an awareness of the financial reporting and auditing environment. The individual we choose should have a demonstrated ability to create a collegial working environment and instill public trust.

My hope and expectation is that the Commission will move expeditiously and select a new chairman for the PCAOB as quickly as the process allows.

Funding advance

The fiscal 2003 budget provides the resources necessary for the Commission to advance start-up funds to the Board. The Commission initially advanced $1.9 million to the Board on January 15, 2003. On March 28, the Commission approved a more substantial second advance of $13.5 million that will fund the Board's operations through May and allow them to begin the development of state-of-the-art information systems to be used in their registration, billing and collection, and professional oversight programs. The Board has stated its intention to repay all of these funds to the Commission by the end the current fiscal year.

Commission Oversight

The Commission has significant responsibilities related to the oversight of the Board, including approving the Board's budget and rules and adjudicating appeals from the Board's decisions on registration, inspection, and disciplinary matters. We have developed close communications and a good working relationship. For example, the Board and the Commission recently participated in a roundtable on issues related the Board's registration and oversight of foreign accounting firms.

Utilization of Commission Resources

We have tremendous needs for the new resources made available in 2003 and have plans in place to meet these needs. However, I want to be sure—and I am committed to making sure—that every penny of that new money is spent wisely. I am determined that we take an aggressive but thoughtful approach to resource allocation. We will bring on the people we need to help us fulfill our mission, and not simply increase our head-count. I view this allocation of resources and renewed commitment to the SEC's needs as a multi-year effort to ensure that we make long-lasting and substantial improvements in the SEC's programs that will restore confidence and benefit our nation's investors.

FISCAL 2004

The President's request for $841.5 million in fiscal 2004 recognizes that the Commission's needs are growing and ongoing. As I stated earlier, this request is the largest amount the Commission has ever received and will allow us to continue all of the efforts that we are undertaking in fiscal 2003. In particular, it will allow us to focus further on financial frauds, review of public company filings, our new risk-based examination program, and the ongoing requirements of the Sarbanes-Oxley Act.

Enforcement Activities

The Commission has played, and will continue to play, a vital role in protecting our markets from fraud, manipulation and other practices that continually threaten to undermine their integrity. To meet the challenges facing us—including the unprecedented number of significant financial frauds and accounting failures, new securities products, technologies, and globalization—the Commission's enforcement program will continue to add personnel, including investigative attorneys, accountants, and market surveillance specialists.

The Commission has responded swiftly to the recent rash of accounting failures. In fiscal 2002, approximately 27 percent of all filed enforcement actions involved financial disclosure and issuer reporting violations. Financial reporting and accounting cases remain our number one enforcement priority, and numerous financial fraud investigations are currently underway. These types of investigations require a significant commitment of staff resources because they are fact- and document-intensive and include reviews of the conduct of a variety of individuals and entities. The Commission's enforcement program will continue to need additional attorneys and accountants to assist in these complex financial fraud investigations.

As the Commission seeks to aggressively investigate and punish corporate fraud, an increasing number of defendants are choosing to litigate. Even many cases that are ultimately settled are the subject of protracted litigation prior to settlement. Commission litigators are now actively involved in nearly one-half of recently filed cases. In addition, our litigation and investigative staff are increasingly involved in emergency court actions in an attempt to secure investor funds before they are lost forever and to alert the investing public to false and misleading disclosures being made by issuers. It is critical that the Commission maintain a strong litigation capability because it is the credible threat of litigation that allows us to pursue wrongdoers effectively and win our cases or settle them on favorable terms.

Additionally, the growing internationalization of the securities industry and the securities markets has added new challenges for the Commission in combating securities fraud. An increasing number of the SEC's enforcement cases have substantial international dimensions that make it more important for the Commission to work closely with its international counterparts in enforcement and inspection activities. Our staff devotes much time and resources to tracking down assets that have been sent abroad.

And finally, the Commission's enforcement staff works closely with U.S. Attorneys' Offices and the Department of Justice to obtain criminal sanctions as appropriate. This association was recently institutionalized by President Bush when he created Corporate Fraud Task Force, of which the Commission is a member and the Department of Justice heads. We also will continue to detail enforcement staff, in appropriate situations, to U.S. Attorneys' Offices around the country to support criminal prosecution of securities fraud.

Market Structure Issues

The rules governing trading within equity markets and the relationship among competing equity markets is another area that the Commission will focus on this year. Aware that such issues were coming to a head, the Commission organized two full days of market structure hearings in October and November 2002. Participants at the hearings included senior staff members of the New York Stock Exchange, Nasdaq, American Stock Exchange, and Chicago Stock Exchange; market makers, specialists, Electronic Communication Networks, and agency brokers; buy-side traders; representatives of individual investors; and respected academics. In the remainder of this fiscal year, the Commission will devote significant resources to the development, proposal, adoption, and enforcement of the policy actions that will be necessary in this area.

Review of Filings of Public Companies

The Division of Corporation Finance has been enhancing its selective review program to target issuers whose review would most protect investors—large companies, companies in critical sectors, companies that present particular perceived financial

or disclosure risks. This targeted approach is consistent with the directives contained in the Sarbanes-Oxley Act. The review of the Fortune 500 companies undertaken last year is an example of this approach. As review resources and technological enhancements that will assist in the assessment of risk are added to the Division, the review process will become more robust. While the review process cannot eliminate or identify all financial fraud or identify those who are determined to commit fraud, the review process will better fulfill its objectives of improving disclosure and deterring fraud.

The review process is increasingly focusing on financial reporting and financial disclosure because these are the areas where defective disclosure puts investors at most risk. To permit this focus, recruiting and hiring of review staff will emphasize accountants and those who are able to perform financial reviews.

The Sarbanes-Oxley Act also requires review of each reporting company at least once every three years. We are in the process of developing review processes that will permit us to meet that goal. Here too, the additional resources that we are adding to the Division are an essential element and will allow us to satisfy that mandate over a multi-year period. We will also use those resources to meet that review requirement in an efficient and effective way, and we intend to do so in a manner that does not undercut our investor protection objective.

Risk-Based Examinations

With the additional staffing provided in fiscal 2003, the Commission's examination and inspection staff will be able to implement our new enhanced risk-based inspection program. For investment advisers and mutual funds, this enhanced program will allow examiners to recognize the different levels of risk inherent in the operations, management, and compliance processes of investment advisers and funds. In particular, those registrants that have relatively higher risk profiles will be examined every two years, while all remaining firms will be examined no less frequently than every four years. New firms will be inspected within the first year of their operation. These more frequent inspections are a substantial improvement over the five-year inspection cycle used to schedule inspections prior to fiscal 2003. For broker-dealers, the new staffing levels will allow us to increase substantially our oversight of the risk management and internal controls of the largest broker-dealers that have the most customer accounts, and also to increase the small number of broker-dealer branch office inspections that we are currently able to conduct.

Other Sarbanes-Oxley Act Requirements

While the Commission has made tremendous progress in implementing many of the critical components of the Sarbanes-Oxley Act and has met each of its statutory deadlines, important initiatives and additional rulemaking pursuant to this historic legislation will continue to be a top priority for the SEC. In addition to the numerous substantive rules already adopted, a number of Commission actions are still mandated by deadlines set within the Sarbanes-Oxley Act. These forthcoming SEC actions include: the ratification of key rules and procedures for the Public Company Accounting Oversight Board; the adoption of rules on analyst conflicts of interest; the recognition of generally accepted accounting standards; as well as studies and reports relating to both principles-based accounting and off-balance sheet transactions and special purpose entities. I am confident that the Commission and its dedicated staff will continue to work tirelessly to implement these remaining provisions of the Sarbanes-Oxley Act.

Other rulemakings under the Sarbanes-Oxley Act, although not limited to a statutory deadline, also will play an important role in improving investor confidence in the credibility of reported financial information. For example, management and auditor reports on an issuer's quality controls over its accounting and financial reporting systems may enhance the quality and implementation of those controls, which, in turn, should improve the quality of financial reports and audits.

Another important area that will require the use of more Commission resources is international affairs. The development of international accounting, auditing, disclosure and enforcement standards is gaining momentum and will require more monitoring of and participation in international bodies that are promulgating and interpreting standards that could impact the credibility of information used by American investors.

CONCLUSION

In closing, let me reiterate how honored I am to serve as Chairman of the Commission at this time of great opportunity. Thank you again for inviting me today to speak on behalf of the needs of the investing public. I would be happy to answer any questions that you may have.

PAY PARITY

Senator GREGG. Well, thank you, Chairman Donaldson. I have a couple of questions. First, after considerable effort we were able to get pay parity in place for the SEC. I'm wondering how it is working, whether you think it is going to allow you to attract the types of individuals you need and keep the individuals who are there and who are critical. You are in a business which, up until a few years ago at least, was extremely competitive for staff, although now you may be able to find staff with a little more ease. Our concern is that the SEC retain its caliber staff. Is there something further we should do, or is pay parity working?

Mr. DONALDSON. Well, I think, bottom line, pay parity is working. We probably have had too short a period of time to measure, but just to give you some numbers, our attrition rate before pay parity was averaging around 14 percent, and our latest figures indicate that it's 4 percent or less right now, so so far, so good. There are other items associated with the hiring of professionals which maybe we can get into, but as far as pay parity, it seems to be working. It's a tremendous help.

HEDGE FUNDS

Senator GREGG. A question in another area, hedge funds are sort of viewed as the Wild West of the investing community these days, especially Wall Street. I'm wondering if the SEC has any concerns about whether or not we need additional, or whether or not you intend to propose additional, regulatory activity in the area of hedge funds and accounting disclosures and activities there.

Mr. DONALDSON. Clearly, the whole area of hedge funds is one in which we need to have more information. The latest numbers indicate that there are some 6,000 hedge funds in operation right now, with some $600 billion under management. The money is flowing in. The growth in hedge funds over the last decade has been considerable.

I would stop and say that I think there's a slight misnomer that the name hedge fund implies. Many of the funds that are classified as hedge funds are not hedged at all, they're simply investment pools, but let's use that term.

I think our posture on this is that the SEC has been, before I got to the SEC, attempting to get information about hedge funds, and since I've arrived we have initiated what will be a roundtable discussion in May for 2 days in which we're inviting a broad cross section of people associated with hedge funds and so forth to come in and tell us about what they're doing. So by the end of May we'll have a lot more information.

I would say generally that we just need to know more about the techniques that are being used by hedge funds. We need to know more than we know now about who is investing in these funds. By and large they are unregulated by the SEC. Some are regulated under the Investment Advisors Act. We see some trends in terms of what I would call the retailization of hedge funds, that is, the putting together of groups of smaller investors, which is something I think we have to examine.

Up until now, by and large, you've had to have certain investable assets and certain income levels in order to be invested in these funds, and in order for the funds to maintain their nonreporting status, and I think that game has shifted. So I think it's too early for us to make a judgment, but we're going to put some resources into looking at that so the next time you ask that question we can give you a good answer.

Senator GREGG. Well, following up on that, from what you said I understand you are still early into this issue, but what do you see is the basic risk that you would be concerned about from the standpoint of protecting the public relative to hedge funds?

Mr. DONALDSON. Well, as you well know, there was a serious risk that almost caused a financial collapse in the case of Long-Term Capital Management, which was a particular kind of hedge fund that employed macroinvestment decisions and heavy leverage. That was a great concern when the markets turned against them, and I think the U.S. Government did a terrific job of stepping in with the Treasury Department and the Federal Reserve, and basically avoiding a collapse that could have been very damaging to other people.

Right now, I think that area has been well covered. The area of potential risk now is the new entrants into the field that we see as Wall Street has had its problems here in the last 3 or 4 years. We see a lot of people breaking off from Wall Street firms, from investment counseling firms, and setting up hedge funds—one or two people raising money for those hedge funds—so you have a lot of potential here for inexperienced people with a totally unregulated vehicle getting themselves in trouble.

We don't know how much leverage is being used in some of these funds. We need to know more about that. We need to know more about some of the trading techniques, so that I think right now all I can say is that we need to know more about what's going on.

Senator GREGG. Senator Hollings.

STATUS OF ENRON CASE

Senator HOLLINGS. Chairman Donaldson, we are very lucky, in my opinion, to have you take this particular assignment, because everyone has confidence in you.

I want to ask about two touchy things, one on the Kenneth Lay case. The reason I ask is, we had the Attorney General just the other day, and he appears before us and he relates all of the hard-charging comedown on corporate corruption, we've cleaned up corporate corruption in this Government of ours and everything else, and he listed the cases and what-have-you, and then when you ask about the leading case that we all know about, Kenneth Lay, he said, wait a minute, I've recused myself, I don't know anything about it. Do you?

I mean, they've made reports to the Securities and Exchange Commission, and you're the Chairman. I hope you haven't recused yourself. Kenny boy didn't give you a contribution, did he?

Mr. DONALDSON. Let me say what I can say.

Senator HOLLINGS. The reason we're interested in this is, right to the point, we as good lawyers know how you can bring—we've defended the charges and we've brought charges and assisted in

the prosecution. Before the Commerce Committee the entire California crowd appeared, and the authorities just listed out the fraud and how it was conducted, whereby they would ask for way more than their allocation in energy shortages and then take the excess of that allocation and ship it out, ship it back in and get it at the higher price because it was imported and what-have-you.

So I said, well, wait a minute now, referring to Mr. Lay and Enron knowing about it, I said, I remember specifically earlier this morning Ms. Lay appeared on my TV and said her husband didn't know anything about it, and Mr. Freeman was the witness. He said, the dickens he didn't, he knew everything about it. He was running it. He was in charge.

So you know, there are a lot of things about knowledge and what-have-you, but here you've got testimony before the Congress that they knew it, and it was a fraud, and California now has brought suit for $7 billion or $8 billion, whatever it is, for reimbursement, but we don't ever hear anything, and 1½ years has passed, and we all are proud about how we have come down hard on corporate corruption, but all of a sudden this case disappears.

In the meantime, back at the ranch, they said, wait a minute, you know, the fellow in charge of corporate corruption was out of the law firm that represented Enron, namely Mr. Larry Thompson, so what gives here? I mean, I'm trying to find out the status of that case.

Mr. DONALDSON. Well, you bring up a number of issues; there is the criminal case, and there is the civil case. Just to give you a little background, the Enron criminal investigation is being led by the Enron Task Force, and that was formed in January of 2002 to investigate all the matters related to Enron, and it is overseen by President Bush's Corporate Fraud Task Force which includes us, the SEC, and the Department of Justice. It is a team of federal prosecutors supervised by the Criminal Division and agents of the FBI and the IRS Criminal Division.

That task force also has coordinated with and received considerable assistance from the Securities and Exchange Commission. Now, as far as the civil case is concerned, last August the SEC filed a case against Michael Kopper, who is a former top Enron official accused of violating antifraud provisions, and then in October we filed a case against Andrew Fastow, who is Enron's former CFO, alleging violations of the antifraud, periodic reporting, books and records provisions and so forth.

Most recently, last month the Commission charged Kevin A. Howard, the former chief financial officer, and Michael W. Krautz, the former senior director of accounting of Enron Broadband Services, and also March 17, charged Merrill Lynch & Company and four of its former senior executives with aiding and abetting Enron securities fraud. Now, that is the first time that the SEC has brought an aider and abettor action against a bank.

Now, as far as a general comment on your question specifically referring to Lay——

Senator HOLLINGS. He was the chief executive officer.

Mr. DONALDSON. He was the chief executive officer, and I think I can say that the coordination of the criminal and civil action requires a lot of very careful building blocks, if I can put it that way.

Senator HOLLINGS. You are building a case, is what you're saying?

Mr. DONALDSON. The building blocks have to do with the way the criminal justice system works. It has to do with the way information is received. Information can be received by the Justice Department a little more completely than it can by us. I guess what I'm saying is, without commenting specifically on that case, that we're on the case of all the Enron activities.

EXPENSING STOCK OPTIONS

Senator HOLLINGS. If Mr. Donaldson says you're on the case, that's sufficient for me. Let me ask this, and go to another thing that Arthur Levitt, when he was the Chairman, he tried to get these stock options expensed. We tried to, Senator Levin from Michigan, he put in an amendment. We were all ready to vote on the amendment, then all of a sudden the majority leader and the minority leader said no, we are not going to take—we're going to take it up later, and later is 1 year ago I think, and we haven't ever taken it up.

I got right to the point with WorldCom, and one of the officials I'm asking, I'm saying how in the Lord's world did you give Ebbers a $400 million loan, and the answer was, we had to. I said, you had to? He said, yeah, he had all of these options and he had built them up and built them up, and he had them, and he was going to cash them in twofold. He was going to ruin the financing we had on course for WorldCom-MCI on the one hand and of course destroy the value of the stock, so we had to give it.

Corporate governance shouldn't work itself into that kind of cul-de-sac, and we're ready to do it, and I have heard, I believe, your comment that they should be expensed. You can't do it both ways. They are an expense, but they're not one. What is the position that the Securities and Exchange Commission has taken? What is being done? Do you want us to write it into this bill? I would be glad to try to write it in here that we expensed the stock options so we can really get corporate governance back. That was the real thing, and it's still bothering us, these excessive executive salaries.

We had to write on the bill just the day before yesterday, or last week I guess it was, Friday, that here we were financing the airlines $3.5 billion. All the airlines' stock, net worth of all the airlines does not come up to $3.5 billion. We've given them more money than they are all worth if you put them all together, and we said well, that's pretty bad, but even worse is, look at these bonuses they are giving, these millions and millions of dollars of bonuses as they all go broke, rewards for going broke. This is what's ruining—nobody wants to invest in a stock market that's got those kind of stock options on the one hand and financing companies giving excessive bonuses and everything else like that on the other hand for going broke. That's the problem that you have.

Mr. DONALDSON. Well, let me make just a couple of comments. I have made, as you allude to, comments on this subject during my confirmation hearing, and I will state again unequivocally that I believe that stock options are an expense and that that expense needs to be reflected. That is point number one.

Point number two, and the more difficult question, is how to do it? How do you come up with a value? In a complex situation in terms of valuing those options over differing periods of years and so forth, and different markets, what is the value that should be reflected on the day that those options are given? A lot of them expire with no value. A lot of them are tremendously valuable. How do you rate that? How do you do it?

The FASB has committed themselves now to come up with a formula for expensing those options and an accounting standard for doing so, and I'm going to be very interested to see that standard. It is not an easy calculation, but they have committed themselves.

Senator HOLLINGS. Will that be a rule of the Commission, then, once they make that recommendation?

Mr. DONALDSON. As you know, under the new arrangement with the Public Accounting Board, we will both be very much listening to the rules proposed by FASB. I think we are going to see that your desires are fulfilled here.

Senator HOLLINGS. And your desires.

Mr. DONALDSON. And my desires, absolutely.

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

Senator GREGG. That will have a tax effect too. Will the Treasury be included in that exercise?

Mr. DONALDSON. The final rule will be an accounting rule, and our new oversight board with the primary responsibility at the first level will be there, but of course their rulings and so forth come through us and have to be approved by us, so we will have the ultimate responsibility.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Senator GREGG. How about this accounting board? How are you doing in getting that going, and especially what are we going to pay these people, talking about pay?

Mr. DONALDSON. As to the status of the Board, as I've said publicly, it is a number one priority for me as the new SEC Chairman to get the right person to be Chairman of the Accounting Board. Although I'm saying me, it ultimately is our Commission that will appoint that chairman.

We instituted a process within 1 week of my arrival, a process for searching for that person. I will not bore you with all the details of the process, except to say that we reached out in a broad and public way to add to our list. We talked to anybody and everybody that would talk to us about making suggestions. We brought in a tremendous number of names. We then had a time-phased process that boiled that down.

We have boiled it down. We are in an advanced stage now, and I think that what I would say is that for anybody that has been in the recruiting business, if you will, we don't want to make a mistake on this. We want to get the right person, and generally speaking, the right person is not always readily available.

Again, my experience has been that oftentimes the right person is happily doing something else, and so it is a recruiting effort to get the right person to come. But I am encouraged by the work to date, and I think presently we will have somebody, sooner, I hope, than later.

Senator GREGG. Not to be parochial about this, but you're the right person for the SEC. You would probably be the right person for this board also, and obviously in taking the SEC job you're not getting paid a lot of money compared to what you made in the private sector. Yet the salary for this accounting board is being set at like $500,000, which is about twice what we pay the President.

Mr. DONALDSON. I can tell you what the relationship is to my salary.

Senator GREGG. Your salary and my salary. The Chief Justice of the Supreme Court is paid about $160,000, I think. I'm not sure that it is understandable why we need to pay so much. I mean, isn't the person who takes this job going to be mostly doing it as a public service, as you are doing your job, as the President does his, and we hopefully do ours, and as the Chief Justice of the Supreme Court does his?

Mr. DONALDSON. Well, I understand exactly what you're saying, and I think you have to go into the history, which you probably know better than I do, of the Sarbanes-Oxley legislation and what went into the status of the Public Company Accounting Oversight Board, and it is not a Government agency. It was set up as an independent privately incorporated agency.

Senator HOLLINGS. Why?

Mr. DONALDSON. The reason for that, and again I'm speculating on this because I had nothing to do with establishing it, was that there are a lot of other entities out there in the private sector such as the FASB and other entities like that, which are attracting people to work there with private sector compensation. And I think the intention of Sarbanes-Oxley was to be able to go out and get not only the members of the Board, but also to get staff members, who were competitive with the best people available out there. So the Oversight Board was ordered to set a salary level that was comparable to what would exist, not in total private sector America, but comparable organizations.

They did that and came up with that salary level. Actually it is slightly over $500,000 for the Chairman and $450,000, I think, for the members of the Board, and that received the kind of negative comments which you've expressed here.

I will stop there, except to say that they are doing what they were ordered to do. Whether they could have modified it or presented it in a better way remains to be seen.

Senator GREGG. I suspect the right person to do it won't do it just to make money.

Mr. DONALDSON. Excuse me, not to interrupt you, but I think you just don't know—I mean, you just don't know. You're absolutely right that certain people are not going to do it, but certain other people maybe will.

SARBANES-OXLEY ACT

Senator GREGG. On Sarbanes-Oxley, how is it working? It's 8 months into it. I hear grumbling. Maybe that's because it's working. Do you see issues out there that we're going to need to revisit?

Mr. DONALDSON. As you know, the SEC has been in an extensive rulemaking mode here, and we're coming to the end of that.

I think that so far, so good. I think that the system is working the way it should work, which is that a law is passed and the rulemaking based on public comment and so forth can address some of the unintended consequences of the law, maintaining the spirit of the law, but being practical about the unintended consequences.

I think it is working quite well. If you go out into corporate America, particularly in the audit committee function, which is where some of the rules are most advanced, I think there's a heightened awareness of the responsibility of the audit committee.

There are still some issues that we have to cover by rulemaking, but I think it's working pretty well. I say pretty well because there's a lot of nervousness out in corporate America about just exactly what these rules mean. There's a lot of tentativeness, and that creates a kind of a distraction in my view for people running companies. They can become so tied up in trying to conform to the letter of the law that the risk here is that they lose flexibility and lose sight of what's needed to run an entrepreneurial company. That is a risk.

My own feeling in this is that—and I probably shouldn't say this—but I feel very strongly that we can pass all the laws that we want to, but we need the atmosphere inside the company to be moral. The philosophy of running the company should be that the chief executive and the board says this is the kind of company we want to be, and we're not going to skate right up to the minimum required by the letter of the law. We're going to stop well short of that because that's the kind of company we want to run, and until companies do that and have a code of ethics that is more than just written on paper, I think we will not have solved our problems.

I might go on to say that I think that there is a shift here, largely as a result of Sarbanes-Oxley, of the power, if you will, and authority to the board away from the chief executive who operates as he or she wants to. Gradually the boards of directors are recognizing that it is their responsibility to the shareholders to set that tone, and then to hire management that has the same feelings about the ethics of doing business.

EFFECT OF SARBANES-OXLEY ON CORPORATE DIRECTORS

Senator GREGG. I couldn't agree more with your explanation of the philosophy and how it should work. I'm wondering, however, if, with Sarbanes-Oxley and the litigation atmosphere, we haven't created a situation where the traditional director no longer wishes to serve on a board of directors. In that case, you're going to create an environment where you basically end up with professional directors who are willing to take risks. Taking risks is the way they make their money. This is, I think, one of the strengths of corporate America, which is that you get Main Street on your board of directors, and it may be a well-heeled Main Street, but at least it's Main Street. You talk to folks who serve as directors now and they're all scared, and many of them won't serve.

Mr. DONALDSON. This is a real problem, and I think there are two solutions to it at least. One is that the corporate directors themselves, the existing body of corporate directors are going to have to figure out how many boards they can be on to discharge their new obligations under Sarbanes-Oxley. They're going to have

to think through, and the boards are going to have to think through as they recruit, that there is an enhanced responsibility here and an enhanced risk, as you say, and I think potential directors and existing directors are going to have to look at that carefully.

Beyond that, I believe we're going to have to bring a whole new cadre of directors into the game. It's been a relatively small group of people who serve on many boards. That's been the tradition, a lot of CEOs serving on other CEOs' boards. There is a tremendous wealth of talent out there, out in corporate America and elsewhere, who can be very good corporate directors, and who have the time, and who will learn by doing it and bring new dimensions.

This makes me feel that we have to organize the training of these people, and searching for them, and we hope to be very active in that. I commend the number of business schools and law schools in the country, and the New York Stock Exchange, who are all moving toward director education, if you will. And we want to help them do that and intend to help them do that, so I think you are going to find a lot of, I'll say young people, but maybe older people who have not had a crack at it, who have something to offer and are willing to take that challenge. But we'll see.

Senator HOLLINGS. Along that line, just as an aside, when I was a young Governor from 1958 to 1962, that is what I had. My Bible was right there, Dun & Brad, and I could just pick out those corporate directors, and there wasn't any training. They were just drinking buddies. I mean, the GE served on the IBM, served on the General Motors, served on the Dupont. I mean, you could find them all. I wove them into what we called the plantation society. We've got over 100 plantations in the low country of South Carolina, and each Sunday at 11 o'clock they would have a brunch and go from one to the other, and I was always at those brunches to meet those folks and everything else, and then talk to them and try to get them to move their industry, try to carpetbag New Hampshire.

Senator GREGG. You did a good job of it, too.

Senator HOLLINGS. We had a good time doing it, but those corporate—they were good. They were good. I found all the CEOs and everything else very good, but it's gotten to the extreme. The quarterly reports and the life of a CEO is what, 3 years or something. He's got to get the stock up or they get him out, or whatever it is. They just take the money and run, all kind of bonuses, everything else like that. You've got a tough job trying to change that with the stock exchange and everything else and the business schools, as you indicate, working on it. You do a lot of good work. Thank you.

CONCLUSION

Senator GREGG. Do you have anything else you wish to add?

Mr. DONALDSON. Again, I'm delighted to be here.

Senator GREGG. The check is in the mail.

Mr. DONALDSON. I might just add one thing, if I can, which relates to the hiring of the people that we have to hire, we can hire lawyers quite easily because they don't have to go through the Civil Service posting and all of the competitive service requirements.

We are having real problems hiring accountants and economists and examiners. It is hard for us to compete out there under exist-

ing hiring regulations; therefore we have been working hard to see if we can't get those laws changed, and the House is ready to vote out an excepted service exception for us. By the way, our union has agreed with this, and we have sent a letter from myself and the head of the union, who cooperated with us. So—you asked if there was anything else you could do.

Senator GREGG. Well, we have been known to put authorizing language in our bill, so if you want to get us the language, and if we can get the agreement of Senator Shelby——

Senator HOLLINGS. That might help move it along. Any need like that, just contact the chairman.

Mr. DONALDSON. Well, I know it is not the direct jurisdiction of this committee, but it helps us.

Senator GREGG. Well, everything is in the jurisdiction of this committee. This is the Appropriations Committee.

Mr. DONALDSON. Okay.

Senator HOLLINGS. That's the way I was taught.

SUBCOMMITTEE RECESS

Senator GREGG. Thank you very much.

The next hearing is scheduled on Thursday, April 10, at 10 o'clock in this room, and at that time we will hear from the Director of the FBI.

[Whereupon, at 10:40 a.m., Tuesday, April 8, 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 2004

THURSDAY, APRIL 10, 2003

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

The subcommittee met at 10:03 a.m., in room S–146, the Capitol, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Hollings and Kohl.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF ROBERT S. MUELLER, III, DIRECTOR

OPENING STATEMENT OF SENATOR JUDD GREGG

Senator GREGG. The hearing will come to order.

We appreciate Director Mueller taking time out of his very busy schedule at the FBI, which is obviously one of the premier agencies in this country for protecting our Nation in this time of heightened concern. The FBI has taken, I think, a dramatic role in the area of leading this effort and has a huge portfolio and, thus, it is nice to have the Director here to talk to us about his budget and about his game plan.

And, Senator Hollings, do you have an opening statement?

Senator HOLLINGS. No. Thank you.

Senator GREGG. So we will turn to you, Director.

Mr. MUELLER. Thank you, Mr. Chairman, Senator Hollings. I beg your indulgence for a short statement.

Senator GREGG. Certainly.

OPENING STATEMENT OF ROBERT S. MUELLER

Mr. MUELLER. Let me just start by saying as I think you have pointed out, and due in no small part to the support we have had from this committee, the FBI is undergoing extraordinary and, I believe, positive changes. I believe we are more prepared today than we ever have been to meet the threats posed by terrorists, foreign intelligence services and criminal enterprises. The changes we have made in the past 18 months, and many others that are ongo-

ing, will ensure that the FBI stays on top of current and future threats well into the 21st century.

I believe that our fiscal year 2004 budget request will give us the resources we need to continue our positive momentum. As you are well aware, our total request is $4.6 billion, and we are requesting program changes totaling $513 million including 2,346 new positions, 503 of which will be for special agents.

I would like to spend a moment walking you through some of our progress to date in certain areas, the assessment of the threats that we still face in this country, and the changes that we are making to align our resources to the threats we confront.

COUNTERTERRORISM

As I know you are aware, our top three priorities currently are counterterrorism, counterintelligence and cyber crime. In turning first to counterterrorism, since the attacks of September 11th, the FBI has made the prevention of terrorist attacks our number one priority. I am pleased to report our efforts have yielded major successes over the last 18 months. As you are aware, we have disrupted suspected terrorist cells in Buffalo, Detroit, and Portland. And the recent apprehension in Pakistan of Khalid Shaikh Mohammed, a key planner and the mastermind of the September 11th attack, is also a significant achievement in the war on terrorism.

We also have been successful in choking off terrorists' ability to fund their acts of terror. We have frozen $125 million from more than 600 accounts around the world, and conducted 70 financial investigations with 23 convictions to date.

Also in Pakistan, last month the Pakistanis apprehended Mustafa Ahmed al-Hawsawi, a major financial planner for Al-Qaeda.

As Al-Qaeda and other terrorist organizations change tactics, the FBI must be equally agile. We, too, must evolve, and we are evolving. We have dramatically increased our intelligence analysis and dissemination capabilities and are now focusing on long-term strategies to upgrade these capabilities.

Our fiscal year 2004 request includes approximately $1 billion in direct support for counterterrorism. Understandably, the number of counterterrorism cases has risen dramatically since September 11, 2001, and the recent capture of high-ranking Al-Qaeda operatives and the information we have gleaned from their debriefings suggests that those numbers will continue to climb.

We need to have the resources to handle those increased numbers of counterterrorism cases. Nearly 50 percent of all of our requested program changes in 2004, or $250 million, supports our counterterrorism mission. In particular, the 430 positions proposed in the budget will strengthen investigative support in the field and improve counterterrorism management and coordination at Headquarters.

Additionally, the requested amounts would support 66 of—the 66 Joint Terrorism Task Forces we have nationwide, which are critical to facilitate information sharing and act as a first line of defense against terrorist attacks.

COUNTERINTELLIGENCE

The second priority for us is counterintelligence. We have—we look at our counterintelligence mission in four sectors. First and most significant is the potential for an agent of a hostile group or Nation to produce or use weapons of mass destruction. Second is the potential for a foreign power to penetrate the intelligence community. Third is the targeting of Government-supported research and development. And finally, the fourth is the potential compromise of certain critical national assets spread across the United States.

Just as we are transforming our counterterrorism program, we are also transforming our counterintelligence. We have reorganized the program and realigned our resources to concentrate on emerging threats. We now have full-time counterintelligence squads in 48 of the 56 field offices dedicated to investigating hostile foreign intelligence services. In the 2004 budget, we are requesting $63 million and 599 positions of which 94 would be for agents.

Let me turn for a second to briefly discuss the events that occurred yesterday in Los Angeles. As you are aware, I believe, yesterday in Los Angeles a retired FBI supervisor, Special Agent James J. Smith, was arrested along with a former intelligence asset, Katrina Leung. For many years, Smith, who had recruited Leung, served as her primary handler. The allegations against Smith and Leung are contained in criminal complaints which were unsealed yesterday. And because the matter is pending in Federal Court, I really cannot comment on the merits of these cases or on the strength of the evidence against Smith and Leung.

I do want to point out, however, that when I learned of these—of this possibility in January of this year, we immediately took steps to address this issue. I brought in a person by the name of Randy Bellows who had done the report on Wen Ho Lee in the Justice Department, an experienced prosecutor from the Eastern District of Virginia, to go out to Los Angeles and review what had occurred in those cases and to come back and give me recommendations.

Based on his recommendation, I appointed an Inspector in Charge, and it was the individual who was the lead agent in the *Aldrich Ames* case, to conduct a thorough covert investigation of the charges in Los Angeles. We gave him a task force in excess of 30 individuals who were separate and apart from the Los Angeles field office. And he conducted that investigation leading to the charges yesterday.

I have also asked the Inspector General to look at the performance of the Bureau with regard to this and other cases out there. And I am not content to wait for the Inspector General's review. I have asked the Inspection Division to look at the managers who may have had some responsibility and immediately get back to me a report on their responsibility for what happened out there.

I also want to point out that it is—we have, since January of last year, instituted a number of reforms out at the FBI Headquarters to ensure that these types of problems are corrected, not only out there, but throughout the FBI. In June of this last year, we established a rigorous Asset Validation Review Program to strengthen

agent accountability and management oversight, and made significant changes in the senior management within the Counterintelligence Division. And as I have said before, we have promulgated a national counterintelligence strategy with centralized program management.

We cannot minimize the problems in the Los Angeles program, but we have moved firmly to correct those problems. And quite obviously, I believe that to be an isolated event and I remain proud of the work of the many thousands of men and women of the FBI for the service they render every day to the United States. But we, as an organization, must learn from the mistakes of the past so that we do not repeat them in the future.

CYBER CRIME

Leaving counterintelligence, the third priority is cyber crime. We, as just about everybody else in the United States, continue to see an explosive growth in cyber crimes. Last year we established a consolidated new Cyber Division at Headquarters to manage these investigations and to help us coordinate our public and private sector partners.

In our 2004 budget request, we are requesting $234.4 million to protect the United States against these attacks. We are seeking 194 positions, of which 77 would be for agents.

In addition to the traditional cyber crimes, over the past 6 years, we have seen cases involving child sexual exploitation grow in number from 113 to over 2,300. The requested resources for 2004 will help us to keep pace with this burgeoning caseload.

Lastly in the cyber area, 6 out of 10 of our investigations currently require some level of computer forensic support. History tells us that the number of cases requiring this support will grow. These resources would allow us—the 2004 resources which we request would allow us to expand our ability to conduct computer forensics examinations.

TECHNOLOGY PROGRESS

A last moment on our technology progress. We have made substantial progress in the last 18 months. On March 28, we completed the Trilogy Wide Area Network. It was completed 3 days ahead of schedule. There were some that said that we could not do it, much less do it on time. That wide area network has been deployed to 622 FBI locations. Over the last 18 months, we have also installed 21,000 new desktop computers and nearly 5,000 printers and scanners.

We are now focused on implementing the data warehousing capability that will bring together our information into a database or databases that can be accessed by agents throughout the world, as well as our analysts, as soon as that piece of information is developed.

In today's world, we cannot afford to allow our technology to become obsolete. And it is essential that we preserve these investments by ensuring there is sufficient funding for life cycle operations and maintenance of systems and for technology refreshment, and the 2004 budget request includes a request for $82 million for this purpose.

Mr. Chairman, in addition to the priorities I outlined today, the FBI is also requesting funding to continue restructuring our security programs, to augment nuclear DNA efforts, and to support our ongoing crackdown on corporate corruption.

PREPARED STATEMENT

I believe that my Bureau is in the process of turning a corner in its history. We have made substantial changes to better equip us to protect America over the last 18 months. We must continue to evolve. We must continue to grow. And with your support, we can give our agents the resources and tools they need to carry out their mission of protecting America.

Thank you for the opportunity to give a brief statement.

Senator GREGG. Thank you, Director. We appreciate that.

[The statement follows:]

PREPARED STATEMENT OF ROBERT S. MUELLER, III

INTRODUCTION

Good morning. Chairman Gregg, Senator Hollings and members of the Subcommittee, I welcome the opportunity to appear before you to discuss the FBI's fiscal year 2004 budget request. The FBI is undergoing extraordinary, positive change, to better meet the threats posed by terrorists, foreign intelligence services, and criminal enterprises. We have changed our organizational structure to address the greatest threats facing our country, to be more dynamic and flexible, and to ensure accountability. And we are dramatically upgrading our information technology. These changes, and many others that are ongoing, will ensure that the FBI stays on top of current and future threats well into the 21st century.

The FBI's fiscal year 2004 budget request will give us the resources we need to keep this positive momentum. Our total request is $4.6 billion. We are requesting program changes totaling $513 million, including 2,346 new positions, 503 of which are Special Agents. This morning, I would like to briefly walk you through our progress to date, our assessment of the threat and the changes we are making to align our organization and resources to address the threat.

Before beginning, let me make one caveat to my testimony. We are still analyzing the impact of the 2003 Omnibus Appropriations Act on our 2004 request. It is possible that some changes to the request may be required to reflect the 2003 enacted level. We will be working with the Appropriations Committee on this analysis.

COUNTERTERRORISM PROGRESS

The prevention of another terrorist attack remains the FBI's top priority. We are thoroughly committed to identifying and dismantling terrorist networks, and I am pleased to report that our efforts have yielded major successes over the past 18 months. Over 228 suspected terrorists have been charged with crimes, 113 of whom have been convicted to date. Some are well-known—including John Walker Lindh and Richard Reid. But, let me give you just a few recent examples:

—In March, Khalid Shaikh Mohammed was located by Pakistani officials and is in custody of the United States at an undisclosed location. Mr. Mohammed was a key planner and the mastermind of the September 11th attack. Since the arrest, the FBI worked with other agencies to disrupt his financial network in the UAE and Pakistan and we are continuing to get extremely valuable information from him.

—On March 16, Abdullah al-Kidd, a U.S. native and former University of Idaho football player, was arrested by the FBI at Dulles International Airport en route to Saudi Arabia. The FBI arrested three other men in the Idaho probe in recent weeks. And the FBI is examining links between the Idaho men and purported charities and individuals in six other jurisdictions across the country.

—In February, members of the Palestinian Islamic Jihad, including Professor Sami Al-Arian, were arrested by the FBI and charged under Racketeering Influence and Corrupt Organizations with operating a racketeering enterprise from 1984 until the present that engaged in violent activities.

—Six individuals in Portland, Oregon, were arrested by the FBI and charged with conspiracy to join al Qaeda and Taliban forces fighting against U.S. and allied soldiers in Afghanistan. All six have entered plea negotiations.

—And, in Buffalo, the FBI arrested seven al-Qaeda associates and sympathizers. These individuals, members of a suspected sleeper cell, were indicted in September 2002 for providing material support to terrorism.

In addition, we are successfully disrupting the sources of terrorist financing, including freezing $125 million from 62 organizations and conducting 70 financial investigations, 23 of which have resulted in convictions.

COUNTERTERRORISM THREAT

Despite these successes, tangible terrorist threats remain. During this period, we are clearly focused on immediate threats to the nation because of the war in Iraq. In order to respond to potential threats, our Strategic Information and Operations Center at FBI Headquarters and our field special command posts are operating on a 24 hour basis. We established an Iraqi Task Force. And, our agents have interviewed over 9,000 individuals and are obtaining important information to help protect the American public.

But, even as we guard against this potential Iraqi threat, we believe that for the foreseeable future, the al-Qaeda network will remain one of the most serious threats facing this country. While the United States has made progress in disrupting al-Qaeda at home and overseas, the organization maintains the ability and the intent to inflict significant casualties in the United States with little warning.

CHANGING TO MEET TERRORIST THREATS

As al-Qaeda and other terrorist organizations change their tactics, the FBI, too, must evolve. And we are evolving.

Our new Analysis Branch in the Counterterrorism Division has produced 30 in-depth analytical assessments, including a comprehensive assessment of the terrorist threat to the homeland. We have also improved analyst training and dramatically beefed up our language translation capabilities.

I am now focusing on long-term strategies to enhance our ability to collect, analyze, and disseminate intelligence. I have put in place a new, formal structure that will enable the FBI to assess gaps and to establish formal policies and strategic plans for intelligence collection. A new Executive Assistant Director for Intelligence (EAD/I) will have direct authority for the FBI's national intelligence program, and will ensure that we have optimum intelligence strategies, structure, and policies in place.

We are establishing, in every field office, Intelligence units staffed with Reports Officers. These specially-trained individuals collect and extract intelligence from FBI investigations and share that information with our law enforcement and intelligence partners.

FISCAL YEAR 2004 COUNTERTERRORISM REQUEST

Our fiscal year 2004 request includes approximately $1 billion in direct support for counterterrorism. Nearly 50 percent of all requested program changes, or $250 million, supports counterterrorism. In particular, the 430 positions proposed in the fiscal year 2004 budget will strengthen operational support around the country and improve CT management and coordination at FBI Headquarters. New personnel would provide an increased level of guidance, legal advice, and operational support to investigators on the front line of the war on terrorism. We must also continue to grow our cadre of strategic analysts. The number of FBI counterterrorism cases more than doubled last year, and with the recent capture of high-ranking al-Qaeda operatives, the number of cases will continue to climb.

The requested amounts would support 66 JTTFs—critical multi-agency task forces that facilitate cooperation and information sharing, and act as a "first line" for preventing terrorist attacks. It would expand vital international partnerships by adding new FBI Legal Attaches in Sarajevo, Bosnia; Kuwait City, Kuwait; Tashkent, Uzbekistan; Kabul, Afghanistan; and Belgrade, Serbia, and by enhancing our presence in several existing locations to handle a growing workload.

Approval of this budget request would also improve FBI crisis response capabilities, so we are prepared to respond to the scene of a terrorist attack at home or abroad quickly and effectively, with the equipment we need.

COUNTERINTELLIGENCE PROGRESS

Mr. Chairman, so far this morning I have focused on the terrorist threats facing this country. Our counterintelligence efforts are also vital to national security. I want to emphasize that the FBI is thoroughly engaged in fighting the serious threat from foreign intelligence services and their assets. The FBI had several successful investigations in this area. Last month, Brian Regan agreed to accept a life sentence for attempted espionage and unlawful gathering of defense information. In October 2002, Ana Montes was sentenced to 25 years in prison following her plea of guilty to one count conspiracy to commit espionage on behalf of Cuba.

COUNTERINTELLIGENCE THREATS

Intelligence threats fall into four general categories. The most significant—and our top counterintelligence priority—is the potential for an agent of a hostile group or nation to enhance its capability to produce or use weapons of mass destruction. A second threat is the potential for a foreign power to penetrate the U.S. Intelligence Community. A third threat is the targeting of government supported research and development. The individuals awarded research and development contracts in support of ongoing operations and war-making capabilities constitute the highest risk. The fourth threat is the potential compromise of Critical National Assets (CNAs). The nation's CNAs are those persons, information, assets, activity, R&D technology, infrastructure, economic security or interests whose compromise would do damage to the survival of the United States.

CHANGING TO MEET INTELLIGENCE THREATS

Just as we have worked to transform ourselves within the counterterrorism program, we have made significant changes to the FBI's counterintelligence program. Last May, when I announced the second phase of the FBI reorganization, I indicated that we would be refocusing our counterintelligence program to focus on the four threats I outlined. That effort is progressing with a centralized, nationally directed program. We established a Counterespionage Section responsible for overseeing all of the FBI's counterespionage efforts, including economic espionage, and we clarified our priorities and objectives in a "National Strategy for Counterintelligence."

With your support, we reprogrammed 216 positions from criminal investigations to counterintelligence, and we now have full-time counterintelligence squads in 48 of the 56 field offices.

FISCAL YEAR 2004 COUNTERINTELLIGENCE BUDGET REQUEST

For fiscal year 2004, we ask your support for program changes totaling $63 million and 599 positions, including 94 agents, to further our counterintelligence strategy. These resources would provide the necessary investigators, analysts, and surveillance capabilities needed to address emerging global threats, bolster both our fixed and mobile surveillance capabilities, and improve our ability to detect espionage activities targeting national assets and universities.

CYBER CRIME PROGRESS

Next, I would like to discuss our third priority—cyber. We have created a consolidated new Cyber Division at Headquarters to manage investigations into Internet-facilitated crimes, to support investigations throughout the Bureau that call for technical expertise, and to help us coordinate with public and private sector partners.

This strategy is proving successful. Our computer intrusion program, for example, has identified over 5,000 compromised computers, and resulted in 320 convictions and $20.4 million in restitutions. During 2002, Innocent Images National Initiative investigations resulted in 692 arrests, 648 indictments/informations, and 646 convictions. And despite using only 5 percent of all FBI resources, the Cyber Program is facilitating investigative activities across all Bureau programs.

CYBER CRIME THREAT

Unfortunately, we are seeing explosive growth in cyber crime—both traditional crimes such as fraud and copyright infringement that have migrated on-line, and new crimes like computer intrusions and denial of service attacks.

To date, terrorists have posed only low-level cyber threats, but some organizations are increasingly using information technology for communication. Terrorist groups are increasingly computer savvy, and with publicly available hacker tools, many

have the capability to launch nuisance attacks against Internet-connected systems. As terrorists become more computer savvy, their attack options will increase.

CHANGING TO MEET CYBER THREATS

Looking forward, our Cyber Program will focus on identifying and neutralizing: (1) individuals or groups conducting computer intrusions and spreading malicious code; (2) intellectual property thieves; (3) Internet fraudsters; and (4) on-line predators that sexually exploit or endanger children. Our success will depend on maintaining state-of-the-art technical capabilities to handle complex investigations and forming and maintaining public/private alliances.

FISCAL YEAR 2004 BUDGET REQUEST

For fiscal year 2004, the FBI is requesting $234.4 million to protect the United States against cyber-based attacks and high-technology crimes. This request represents program changes of $62 million and 194 positions, including 77 agents. These resources will enable the FBI to staff computer intrusion squads in field offices, enhance technical capacities to identify persons illegally accessing networks, and provide funding for the training and equipment we need to more aggressively investigate cyber incidents. The requested resources will enable the FBI to increase its efforts to detect the sexual exploitation of children on the Internet. Over the past six years we have seen these cases grow in number from 113 to over 2,300. We must increase our commitment here. Finally, the resources would allow us to expand our ability to conduct computer forensics examinations. Right now, 6 out of 10 investigations require some level of computer forensics support. History tells us that the number of cases requiring this support will continue to grow and that the number of forensic examinations required per investigation will also continue to grow.

TECHNOLOGY PROGRESS

I would like to touch on our efforts to upgrade FBI technology. Over the past two years the FBI has made significant progress in modernizing our information technology infrastructure to better support our investigative needs. On March 28, we completed the Trilogy Wide Area Network—three days ahead of schedule. High-speed local area networks have been deployed to 622 FBI locations. Over 21,000 new desktop computers and nearly 5,000 printers and scanners have been provided. The Enterprise Operations Center, which will manage our computer networks, becomes operational early this spring.

We are now focused on implementing a corporate data warehousing capability that is key to FBI intelligence, investigative, and information sharing initiatives as well as to our records management system.

Trilogy will change the FBI culture from paper to electronic. It will replace redundant searches of stove-piped systems. Agents will search multiple databases—linking thousands of data points of evidence, leads and suspects—through a single portal. Trilogy is the base for a modern computer architecture. Trilogy computers, servers, and networks will support state-of-the-art applications. Using Trilogy to transport, the Integrated Data Warehouse will link 31 FBI databases for single-portal searches and data mining. The Collaborative Capabilities program will allow electronic data sharing with other agencies.

FISCAL YEAR 2004 BUDGET REQUEST

We are now at the point in our information technology upgrade where it is essential that we preserve these investments by ensuring there is sufficient funding for life-cycle operations and maintenance of systems and for technology refreshment. The fiscal year 2004 request includes increases of $82 million to fund technology refreshment and operations and maintenance. These resources will ensure that the equipment we have deployed stays in good working order, and that it is replaced in an orderly manner. The FBI can never again allow its equipment to become obsolete.

OTHER PROGRAMS

We are completely restructuring our internal security programs and processes. We have created a dedicated Security Division and are consolidating security functions under a single management structure. As we implement these changes to improve security, we are addressing recommendations in the Webster and Rand reports. The fiscal year 2004 request includes increases of $37 million and 126 positions, including 32 agents. These resources will fund polygraph examinations, guard services, and other security expenses.

The FBI Laboratory's R&D efforts generated more than 120 projects, providing more than 100 deliverable products to the operational units, 58 technical publications, and 126 scientific presentations, in the last three years. The FBI's Combined DNA Index System software is used by 185 domestic and 23 foreign laboratories. The fiscal year 2004 request includes $3.28 million and 32 positions funding nuclear DNA and the Federal Convicted Offender Program.

I will conclude with the FBI's Criminal Program. We have opened more than 85 major corporate fraud investigations. At the end of fiscal year 2002, the FBI had five corporate fraud investigations with losses in excess of $1 billion. Currently, this number has increased to eight. Forty-five FBI field offices are participating in multi-agency corporate fraud working groups. The fiscal year 2004 request includes $16 million and 164 positions, including 54 agents. The request will fund additional investigators to support this initiative.

CLOSING

The FBI has turned a corner in its history. With the support of Congress, we have been able to make dramatic and substantive changes. Our transformation continues because the threats facing the U.S. homeland continue to evolve. I want to reassure you that we are committed to protecting this country from those who seek to harm us through acts of terror, espionage, cyber attacks, or criminal acts. Every citizen must be able to enjoy the basic freedoms this great nation provides. The men and women of the FBI understand their roles in these challenging and uncertain times. With your support, we can give them the resources and tools they need to carry out our mission.

Thank you.

COUNTERTERRORISM

Senator GREGG. Maybe you could give us your thoughts on where we stand in fighting terrorism.

Mr. MUELLER. Looking at it from our perspective alone, the FBI is responsible for understanding the terrorist threats within the United States. Each month as we reorient our work force, as we increase our information technology (IT) capability, as we grow analytical capability, as we bring on more translators, as we focus on addressing counterterrorism as our number one priority and, as everyone in the organization comes to understand that, I think we have grown in our capability of understanding the threats within our borders.

That does not mean that we could not still face individuals coming into the United States, sleepers who come in individually under our radar screen and, pursuant to some plot originated and directed overseas, contemplate a terrorist attack. But each month I believe that we have moved to better our capabilities and understanding of the terrorist threats within our borders.

And if you couple that with the successes overseas, the arrest of Abu Zabaydah, the arrest of Ramzi Binalshibh, the detention of Khalid Shaikh Mohammed, the detention of Mustafa Ahmed al-Husawi, and our continuing debriefings of these individuals, our view of the capabilities of Al-Qaeda becomes more transparent and it gives us more confidence that we have an understanding of plots in the past, plots that were on the table as future possibilities.

We still face a substantial threat, principally from Al-Qaeda and their desire, willingness, capabilities, and unity of mission to kill Americans. So on the one hand, I think we are doing a much better job both here and overseas. On the other hand, we still face a substantial threat.

Senator GREGG. What percentage of the agents are now involved in counterterrorism?

Mr. MUELLER. I believe it is up to—let me just check for a second if I could.

Senator GREGG. Yes.

Mr. MUELLER. Yes, it is 23 percent. I had to check my figures.

Senator GREGG. And what percentage are involved in the counterintelligence? And is that an overlapping number?

Mr. MUELLER. It is not an overlapping number, although—let me just—let me see if I can give you the figures, the percentage.

I was just informed that we generally do not—I would be happy to provide the number of counterintelligence in closed session. Generally we do not give out the percentages or the numbers in open session.

I will tell you that it is not an overlap. However, the—since September 11th, my directions to the SACs, Special Agents in Charge, around the country is that their first priority is counterterrorism. There should be no counterterrorism lead that goes unaddressed. And consequently, we have overburned, as you would say, in counterterrorism substantially in the wake of September 11th, and that continues to drop until October of this year. And then as we ginned up for the response to the, at that time, probable incursion into Iraq, the numbers that were dedicated to counterterrorism ramped up again.

And so there will be and there has been in the wake of September 11th, and there has been in anticipation and during the war in Iraq, a number of individuals who have been taken from other programs, including counterintelligence, to meet the short-term needs of addressing the September 11th investigation, and then the responsibility for protecting the United States from terrorist attacks which might have been associated with the war in Iraq.

CHICAGO FIELD OFFICE

Senator GREGG. Let us take the field office, arbitrarily choosing Chicago as a large one. How many agents approximately do you think you have there? Do you know?

Mr. MUELLER. I just do not have that off the top of my head.

Senator GREGG. Let us say it is 500. What——

Mr. MUELLER. I would say——

Senator GREGG. What percentage——

Mr. MUELLER [continuing]. Yes, probably 500 or 600 in Chicago.

[The information follows:]

NUMBER OF AGENTS IN CHICAGO FIELD OFFICE

As of April 10, 2003, the Chicago Field Office had a Funded Staffing Level of 422 agents.

Senator GREGG. What percentage would be doing counterterrorism, and what percentage would be doing counterintelligence, and what percentage would be doing what they have always done in Chicago, chasing city officials?

Mr. MUELLER. I would be happy to get you those figures, but I can tell you in the wake of September 11th, there would have been a ramp up, a substantial ramp up in which probably 50 to 60 percent of the agents in the months from October 2001 to April, May or June 2002, were addressing counterterrorism.

As you got further away from September 11th, the numbers would drop back and be addressing the other programs, so that I would venture to say in a place like Chicago, 30 percent would be doing counterterrorism at the low point, August, September, before we started ramping up for Iraq. Now it is probably higher. And it certainly has been higher in the last several weeks because we completed, around the country, interviews in excess of 9,000 individual Iraqis who have provided us with tremendous information helpful to the forces overseas. But we have undertaken and completed 9,400 interviews around the country and we had to use agents from different programs.

So if you look at it today, the percentage who would be working on what we say is counterterrorism would be a lot higher. If you looked at it back in August, I would say probably 20 to 30 percent of the Chicago office was working on counterterrorism. A lesser percent would be working on counterintelligence. A lesser percent would be working on cyber. And then a substantial number in the overall criminal programs, probably close to 40 percent, 30 to 40 percent, would be on all of the criminal programs. That would be public corruption, violent crime, gangs, organized crime, all lumped together under the criminal programs.

[The information follows:]

CLARIFICATION: PERCENTAGE INCREASE OF AGENTS IN CHICAGO FIELD OFFICE FOCUSING ON COUNTERTERRORISM PRIOR TO SEPTEMBER 11 TO MAY/JUNE OF 2002, AND DURING WAR WITH IRAQ

"In the wake of September 11, there would have been a ramp up, a substantial ramp up in which probably 50 to 60 percent of the agents in the months from October of 2001 to April, May or June of 2002, were addressing counterterrorism."

In fiscal year 2001 (October 1, 2000-September 30, 2001) 12.1 percent of all FBI field agents Bureau-wide were working counterterrorism. In the Chicago field office, 14.1 percent of agents were working counterterrorism.

From October 1, 2001 through December 31, 2001, 52.4 percent of all FBI field agents were working counterterrorism. In the Chicago field office, 34.7 percent of agents were working counterterrorism.

From October 1, 2001 through June 30, 2002, 34.5 percent of all FBI field agents were working counterterrorism. In the Chicago field office, 26.7 percent of agents were working counterterrorism.

"As you got further away from September 11th, the numbers would drop back and be addressing the other programs, so that I would venture to say in a place like Chicago 30 percent would be doing counterterrorism I would say at the low point, August, September, before we started ramping up for Iraq. Now it is probably higher."

From October 1, 2002 through December 31, 2002, 22.3 percent of all FBI field agents were working counterterrorism. In the Chicago field office, 19.2 percent of agents were working counterterrorism.

From October 1, 2002 through March 31, 2003, 24.4 percent of all FBI field agents were working counterterrorism. In the Chicago field office, 19.6 percent of agents were working counterterrorism.

The chart below illustrates these figures.

The number of FBI agents involved in counterintelligence in the Chicago office is classified. The classified response is provided in a separate document.

SUMMARY CHART OF AVERAGE FIELD AGENT ONBOARD FOR TOTAL FBI AND THE CHICAGO FIELD OFFICE

Time Period	Bureau [1]			Chicago [1]		
	Avg. Agents Onboard	Avg. CT Agents Onboard	Percent of Total Agents	Avg. Agents Onboard	Avg. CT Agents Onboard	Percent of Total Agents
Fiscal year 2001: 10/1/00–9/30/01	9,048	1,092	12.1	384	54	14.1
Fiscal year 2002, 1st Qtr: 10/1/01–12/31/01	8,904	4,666	52.4	377	131	34.7
Fiscal year 2002, 3rd Qtr: 10/1/01–6/30/02	8,791	3,029	34.5	371	99	26.7
Fiscal year 2003, 1st Qtr: 10/1/02–12/31/02	8,826	1,964	22.3	381	73	19.2
Fiscal year 2003, 2nd Qtr: 10/1/02–3/31/03	8,884	2,172	24.4	378	74	19.6

[1] These number do not include Supervisory Special Agents.

COUNTERTERRORISM TRAINING

Senator GREGG. What percentage of the curriculum at Quantico is dedicated to counterterrorism?

Mr. MUELLER. I can tell you that it has increased. I do not know the exact percentages. The basic skills, and by that I mean the skills that cut across all of the various substantive programs of the Bureau, probably take up 50 or 60 percent—and this is off the top of my head, and I would have to get you the exact figures. It is probably 50 to 60 percent.

Thank you. For a percentage—I can tell you that since September 11th, we have added 32 hours of counterterrorism and counterintelligence training to the—on the counterterrorism and counterintelligence curriculum for the new agents. We also are putting in a separate training session specifically for counterintelligence.

[The information follows:]

PERCENTAGE OF CURRICULUM AT QUANTICO DEDICATED TO COUNTERTERRORISM (CT)

Currently, New Agents receive 116 hours of Investigative Training. Of these, 55 hours (approximately 47 percent) are dedicated directly to counterterrorism and counterintelligence training. Because these two training initiatives are extremely inter-related, singling out CT-exclusive training is difficult. All other training, such as Legal, Forensics, and Firearms, is an integral part of New Agent Training, but is not program-specific. Additionally, CT analysts are also trained at Quantico in the College of Analytical Studies. The training includes a basic six-week course. Several advanced analyst courses have been developed as well.

FBI CULTURE

Senator GREGG. I guess my question goes to this: How much has the culture changed? I mean, does the agent in the field today think that he is primarily a counterintelligence, counterterrorism agent? Or does he still think he is a super police officer——

Mr. MUELLER. I think the——

Senator GREGG [continuing]. Or she?

Mr. MUELLER. No, I think that there are a couple of ways of looking at it. At the outset I would say when we talk about culture and when you think on it, if you looked at your FBI agent, the FBI agent is patriotic needless to say, dedicated, honorable, wants to do the job that is set by their country, in the same way that the military is. When a person joins the military, they do what the President directs for the military, to be one place one day and the next place the next day.

In the past, we have been focused on cases with the expectation that a case would go to court. I believe since September 11th, almost everyone in the organization understands that you have to look at a piece of information as a piece of information, whether it is a piece of information for purposes of intelligence or a piece of information that can be used all the way into a courtroom. But it is very important for that piece of intelligence, that piece of information available to be looked at in a larger context of the intelligence mission of the Bureau.

I have heard and believe that around the country, agents who want to do counterterrorism find that the skills that they have developed on the criminal side lend themselves to counterterrorism investigations, and that the mix of counterintelligence or counterterrorism experience is ideal. There are those around the country, and there probably always will be, who prefer doing drug investigations or white collar crime investigations. But I believe that the Bureau has shifted remarkably since September 11th to address and understand the importance of the intelligence function.

I also have to give them the tools to do it. I have to give them the analysts. I have to give them the information technology. I have to develop the reports officers, and strip off the sources and methods so that we become a greater part of the intelligence community. I have to develop a cadre not just of reports officers, but intelligence officers who will look at things not just from the case perspective but also from the perspective of a particular strategic target, and adopt that which MI5 does well in certain areas in order to be successful.

And the last point I would make is the—I have looked at MI5. I have looked at other intelligence areas, and I believe that the combination we have of intelligence capability and law enforcement capability under one roof is by far the best way to go, and avoids the stovepiping that we see elsewhere.

Senator GREGG. I have a lot of other thoughts and questions. But I will turn to Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman.

I first observe, Director Mueller, that you are not in any trouble. Otherwise, this table would be filled up, you know.

It is not all of us here, just us chickens.

TERRORISM

With respect to the status of terrorist that the chairman asked about, of course the real question is: Are they creating them faster than you get rid of them? You meet every morning and brief the President I believe.

Mr. MUELLER. Yes, sir.

Senator HOLLINGS. I wonder about the statement made by Mubarak in Cairo to the effect that we are creating 100 bin Ladens. That is what we have really got to worry about. We have got to make sure that we bring, as we are doing now, a quick end to Saddam. Otherwise, when we get that government going, but more particularly get the President's roadmap for peace in the Middle East ongoing—I notice that Chirac has announced a different roadmap. Tell the President to stick to his roadmap because—that is the creation of the terrorism.

I mean, you can put on all of these numbers of agents, dedicate so many more agents to terrorism rather than to drugs or to crime or white collar, this or that, but unless and until we get to the source of the creation of them, they are creating them fast. That was the whole—but we have got our fingers crossed right now about the victory in Iraq. We have hit the bowl. The question is whether the follow-through is going to really work. And it is going to be extremely difficult to get all of these religious sects and get a democratic government. It is going to be tough.

But that is the answer to the question of the status of terrorism, because it could be that we are creating them faster than you can get rid of them.

Otherwise, on the culture, that is another difficult job that you have. And you talk about the agent out there, and you—it is a question of how do you get them so that they believe they are beyond the law or they can out-trick the law or they devolve into corruption or that kind, where they swap sides. We have had Miller and Hanssen, for one thing. I would have burned Hanssen. I do not know where you all get this that you can get more—I mean that was one clear-cut case and the files got him. So we had all the more that we could have gotten out of him.

And if you do not really treat it as treason they will continue to say, "Well, the jail is not so bad." I know we have built one down in South Carolina. I went to see it, and they had better rooms in the jail than they had the Citadel when I went to school. They have TV there. They have exercises, you know, and you can play ball in the afternoon and all of that kind of stuff. So the fellow who is hungry and out there—I have worked on jails—if he does not have a pretty good go at it, he said he can get three squares and a warm place, and they get into crime.

Similarly, if there is no real penalty and they get just wonderful security and three squares, what is the risk? You know what I mean.

Mr. MUELLER. Yes, sir.

COUNTERINTELLIGENCE

Senator HOLLINGS. Otherwise, we and the State Department swap around our ambassadors and chiefs of stations. We find—is there a swap-around system particularly in counterintelligence, where they just do not stay there and get corrupted in that sense? The Methodist ministry does that. I know we do that with Circuit judges in South Carolina.

Somehow we have got to give polygraphs to everyone in counterintelligence. Every 3 years, I think, is the practice. When last did J.J. Smith get a polygraph?

Mr. MUELLER. I am not certain, Senator, on J.J. Smith. I can tell you that on the—on Ms. Leung, the other individual, she was polygraphed back in the 1980s but not more recently than that. I have to——

Senator HOLLINGS. Well, now——

Mr. MUELLER [continuing]. Tell you that we have changed our policy in the wake of——

Senator HOLLINGS. You have changed your policy?

Mr. MUELLER. We have changed our——

Senator HOLLINGS. Thank goodness.

Mr. MUELLER. We have dramatically improved our——

Senator HOLLINGS. I asked Judge Freeh about Hanssen——

Mr. MUELLER [continuing]. Use of polygraphs.

Senator HOLLINGS [continuing]. And he had not had one in 20 years.

Mr. MUELLER. I also took one before my confirmation.

Senator HOLLINGS. Yes, sir.

Mr. MUELLER. So I have been through it along with everybody else, and it was an experience.

[The information follows:]

MOST RECENT POLYGRAPH OF SPECIAL AGENT JAMES J. SMITH, SUBJECT OF ESPIONAGE CASE IN LOS ANGELES, CALIFORNIA

Operating under previous policies, Agent Smith never received a polygraph examination, as he retired prior to the Hanssen case. Under the current polygraph policies, an agent in a similar position would be subject to periodic 5-year reinvestigations requiring a counterintelligence-specific polygraph, and would also be subject to random testing. In addition, all new employees are subjected to a pre-employment polygraph.

Senator HOLLINGS. I was on the Intelligence Committee, and we knew good and well where the leaks were in the staff, and so you never ask a man to do something that you are not going to do yourself. We learned that in the war. So I went over to the Capitol Police; it was a 2-hour thing. And the first question, I started my answer, I said, "Well, in my humble opinion," and the damn needle just went right straight across.

Senator GREGG. I am not sure a polygraph has been designed that would be able to handle your answers——

Senator HOLLINGS. But in any event——

Senator GREGG [continuing]. Or understand them.

DOMESTIC INTELLIGENCE

Senator HOLLINGS. When 9/11 occurred, it was like—it is like that, "When in danger, when in doubt, run in circles, scream and shout." And one of the screams was, "We need a whole new division of domestic intelligence rather than the FBI. I think you are handling it. You are reorganizing it, but it has sort of been top secret in that sense that—I have explained to colleagues what you have been doing. Somehow you have a PR man. That is all J. Edgar had. Find out his descendant and get him.

And tell what is going on, that can be told, because they do not realize the tremendous effort you have made on domestic intelligence.

TRILOGY

With respect to the Trilogy, as I understand you said you were going to have a cost overrun of $137.9 million. And we asked you to take it out of the hide of the budget, and that was going to require a reprogramming.

Mr. MUELLER. Yes, sir.

Senator HOLLINGS. Have you got that reprogramming request before us?

Mr. MUELLER. I have the—it is over at the Department of Justice at this point.

[The information follows:]

STATUS OF THE TRILOGY REPROGRAMMING REQUEST

As of April 10, 2003, the Trilogy reprogramming request was at the Department of Justice. The request was forwarded to the Office of Management and Budget (OMB) on April 17, 2003, and approved by OMB on April 25, 2003. On May 21, 2003, the request was transmitted to Congress.

Senator HOLLINGS. I see. What about keeping, now, that Trilogy up to date? If we get all of this stuff and everything else like that, but do we have an ongoing plan to keep it moving and going?

Mr. MUELLER. Yes, absolutely. Yes. Let me back up a second and say that——

Senator HOLLINGS. Yes.

Mr. MUELLER [continuing]. I would take responsibility for the cost overruns.

Senator HOLLINGS. Yes.

Mr. MUELLER. When I came in, it took me a while to understand the information technology or lack thereof in the Bureau, and the current plans to upgrade it. And it takes a while to get it into my head because I am not a computer programmer at all. But as we went along, it seemed to me that our plans and what we had budgeted for and what Congress had given us would be inadequate to the mission that we had, in the sense that it was not upgrading our essential databases, giving and putting it into a new, upgraded database architecture that would be a platform for the future. And as has been described to me by others in the Bureau, what we were doing in the previous budget was putting lipstick on a pig.

Senator HOLLINGS. Yes.

Mr. MUELLER. In other words, the pig is our old databases and we are putting a GUI, Graphical User Interface, on it that would make everybody happier in terms of input and output, but would not enable us to use the analytical tools that we needed. So I had them go back to scratch. And in going back to scratch and developing the database structure that I believe will be the foundation for the future, it ended up costing more. That, coupled with the fact that we had two contractors and we need an integrator, is principally responsible for the overruns.

Now, I believe that those changes that we have made are absolutely indispensable to our ability to continue to refresh our information technology down the road. It makes no sense for us to have and put into place that which will be obsolete in 2 years. And we are increasingly looking at and focusing on what we do in-house as a foundation for the future, whether it be 5 or 10 years down the road, and enhancing our capability to get commercial-off-the-shelf, COTS, products in to augment what we are doing, as those COTS products get developed by the various contractors out in the field.

So we have asked for, I believe, something in the range of—what is it? $82 million, is it? Yes, $82 million in the 2004 budget, principally directed at enhancing our information technology.

[The information follows:]

CLARIFICATION: AMOUNT REQUESTED FOR INFORMATION TECHNOLOGY IN FISCAL YEAR 2004

In fiscal year 2004, the requested increase for information technology is $82 million. The FBI requests $80 million for Trilogy operations and maintenance (O&M)

and technology refreshment and $2 million for the Top Secret/Sensitive Compartmented Local Area Network O&M.

Mr. MUELLER. As to the $137.9 million, you are right. You did say take it out of our base funding, and we are taking it out of our base funding. We have the reprogramming over at the Department of Justice. And I am looking at the information technology dollars with a view to making certain that every one of those dollars is spent wisely.

CRIMINAL JUSTICE INFORMATION SERVICES (CJIS)

While I am on this subject, because it is important to the future of the Bureau——

Senator HOLLINGS. Yes.

Mr. MUELLER [continuing]. I will tell you that we have tremendous capabilities out at CJIS, for instance, Integrated Automated Fingerprint Identification System, or IAFIS, the fingerprint databases, NICS, National Instant Criminal Background Check System——

Senator HOLLINGS. How long does it take with the fingerprint thing? If I am——

Mr. MUELLER. Seconds.

Senator HOLLINGS [continuing]. The highway patrol and I take a fellow and I have his fingerprints——

Mr. MUELLER. Seconds.

Senator HOLLINGS. Seconds?

Mr. MUELLER. Seconds.

Senator HOLLINGS. It used to take 1 month or 2 months.

Mr. MUELLER. Seconds.

Senator HOLLINGS. Yes, good.

Mr. MUELLER. And with the expansion of our database, we have a number of cases now where we have gone back 20 or 30 or 40 years and provided fingerprint matches to State and local law enforcement entities that have enabled them to solve homicides in ways they had not been able to solve them in the past.

There were two officers who were killed out in Los Angeles, something like 30 years ago. And with our enhanced capabilities, fingerprint capability—they still have not forgotten about that case in that police department out there. They sent the fingerprints in from the crime scene, and it was matched with an individual who lived down in—it may have been South Carolina, but one of the Carolinas. I do not know which one, or Georgia. And it turned out he had been living there for a number of years, married, had a family, but he was responsible for killing these two police officers 30 years ago, and they brought him back and he pled guilty last week. That is the kind of work that is done out at CJIS.

Now as we grow as an organization, what we have to do is enhance our information technology capabilities there and better integrate it in to what we do in the Bureau overall.

[The information follows:]

CLARIFICATION: IAFIS CASE IN LOS ANGELES

More than 45 years ago, two California police officers were shot and killed. A latent fingerprint was developed from a vehicle involved in the case, but searches of that print met with negative results. Last year, detectives in the Los Angeles County Sheriff's Office initiated a search of the latent fingerprint against the database

of the Integrated Automated Fingerprint Identification System (IAFIS). The search resulted in the identification and arrest of Mr. Gerald Mason, who was in the database because of a 1956 burglary arrest. The FBI notified the Los Angeles County Sheriff's Office. Mr. Mason was located and arrested at his residence in South Carolina on January 29, 2003.

Mr. MUELLER. I do not mean to get on my hobbyhorse on that, but——

DRUGS/TERRORISM FINANCING

Senator HOLLINGS. Oh, no, it is better to know that you have a grasp of it, and that was really the question. And you really know more about it than I do.

But I am a little concerned—of course, I am—sometimes I get our chairman and so forth and we find out what we are going to do on drugs. I started 30-some years ago right at this table and we were burning the poppy fields in Turkey, and then we went to Marseilles and broke up the factories, went down into Paraguay and up to Colombia and over to the triangle at Chiang Mai, up in Laos, and I met with the Japanese and the Australians and everybody else. I said, "Let us go into Burma now and look." But they said, "Oh, no, they have armies over there. You would get killed." They were shipping in 50,000 pounds of heroine out through Bangkok every week, that kind of thing.

And now, I pick up the morning paper, and the drug war in Colombia has spilled over into Venezuela. However, the—you keep telling us, you folks in law enforcement, that this terrorism is financed by drug money. And I looked and see where you moved 567 agents from drugs to counterterrorism. Can we not ask for just more and get them—have them keep going, not necessarily on the ordinary drugs and everything, but at least the money part? Because that is what finances the terrorism.

Mr. MUELLER. Well, we are—whenever we have—as I said, terrorism is our first priority.

Senator HOLLINGS. Yes.

Mr. MUELLER. If it relates in some way to——

Senator HOLLINGS. And the money part——

Mr. MUELLER [continuing]. Financing by narcotics——

Senator HOLLINGS [continuing]. Is the first priority of the first priority.

Mr. MUELLER. First is—we take that as a priority. We recently did a case in New York where we found that heroin from Afghanistan was being sold in the United States, distributed in the United States, and the monies were going back to Afghanistan to the Taliban and Al-Qaeda. And so we address cases like that, and we have done a number of cases involving the FARC out of Colombia, where it looks like cocaine monies were being used to purchase weapons and the like.

I took 400 initially, 400 positions from the drug programs in a reorganization and reprogramming because I believe that we had to reorient ourselves, first of all, as an agency before I came back to either the administration, the Justice Department or the Congress for additional resources. And in looking at it, it seemed to me that, first of all, I needed to put our house in order, focus on our priorities, be absolutely clear on what our priorities are up and

down the line, and then have not only the FSL, funded staffing level, the manpower directed towards the priorities, but also the financing.

The process I went through in making those decisions was to go to the Special Agents in Charge and say, "What do you need to do in each of your territory's divisions to address either perceived counterterrorism, mission or threat in that division?" And they came back with various numbers of agents that they believed they needed, depending on the division.

Now, quite probably, one or more of them came back and said, "Well, the Director is going to give us new resources," and maybe gave me more numbers than they really actually needed. So we cut them down and looked at it across the country, and came up with approximately 500 that the Special Agents in Charge said, "We need these numbers in our divisions to address counterterrorism."

And I went back to them and said, "In your divisions, what are your priorities? What programs would you take these agents from?" And coming back, it was 400 that came from the drug program. And I looked at that and I said, "Okay. Why are we taking them from the drug programs?" And we looked at areas where we overlapped with the DEA in terms of addressing the cartels, and we looked at areas where we do standalone drug cases that increasingly can be done by State and local law enforcement, standalone methamphetamine case, standalone marijuana cases.

And what I wished us to remain focused on, are the organized crime drug enforcement task force cases, the high intensity drug trafficking areas cases, and those areas where we bring something special to the table and where we do not overlap with other Federal agencies or State and local agencies.

Now, as we go down the path and I hear from State and local law enforcement, many of them are saying, "We miss you in the drug area. We want you back more than you were before," and that is something that I will have to address down the road.

LEGATS

Senator HOLLINGS. Well, as I understand it, Judge Freeh was putting these Legats out into the different countries as drug agents, and now I see you have them in Sarajevo, Bosnia, Kuwait, Uzbekistan, Kabul, Afghanistan, Belgrade, Serbia, that they have really moved from drugs to counterterrorism. You have been putting them down in the West Bank. You have put them somewhere in Beirut. You have put them in Syria. You have put them in Cairo. You have put them down in Riyadh. When you have them in Bosnia and Sarajevo, you are still chasing drugs. Afghanistan, you still—well, I mean, you might find some Al-Qaeda left there. But look at that, because what we have got to do is get both, to tell you the truth——

Mr. MUELLER. The list——

Senator HOLLINGS [continuing]. Of where the real money is coming from.

Mr. MUELLER. The list that you have read off——

Senator HOLLINGS. Yes.

Mr. MUELLER [continuing]. Are those that we are requesting——

Senator HOLLINGS. Yes.

Mr. MUELLER [continuing]. Expansion on in those particular cities. We do have a Legat in Cairo. We have Legats in Riyadh. We are expanding the Legat in Riyadh and minimizing—or I should not say minimizing, but cutting back the territory that was—or for which Riyadh was responsible. So we are adjusting our Legat distribution to reflect the new challenges of addressing counterterrorism. Even in South America, where there may well be enhanced activity from those who are affiliated with either Al-Qaeda, Hezbollah, or Hamas, our Legats down there are now finding that they are handling that type of activity rather than narcotics activity.

And lastly, we do want to put a Legat in Beirut. We have been discussing that with the State Department for some time. The State Department has the embassy there, but because of the threat level, you need to have the personnel working the embassy in secure compound grounds. They simply do not have room now. They are anticipating building a new embassy to be completed in, I think, 2006, and then they will have space for us. And in the meantime, we are going to be exploring having a greater presence in Beirut than we currently do.

Senator HOLLINGS. Yes, you have to get to them and tell them to move somebody out. You cannot wait until 2006.

One final question—Mr. Chairman, you have been very good to me.

REORGANIZATION

How do you coordinate our—just looking at the breakdown now that you have in the reorganization of the Bureau itself, and you have all of this Trilogy and you have all of these different officers and responsibilities. But where is the coordination? And how is that working so that you are informed? We cannot have another Minnesota situation where they kept calling the Headquarters but somehow it did not get through.

Mr. MUELLER. Well, there are actually three ways. The first way is—every time I speak to groups at the FBI, I say, "I want to know the bad news." Inevitably, the good news has a way of reaching the top. It is the bad news that does not.

Senator HOLLINGS. Yes.

Mr. MUELLER. When I find that I do not get the news of those things that are wrong and substantial, I am not happy and that word has gone out. And so I have tried to change and make people understand that I would be twice as mad about not hearing about a mistake than hearing that a mistake was made. We are going to have to take risks. I want people to be aggressive investigators.

And people will take risks, and I want them to take risks, and I do not want them to feel that they will be disciplined for taking the risk. We all make mistakes; I will make more than most people in the organization. But I want to hear about the issues such as what happened in Los Angeles, such as what happened in Minneapolis.

The second way is by changing the accountability and responsibility for the national programs. And by that I mean counterterrorism, counterintelligence and cyber. Whereas in the past it would be the field office that was responsible for any par-

ticular case, in those national programs it is the Assistant Director in charge of counterterrorism that is responsible for the success or failure of a case. That means that individual has to know what is going on around the country. The Assistant Director does not do the investigation but must know about the investigations. And when it is in counterterrorism, there has to be direction from the center. There has to be accumulation of intelligence, analysis of that intelligence, dissemination of that intelligence, and undertaking operational responsibilities for that intelligence.

So centralizing responsibility and accountability in those programs, I think, is going to make a substantial difference from the way we operated prior to September, prior to September 11th.

And the third way is that I have expanded—thanks to the approval of my initial reorganization, I have now four Executive Assistant Directors who have a much smaller span of control than before. Before September 11th, there were I think 12 Assistant Directors, all reporting to the Deputy Director and then to me. Now I have a Deputy Director and there are four Executive Assistant Directors who report to the Director and the Deputy Director. So the span of control in these various areas is much more narrow than it was prior to September 11th.

Senator HOLLINGS. Thank you, Mr. Chairman.

Senator GREGG. Senator Kohl.

HYDROGEN CYANIDE WEAPONS

Senator KOHL. Thank you, Mr. Chairman, Senator Hollings, Director Mueller.

Within the past month, the FBI has warned law enforcement agencies nationwide that terrorists could build a simple but deadly chemical weapon out of readily available materials. Specifically, the FBI cited hydrogen cyanide or chlorine gas as easy-to-make chemical weapons. What is so disturbing is how easy it is to obtain cyanide. As you know, it is readily available at chemical supply warehouses, from mail-order catalogs, and even via the internet.

As you probably know much better than I do, terrorists may well use cyanide in a future attack. Attorney General Ashcroft told this subcommittee last week that he would work with us to prevent terrorists from acquiring this simple chemistry to launch an attack. We also hope that you can pledge to work with us to address this concern.

How serious of a threat does the widespread availability of toxic industrial chemicals like cyanide pose? And what do you suggest we do? Are you prepared to work with us on some legislative improvement to the problem?

Mr. MUELLER. Well, we sent out a bulletin several weeks ago relating to a relatively simple explosive device, the schematic for which we had picked up in one of our searches overseas. It was to alert State and local law enforcement to be aware of this potential threat out there.

We have over a period of time received threats about the possible, the potential use of cyanide in an attack. We have received threats internationally. Working closely with the CIA, the FBI has focused on addressing and identifying the expertise for use of this compound, amongst other types of poisons. We have also focused on

the individuals in Al-Qaeda who may have that expertise and understanding, and those individuals in Al-Qaeda that may be participating in a network that would undertake such an attack utilizing cyanide.

And when we receive the threats relating to use of the cyanide, we also may see in the same genre threats relating to the use of ricin, sarin, or other such compounds.

With specific regard to cyanide and its ease of use in the United States, whenever we have an indication in a case that there is a potential for the use of cyanide, we utilize every arrow in our quiver, whether it be Foreign Intelligence Surveillance Act (FISA) intercepts or aerial or individual surveillance to make certain that we address that threat immediately.

We also have reached out to the chemical companies, and the groups that represent chemical companies, to develop a liaison so we can do a better job in trying to identify misuses of cyanide compounds within the United States. As you know, it is very easy to get. It is prevalent—well, I should not say it is prevalent. But it is not hard to get. You can get it off of the internet, and we were exploring ways to curtail it, curtail that.

We actually recently had a prosecution up in—I guess it was in Chicago, an individual who was—he had not—he was storing sodium cyanide and potassium cyanide and other toxic chemicals in passageways under the streets of Chicago. And we were onto that, we identified it and successfully prosecuted that individual. So where we find an indication of the use of cyanide, we investigate it, and we prosecute.

We are working with the chemical industries within the United States to do more on that. We are certainly willing to cooperate and work with you in terms of additional legislation to address that threat.

Lastly, we are working with the CIA and other agencies both within the United States and outside of the United States, to address any threats relating to the use of cyanide or any such compounds that comes from overseas.

CIGARETTE SMUGGLING/TERRORISM FINANCING

Senator KOHL. Within the past month, the FBI has warned—I am sorry. Recent ATF investigations reveal that tobacco smugglers are using the profits they make from illegal operations in the United States to fund terrorist organizations like Hezbollah among others.

I raised this issue with the Attorney General last week, and he seemed genuinely interested in helping to tackle this issue. This is a serious problem that is not getting the attention I believe that it deserves. It is a funding source for terrorism. Should the FBI play a role in investigating the terrorism-related aspect of this problem? Do you agree that this is a serious terrorism-related concern? And can you pledge to work with us on finding some remedy for terrorist organizations which use the legal profits from the tobacco industry?

Mr. MUELLER. Yes, I—we have had several recent cases, principally Hezbollah, where cigarette smuggling has been one of the illegal activities engaged in by individuals affiliated with

Hezbollah, to gather monies, of which have been siphoned off to terrorist organizations overseas.

We had a successful prosecution most recently in North Carolina in which a number of Hezbollah-associated individuals were convicted for their actions in cigarette smuggling. We recently had a case up in, I believe it was Detroit, that we indicted where there were a number of illegal activities by a group of individuals again associated with Hezbollah, and the charges there are racketeering charges.

So we have a number of areas where we have seen this as one of the illegal activities engaged in principally by those associated with Hezbollah to gather funds. We are looking at it individually and through our Joint Terrorism Task Forces, by addressing the terrorist groups engaged in all types of illegal activities, including cigarette smuggling, extortion and other traditional racketeering crimes.

We also have a terrorism financing section that was established after September 11th in the Counterterrorism Division, that has been working hard on all means and mechanisms of the financing of terrorists—not just profits that come from cigarette smuggling but also from narcotic trafficking, from extortion, and as well as from non-governmental organizations (NGOs), charitable organizations. So that section was established with experts in finance to focus on the sourcing and the funding of terrorists.

And lastly, I would say we are working hand in glove with the CIA because most of the terrorism financing does not stop at our borders. It is integrated with other pockets of financing overseas, whether it be in the Middle East or in Europe. And so we are working very closely with our counterparts and with the CIA to focus on financing, to have a comprehensive strategy to address terrorism financing around the globe, of which the financing in the United States is but a part of it.

Senator KOHL. Thank you for that answer.

Thank you, Mr. Chairman.

INFORMATION TECHNOLOGY

Senator GREGG. Thank you, Senator.

I think it was Mr. Lowery who was reported to say that there is going to have to be a number of items in technology activity that would not be pursued in order to pay for the Trilogy. That was reported in the Federal Register. I think it was the Federal Register. Oh, Federal Times.

What would be the items that you would not be pursuing in order to pay for Trilogy?

Mr. MUELLER. That is—he was misquoted.

Senator GREGG. Oh. We have all experienced that.

That is a good answer.

That is a good answer.

Mr. MUELLER. It is also the accurate answer.

He was misquoted. As I think we—as I have said before, to fund $137.7 million, we are taking those funds from a number of areas that I think we have let you know of. None of them are from other information technology projects. They are from—let me see. I know I have it some place here.

We are taking the monies from unobligated balances from the emergency supplemental, as I know you will—we will probably discuss at some point; from prior year unobligated balances, as well as a reallocation of certain funds available in the current year. And they include some funds that we have set aside for information technology.

I am tremendously frustrated, was when I first came and still am, at the fact that our information technology is not where I want it and need it to be tomorrow and today. I have come to learn through trial and error that I have to make certain that when we put pieces in place, that they are well thought out, that those pieces fit into the overall architecture and puzzle of the Bureau so that we do not have these same stovepipes. But there is so much more we could do with information technology, that every dollar I can get in our budget that I can put into advances in information technology, I am looking to put in. Now, that is difficult when I am having to ramp up the agent strength in our various programs, but particularly counterterrorism and counterintelligence, but I am loathe to take monies away from information technology for anything else.

[The information follows:]

CLARIFICATION OF SOURCES OF TRILOGY REPROGRAMMING

The FBI proposes to fund the $137.9 million needed for Trilogy from prior year unobligated balances, current year funds, available information technology funding, and $33 million in excess user fees. The FBI submitted a reprogramming request to the Department of Justice and the Office of Management and Budget. The detailed request was transmitted to Congress on May 21, 2003.

Senator GREGG. Well, I agree with what you say. I think there is no question that the Department has had an antiquated technology capability for a long time, the agency, the Bureau. But the problem that we have seen, especially with the Bureau, but with other groups that we oversight in this committee, is that we build these, we make a commitment to move down these technology roads and then we build them out and we find that we have made huge errors, and we spend a lot of money. IAFIS was an example. NCIC was an example. Trilogy as it started was a classic example. The worst, of course, is the INS, which is in a category of its own when it comes to having wasted money on technology. It does not even communicate within the Department.

And so we agree with you, that you need funds for technology. But our concern is if we give you too much money too fast, you end up buying stuff that does not work simply to spend the money and you end up going down roads that lead to dead ends or do not produce product, that do not create the integration that you need. So that is our reservation on some of this.

I think you have done a good job of getting the technology on the Trilogy back together and up and focused, and that is great.

I think, though, the same concept, the same fear, at least as far as my feeling, is with the amount of money that we are putting into the Bureau. It is coming in very fast, and you are shifting gears from a national police force to being a counterterrorism and counterintelligence force. And you are setting up, as you have to, all sorts of different things very quickly.

The question is: Are we going to, by giving you this much money this fast, do you a disservice because you will end up going down the road of creating activity that 2 years, 3 years from now we will find out was just a waste?

Mr. MUELLER. Well——

Senator HOLLINGS. If you will yield on that point.

I thought when you called about Smith, that you were going to call about the supplemental and I had the answer that you had $123 million unobligated. That is what you are talking about, right?

Mr. MUELLER. That is one of the answers.

Senator HOLLINGS. Yes.

Mr. MUELLER. Well, let me try to address those——

Senator GREGG. Right, the $320 million is just——

Mr. MUELLER. Well, let me try to address those in some form of order. I think 18 months ago we had very little credibility in many places up here. And I came to see it because we had not put into place in my mind the individuals and the structure to address something that you need outside expertise to advise on. I think in the world, the FBI Special Agents, I think they are the best information gatherers in the world, best investigators.

But when it comes to information technology, when it comes to financial posterity or financial planning, when it comes to running a 27,000-employee business, that background does not easily lend itself to that kind of organizational structure. And the biggest change I think we have made in the last 18 months is bringing in individuals who have expertise in those areas. Whether it be Tina Jonas behind me as chief financial officer (CFO), who is familiar with this particular area, or Wilson Lowery, who came from IBM where he was part of the team that was doing re-engineering, or a chief information officer (CIO) that came from outside, the individuals we brought in I need to advise me and make certain that we are on the right track.

And it is not just one person, as I have explained before. It is somebody who understands the finance; somebody who understands the technology; somebody who understands the project and getting the project done on time. All of these are talents that are specific and unique unto themselves, and you need all of them to reach the finish line. We have a number of those talents. We need some more.

The other thing is, for my own sake, I mean, I come in from having been a prosecutor for a long time. Yes, I ran a criminal division at the Department of Justice, but I had not run a 27,000-person institution where you needed to transform the institution and the technology. It has been a learning experience.

And the one thing I have learned is that if I do not understand it and do not know and keep track of what is happening on the information technology side, it is going to go awry. Even though I am not a CIO, even though I am not a computer programmer, I do believe in order to transform the institution, you have to keep track of it from the very top and force yourself to learn it. And I am responsible ultimately for the success or failure of that program. I was delighted, as was everybody else, when we put in the wide area network and it came in on time.

I will tell you that in October, as I may have mentioned to you before, we had what I call the "graybeards" come in and sit down with us for 2 days and go through our IT plans. And these are persons from Sandia Laboratories and elsewhere, and both Federal Government and outside computer specialists, to look through what we plan to do. And they came up with two points.

One is that they said we would have substantial difficulty putting in the wide area network (WAN), because we were utilizing switches developed by the intelligence community that had never been put into a wide area network that size. And so I had some fear and trepidation that we actually would not get to the finish line on that, but we did.

The second thing I learned is that—I had assumed that, for instance, you could put all of the information in a database, into one database. They came back and said no; for security reasons, no, keep separate databases.

And so it is a combination of learning as we go along, having persons responsible for looking at the financial part of it, and where we are going. Are we spending our dollars correctly? Do we have the right contractors? Do we have the right technology? And will this technology put us where we want to be 5 years down the road?

And these are the issues that I spend a substantial amount of time on now, because they are so integral to the future of the Bureau.

Senator GREGG. Well, we appreciate that. And we also spend a substantial amount of time on that, and do appreciate communication in that area.

Mr. MUELLER. I always am open to suggestions, also. If we are doing it wrong, I want to know it, and I want to know it earlier rather than later. And so I am always open to suggestions as to how we can do it better.

COUNTERTERRORISM

Senator GREGG. As an ancillary issue, you are now setting up, it appears to me, and which you have to, a whole series of counterterrorism intelligence task forces. You have TTIC. You have the foreign terrorism task force. As I understand it, every field office is going to have an intelligence officer who is the coordinating individual, which may have been set up outside without contacting the Congress, which we will need to discuss, but probably not here.

Are we putting up so many of these groups that we are going to be back to where we were before 9/11, where there is just too many people out there doing the same stuff, or relatively related stuff, but they are not communicating with each other? Should we put the foreign task force in with the TTIC or——

Mr. MUELLER. Well, now, let me address a number of those issues. What I have tried to do in the Counterterrorism Division is specialize in certain areas such as finances and communications. The Foreign Terrorist Tracking Task Force, which is database mining for a particular operational mission, all of those are operational in the sense that they gather information in a particular area and then will run operations by that, further investigations in particular areas to identify terrorists, terrorist financing, terrorist communications, etc. And I consider those to be operational, and

what we need to develop within the Counterterrorism Division to support the counterterrorism responsibilities nationwide.

At the same time, I believe we had to enhance the focus on intelligence within our organization. I take full responsibility and I apologize for not having done the reprogramming that should have been done in anticipation of announcing the selection of an individual to be Executive Assistant Director for Intelligence. I had an Executive Assistant Director. It was my naive thought that since I had an open Executive Assistant Director position, I could put the person in there and call that person the Executive Assistant Director for Intelligence, without running it past Congress, for which I apologize.

And with regard to the intelligence units in each of our field offices, we have intelligence units scattered around most of our field offices. And I wanted to make certain that that becomes an established program down the road. That also I should have run past you, and we will. But my expectation is what we will lend to our field offices is the capability of having an entity there that will be charged with gathering that intelligence and pushing it up, and as you look at it, I think you will find it beneficial.

The last issue is: Do we have too many task forces? Do we—are we——

TERRORIST THREAT INTEGRATION CENTER/FOREIGN TERRORIST TRACKING TASK FORCE

Senator GREGG. Well, specifically, the Foreign Terrorist Task Force, why should that not be folded into this TTIC?

Mr. MUELLER. Because I believe it is operational—it is looking at identifying individuals who may fit a particular match of a terrorist and requires investigation as part of that.

Now, when you look at what the TTIC is going to be—I believe in it. I am very supportive of the Terrorist Threat Integration Center because I believe we need an analytical center that focuses on terrorist threats, an analytical center where you have analysts that are pulling the pieces of information together from the various separate databases with regard to particular threats. But I do not believe that that should be operational.

Senator GREGG. All right. That explains that.

Well, let me just say on my behalf and I think I speak for most of the folks up here: We think you are doing a great job. You are trying hard, and you are certainly focused. And you are changing a ship that has been going one way for many years, and that has got to be done, and it is going fairly well. We are very impressed with the work you do.

We appreciate the fact that your agents out there are trying to defend us and make us safe as a country, and we want to thank them for their service. We know they are working long hours, and they are out there trying to do something to protect us. And we appreciate that. Thank you.

Senator HOLLINGS. I concur.

CONCLUSION OF HEARINGS

Mr. MUELLER. Thank you.

Senator GREGG. Thank you very much.

Senator HOLLINGS. Thank you, Mr. Chairman.

Senator GREGG. Thank you.

[Whereupon, at 11:12 a.m., Thursday, April 10, 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 2004

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

[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 2004 budget request for programs within the subcommittee's jurisdiction.]

DEPARTMENTAL WITNESSES

THE JUDICIARY

PREPARED STATEMENT OF LEONIDAS RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

INTRODUCTION

Chairman Gregg, Senator Hollings, and Members of the Subcommittee: thank you for giving me the opportunity to present the fiscal year 2004 budget request for the Administrative Office of the United States Courts (AO).

Let me first take a moment to thank you for your help in conference on the fiscal year 2003 appropriation for the AO. I am grateful of your support in providing the AO with an increase in funding above the fiscal year 2002 appropriation. Crafting an acceptable conference agreement within the limited allocation you were provided was a difficult challenge. Your continued support and recognition of our service to the courts are very much appreciated.

ROLE OF THE ADMINISTRATIVE OFFICE

Created by an Act of Congress in 1939, 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 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. We also staff the judiciary's policy-making body, the Judicial Conference of the United States, and its 24 committees.

SECURITY OF THE JUDICIARY

During this past year, in the wake of the events of September 11, 2001, and the anthrax incidents that followed, a principal focus of the AO has been to provide additional guidance on security and emergency preparedness to the courts. We have consulted with experts, analyzed alternatives, and taken numerous steps to ensure the safety and security of federal judges, judiciary staff, jurors, attorneys, the public, and others associated with the judicial process. These efforts would not have been possible without your support in providing the judiciary with $129 million in emer-

gency supplemental funding during fiscal year 2002. I would like to take a few moments to highlight how we have used these monies as well as share with you some of the initiatives we have undertaken in the area of security during the last year.

Emergency Supplemental Funding

First and foremost, the supplemental funding enabled the judiciary to augment the U.S. Marshals Service's workforce with 106 new court security inspectors who will oversee courthouse security and coordinate on- and off-site protection of judges in each of the 94 districts and 12 regional courts of appeals. The funding also covered the costs associated with 358 new Court Security Officers (CSOs) to provide a higher level of security, including extended evening and weekend coverage, enhanced perimeter and internal security patrols, 100 percent identification checks, and visual inspection of vehicles. The inability to provide expanded hours of security coverage in courthouses had been a major weakness in the judiciary's security program. Your assistance in addressing this need is very much appreciated.

In addition, the supplemental funding is being used to pay for such things as bomb detection equipment, enhanced x-ray equipment for screening, bullet-proof vests for CSOs, security enhancements around the perimeter of courthouses, ballistic hardening of screening posts, and special security requirements for courts handling high-threat trials.

We also used emergency supplemental funding to enhance the physical security of the Thurgood Marshall Federal Judiciary Building. Monies have been used to upgrade the fire control system which includes accessible features for secondary locations. Vehicles no longer are allowed to park or idle outside the building. We have purchased new state-of-the-art x-ray machines and video surveillance cameras, installed protective film on perimeter windows, purchased evacuation chairs, radiological monitoring devices, and are pursuing other security upgrades based on expert security advice, and assessment reports.

Safe Mail Handling

As I mentioned in my testimony before the Subcommittee last year, immediately following the incidents of anthrax-contaminated mail, the AO began sending nearly all correspondence to the courts via e-mail or facsimile transmission. In addition, consultant architectural services were obtained to study several existing courthouse mail facilities and handling practices to help develop procedures, standards, and infrastructure for safe mail handling in federal courthouses. In July 2002, the Judicial Conference endorsed recommendations regarding safe mail handling procedures, and the construction of centralized mail rooms in courthouses using $12 million in fiscal year 2002 emergency supplemental funding. AO staff then developed guidelines and specifications for prototype mail rooms based on the size of the courthouse and the potential volume of mail.

Emergency Preparedness

Also during fiscal year 2002, the AO established the Judiciary Emergency Preparedness Office to give direct guidance and other assistance to courts for emergency preparedness, crisis response, and continuity of operations plans. Such plans focus on the safety of judiciary employees and the public, and ensure that essential functions and activities are not interrupted for long and that critical functions resume as quickly as possible. During the past year, representatives from this office have briefed nearly 2,000 members of the judiciary on the emergency preparedness program.

Continuity of Operations Planning (COOP)

And, with the help of an independent consultant, prototype Continuity of Operations Plan (COOP) templates and instructional materials have been developed for each court type based on the actual COOP plans developed with AO assistance by the courts in New York after the terrorist events of September 11, 2001. Representatives from the courts contributed to the development of the COOP template by identifying specific issues courts need to consider in creating their local plans. The final template was distributed to the courts in November 2002 and will help them identify vulnerabilities in the event of a crisis, do the advanced planning necessary to maintain normal operations, and conduct the extensive coordination required among local organizations. Courts can access templates and checklists about emergency preparedness on the judiciary's Emergency Preparedness Office's website. These templates will be refined and updated based on experience and feedback from the courts.

Court Operations Support Center

We are particularly grateful for your endorsement in the conference report of the recommendations of the Court Operations Support Center and Continuity of Operations Housing Plan report that we provided to the Subcommittee in November 2002. The establishment of a small leased facility at least 20 miles outside of Washington, D.C. will help ensure the continuity of critical court support operations in the event that administrative and automation support functions are shut down as a result of closure of the Thurgood Marshall Federal Judiciary Building. While the primary purpose of the facility will be continuity of operations, consistent with the conference report direction, we intend to provide telework opportunities for judiciary employees at this facility as well. We will work quickly to establish this facility, and I will keep you apprized of its progress.

Courts Supported in High-Profile Trials

The ongoing terrorist threat to our nation and increased focus of federal law enforcement resources on homeland security also mean that the federal courts are likely to be the forum for many more highly publicized and security-sensitive criminal proceedings. We've already had the Richard Reid case in Massachusetts and the John Walker Lindh case in the Eastern District of Virginia. We know of several more that are upcoming, including the Zacarias Moussaoui case, also in the Eastern District of Virginia. The courts hosting these trials face unprecedented and extraordinary challenges involving a wide range of issues from heightened security concerns, greater information technology support needs, and furnishing closed-circuit broadcasts of the proceedings to victims' families.

The courts rely on the AO to provide support and advice to them on all of these issues. AO staff met with court staff from the Court of Appeals for the Fourth Circuit and the Eastern District of Virginia to discuss the possibilities of using videoconferencing for emergency appeals resulting from terrorist-related cases in the circuit. The AO also arranged for classified briefings from the National Security Agency (NSA) for judges and others to discuss increased risks from terrorists trials. In Massachusetts, staff, working with NSA representatives, conducted an information security analysis at the district and appellate courts, followed by briefings for court staff and judges.

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. Even in the face of the grim realities of a terrorist attack, chemical or biological contamination, or natural disaster, we are doing our best to ensure that the business of the judiciary can and will continue without disruption.

RELATIONSHIP WITH THE U.S. MARSHALS SERVICE

In my role as Secretary to the Judicial Conference, one of my primary responsibilities is to carry out and implement policy decisions of the Judicial Conference. Not surprising, providing for the safety and security of federal judges, judiciary staff, jurors, attorneys and other participants in the judicial process has always been a top priority for the judiciary.

On May 5, 1981, Chief Justice Warren Burger met with Attorney General William French Smith to discuss the need for improved court security. Following this meeting, in July 1981, Attorney General Smith formed a task force to examine court security requirements and make recommendations for improvements. The task force report was issued in March 1982.

To quote from the Joint Statement of the Chief Justice and the Attorney General before the Judicial Conference of the United States on March 11, 1982:

The provisions of adequate security services to all the participants in the federal judicial system, most especially the Judiciary itself, is a critical element in the relationship between the Department of Justice and the Federal Courts. If we cannot ensure the safety of all participants in the judicial process, we cannot maintain the integrity of the system, we cannot—in sum—"establish justice," as mandated in the preamble to the Constitution of the United States.

The statement goes on to point out that the needs of the judiciary had risen dramatically due to the increase in the number of judges, the increase in the number of cases, combined with the increasingly complex and sensitive nature of the cases and people involved. Mr. Chairman, it is disturbing to note that twenty-one years later these statements are even more relevant.

Today, the federal courts are at risk from domestic and international terrorists, organized domestic and international criminal organizations, and litigants distressed at the outcome of their individual cases. And, because of the role the judiciary plays in the prosecution of international and domestic terrorists, as well as the

high profile of judges and court facilities in most communities, security threats to the federal judicial system will no doubt continue to increase.

USMS Staffing Shortfalls

The judiciary is a strong advocate for the resource needs of the U.S. Marshals Service (USMS). But the judiciary has no binding authority over the general level of security services provided it by the USMS. By statute, the judiciary depends on the Executive Branch's USMS as its security provider. This relationship makes it difficult for us to ensure the judiciary receives the security services it requires.

During the past several years, the U.S. Marshals Service has experienced severe personnel resource deficiencies, particularly at courts along the Southwest border and in cities with burgeoning criminal caseloads. The Marshals Service could not redeploy sufficient resources to these areas without severely short-changing others. The AO recently learned that the USMS' budgeting model identified personnel shortages of approximately 1,200 positions. The USMS is operating at 70 percent of its required staffing. It is critical to the welfare of the judiciary that the USMS be adequately staffed to perform all of its various missions so that judicial security does not take a back seat to other USMS priorities. We are, so to speak, at the mercy of the USMS, the Department of Justice, and the Office of Management and Budget in terms of their ability to provide the number of deputy marshals necessary to ensure the judiciary has a top notch security program.

For more than a year, Judge Jane Roth, Chair of the Judicial Conference Committee on Security and Facilities, and I have been working with the Department of Justice and Director Reyna in an attempt to evaluate the USMS staffing requirements and develop a multi-year strategy to raise the number of funded marshals. To be frank, achieving a collaborative effort has not been easy, but the Department has recently decided to seek input from the judiciary in the development of a revised staffing formula.

During consideration of the third fiscal year 2002 Emergency Supplemental, Senator Graham was successful in amending the bill on the Senate floor to include funding for the hiring of 200 additional deputy U.S. marshals for the protection of the judiciary. With your help in conference, $37.9 million was provided to support up to 250 new positions for the USMS. Unfortunately, certain funds in the Act were included on a contingent basis—contingent on the President submitting an official budget request designating those funds as an emergency requirement. In a letter dated August 6, 2002, I wrote to the President on behalf of the Judicial Conference to urge expeditious submission of an official budget request so these critically needed resources could be released. The President declined to take that action.

For fiscal year 2003, through your leadership in conference on the Omnibus Appropriations Bill, $7.9 million was included for 58 additional deputy U.S. marshal positions for the protection of the judiciary for high threat trials, and for districts demonstrating the highest priority needs. For fiscal year 2004, while the President's budget for the U.S. Marshals Service seeks $26.6 million for 231 additional deputy U.S. marshal positions, it also includes a general base reduction of $25.1 million to this same account. I am concerned that judicial security may suffer as a result.

Comprehensive Study on Judicial Security

As I have tried to lay out before you, the AO and the Judicial Conference have been concerned with the state of judicial security and the unique position the judiciary finds itself in with regard to its dependence on the Department of Justice for some time. Before September 11, 2001, the AO and the Judicial Conference Committee on Security and Facilities had undertaken a comprehensive look at various aspects of judicial security. Working with a private security contractor, the findings of the review were issued in November 2001. Enhancements funded by the three emergency supplementals and the initiatives that have been undertaken by the AO to strengthen the security of the courts were key recommendations contained in this comprehensive review.

In fact, the 106 supervisory-level deputy U.S. marshal positions included in the emergency supplemental to coordinate judicial security in the 94 districts and 12 regional circuits were a direct outgrowth of a recommendation of the independent security experts. Congress has now transferred the funding to the USMS, Salaries and Expenses account, but I am grateful that you have included statutory language to ensure the funding and positions will continue to be assigned to court security. District marshals and judges have seen improvements in security with the addition of the new security positions.

In the conference report accompanying the fiscal year 2003 Omnibus Appropriation Bill, you have directed the U.S. Marshals Service to conduct a study with an independent consultant on the management of the Court Security program and the

unique relationship between the Federal Judiciary, the U.S. Marshals Service, and the Federal Protective Service in administering the Court Security program and providing facilities security for the judiciary. Mr. Chairman, consistent with our responsibility to monitor the provision of court security and our personal concern for the safety of the public, litigants, attorneys, jurors, judges, court staff and others in the judicial process, I respectfully urge you to permit the judiciary to share its views regarding the management of court security during the course of this study. Certainly the outcome of the study will have profound implications for the future delivery of judicial security. Judge Jane Roth and I hope that you will meet with us if you believe changes to our security arrangements are warranted.

ADMINISTRATIVE OFFICE BUDGET REQUEST

The fiscal year 2004 budget request for the Administrative Office of the U.S. Courts is $70,584,000, representing an increase of $7,497,000, or 11.9 percent above the fiscal year 2003 available appropriation. While the percentage increase we are seeking appears significant, it should be noted that more than three-fourths of the requested increase for the AO, $5,842,000, is necessary to support adjustments to base. These adjustments are mainly comprised of standard pay and general inflationary increases, funding to replace a lower level of fee carryover with appropriated funds, and $400,000 to restore funding for critical cyclical replacement of information technology equipment that had to be deferred into fiscal year 2004. We are highly dependent on personal computers, data networks, and telecommunications to conduct AO business and support the courts. Funds must be available to ensure security and replacement of essential equipment.

The remaining increase of $1,655,000, which I will describe in greater detail in a moment, is requested to support new security requirements, strengthen programmatic oversight, audits, reviews and assessments, allow us to fund an increase in the transit subsidy benefit for AO employees, and implement a cafeteria-style flexible benefit program.

AO Staff Support for the Courts

Specifically, $958,000 is requested to provide nine additional FTEs for program and security 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 essentially the same over the last ten years, while court staffing has grown by 20 percent during the same time period, thus adding substantially to the AO workload.

Each vacancy that occurs is carefully evaluated and used to fulfill our highest priority needs. Nowhere has this been more evident than with our increased focus on security and emergency preparedness. Without additional funding, we have had to shift duties and responsibilities to meet the most pressing and immediate requirements of the courts, and this has meant shortchanging other needs. For example, during fiscal year 2002, the AO devoted $1 million and 8 FTEs to homeland security efforts. Roughly 50 AO employees devoted staff-hours equivalent to 8 FTEs, developing and implementing enhanced judicial security programs—fulfilling responsibilities and carrying out duties other than those for which their positions were originally funded to support.

I am proud of my staff and their dedication to serving the needs of the courts. However, because sufficient resources must be committed to core functions such as running key systems, providing basic payroll, personnel, and financial management services, and supporting the committees of the Judicial Conference, program oversight functions are in serious need of additional resources.

The nine additional FTEs we are requesting will be applied to the following functions: adding staff to the facilities and security program to ensure greater emphasis on the planning aspects of emergency preparedness and crisis response; providing greater focus and support to the probation and pretrial services program, which currently has only 36 AO staff supporting 8,000 probation and pretrial services personnel in 94 districts nationwide, and a budget of $850 million; and, increasing program oversight and efficiency reviews to assist the courts in areas such as automated case management, financial management, and developing strengthened procurement policies and procedures.

Mr. Chairman, I hope you can assist us with this much needed request for additional staffing at the AO.

Cafeteria-Style Flexible Benefits Program

As you may recall, the Judicial Conference is seeking legislation that would provide the judiciary with the authority to use appropriated funds and/or fees to help defray the cost of providing supplemental benefits to judiciary employees. Approval

of the legislation will allow a full-flexible cafeteria plan to be available to all judiciary employees, including the AO, providing a supplemental benefits package that is competitive with those already provided throughout the private sector and state governments. Benefits that may potentially be offered in a cafeteria plan include such items as a dental program, a vision program, and life insurance, as well as short-term and long-term disability insurance.

While the House passed its Federal Courts Improvement Bill with this needed authorization in it, the Senate failed to act on the measure during the 107th Congress. However, in anticipation of the enactment of legislation in fiscal year 2003 allowing flexible cafeteria-style benefits to be offered to the judiciary, our fiscal year 2004 request includes $432,000 to begin implementing such a program for AO employees. A similar request implementing the program judiciary-wide is included in the Salaries and Expenses account.

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 with available funding in fiscal year 2000. The benefit is currently $60 per month with a participation rate of approximately 60 percent. Executive Order No. 13150 provided for an increase in the allowable benefit to $100 per month in January 2002. The AO is requesting $265,000 to increase the subsidy to the currently authorized amount of $100 per month.

The already limited parking available in and around the Thurgood Marshall Federal Judiciary Building has been further reduced by the loss of parking spaces at Union Station due to security considerations. Compounding the situation is the elimination of nearby parking as a result of the construction of Station Place, which has necessitated employees of the AO to seek parking in remote locations that are unsafe. 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 $265,000 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 70 percent.

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 and its 24 committees 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 of the probation and pretrial services program for which we are seeking additional oversight positions. In fiscal year 2002, probation and pretrial services offices supervised a record number of offenders and defendants (143,672) living in our communities on pretrial release, probation, parole, or supervised release. The AO staff provided policy guidance and program support to a system that encompasses 94 districts in 500 locations. The staff develop and administer national contracts for drug testing and electronic monitoring and help support 500 local purchase orders for substance abuse and mental health treatment. 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 training, audits, and reviews to ensure the continued quality and integrity of federal court operations.

In addition, the AO provides necessary support services to other entities including the Judicial Panel on Multi-District Litigation and the Foreign Intelligence Surveillance Court.

Throughout 2002, the AO excelled in its day-to-day responsibilities. Let me take a moment to highlight just a few of these areas.

Financial Stewardship

Working with the courts to ensure the efficient and effective use of resources is a key AO function. 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 timely, accurate, and reliable; and business practices comply with applicable laws and regulations. In 2001, a Management Oversight and Stewardship Handbook was published and training on management oversight was provided to chief district judges and chief bankruptcy judges. In 2002, a companion program was launched for court executives. The AO has held two of six planned workshops of the new training program, Management in the Judiciary: The Rules, Tools and Tips of Good Stewardship. To date, 110 court executives have received training. The remaining 332 will receive training in fiscal years 2003 and 2004.

Strengthened Internal Controls

Good internal controls are systematic safeguards that ensure objectives are achieved and assets are protected. With the participation of court managers, AO staff is developing a model internal controls handbook to assist court leaders in managing their courts. The handbook will identify the minimum procedural checks and balances that should be in place for finance, travel, procurement and contracting, property, human resources, information technology, records, and statistical reporting.

Information Technology

Another key responsibility of the AO is developing, implementing, and supporting new automated systems and technologies for the courts. One of our largest automation 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 2001. By March 2003, about 130 district and bankruptcy courts had begun or completed implementing the new systems and national implementation in all courts should be completed in 2005. More than 27,000 attorneys have already filed documents electronically and more than 6 million cases involving more than 15 million documents are in the electronic files systems. In fact, several recent mega-bankruptcies were filed electronically, enhancing both public access and case management. In 2002, the total number of Public Access to Court Electronic Records (PACER) accounts topped 200,000. These systems will save considerable court resources while also significantly improving public access to federal court records.

Many systems have also been developed through the energy and creativity of AO-court partnerships. Probation and pretrial services officers who, as I noted earlier, supervise well over 100,000 persons, have started using the Probation and Pretrial Services Automated Case Tracking System-Electronic Case Management (PACTS–ECM), which in 2002 went live in 17 districts. 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 has remote capabilities to allow officer access while in the field. The PACTS–ECM system is an invaluable resource as the number of offenders released from Federal prison who are serving terms of supervised release continues to escalate.

CONCLUSION

Mr. Chairman, Members of the Subcommittee, I do not believe that any one agency in the executive branch or the legislative branch offers the broad range of services and functions that the AO provides to the federal courts. However, in the interest of time and the particular focus of this hearing, I have tried to limit my testimony to our fiscal year 2004 budget request and the role of the AO in enhancing judicial security and ensuring the safe and uninterrupted delivery of justice. We take our responsibilities and service to the courts seriously and are always looking for ways to improve. I ask your support in accomplishing this by granting the increase the AO is seeking for fiscal year 2004. Thank you.

PREPARED STATEMENT OF THE HONORABLE JOHN G. HEYBURN II, CHAIRMAN, COMMITTEE ON THE BUDGET, JUDICIAL CONFERENCE OF THE UNITED STATES

INTRODUCTION

Chairman Gregg, Senator Hollings, Members of the Subcommittee, thank you for giving me the opportunity to present the judiciary's fiscal year 2004 budget request.

Before addressing our fiscal year 2004 request, on behalf of the entire judiciary, I want to express our appreciation for the funding levels provided to the judiciary for fiscal year 2003. We understand the difficult decisions and concerns that you faced, and will continue to face, balancing the needs of the newly-established De-

partment of Homeland Security, the ongoing war against terrorism, the war in Iraq, and the funding needs of numerous domestic entities, while trying to hold down spending. 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 the judiciary's most pressing needs.

BUDGET OVERVIEW

The budget request the judiciary has submitted for fiscal year 2004 is that which is necessary to maintain our current staff and operations and to allow the courts to handle growing workload and other critical needs. The appropriations request is 10.8 percent over the available appropriations for fiscal year 2003. We realize that this request is higher than the 3.8 percent increase requested for discretionary spending, with the exception of homeland security, in the President's Budget. Although we are mindful of the need for fiscal restraint, now more than ever a strong judiciary is critical to the protection of our citizens. Threats to homeland security potentially involve civil or criminal actions that will require court orders and adjudication in this nation's courts.

For all judiciary accounts, we are requesting a $530 million increase in appropriations over the enacted appropriations for fiscal year 2003. Nearly two-thirds of this requested increase ($338 million) is required to maintain current operations with pay and benefit adjustments, inflationary adjustments, increases in GSA space rental costs, an increase in filled Article III judgeships, and continued security measures. The remainder ($192 million) is primarily to provide for the programmatic and workload-related needs such as high-profile terrorist trials, the unprecedented numbers of bankruptcy filings, and significant increases in the probation and pretrial services workload as criminal filings continue to rise and as the number of offenders released from prisons into our communities with a need for drug and mental health treatment steadily increases. A detailed explanation of our fiscal year 2004 request is included as an appendix.

PROTECTION OF FREEDOM

In these uncertain times, with our nation's safety and freedom threatened as it has never been before, our three branches of government must work together to protect the safety of our citizens and our heritage of freedom. A strong, independent federal judiciary, providing equal justice to all, is at the heart of what this nation stands for. As Chief Justice Rehnquist noted in his 2002 year-end report on the federal judiciary, there is a fundamental interdependence of our three separate branches of government when it comes to funding our nation's priorities, and we look to the Legislative and Executive Branches for support, funding and staffing.

WORKLOAD INCREASES

The workload asked of the judiciary is truly uncontrollable, whether it is processing criminal, civil, or bankruptcy cases; or providing jury services, supervision and treatment of defendants and released felons, or representation to those financially unable to obtain private counsel. The judiciary has no major program which can be cut or deferred, only the people who provide those services, the systems that support them, and the facilities that house them. Therefore, when funding is reduced, the only place the reduction can be taken is in the staff and the supporting systems that perform those essential services.

While we are not at a point where I would use the term crisis, I am very concerned about certain workload indicators that I believe are heading in the wrong direction, likely as a result of resource shortfalls.

Pending criminal and bankruptcy cases have grown by 38 percent and 17 percent respectively between 1998 and 2002. This means that the number of cases terminated is less than the number of new cases filed. The number of judges and court staff has not kept pace with the growth in caseload, and a disturbing argument could be made that this lack of judicial resources has resulted in a growth in backlogs.

I am also concerned about our law enforcement function, probation and pretrial services. The caseload in these offices has grown by approximately 16 percent between 1998 and 2002. That in itself is significant, but in addition, the nature of their work has also changed. Officers are supervising more hardened offenders as evidenced by their more extensive criminal histories and the 67 percent increase in the average prison sentence. Furthermore, over this same time period the number of offenders with mental health conditions has grown by 81 percent, and the number with substance abuse problems has grown by 48 percent. While the number of officers has kept pace with the growth in the overall number of cases during this pe-

riod, there has been no increase associated with the increased risk presented by these cases. Within the same relative level of staffing, our probation and pretrial services officers must devote a higher level of supervision to the more hardened criminals and those with drug abuse and mental health issues, which means they must devote less time to their other cases. On the one hand, I applaud them for prioritizing limited resources to the more complex cases, but on the other hand, I am concerned that the level of supervision of their other cases could pose a higher risk to the community in the long run.

The courts experienced record workload increases in fiscal year 2002. Bankruptcy filings grew 8 percent, civil filings in the U.S. district courts climbed 10 percent, criminal cases rose 7 percent, and the number of persons under probation supervision and supervised release as well as the defendants in the pretrial services systems each increased by 4 percent.

As we look to what the future will bring, we note that in Conference report on the fiscal year 2003 appropriations, additional funds were provided to the U.S. Attorneys "to aggressively prosecute cases of corporate fraud" and the funding provided to the FBI included increases to combat violent crime and white collar crime. And, the Bureau of Prisons inmate population has reached an all-time high of 165,000. Approximately 80 percent of these prisoners will be released to the community and will be under the supervision of probation officers at the completion of their sentences.

These are just a few of the indicators that point to continued increases in workload for the federal judiciary. In fiscal year 2003, because of limited funding, we will be unable to provide for the full complement of staffing required to meet the workload requirements. I urge the Subcommittee, as you determine your funding priorities in this constrained environment, to consider providing the federal courts with the resources required to perform the very important functions assigned to them by the Constitution and the Congress. Without the funding increases needed to address growing workload, I believe the judicial system, and those who depend on it to resolve disputes, will begin to suffer.

JUDICIAL PAY

The need to increase judicial pay continues to be one of the most pressing issues facing the judiciary. Federal judicial salaries have lost 23.5 percent of their purchasing power since 1969, while during this same time period private sector wages have increased by 17.5 percent. More than 70 Article III judges, all of whom have life-time appointments, left the bench between 1990 and February 28, 2003—either under the retirement statute if eligible or simply resigning—as did a number of bankruptcy and magistrate judges. Another judge resigned at the end of February, and two more judges have announced their intention to retire from federal bench later this year. During the 1960s only a handful of Article III judges retired or resigned. Many judges no longer take senior status and we are losing their valuable contributions as they seek private sector employment and compensation. A study of 1999 data indicated that senior judges participated in 15 percent of appeals and presided over nearly 20 percent of trials.

Recently, the report of the National Commission on the Public Service, also called the Volcker Commission, supported the need to address this issue. In its final report, the Commission said, "The lag in judicial salaries has gone on too long, and the potential for diminished quality in American jurisprudence is now too large. Too many of America's best lawyers have declined judicial appointments." The salary differential when compared with the legal education profession has become quite dramatic. In 1969, the salaries of district court judges had just been raised to $40,000 while the salary of the dean of Harvard Law School was $33,000 and that of an average senior professor at the school was $28,000. That relationship has now been erased. The salaries of professors and deans at the twenty-five law schools ranked highest in the annual U.S. News and World Report survey found that the average salary for deans of those schools was $301,639. The average base salary for full professors at those law schools was $209,571, with summer research and teaching supplements typically ranging between $33,000 and $80,000. This compares with a district court judge's salary of $154,700. The Volcker Commission's report stated, "Judicial salaries are the most egregious example of the failure of federal compensation policies. . . . Unless this is revised soon, the American people will pay a high price for the low salaries we impose on the men and women in whom we invest responsibility for the dispensation of justice". The Commission expressed similar concerns about the inadequacy of congressional and executive salaries and recommended, "Congress should grant an immediate and significant increase in ju-

dicial, executive, and legislative salaries to ensure a reasonable relationship to other professional opportunities."

I know that to address this issue requires a broad Congressional consensus. Nevertheless, this Committee can take a small, but vital step in the right direction by including the funding for the annual ECI adjustment for judges in this bill.

NEW JUDGESHIPS

Despite the substantial increase in workload, there has not been a major judgeship bill creating additional Article III judges since 1990 or a bankruptcy judgeship bill since 1992. We are grateful for nine district judgeships added in the fiscal year 2000 appropriation, the ten additional district judgeships added in the fiscal year 2001 appropriation, and the 15 additional permanent and temporary district judgeships Congress authorized in November 2002 as part of the Department of Justice authorization act. However, the need for additional appellate, district and bankruptcy judges is critical. For example, in 1992, when the last bankruptcy judgeships were created, each bankruptcy judge handled an average of 2,998 cases; each now handles an average of 4,777 cases. Likewise, appellate and district judges are handling more cases. We hope that you will support and provide funding for the Judicial Conference requests to create 57 additional Article III judgeships and 36 bankruptcy judgeships.

COURT SUPPORT STAFF

The court support staff are the backbone of court operations. From intake to disposition, it is the clerk's staff, along with the pretrial services and probation officers who keep the wheels of justice running smoothly. In order to ensure that resources are distributed as required by workload, the judiciary has developed scientifically-derived staffing formulas to construct the budget request and to allocate funds to the clerks' offices and to the probation and pretrial services offices. As filings and other workload factors fluctuate from year to year, the application of the formulas to the individual court units provides a corresponding increase or decrease in funding. This ensures the equitable allocation of resources to meet workload requirements.

For the duration of the Continuing Resolutions this year, the clerks' offices and probation and pretrial services offices were held to a spending level significantly below the fiscal year 2002 allotments, which put a major strain on the staffs. Most offices were unable to fill critical vacancies, and were anticipating the possibility of RIFs and furloughs. We are grateful for the fiscal year 2003 appropriation, which will allow the courts the funding necessary to maintain a current services level of operations for the remainder of the year. However, it will not allow us to fully fund the formulas that provide for the staff necessary to keep pace with steadily growing workload. The gap between required staff levels and funded staff levels continues to grow.

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. Pretrial services officers investigate the backgrounds of defendants charged with a federal crime, recommend in a report to the court whether to release or detain a defendant, and supervise those who are released to the community while they await their day in court. The probation officer enters the scene upon a finding of guilt, investigating the offender to provide the court with a presentence report, and supervising all offenders conditionally released to the community. As an example of the dedication of these officers and the difference they make in our communities I would like to tell you a success story that took place in the Eastern District of Virginia.

"JB" began his three-year term of supervised release after serving time at the Federal Correctional Institution in Butner, North Carolina on a conviction for making bomb threats. He had a long-standing history of mental health problems characterized by anger, suspicion, paranoia, and aggressiveness. The FBI, the local police department, and JB's former employer—the target of JB's bomb threats—were extremely anxious about JB's release because of his unstable mental condition.

Supervision in this case became difficult even before release. JB's request to relocate to his hometown in the Middle District of North Carolina was turned down because he had sent numerous threatening letters to his parents. With no acceptable release plan, he was to be released to Richmond—where he had no ties and where his former workplace was located.

A senior Probation Officer (PO) in Virginia Eastern initiated contact with JB before he was released. She established and maintained contacts with local law enforcement, corporate security for the victim, and the probation office in the Middle District of North Carolina. She found JB temporary housing and placed him in treatment. She also began a close collaboration with the Richmond Behavioral and Health Authority, where JB was to participate in a program for homeless people in need of mental health treatment. This community resource provided the medication and treatment necessary to stabilize JB's mental condition and helped him with housing and job placement.

The PO met with JB within 30 minutes of his release from custody. She conducted a thorough initial interview and gave him clear, detailed instructions as to what he was to do next. After that first contact, the PO closely monitored JB, speaking with him by telephone daily, when necessary. With each change of residence or job, the PO made a prompt on-site inspection and added new landlords and employers to her list of collateral contacts.

Because the PO monitored JB's case very closely, she was able to identify potential danger signals and intervene quickly before a crisis arose, and to clarify what she expected of JB in each change of circumstance. She reinforced her expectations of him by using a blend of explanations, warnings, and incentives. For example, when JB took up photography as a hobby, the PO first set clear limits for this potentially intrusive activity. She then both monitored JB's work and complimented his growing skill. The PO also helped JB deal with the requirements of managing an independent life—serving as case manager and service broker with mental health counselors, employers, landlords, Social Security Administration officials, and family members. She encouraged JB in his successes and consoled him in his disappointments, while—within the bounds of confidentiality—also keeping her law enforcement and corporate security contacts informed of his activities and progress.

As a result of these efforts, JB got a job at a local YMCA, where he became a productive, well-liked employee and served as their unofficial photographer. He became stabilized on medication and began receiving monthly social security disability benefits. JB occasionally visited his hometown, under the supervision of the North Carolina Middle probation office, and his relationship with his family improved so much that the district accepted him for courtesy supervision.

When JB ended his term of supervised release, he was stable, back in his hometown with his family, equipped with a new skill, and able to support himself. The PO and the collateral network she developed provided the structure, control, treatment, and support necessary for JB to succeed and for the public to remain safe. Her efforts laid the foundation for JB's continued success in the future.

Helping past offenders avoid becoming repeat offenders, while protecting the community, is the primary goal of supervision. With insufficient staffing resources and limited funds for programs that help offenders become productive members of our communities, we increase the risk to those communities.

Persons under supervision have increased by 16 percent since 1998. More growth is expected for fiscal years 2003 and 2004. Further, the level of danger posed by many of those under supervision and their attendant drug and mental health problems has soared.

DEFENDER SERVICES

Defender Services is also affected by the increase in criminal cases and the number of terrorist trials. In addition to the projected growth in representations in fiscal year 2004, the current projections for fiscal year 2003 exceed the funding provided. This means that some panel attorney payments likely will have to be deferred into fiscal year 2004, further raising the requirements for that year.

We are grateful for the panel attorney rate increase to $90 per hour provided in fiscal year 2002. This was the first significant raise in private panel attorney hourly rates in most judicial districts since 1986, and it was badly needed. The judiciary is collecting information in response to the Committee's questions about the extent to which the new rate has solved problems in obtaining adequate counsel for Criminal Justice Act (CJA) representation. However, even in a district where the $90 rate may now allow a court to obtain qualified counsel to accept CJA appointments, lawyers are accepting the cases at a significant financial sacrifice which ultimately will not bode well for the criminal justice system.

To ensure that the panel rates do not further decline, in real terms, below the rates envisioned by the CJA, the Judicial Conference again has requested that the Congress raise the rate to $113 per hour. Even at $113 per hour, CJA counsel, who provide representation guaranteed by our Constitution, would be underpaid compared to rates paid by many federal agencies to private lawyers. In a survey of hour-

ly rates paid to private counsel by government agencies conducted in 2001, the General Accounting Office found that the average hourly fees paid to private counsel ranged from $125 to $357, depending on the agency and the type of legal services. In addition, the average hourly billing rate charged by privately retained counsel, according to The 2002 Small Law Firm Economic Survey (Altman Weil, Inc.), is approximately $190 for sole practitioners and partners in small law firms. The judiciary and panel attorneys understand that CJA hourly rates were not intended to match those that lawyers charge their private clients. It is the judiciary's view that panel attorneys' compensation should cover reasonable overhead and a fair hourly fee, which warrants raising the CJA rate to $113.

In deciding to continue to seek a nationwide $113 hourly rate for fiscal year 2004, the judiciary considered the possibility of proposing geographic-based rates. In addition to the reasons supporting a $113 rate, the judiciary took note of several factors regarding geographic-based rates, including that the cost of living in an area is not the only factor in a court's ability to recruit and retain qualified attorneys to accept CJA appointments. For example, in a low-cost rural area where there is a minimal retained federal criminal practice and a limited pool of lawyers with federal criminal defense experience, a higher rate may be needed in order to provide sufficient incentive for attorneys to invest the time required to develop the necessary expertise and to then be willing to take on a substantial portion of the CJA caseload. The judiciary will continue to examine options, such as geographic-based rates, in developing its future funding requests.

We are also requesting, for the first time, an increase in the maximum hourly rate to $157 for panel attorney compensation in capital cases. The $157 hourly rate represents the $125 rate adjusted for the cumulative cost-of-living adjustments provided for in the Antiterrorism and Effective Death Penalty Act of 1996. Counsel accepting appointments to capital cases typically are sole practitioners or are from small, independent firms, which do not have other attorneys willing or able to subsidize the cost of the CJA work. The amount of time that the attorneys need to devote to these capital cases is so extensive that it is generally impossible for the attorneys to handle other cases concurrently. The current maximum capital hourly rate of $125 is significantly below the market rates charged by lawyers for providing representation in comparable high-stakes, complex, and time-consuming cases. An increase would be the first in the maximum rate for capital cases since it was set statutorily in 1996. The cost of this increase is only $2.9 million. We urge you to consider it.

COURT SECURITY

We appreciate your continued support of our Court Security program and understand your concerns regarding budget administration and oversight of the program. This is a unique account—appropriated to the judiciary but primarily managed by the Department of Justice. The safety of the public, litigants, attorneys, jurors, judges, court staff and others in the judicial process is of primary concern to us, and we are fully committed to working with the USMS to make sure that the program is successful and that the resources you provide are managed in the most efficient and effective manner. You have directed the USMS to conduct a study on the management of this program, and we respectfully ask that the judiciary be involved actively in this study since the mission of the program is so important to us.

In these troubled times when courthouses are such visible targets for terrorists, our Court Security program is more critical than ever. Court Security Officers (CSO) and security systems are key aspects in providing physical security to the courts. Statistical data provided by the USMS indicates that our security process detected 641,489 weapons such as guns, knives, and other items prohibited in courthouses in fiscal year 2002. The USMS also reported the detention or arrest of 16 persons related to security breaches in courthouses during the year. I will share with you a few stories illustrating the vigilance and professionalism of our CSOs.

In October of 2002, in the district of Colorado, a CSO intercepted an individual attempting to gain entrance into the courthouse with a .380 caliber automatic handgun concealed in a leather carrying case. The individual was also in possession of a loaded magazine. The individual was taken into custody.

In December of 2001 in the Federal Courthouse and Post Office in El Dorado, Arkansas, two CSOs noticed a man in the Post Office lobby with a gun and badge. Although it is a reasonably large city, one of the CSOs recognized this man as an individual who some years before had been in court for a civil charge and was considered to have mental health problems. The two CSOs approached him and had to fight him to the floor. The individual had a fake badge and a real gun. He was

apprehended, charged and found guilty of several charges including carrying a weapon into a federal building.

In February of 2002, an individual used a hammer to shatter the glass in the front entrance door of the U.S. Federal Building at Beckley, West Virginia. Two CSOs quickly subdued this individual and restrained him until he was taken into custody by the U.S. Marshals Service.

During a court session in the Southern District of Ohio a prisoner attempted escape. The prisoner was able to get out of the courtroom and almost out the front door, but two CSOs tackled and apprehended him at the front entrance.

We appreciate your increased support and funding for this program. While we recognize the practical reasons for transferring the 106 supervisory deputy marshal positions, approved by Congress in the fiscal year 2002 supplemental appropriation, to the USMS in fiscal year 2003, these positions are a linchpin to effective security of our courthouses, and we look for your support to ensure that they will continue to be dedicated to courthouse security, and to our participation in the study on the management of the Court Security program.

CAFETERIA-STYLE EMPLOYEES BENEFITS PROGRAM

For the past several years, the judiciary has been a leader in offering enhanced benefits to employees. Long-term care was introduced in 1999, followed by the existing flexible benefits plan, introduced in fiscal year 2000, which offers pre-tax benefits such as flexible spending accounts for health care, dependent care, payment of health insurance premiums, and commuter reimbursement. The judiciary was able to implement these benefits within the existing statutory framework and without requiring additional funds. We would like to do more for our employees to stay competitive in an era when skilled workers change jobs frequently. This is especially important to the judiciary as the work force of tempered professionals reaches retirement age and we are looking to maintain a qualified, stable work force. We cannot continue to be competitive in the employment market with substandard benefits, and so we are seeking legislation and funding to establish a cafeteria-style benefits program that would be funded in part by a modest per-employee contribution by the judiciary. The combined employee and employer contributions could eventually be used to purchase benefits from a menu of choices such as dental insurance, vision insurance, leave conversion, expanded commuter subsidies, short-term and long-term disability, and prescription drug insurance and mental health insurance to plug gaps in the Federal Employees Health Benefits (FEHB) programs. Benefit programs like these are common in state governments, the private sector, and other federal agencies such as the Federal Reserve, Federal Deposit Insurance Corporation, Comptroller of the Currency and the Postal Service—entities with which we compete for professional staff.

Although the House passed the Federal Courts Improvement Bill with the needed authorization allowing us to use appropriated funds and/or fees to help defray the cost of providing these supplemental benefits, the Senate failed to act on the measure during the 107th Congress. However, in anticipation of the enactment of legislation in fiscal year 2003 allowing flexible cafeteria-style benefits to be offered in the judiciary, we are including a request for $15.9 million, hoping to begin implementing the program in fiscal year 2004.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

The Administrative Office of the United States Courts serves as the central support agency for the federal courts, with key responsibility for judicial administration, policy implementation, program management, and oversight. The Administrative Office (AO) 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 AO's staff has been essentially frozen for ten years, while its work has expanded to support the courts.

In the wake of the tragic events of September 11 and the anthrax mail situation, the AO has been working to provide additional guidance on security and emergency preparedness to the courts. The Director established a permanent Judiciary Emergency Preparedness Office to focus on crisis response, occupant emergency planning, and continuity of operations planning. Following the anthrax mail contamination crisis, the AO provided advice and contract support to test for anthrax and address mail handling concerns at courts across the nation. To avoid future contaminated mailings, the AO began using e-mail broadcasts, facsimile transmissions, and more extensive posting to our intranet site, the J–Net, to deliver information to the courts.

With the help of an independent consultant, prototype Continuity of Operation Plan (COOP) templates and instructional materials have been developed for each court type based on the actual COOP plans for the U.S. Court of Appeals for the Second Circuit and the District and Bankruptcy Courts for the Southern District of New York. Templates and checklists about emergency preparedness have been made available on the Emergency Preparedness Office's J–Net website.

The Director created a project team to assess the feasibility of establishing a Court Operation Support Center (COSC) outside downtown Washington, DC to address the vulnerability of key administrative and technical support to the courts. The primary objective of an off-site COSC is to ensure that support to the courts would continue uninterrupted in the event the Thurgood Marshall Federal Judiciary Building is rendered inaccessible. We intend to provide telework opportunities for judiciary employees at this facility as well. We are grateful for your endorsement of the COSC in the conference report on the fiscal year 2003 appropriations.

As courts are facing more highly publicized and security-sensitive criminal proceedings, the AO has been providing support and advice to the courts on a wide range of issues from heightened security concerns to information technology, and furnishing closed-circuit broadcasts of the proceedings to victims' families.

Working with the courts to ensure the efficient and effective use of resources is a key AO function. In fiscal year 2001, a Management Oversight and Stewardship Handbook was published and training on management oversight was provided to chief district judges and chief bankruptcy judges. In 2002, a companion program was launched for court executives. The AO has held two of the six planned workshops of the new training program, Management in the Judiciary: The Rules, Tools and Tips of Good Stewardship.

The fiscal year 2004 budget request for the AO is $70,584,000, representing an increase of $7,497,000, or 11.9 percent above the fiscal year 2003 available appropriation. More than three-fourths of the requested increase is necessary to support adjustments to base, mainly standard pay and general inflationary increases, as well as funding to replace a lower level of fee carryover with appropriated funds. Of the remaining $1,655,000 increase, $958,000 is requested to provide nine additional FTE for program and security oversight. The staffing level in the AO has remained essentially the same over the last ten years, while court staffing has grown by 15 percent during the same time period.

I urge the Committee to fund fully the AO's budget request. The increase in funding will ensure that the AO continues to provide program leadership 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 seeking a modest 8.3 percent increase over its current appropriation. The Center is the federal judiciary's education and research arm. Its support is vital to the work of federal judges and the personnel of the courts.

Judge Smith will return to California later this year to resume her duties as a U.S. district judge. All of us in the judiciary are grateful to her and to the Center for its contributions under her four years of leadership.

With Judge Smith, I thank you for last year's increase for the Center, including the confirmation that the funds transferred in 2002 are part of its base budget and available to support some of the distance education positions that it has requested for several years.

A main element of the increase that the Center seeks in 2004 would restore its basic judicial education programs to a twelve-month cycle, rather than the current eighteen-month cycle. Having to go a year and a half between continuing education programs has been a matter of great concern to judges over the country. 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 want also to recognize the importance of the Center's research, primarily for committees of the Judicial Conference, as detailed in Judge Smith's statement, and the Center's education to enhance management skills in the federal courts. I participated last fall in a Center program for new chief judges and unit executives, and it has helped me immensely. Center programs also provide a forum to stress the importance of economy in administration, which I did earlier this week when speaking at a Center conference for the clerks and chief deputies of the courts of appeals and the clerks of the bankruptcy appellate panels. Last October I provided similar

guidance on fiscal realities and responsibility when making a presentation at a Center workshop for the clerks and chief deputies of our federal district courts.

Center programs for our clerk's offices and our probation, and pretrial services offices, almost all of it by satellite and on the Web, has never been more important for court executives who must deal with employee unease and insecurity in these troubled times. Its importance highlights the need for the educational technology positions the Center requests.

I believe the Center's request deserves the committee's support and urge favorable action on the full amount.

CONCLUSION

Chairman Gregg and Members of the Subcommittee, this concludes my statement. I look forward to working with you as you work to develop the fiscal year 2004 appropriation bill for the Judiciary.

APPENDIX

SUMMARY

The fiscal year 2004 appropriation request for the Courts of Appeals, District Courts and Other Judicial Services totals $5,175,878,000, an increase of $540,200,000, or 11.7 percent, over the fiscal year 2003 available appropriations. In addition to appropriated funds, the judiciary utilizes other funding sources to supplement our appropriations including fee collections, carry forward of fee balances from a prior year, and the use of no-year funds. When all sources of funds are considered, the increase in obligations for fiscal year 2004 is only $429,435,000 or 8.5 percent.

Of the $540,200,000 increase in appropriations, 66 percent ($357,481,000) is adjustments to the fiscal year 2003 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 2004. The remaining 34 percent ($182,719,000) is needed to respond to increased requirements for magistrate judges, federal defender offices, security, drug and mental health treatment, and to fund additional court staff required to process growing workload. 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 our request. A total of $4,467,930,000 in obligations is required for this account, including funding for the Vaccine Injury program, in fiscal year 2004. Funding totaling $276,285,000 is expected to be available from other sources including fee collections and carryforward balances to fund S&E requirements. This leaves an appropriation need of $4,191,645,000, which is $411,864,000 above the fiscal year 2003 available appropriation.

Of the $411,864,000 increase, 61 percent ($249,697,000) is needed to fund adjustments to the fiscal year 2003 base including: pay and benefit increases for judges ($12,563,000); increases in the number of filled Article III judges, senior judges, magistrates judges adjustments, and the filling of vacant Special Masters to handle vaccine injury cases ($13,725,000); pay and benefit increases for court support and probation and pretrial services staff ($95,327,000); increases necessary to maintain fiscal year 2003 staffing levels and automation support because of a reduction in non-appropriated funding ($30,571,000); increases for space rental and associated costs ($60,084,000); inflationary increases for operating costs ($12,339,000); increases to support existing and newly installed automated systems and to continue development of new information technology systems ($17,934,000); and increases for maintenance of telecommunications systems and systems for new space coming online ($7,154,000).

The remaining 39 percent ($162,167,000) will fund 10 additional magistrate judges and their staff to help Article III judges handle the growing volume of civil and criminal cases facing the courts ($4,119,000); 807 court support FTEs to address the shortfall in the level of staffing and operating costs funded in fiscal year 2003 ($97,025,000); 427 court support FTEs for a net increase in workload in fiscal year 2004 ($28,200,000); a cafeteria-style flexible benefits program for employees to reduce turnover and attract high quality new hires ($15,886,000); increased mental health and substance abuse treatment for projected growth in the number of offenders and defendants under supervision requiring this treatment ($7,369,000); annual recurring costs of the judiciary's off-site operations support center ($3,495,000); ad-

ditional funding for the installation of courtroom audio systems during the construction of new courthouses ($4,384,000); and funding for background investigations for probation and pretrial services officers and officer assistants, and for court staff in sensitive positions ($1,689,000).

Defender Services

An appropriation of $635,481,000 is required for the Defender Services program to provide representation for eligible criminal defendants in fiscal year 2004. This is an increase of $100,520,000 above the available fiscal year 2003 appropriation.

Of this increase, 86 percent ($86,909,000) is needed for adjustments to the fiscal year 2003 base for inflationary and workload increases. Included in these adjustments are standard pay and inflation increases for Federal Defender Organizations ($14,002,000); a cost-of-living adjustment for panel attorneys ($1,247,000); other inflationary increases ($2,149,000); increase in the projected number of representations ($36,923,000); funding to maintain base caseload costs ($33,188,000); and a reduction in non-recurring costs (−$600,000).

The remaining increase of 14 percent ($13,611,000) will fund an increase in the hourly panel attorney rate for non-capital cases, above the inflationary adjustment, to $113 beginning on April 1, 2004 ($10,378,000); an increase in the hourly panel attorney rate for capital cases, beyond the inflationary increase requested, to $157 effective on April 1, 2004 ($2,633,000); and start-up costs of two new federal defender offices expected to be opened in fiscal year 2004 ($600,000). 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 $53,181,000 is required, a decline of $1,100,000 from the fiscal year 2003 available appropriation. This decline is the result of a decrease in the projected number of juror days (−$1,447,000); and an increase for inflation ($347,000).

Court Security

For the Court Security program, an appropriation of $295,571,000 is required, which is an increase of $28,916,000 above the fiscal year 2003 available appropriation. Of this increase, 76 percent ($21,975,000) is for adjustments to base including: an increase for standard pay, benefit and contractual services inflation ($13,237,000); an increase to annualize the costs for 10 new court security officers (CSOs) partially funded in fiscal year 2003 ($290,000); non-pay inflationary increases ($303,000); an increase of 26 court security officers for new or existing courthouse space ($980,000); and an increase for the cyclical replacement of security systems and equipment ($7,165,000).

The remaining increase of 24 percent ($6,941,000) will fund security systems and equipment for perimeter security, CSO radio repeater installations, and systems in probation and pretrial services offices ($6,072,000); CSO orientation training and contracting officer training for staff who administer the CSO contract ($550,000); and four additional FTE to administer the Court Security Program at the U.S. Marshals Service to improve program oversight and administration ($319,000).

PREPARED STATEMENT OF GREGORY W. CARMAN, CHIEF JUDGE, UNITED STATES COURT OF INTERNATIONAL TRADE

Chairman Gregg, Senator Hollings, and Members of the Subcommittee: thank you once again 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 2004 is $14,206,000, which is $519,000 or 3.8 percent over the fiscal year 2003 enacted appropriation of $13,687,000 and an increase of $597,000 or 4.4 percent over the level after the rescission imposed by Congress. This request will enable the Court to maintain current services and provide for standard pay and other inflationary adjustments to base. The Court's budget request included a small program increase of $50,000 to upgrade its security recording system to a digital system that will increase the accuracy and reliability of its current system, while, at the same time enhancing its internal and external surveillance capabilities. The requested increase, however, was included in the re-

cently enacted Wartime Supplemental Appropriation Bill and will allow us to move forward with this security upgrade during fiscal year 2003. The Court continues, as it has done for the past nine years, to hold its requested budget increases below 6 percent.

In response to several studies conducted by GSA and the U.S. Marshals Service, and in the wake of September 11th, the Court, in fiscal year 2002, requested and received funds for an architectural analysis of the structure of the Courthouse in order to determine the vulnerability of the facility in case of a bomb blast and/or a terrorist attack. As a result of this analysis, the Court, using other funds from its fiscal year 2002 appropriation, asked the contractor for recommendations as to the feasibility of modifying the existing building in a manner that would ensure the health, security and effective operation of the Court. The contractor's final report was completed at the beginning of fiscal year 2003. Specific recommendations were made that would make the courthouse less vulnerable and safer for the Judges, the employees and the public. The Court is working closely with all relevant agencies to obtain appropriate funding for the implementation of the needed modifications to the building.

In accordance with its Long Range Plan, the Court continues to upgrade its technology infrastructure and expand staff development programs in the areas of technology and job related skills without requesting additional funds. The Court is in the process of completing the implementation of a customized version of the Federal Judiciary's Case Management/Electronic Case Files (CM/ECF.) System and the related file tracking, scanning and indexing solutions. The upgrading of the wiring of its data network and voice connections will be completed in fiscal year 2003. This upgrade will greatly increase the Court's access to the Judiciary's Data Communications Network (DCN), improve data speeds and enable the Court to address its current and future telecommunications needs. Additionally, the Court has installed its own frame relay connections for direct access to the DCN and a separate frame relay connection that enables the Court to host public access systems, such as its Internet Website. In fiscal year 2003, the Court will purchase a Virtual Private Network System (VPN) that will provide high speed remote access to Court systems by the Judges and Court employees working at remote locations. As in the past, the Court will continue to use its Judiciary Information Technology Fund for the cyclical replacement of aging desktop and server based hardware systems.

In fiscal year 2004, the Court remains committed to ensuring that the Court's technology infrastructure will continue to support its short and long term needs, thereby permitting the Court to operate efficiently and effectively. Among the projects to be supported by the Court's budget request and the carryforward balance from its Judiciary Information Technology Fund are: (1) supporting the Court's Case Management/Electronic Case Files (CM/EC) System; (2) expanding, improving and supporting the Court's remote access capability; (3) supporting a windows-based financial management system; (4) improving the Court's disaster recovery capabilities; (5) supporting new software applications that not only enable Judges and Court staff to view instructional videos at individual workstations, but integrates the Federal Judiciary's Training Network with the Court's local area network; (6) upgrading the Court's networked records management and tracking system for all case records; and (7) upgrading and supporting the online library automation system that enables the Judges and Court staff to search electronically for books and resource materials in the Court's Library collection.

Additionally, the fiscal year 2004 request will enable the Court to continue its cyclical maintenance program of the Court's facilities, including the replacement of certain furniture with ergonomic designs that will minimize the risk of injury to Court personnel.

Lastly, the fiscal year 2004 request also includes funds for the continued support and maintenance of security system upgrades implemented by the Court in fiscal years 1999 through 2003.

The Court's continued 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: I am pleased to submit this statement in support of the Federal Judicial Center's request for fiscal 2004 funds to help it improve the administration of justice.

This is the last request I will submit to you; this fall, having completed my four-year commitment, I will return to the Northern District of California, where I have been a U.S. district judge since 1988. It has been a pleasure to work with the subcommittee and its staff.

The Center's statutory Board, which the Chief Justice chairs, has selected U.S. District Judge Barbara Rothstein of Seattle as the Center's ninth director. She will take up her duties in early September.

This statement summarizes our 2004 request and provides a brief accounting of major Center activities to promote improved judicial administration in the United States and, to the degree our resources permit it, to work with other public and private organizations to provide help to the judiciaries in foreign countries that need our assistance.

As to the Center's 2003 funding, especially in light of the fiscal constraints you faced, I am grateful for the base funding and the partial adjustments to that funding. Thank you as well for recognizing as part of the base budget, the funds you transferred in 2002 for distance education, which provide us some of the positions for distance education that we have been requesting since 1998.

2004 REQUEST

The Center's Board unanimously approved the 2004 request for $22,434,000, an 8.3 percent increase to provide adjustments to the 2003 base, modest program enhancements to allow a return to a twelve-month cycle of education programs for federal judges, and five additional distance education positions. Statement of Hon. Fern M. Smith, Director, Federal Judicial Center, May 1, 2003

Judicial education and training programs ($500,000)

The funds for more timely education for federal judges are vital to our task of keeping judges knowledgeable about the constant changes in the law, science, and technology. Last year, in fact, the Board prepared its own statement supporting this element of that year's request, noting "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."

Center educational programs last year reached almost 31,700 participants. Almost 80 percent participated in satellite broadcasts and other forms of distance education.

For federal judges, the Center provides education in several forms, including manuals, satellite broadcasts, and small seminars or workshops to orient new judges to their responsibilities and to provide experienced judges with assistance in specific areas, such as mediation or intellectual property law.

Another fundamental element of our education for judges is periodic, general continuing education programs for circuit judges, district judges, magistrate judges, and bankruptcy judges. These programs assist judges on a variety of subjects, including updating them on new case law relevant to frequently litigated issues, describing new techniques of case management, and reviewing the ethics requirements that govern judges. Moreover, these programs allow judges to learn from their colleagues as well as from the faculty we assemble and to share innovations that have proven successful as well as those that have not.

Until 1999, a judge could attend such a general program once a year. In 1999, we shifted to an eighteen-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 negative commentary from judges across the country. As the Center Board said last year, "[o]f 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."

Seeking this modest increase in funds for judicial education seminars in no way signals the Center's retreat from distance education. In most respects, distance education has been a great success. Our travel budget, with this request, would still be about $1,000,000 below our 1995 travel budget. We want to continue to empha-

size 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 that some face-to-face educational opportunities are essential, especially for those with responsibilities like 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. These are not subjects or procedures that lend themselves to learning solely by computer or video screen.

Five additional positions (3 FTE) to enhance the Center's use of distance education technologies ($311,000)

The Center has long relied on distance education technologies for the bulk of the education it provides, including the Federal Judicial Television Network, which the Center began operating in April 1998. Since then, the Center has been requesting ten additional positions for video, multimedia, and automation specialists to support distance education and its necessary technologies. You provided for some of these positions in 2002 by transferring $400,000 to the Center's appropriation from the funds that Congress had earlier transferred to a completed federal appellate courts study commission, and then including those funds in our 2003 base. We appreciate that assistance, but the need for the remaining positions has not diminished, and so I am requesting again funds to provide for five additional distance education-related positions.

The five additional positions we seek in 2004 will permit us to bring on additional software engineers and computer-training technologists to ensure the federal courts have readily available, quality education without the need or expense of travel.

CENTER SERVICES AND ACTIVITIES

The following summary of current Center activities is an accounting for our stewardship of the funds you provide.

Promoting security in the administration of justice

The Center's "critical incident stress management" training helps courts develop teams to provide crisis intervention to their personnel victimized by natural disasters, terrorist attacks, and work-related trauma. Such teams assisted in the crisis response for the New York federal courts following 9/11.

Center Federal Judicial Television Network series on security include:

—crisis management training through Leading in Times of Crisis, featuring court managers who have successfully confronted crises in their own courts, and. Confronting Crises: The Employee's Perspective, to help staff prepare for potential security threats and crises

—a safety series to enable probation and pretrial services officers to mentally rehearse appropriate reactions to security threats in the office, in the field, and during home contacts with offenders, defendants, and third parties.

Additionally, at the request of the Judicial Conference Committee on Court Administration and Case Management, the Center is assessing the Conference's Criminal Case Files Pilot Programs to learn, among other things, about the possible harm or threats of harm that may result from providing remote public electronic access to documents filed in criminal cases.

Promoting the fair and efficient disposition of litigation

Helping judges dispose of cases fairly, quickly, and inexpensively is a major theme of our initial orientation seminars for new judges. We also provide judges an extensive array of manuals and sourcebooks about case-management techniques, including recurring problems in criminal trials, managing cases for resolution by alternatives to conventional procedures, and effective use of courtroom technology.

Our research for committees of the Judicial Conference includes analyses of class action litigation and a study of the incidence of sealed settlements in district courts across the country, a subject of national interest since the recent decision of the federal district court in South Carolina not to permit the practice.

Judicial ethics

We work closely with the Judicial Conference Committee on the Codes of Conduct to keep judges and their staffs fully informed of their ethical obligations and to help them understand the often complex rules designed to promote judicial impartiality. This year we published two new guides, one for judges on their recusal obligations under the judicial disqualification statute and one for judges' law clerks on the restrictions that apply to them.

Helping courts help offenders

The Center is conducting two related studies of federal court programs, prompted by increased national interest in offender re-entry programs and recent legislation providing post-incarceration vocational and remedial educational opportunities for certain releasees. One study will produce empirical information about federal probation officers' efforts to assist appropriate prisoners in preparing for reentry into the community. The other will help the Eastern District of Missouri evaluate its Offender Employment Program, which emphasizes the educational and employment needs of the offender and provides employment-related services coordinated by probation officers who are trained employment specialists.

We are also assessing the substance abuse treatment and mental health services needs of Native American offenders, in order to help probation and pretrial services officers better meet the special needs of this group.

Promoting public understanding of the judicial process

We recently released an interactive Web site, "Inside the Federal Courts," available at http://www.fjc.gov, that helps federal court employees, as well as the media and citizens of this and other countries, understand the federal court system's structure and operation. This includes a section on Congress's role in improving the federal courts. We also produced an eighteen-minute video, An Introduction to the Patent System, that judges may use to help explain patents and the patent process to jurors. Bar associations are making copies available to lawyers and the public.

Assisting the judiciaries of foreign countries

Mr. Chairman, I would also like to give you a brief update of our work to promote independent and effective dispute resolution in the courts of foreign countries.

In the last twelve months, the Center has provided briefings about the U.S. judicial system to 488 judges and legal officials from 66 countries, as well as a limited amount of more substantial assistance, either by in-country technical assistance or seminars held here in the United States. Neither our briefings nor our more extensive projects for foreign judiciaries are funded from the Center's appropriation. We provide this assistance at the request of either domestic agencies or foreign institutions, which fund the travel, lodging, and subsistence.

Our activities this year included a small seminar on educational techniques with our counterparts from Mexico and Canada, this a follow-up to the Chief Justice's meeting with the President of the Supreme Court of Mexico in September 2001. The Center also hosted a number of judges, scholars, and government officials as part of its Visiting Foreign Judicial Fellows Program. These included a labor judge from Brazil, who researched the use of alternative dispute resolution at the appellate level, and an official from the Ministry of Justice of Azerbaijan, who studied judicial education. In October 2002, I, and another representative from the Center, participated in a CEELI Institute conference in Prague, Czech Republic, that brought together representatives of judicial training centers from Russia, Eastern Europe, and Central Asia to discuss strategies for delivering judicial education. The Center continues to facilitate a variety of other international exchanges, including a bimonthly digital video-conference between judges from Ecuador and the United States and a recent panel discussion on the judiciary for officials from Afghanistan.

The Center workplace

The Center's statute provides greater flexibility in personnel matters than many federal agencies enjoy. We have used that flexibility to adopt a broad payband system and to implement employee-recommended policies that will 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.

Well before 1990, we permitted flextime for all employees. Since 1994, we have allowed employees to choose a compressed work schedule. All of our employees use flextime and more than half are on compressed work schedules.

In 1997 we established a telecommuting policy applicable to all Center employees, subject to managers' discretion. Although it is not practical to do some Center jobs—such as video production—at home, 8 percent of Center employees telecommute regularly. We also make telecommuting available to employees on a day-by-day basis, as the needs present themselves, and last year, we accommodated more than 50 requests from a staff of fewer than 140. We intend to do even better in this regard next year.

To encourage employee use of public transportation, we offer our employees a transportation subsidy of $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 Administrative Office of the U.S. Courts 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.

I will be pleased to answer any questions you may have.

PREPARED STATEMENT OF DIANA E. MURPHY, CHAIR, UNITED STATES SENTENCING COMMISSION

Chairman Gregg, Senator Hollings, 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 2004. The Commission was resurrected with the appointment of a full complement of seven voting commissioners on November 15, 1999, and I currently serve as Chair. In a relatively brief period, the Commission has reestablished its policy making role in the federal criminal justice system as envisioned by Congress under the Sentencing Reform Act of 1984.

To date, the new commissioners have promulgated over fifty amendments to the federal sentencing guidelines, and Congress has without exception accepted all of the Commission's amendments. The Commission has set aggressive annual agendas and achieved significant results by creating new guidelines and modifying existing guidelines covering offenses such as:

—nuclear, chemical, and biological weapons offenses,
—terrorism,
—sexual offenses against children,
—human trafficking and peonage,
—stalking,
—intellectual property infringement,
—identity theft,
—counterfeiting,
—economic crimes and money laundering,
—illegal firearm sales and possession,
—illegal reentry,
—ecstasy trafficking,
—methamphetamine and amphetamine manufacturing, and
—cultural heritage resources.

The Commission worked diligently to clear the significant backlog of crime legislation created by previous vacancies on the Commission. This amendment cycle, we expect to submit to Congress amendments to the federal sentencing guidelines implementing new crime legislation and addressing such difficult areas as:

—terrorism,
—corporate fraud,
—oxycodone offenses,
—cybersecurity,
—involuntary manslaughter,
—campaign finance violations, and
—offenses involving the use of body armor.

The Commission will be unable to respond to the emergencies identified by Congress without the staff resources required. Sentencing guidelines must be carefully crafted to meet policy needs and to fit within our interlocking system. To accomplish what Congress expects, the Commission must be able to maintain its ability to respond quickly to emerging national priorities. The Commission is dedicated to continuing its important role in addressing national priorities such as terrorism and corporate crime, but our current resources limit our ability to respond to new information, acquire sophisticated expertise, and develop novel approaches.

For these reasons, the Commission requests an appropriation of $13,200,000 for fiscal year 2004. This funding request for fiscal year 2004 represents a zero percent increase over the Commission's request for fiscal year 2003.

RESOURCES REQUESTED

The Commission's appropriation request for fiscal year 2004 is $13,200,000, the same amount requested for fiscal year 2003. We understand increases are generally difficult to justify, particularly this year, but we need to develop the necessary staff expertise in areas of national importance such as terrorism and corporate crime. Staff resources have become increasingly taxed at the same time as we have re-

ceived increased requests for sentencing information from the Congress, the General Accounting Office, the federal Judiciary, the media, and other interested parties. We now must analyze an increased number of new case filings, develop ever more proposed guideline amendments each year, and fulfill other statutory duties to train and provide expertise on sentencing issues to the federal courts, Congress, and the Executive branch. The Commission respectfully urges Congress to appropriate $13,200,000 in fiscal year 2004 to enable the Commission to keep pace with these significantly increased demands.

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 courts. 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.

Commission Response to the Threat of Terrorism and Corporate Crime

This appropriation request again grows out of the need to reestablish the staffing levels necessary to respond to emerging national priorities and to support a fully functioning Commission. The policy 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 in the late 1990s and a firm commitment on the part of the new Commission to respond quickly to congressional directives, the Commission has focused resources toward implementing crime legislation. Congress has called upon the Commission to implement crime legislation covering a wide range of disturbing criminal conduct, including sexual offenses against children, human trafficking and peonage, stalking, identity theft, ecstasy trafficking, methamphetamine and amphetamine manufacturing, and intellectual property infringement.

New laws passed by Congress to secure our nation from the threats of terrorism and to protect our workforce from economic disruption caused by corporate crime are perhaps the most important—and most complex—for the Commission to implement. In the area of terrorism, the Commission submitted to Congress a guideline amendment that significantly increased the penalties for offenses involving the importation and exportation of nuclear, biological, and chemical weapons on May 1, 2001, a full four months before the terrorist strikes of September 11th and subsequent nationwide anthrax attacks and threats. By utilizing our extensive datasets to review national security offenses, the Commission identified the inadequacy of existing penalties before concerns were widely shared.

Congress responded quickly to the threat of terrorism by passing the USA PATRIOT Act, Pub. L. 107–56, and the Commission responded in kind. In less than six months, the Commission promulgated a comprehensive package of amendments to the guidelines implementing the USA PATRIOT Act. Among the most significant of the provisions are appropriately severe penalties for offenses committed against mass transportation systems and interstate gas or hazardous liquid pipelines, increased sentences for threats that substantially disrupt governmental or business operations or result in costly cleanup measures, expanded guideline coverage for bioterrorism offenses, and a new guideline covering material support to foreign terrorist organizations.

This year Congress once again has called upon the Commission to implement terrorism related legislation. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, and the Terrorist Bombings Con-

vention Implementation Act of 2002, Pub. L. 107–197 require the Commission to develop new guideline provisions to address protection of the nation's food and water supplies and to review the penalty structure for certain national security offenses, including nuclear, biological, and chemical weapons offenses.

In addition, the Homeland Security Act of 2002 (specifically section 225, the "Cyber Security Enhancement Act of 2002"), Pub. L. 107–296, requires the Commission implement new guideline provisions to punish appropriately and effectively deter crimes that undermine our nation's cybersecurity. Specifically, the Act requires the Commission on an expedited basis to develop guideline provisions that adequately account for eight enumerated factors, such as "whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice," and "whether the violation was intended to, or had the effect of, significantly interfering with or disrupting a critical infrastructure."

The Commission is making progress toward implementing each of these new terrorism related legislative items. As the nation learns more about identifying terrorism related conduct, the Commission expects Congress will continue to respond with further legislation. The Commission needs to acquire additional staff expertise to meets its related responsibilities. For example, Congress has introduced legislation that would require significantly increased penalties for certain terrorism related offenses involving identity theft, the "Identity Theft Penalty Enhancement Act of 2003." This legislation already has passed the Senate Judiciary Committee and would require the Commission to evaluate how it would affect and interact with existing guideline provisions.

In April 2001, the Commission promulgated a multi-part amendment that made comprehensive changes to the guidelines covering economic crime. Economic offenses account for more than one quarter of all the cases sentenced in the United States federal district courts. The Commission had received from the federal Judiciary and the Department of Justice testimony and survey results that indicate that the sentences for these offenses were inadequate to punish appropriately defendants in cases in which the monetary loss was substantial. 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 and significantly improved the operation of the money laundering guideline.

While the Commission's guideline amendment was pending before Congress, a number of corporate scandals became publicized. Congress responded swiftly by passing the Sarbanes-Oxley Act of 2002 The Act required the Commission to promulgate on an emergency basis several new guideline provisions relating to securities fraud, pension fraud, accounting fraud, and other more general types of fraud. Fortunately, the Commission was able to build upon expertise it had acquired developing the 2001 economic crime package, and in six months the Commission completed a multi-part amendment that increases penalties significantly for serious fraud offenses.

The emergency guideline, which became effective January 25, 2003, includes new sentencing enhancements for offenses involving more than 100 victims, substantially endangering the solvency and financial security of a publicly traded corporation or other organization with 1,000 or more employees, and securities fraud committed by officers or directors of publicly traded corporations. The Commission continues to address the problems and will submit for congressional review a permanent amendment by May 1, 2003.

New Opportunities in Fiscal Year 2004 in Corporate Crime and Native American Issues

Early in 2002 the Commission created two special panels of outside experts to study problems related to corporate crime and disparities encountered when Native Americans are sentenced in federal court under the Major Crimes Act. Each ad hoc group was given eighteen months to work on recommendations to the Commission, and each has been functioning effectively and has obtained public input into its work. Both groups will issue their reports in fiscal year 2004 which will be shared with the public. Then the Commission will need to work on possible amendments to Chapter 8 (the guidelines for sentencing organizations, including corporations, associations, municipalities, unions, etc.) and to guidelines particularly affecting Native Americans. While this method of gathering expert assistance has proven extremely cost effective, we need additional staff to draw out from a wealth of material the optimum proposals and to translate them into guidelines.

The corporate crime advisory group is comprised of sixteen nationally recognized experts drawn from government, private business, and academia, and is chaired by a former United States Attorney. The Commission has requested the expert committee to review the effectiveness of the criteria for an effective corporate compliance program and the deterrence of corporate crime. The advisory committee has actively engaged in research and soliciting public comment, including a day-long public hearing. The hearing covered many issues that bear directly on organizations' abilities and incentives to detect and report wrongdoing before it becomes widespread and institutionalized.

Congress also recognizes the critical role the organizational guidelines perform, and in the Sarbanes-Oxley Act directed the Commission to ensure that the guidelines that apply to organizations are sufficient to deter and punish organizational misconduct. Because the Commission had a jump start in this area and had already formed the advisory group, the expert panel will be able to report its findings and recommendations to the Commission in October 2003. At that time, the Commission expects to have a sound foundation for staff to help us deliberate and consider promulgation of appropriate modifications to the organizational guidelines during fiscal year 2004.

The formation of the Native American advisory group grew out of a hearing the Commission held in Rapid City, South Dakota in 2001. The Rapid City hearing focused on issues relating to Native Americans and was attended by a number of individuals who now serve on the advisory group. As a result of testimony at the hearing as well as public comment we received, the Commission formed the advisory group and requested that the group to report its findings during fiscal year 2004. The Commission is devoting additional staff resources to sentencing issues that particularly affect Native Americans. For example, the Commission has created a new sentencing guideline aimed at protecting our cultural heritage resources and other national treasures, has conducted several days of intensive training for prosecutors defense attorneys, and probation officers in Indian Country, and has begun to study federal crimes for which Native Americans comprise a significant proportion of offenders, such as manslaughter.

Additional Sentencing Priorities

Drug trafficking offenders continue to comprise the majority of the federal criminal caseload, and the Commission is constantly identifying and responding to new drugs of abuse. In recent years, the Commission has acted to increase penalties significantly for methamphetamine, amphetamine, ecstasy, and certain List I chemical offenses.

This amendment cycle the Commission is focusing on the increasing problem of oxycodone trafficking. Using its comprehensive sentencing database, the Commission recently identified a significant increase in the number of offenses involving the pain killer Oxycontin. The Commission currently is considering an amendment to the drug guideline that will recalibrate the way in which this drug is penalized so that the penalties for offenses involving oxycodone will be substantially increased. The Commission hopes that this increased penalty structure will help deter any further increase in the abuse of this drug and serve to punish appropriately those criminals who engage in its illegal trafficking.

The Commission also is aware that Congress may enact legislation directing it to review the guidelines pertaining to GHB, a drug that is often associated with date rape. Bills have been introduced both in the Senate and the House on this issue, and, if enacted, they would require the Commission to engage in a comprehensive review of the penalty structure for this particular drug during fiscal year 2004. The Commission also is aware of other drug related legislation that would require a response from us if enacted.

The Commission also is examining several guidelines covering offenses against persons and this work must be extended through fiscal year 2004. The 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273, for example, contains two directives to the Commission. The first directs the Commission to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime in which the defendant used body armor. The Commission expects to submit an amendment to Congress by May 1, 2003, implementing this first directive. The second and more complicated directive requires the Commission to provide an appropriate sentencing enhancement for assaults against a federal judge and lists eight factors that the Commission must consider. The Commission expects that the Native American advisory group's review of the federal assault penalty structure will be helpful to implementation of this congressional directive during fiscal year 2004.

The Commission also is reviewing the guideline covering involuntary manslaughter after receiving congressional inquiries on the matter. The Commission currently is considering an amendment that would significantly increase the penalties for such offenses, but the Commission's work in the area of crimes against individuals will continue into fiscal year 2004. The overwhelming majority of offenders convicted of assaults or homicide at the federal level are Native Americans. As a result, the ad hoc committee also is examining the guidelines pertaining to manslaughter. Even though the Commission may make some change to the involuntary manslaughter guideline this amendment cycle, we likely will continue our work in the area of manslaughter until after receiving the report and recommendations from the Native American advisory committee during fiscal year 2004.

The Commission also has been very active in the area of sexual offenses. In every amendment cycle since the Commission was reconstituted in 1999, the Commission has promulgated new amendment provisions addressing various egregious sexual offenses. These many new guideline provisions provide severe punishment for such heinous crimes as human trafficking (in response to an emergency directive contained in the Victims of Trafficking and Violence Protection Act of 2000), sexual abuse of a minor, and commercial sex acts such as the production of child pornography and prostitution.

Sexual offenses involving children, however, continues to be of great concern, and the Commission is aware of several bills recently introduced in the 108th Congress that would require further action by the Commission. For example, the Senate recently overwhelming passed S. 151, the "PROTECT Act," which creates several new offenses relating to "virtual" child pornography and contains several directives to the Commission. The directives, among other things, would require the Commission to incorporate the new virtual child pornography offense into the sentencing guidelines and revisit guideline treatment of offenses involving interstate travel to engage in illegal sexual acts with children. If S. 151 or other similar bills are enacted, the Commission will be required to devote significant resources toward implementing those provisions during fiscal year 2004.

Ongoing Research and Analysis Obligations

In fiscal year 2004, as part of its ongoing mission the Commission will continue to work on several studies reflecting the operation of the guidelines since their inception. In conjunction with these studies, the Commission began a comprehensive assessment of the guidelines pertaining to drug offenses, which comprise a majority of the cases sentenced under the guidelines. In May 2002, the Commission issued a comprehensive 112 page report to Congress examining the current federal penalty structure for crack cocaine and powder cocaine offenses. The report contained concrete recommendations for Congress to consider regarding statutory and guideline penalties for cocaine offenses which I presented at a hearing before the Senate Judiciary Subcommittee on Crime and Drugs on May 22, 2002.

The report on federal cocaine sentencing policy was informed by an intensive project which involved 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. The Commission analyzed important variables such as the offender's function in the offense, the geographic scope of the offense, and the presence of aggravating factors such as possession, brandishment, or use of a weapon, bodily injury, sales to protected persons such as minors, and sales in protected locations such as areas surrounding schools and playgrounds.

The Commission currently is collecting similar data with respect to other major drugs of abuse, such as methamphetamine, heroin, and marijuana. This process entails gathering information on the offense conduct and offender characteristics for over 3,000 federal drug trafficking offenders. This analysis is continuing through fiscal year 2004 and provide information on the organizational structure of drug trafficking operations and assist in the evaluation of the sentencing structure for these offenses.

The Commission has also undertaken the most comprehensive study of recidivism rates for federal offenders. The Commission is tracking more than 6,000 federal offenders through the criminal justice system to determine who becomes a repeat offender and what factors may be predictive of such behavior. The results will assist in evaluating the established criminal history categories and the role of the guidelines in deterring crime. While encouraged by the progress made on the project, full access to arrest and conviction records to complete the work only recently occurred when Congress authorized access by the Commission to a National Crime Information Center terminal under the 21st Century Department of Justice Appropriations Act. The Commission expects both the recidivism study and the consideration of any

modifications to the guidelines in response to its findings to continue through fiscal year 2004.

Commission Struggles with Increasing Caseload

A key component to the Commission's ability to implement legislation and develop new guideline provisions is its comprehensive, computerized data collection system. This comprehensive database serves as a clearinghouse of federal sentencing information and forms the basis for the Commission's monitoring and evaluating the guidelines, undertaking many of its research projects, and responding to hundreds of data requests received from Congress and other criminal justice entities each year.

For each case sentenced under the guidelines, the Commission enters over 200 items of information into its database, such as each count of conviction, the number and nature of victims, the magnitude of economic loss, the type and quantity of drugs, and the number and type of weapons. The Commission is only funded and physically equipped to process some 40,000 cases annually, but for each of the last four years it has received well over 50,000 cases annually. We expect to receive 63,000 cases in fiscal year 2003, and our resources do not permit timely processing of the extensive information. We plan to experiment with an electronic file transfer system to enable the 94 federal districts to submit five major court documents (the Judgment and Commitment Order, the Presentence Report, the Indictment, the Plea Agreement, and the Statement of Reasons) to the Commission in a paperless manner, thereby improving efficiencies and lessening delays, but this system will require substantial start up costs.

Additionally, the Commission performs case processing for organizational/corporate sentences, appellate cases, and probation revocation/supervised release violations. The Commission also has received requests that additional coding modules be added to analyze Rule 35 sentencings and plea bargaining, which we could undertake only with additional funding.

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 proportionately. 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 central goals of the Act.

Commission staff provides training on the sentencing guidelines to more than 2,500 individuals annually 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 entities. Each year the Commission cosponsors a National Sentencing Seminar to train hundreds of probation officers, prosecutors, and defense attorneys on guideline application. New personnel often have no knowledge of the federal guidelines system, and seasoned personnel need training in the new guidelines promulgated each year. The program is so popular that we must turn away people due to the high volume of interest.

The Commission also plays 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. 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. 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 be diverted to other projects.

SUMMATION

The Commission has worked very hard with limited resources to respond when called upon to help the President and Congress address emerging national priorities such as the threat of terrorism and corporate fraud. In many ways these are novel complex areas that require the Commission to acquire and maintain additional in-house expertise. Moreover, Congress and the Commission continue to identify new areas of concern that require substantial resources, such as oxycodone offenses, involuntary manslaughter, and sexual offenses against children. We cannot undertake a policy agenda of any real significance without enhancing our staff power, particularly given the large increase in the number of cases sentenced each year which require compilation and analysis.

The requested funding level would enable the Commission to continue its work in areas of national importance, enhance staff expertise, provide training to a rapidly expanding audience, process its surging caseload effectively, continue its monitoring and research of the guidelines, and continue to be responsive to the concerns of the federal criminal justice community.

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 the United States Court of Appeals for the Federal Circuit's fiscal year 2004 budget request.

Our 2004 budget request totals $22,422,000. This is an increase of $2,227,000 over the fiscal year 2003 approved appropriation of $20,195,000. Twenty-nine percent (29 percent) of the requested increase, $646,000, is for mandatory, uncontrollable increases in costs. The remaining increase of $1,581,000 is for funding of additional positions and other program increases.

Request for Program Increases

A total of $1,581,000 for program increases is requested. The breakdown and further justification for each amount follows. The justifications for the program increases are separated into four categories: staffing; courtroom renovations; technology advancements; and security staffing enhancements.

A portion of this program increase request, $653,000, was requested to cover the cost of thirteen (13) additional Court Security Officers (CSOs) for fiscal year 2004. These additional CSOs were requested and needed to bring our total CSOs up to current U.S. Marshal Service Standards. This requested increase, however, was included in the recently enacted Supplemental Appropriation Bill. This amount will enable us to begin the recruiting and hiring process in fiscal year 2003.

Two New Staff Positions

The court requests $208,000 to cover the cost of two new positions for nine (9) months in fiscal year 2004. The positions requested are for a Deputy to the Circuit Executive position ($130,000) and a Computer Security Specialist ($78,000).

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 assist in overseeing the offices that operate under the direction of the Circuit Executive and would act in the absence of the Circuit Executive.

We also request funding to hire a full-time permanent Computer Security Specialist. Upon completion of a formal security review and assessment of the court's electronic information system, the National Security Agency in August 2000 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 Computer Security Specialist would ensure that all electronic communications and information in judges' chambers and staff offices are protected and secure from compromise or unlawful release. Both of these positions were requested in our fiscal year 2003 budget request and denied.

Courtroom Renovations

The court is requesting $170,000 to begin the long-overdue renovations of courtrooms to bring them up to 21st Century security and technology standards to benefit judges, attorneys, and litigants. There have been no upgrades to the courtrooms, with the exception of new carpet, since the opening of the courthouse in 1967.

We have requested funding for this project in our 2001, 2002, and 2003 budget requests. We have taken our request to GSA as suggested by the Subcommittee. At this time, GSA has indicated that they are taking every appropriate action to have this project included in their fiscal years 2004 and 2005 budgets. Should the court be successful in receiving funding through GSA to pay for the renovations of the courtroom Congress will be notified that this request for $170,000 is no longer necessary.

Improvements in the Court's Courtroom and Courthouse Computer Technology and Security

We request $490,000 for program advancements in the area of technology in the courtrooms, judges' chambers, and staff offices.

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 United States Courts (AO) cur-

rently is implementing this program in courts across the country, the court is requesting funding to upgrade the courtroom technology in one of its 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 benefit 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 also 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 in 2000 and recommended 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.

Increased Security Position

This court requests $60,000 to cover the cost of hiring one (1) Supervisory Level on-site Deputy U.S. Marshal.

The court requests funding to hire one (1) full-time Supervisory Level Deputy U.S. Marshal Inspector to coordinate facilities security at the National Courts Building based on this same need for upgraded security. The Inspector will report to the Chief Judge, will ensure that protection of judges on and off-site is properly coordinated, will supervise the court security officers assigned to the National Courts Building, and will work with the court security committee on matters involving staff and courthouse security.

Currently the Federal Circuit shares a Deputy U.S. Marshal with the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia. The shared U.S. Deputy Marshal is assigned to the U.S. District Court for the District of Columbia and is located at the District of Columbia Circuit courthouse. It is a daunting task and a big assignment for one person to cover adequately the security needs of two separate courthouses and four separate courts located in different parts of the District of Columbia.

In a March 7, 2003 memorandum to Chief Judges of the U.S. Courts, AO Director L. Ralph Mecham emphasized the importance of having a full-time Deputy U.S. Marshal Inspector assigned to each court. "It seems clear," Director Mecham said, "that in today's high risk environment there should be USMS personnel at the local level assigned to security responsibilities on a full-time basis." As the only United States Court of Appeals with national jurisdiction, the Federal Circuit should be given the same consideration in the assignment of security personnel as the twelve other regional circuits. Indeed, it is hard to understand how the USMS can assign a Deputy U.S. Marshal Inspector to the District of Columbia Circuit—a regional court of appeals—and direct that Inspector to provide security to the Federal Circuit—a national court of appeals located across from The White House—on an as-needed basis.

I also would like to address a statement that was contained in the Conference Report for our 2003 budget request. That document contained language referring to a reduction in the number of filings at the Federal Circuit between 1992 and 2001. Our figures show that total case filings for the Federal Circuit for the ten-year period did drop 219 cases from 1,702 in fiscal year 1992 to 1,483 in fiscal year 2001. That drop is consistent with the statement contained in the Conference Report. However, the reduction in the court's caseload does not justify a reduction in staff for two reasons.

First, starting with the 1,702 cases in 1992—which represented at that time the second highest number of annual case filings since 1982—the number of total cases filed each subsequent year through 2001 sometimes increased and sometimes decreased and occasionally exceeded 1,702. In fiscal year 2002, the Federal Circuit's total filings increased to 1,748; this is the third highest number of filings ever for the Federal Circuit—nearly 18 percent higher than the 2001 filings and 3 percent higher than the 1992 filings.

The second reason why the reduction of 219 case filings over the ten-year period does not justify a reduction in court staff is that the reduction does not reflect an important change in the court's workload. In short, it ignores how particular categories of cases have increased or decreased. Attention to the number of appeals in patent cases from district courts is critical when assessing the court's workload. Patent cases typically involve complex science and engineering principles, as well as multiple issues dealing with patent validity, infringement, defenses, counterclaims,

and damages. In addition, the patent cases often have lengthy trial records and extensive damages. In sum, patent appeals typically take much more time than, for example, the court's Merit Systems Protection Board (MSPB) cases. Hence, even though case filings went down by 219 when comparing 1992 to 2001, appeals from district courts—almost all of which are patent cases—went up from 315 in 1992 (about 18.5 percent of the total cases), to 403 in 2001 (about 27 percent of the total cases). At the same time, the much easier MSPB cases dropped from 789 in fiscal 1992, to 421 in fiscal 2001. And in fiscal 2002, when total cases increased nearly 18 percent from 2001, district court cases increased 19 percent, to 480, while MSPB cases rose only 3 percent, to 435.

The significant rise over the last 10 years in the number of patent infringement cases filed with the court and the nearly 18 percent increase in the court's annual filings from 2001 to 2002 warrant an increase—not a decrease—in court staff. Further, a careful review of the number of support personnel assigned to the Federal Circuit will establish that the staff numbers are considerably smaller than other courts of appeals.

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.

NONDEPARTMENTAL WITNESSES

PREPARED STATEMENT OF THE AMERICAN BAR ASSOCIATION

The American Bar Association is centrally concerned with promoting improvements in the administration of justice and preserving the independence of the judiciary as fundamental to a free society. In furtherance of these two objectives, we are submitting this statement to address the need for increased compensation for Article III judges and to urge Congress to appropriate adequate funds for the State Justice Institute. We respectfully request that this statement be incorporated into the Subcommittee's record of hearings on fiscal year 2004 appropriations for Commerce, Justice and State, the Judiciary and Related Agencies.

STATE JUSTICE INSTITUTE

In 1984, Congress created the State Justice Institute (SJI) as a federally funded, private, non-profit corporation to award federal grants to improve the quality of justice in state courts, facilitate better coordination between state and federal courts, and foster innovative, efficient solutions to common problems faced by all courts. It is the only source of federal funding exclusively dedicated to helping to meet the needs of our state courts, which hear over 97 percent of the nation's cases. Since it became operational in 1987, the SJI has parlayed a modest amount of federal money into court improvement projects that benefit the nation's judicial system in its entirety and the public it serves. On behalf of the Association's 410,000 members, we can unequivocally say that the overwhelming consensus in the legal community is that the SJI effectively, efficiently and consistently executes its mandate despite a de minimis annual budget, which has never exceeded $13.55 million.

In creating the State Justice Institute, Congress recognized that our state and federal courts are separate but interdependent and that the quality of justice in this nation depends on the vitality of both court systems. Concluding that the federal government has a stake in maintaining strong state judicial systems and improving state-court partnerships, Congress created SJI to monitor the state judicial system, assist in prioritizing the needs of the state courts and award small federal grants to foster solutions to critical problems confronting the courts. To enable all courts to benefit from federally funded projects, Congress required SJI to maximize the impact of each grant—even those that provide technical assistance to a court with a specific problem—through a variety of techniques, such as maintaining readily accessible information clearinghouses to assure that effective new approaches are shared with courts nationwide, convening national conferences to address emerging justice system issues, and placing practical products into the hands of judges and court personnel who can most benefit from them. These various strategies have proven effective in maximizing the benefits derived from each spent federal dollar and avoiding wasteful duplication of effort to solve identical or similar judicial administration problems.

After 15 years of SJI's operation, and out of a renewed concern for fiscal restraint in a time of competing budgetary demands, Congress requested that the Attorney General of the United States evaluate and report back on the effectiveness of the SJI. In November 2002, the Attorney General submitted his report to Congress in

which he concluded that SJI effectively implements its mission with only minimal administrative costs. Moreover, the Attorney General reaffirmed the wisdom of the 98th Congress by validating the premise on which SJI was created. He noted that an important Federal purpose was served by supporting SJI's mission to improve the quality of justice in state courts, observing that, "given overlapping state-federal jurisdiction, it is in the Federal government's interest to have effective and fair state courts, lest litigants turn to Federal courts to resolve matters properly within state court responsibilities."

The American Bar Association concurs with these core findings. By strengthening our state courts, SJI grants strengthen our entire justice system. Furthermore, we would like to point out that the federal government also has a direct interest in the vitality of our state courts because many important federal programs depend on state courts for their implementation.

Subsequent Congresses, including this one, have in fact acknowledged the appropriateness of providing federal assistance to state court projects by regularly appropriating funds for specific state court improvement projects sponsored by individual members. In fact, the funds spent on these projects often have exceeded the maximum appropriation SJI has ever received. While we do not doubt that such funds have been expended for worthy state court projects that have improved the administration of justice in a particular jurisdiction or state, we do not believe that it is a cost-efficient or effective way to provide federal financial support to strengthen our state judicial system. In contrast, disseminating federal funds through SJI assures that government money is spent on finding solutions to the most pressing judicial administration problems and sharing these solutions with every state and federal court.

The conference report accompanying Pub. L. No. 108–7 appropriated $3.1 million in funding for SJI for fiscal year 2003 but contained the proviso that SJI should obtain future funding from "bar associations and the States, who are the beneficiaries of SJI's work." Such a proposal is unrealistic and would effectively terminate this highly effective program.

The courts are an integral part of our democratic system of government. Their support should come from the public fisc. SJI was created to provide federal support for needed improvements to supplement state court resources, which are often inadequate because of strapped state budgets. Bar associations and other grantee organizations, in essence, already contribute their own funds to SJI by absorbing some of the cost of any grant activity in which they are involved. Furthermore, SJI relies on the dedication and expertise of organizations, such as the ABA, to develop and implement programs that will strengthen the justice system; and in return, SJI pays for a substantial portion of the cost of worthy programs, while grantees provide a certain amount of matching funds. In this way, SJI grants not only require a sharing of the financial burden, but they also help forge essential public-private partnerships to address justice system issues.

In addition, the ABA and other bar associations already make substantial financial (in addition to other) contributions to promote excellence in the justice system by annually allocating a significant amount of their general revenues for judicial system improvements. For example, in fiscal year 2004, the ABA alone will spend almost $2.5 million on such programs and projects.

In conclusion, terminating funding for the only government-funded entity exclusively dedicated to providing federal grants for projects to improve state courts makes no sense, especially at a time when our courts are facing a nation-wide fiscal crisis. Congress has a strong federal interest in strengthening the state courts and maintaining a robust justice system as well as a responsibility to implement sound fiscal policies. To deny the small sum of $13.5 million to a program that is supported by every state supreme court and highly praised by the legal community, but authorize appropriations for projects that primarily benefit individual state courts, represents a serious fiscal miscalculation. For all these reasons, the ABA urges Congress to preserve SJI as a federally funded institute and to appropriate sufficient funds for fiscal year 2004 for SJI to carry out its mandate. The ABA recommends an appropriation of $13.5 million—the amount that SJI received in 1996.

Article III Judicial Salaries

The 108th Congress has inherited a federal salary system for top-level government officials that is badly in need of reform. This is particularly true with respect to the Federal Judiciary.

The National Commission on the Public Service (otherwise known as the "Volcker Commission") concurs with this assessment. Composed of government leaders from past Administrations, the non-partisan Commission recently issued its report, Urgent Business for America: Revitalizing the Federal government for the 21st Cen-

tury, which concluded that "[j]udicial salaries are the most egregious example of the failure of federal compensation policies." It recommended that Congress take immediate steps to substantially raise federal judicial pay.

During the past decade in particular, judges have experienced both an absolute loss in purchasing power and a relative decline in remuneration as the salaries of peer group members have risen dramatically. Despite five salary adjustments since 1993, judges have suffered a 10.9 percent decline in the purchasing power of their salaries. That judicial pay has not even kept pace with inflation has robbed judges of the prospect of salary stability during their tenure on the bench.

Judges freely acknowledge that rendering public service in a highly visible and respected role and serving in a lifetime appointment are intangible benefits that help compensate for the reduced salary levels associated with the bench. Nonetheless, compensation levels for attorneys from other work sectors are relevant to the issue of fair and adequate judicial compensation.

While the vast majority of federal judges have the requisite years of experience and legal skills that would enable them to command compensation similar to that paid to top-notch, seasoned attorneys in the private sphere ($400,000 to $800,000 according to the most recent surveys conducted by the National Law Journal), it is obviously not practical to suggest that Federal judges should be paid that much. The salaries of leaders of academia or nonprofit institutions are considered more reasonable points of reference because the level of education and expertise required of leaders of these institutions and the psychic satisfaction derived from holding such jobs are comparable to those of Federal judges.

Associate Justice Stephen Breyer, in testimony submitted to the Volcker Commission, stated that the average salary of nonprofit CEOs is $212,000—approximately 20 percent higher than that of a Supreme Court Justice and about 35 percent higher than that of a federal district judge. Further, the differential between federal judicial salaries and salaries of leaders in the academic world is even larger: the average salary for deans of the twenty-five law schools ranked highest in the annual U.S. News and World Report survey was $301,639 and the average base salary for full professors at those law schools was $209,571.

Even though market conditions alone should not be the measure of the adequacy of judicial salaries, the widening disparity between judicial salaries and those of attorneys with comparable skills employed in the private sphere is causing demonstrable harm to our nation's Third Branch by deterring excellent candidates from seeking judicial appointments and motivating sitting judges to resign prematurely from office to enter a more lucrative field.

Between 1990 and 2003, 77 Article III judges resigned or retired from the Federal bench and many of them returned to private practice. Fifty-one of the 77 departed judges entered the private practice of law and 14 others accepted jobs in related fields. Sixteen of the 77 judges departed before reaching retirement age, thereby forfeiting their right to salary for life. Premature departures from the bench impose both real and intangible costs upon the Third Branch, by compromising judicial independence fostered by life tenure and depriving the Federal Judiciary of the skills of some of its most capable and experienced jurists.

Inadequate judicial salaries also disadvantage the Federal Judiciary in the "war for talent." Judicial pay may not be a deterrent to individuals who are independently wealth or who are already in public service, where salaries are generally lower, but it is a strong disincentive for lawyers in private practice whose varied experiences bring a perspective and independence that is vital to the judiciary. Our analysis of the occupations held immediately prior to the confirmation of all district and circuit court judges appointed since 1977 supports this conclusion. For example, during President Carter's term of office, 49.5 percent of his district court appointees came from the public sector, while 57.6 percent of President Bush's district court appointees through the 107th Congress have come from the public sector.

White House Counsel Alberto Gonzales made this same point in an interview published in the May 2002 edition of The Third Branch:

"We are aware of both young lawyers with family obligations and established prominent lawyers with substantial investment in their practice and community who feel that they cannot afford to go on the federal bench. The Judiciary suffers when it cannot attract top tier lawyers for whatever reason."

The Federal Judiciary benefits from the collective wealth of experience of its jurists who have served in different capacities in the public and private sectors. It is enriched by their diverse backgrounds and better able to serve the need of all Americans. We cannot afford to lose the diversity of the bench that comes from the appointment of individuals of varying financial means who have served in different capacities in both the public and private sectors.

In conclusion, while we recognize that there is a compelling need for salary reform within all top levels of government, we believe that there is an urgent and immediate need to substantially increase judicial salaries in order to maintain a stellar judiciary and protect one of the pillars of our democracy—Federal judicial independence. We urge you to support an appropriation for the Federal Judiciary that is sufficient to cover a substantial pay raise for all Article III judges.

PREPARED STATEMENT OF THE AMERICAN SPORTFISHING ASSOCIATION

The American Sportfishing Association (ASA) recommends the following as the Subcommittee considers appropriations for the National Marine Fisheries Service (NMFS) for fiscal year 2004. The American Sportfishing Association is a non-profit trade association whose 555 members include fishing tackle manufacturers, sport fishing retailers, boat builders, state fish and wildlife agencies, and the outdoor media.

The ASA makes these recommendations on the basis of briefings with agency staff and from years of experience with fisheries management in this Nation. It is important to note that sportfishing provides $116 billion in economic output to the economy of the United States each year. Sportfishing in marine waters alone provides a $31 billion impact each year to coastal states.

Saltwater fishing is the fastest growing sector of recreational fishing. Because of this the ASA urges NMFS to continue the pursuit of sound management of marine fish stocks by supporting the Regional Fishery Management Councils, the States, and the Interstate Marine Fisheries Commissions. Collectively, these programs conduct research and collect data that is essential for managers to appropriately maintain marine stocks and assure that areas are open to anglers. For the Regional Fishery Management Councils to carry out the regulations of the Magnuson-Stevens Fisheries Conservation and Management Act they must be properly funded. The Association recommends funding the Regional Councils activities at the $16.032 million level.

The Association supports the fiscal year 2004 President's request for a $3.0 million increase in funds for fisheries stock assessment and improvement of data collection, but also recommends an additional $21.2 million with the goal of funding stock assessment at the $100 million level by fiscal year 2008.

The ASA requests a total of $12.8 million for Fish Statistics—Economics and Social Science Research. These would include:

—An increase in base funding for NOAA Fisheries could create a premiere Center for Excellence in Recreational Fisheries Economics. The Center could be housed in NOAA Fisheries and could provide the umbrella for recreational fisheries data collection and economic analysis conducted within NOAA Fisheries and by academia under contract. The Center will serve three primary functions: (1) strategic planning for data collection and analysis; (2) development and application of analytical techniques for measuring the costs, benefits, and impacts of recreational fisheries management; and (3) improved outreach and information sharing to ensure that both fisheries managers and the public receive and understand the data products. The Center will work in concert with and complement the existing NOAA Fisheries recreational fisheries economics program and the Marine Recreational Fisheries Statistics Survey (MRFSS) program. The ASA recommends a $500,000 increase in base funding in fisheries statistics for the Center.

—The Association urges Congress to appropriate an additional $9.5 million in new base funding for fisheries statistics to significantly improve catch and effort data through the NOAA Fisheries' Marine Recreational Fisheries Statistics Survey (MRFSS). Base funding has not increased substantially since the survey's inception in 1979. Improved data collection is central to achieving the rebuilding and management standards called for in the Sustainable Fisheries Act.

—The ASA recommends Congress increase base funding by $2.8 million for the NOAA Fisheries recreational economics program. This program within NOAA Fisheries is severely understaffed and under-funded. The most basic recreational fishery data is unavailable making NOAA Fisheries unable to fulfill their congressionally mandated requirements to provide the basic data for recreational fisheries management. This additional funding should go directly towards outfitting new Centers with PhD level recreational fisheries economists, improving data collection and conducting expenditure surveys, and conducting critical research.

The Association urges congress to appropriate $10 million for the Atlantic Coastal Fisheries Cooperative Management Act which allows government, state agencies,

and interstate marine fishery commissions to work together in support of fisheries resources. These efforts have showed success in stripped bass and weakfish management, and it's continued success relies on this level of funding.

Fish habitat restoration programs would be more cost-effective and successful if partnered under a State-Federal cooperative program undertaking research and management of fish habitat. ASA is pleased with the Administration's budget of $13.22 million for fish habitat restoration. Furthermore, we support the continuation of the Charleston Bump Billfish Tagging program that serves as an important fish nursery for Atlantic Highly Migratory Fish species (AHMF).

Providing a complete database of information on high priority species aids in identification, protection and restoration efforts of exploited fish along the Atlantic, Gulf and Pacific coasts. The SEAMAP program builds this database and partners with another program, the MARFIN program, and together they work to support fishery independent research on high priority species. ASA is concerned about the erosion of these partnerships and recommends funding for the SEAMAP program at $6 million and the MARFIN program also at $6 million ($4 million for the Southeast and $2 million for the Northeast).

The American Sportfishing Association is very concerned with the low level of funding for the Anadromous Fisheries Act. Continual declines in funding means the needs of most anadromous fish stocks will not be met because funding cannot be supported through other federal and state funds or the fisheries management community. Therefore, the Association urges Congress to fund the Anadromous Fisheries Act grants to States at $8 million.

The ASA is again disappointed in the level of funding for the Saltonstall-Kennedy grant program. This program promotes and develops fisheries by funding high priority research and development needs. ASA urges the Administration to restore this program to the fiscal year 1999 level of $11.171 million.

The ASA agrees with the Administration's request to ensure NMFS' vessels are in good condition for proper management and research needs. These vessels are chartered privately by universities and states, and thus their condition is important to the safety of their users.

Concluding with our NMFS recommendations we would also like to comment on some of the other line items in NOAA's budget.

ASA urges Congress to recognize critical marine resources issues and how funding efforts can play a large role in developing new technologies. These efforts are stronger with the ability of a coalition of federal and state scientists for these critical issues. Two important efforts taking place at the Hollings Marine Laboratory (HML) and the Fish Cooperative Institute, does important work on marine environmental health, biotechnology, and ecototxicology. The Association is pleased with the Administration's request to fund the HML at $2.5 million and the Fish Cooperative Institute at $750,000.

The past few years have encountered a large breakout of algal blooms resulting in bad pfiesteria seasons. In response to this, effort to research and control the problem was largely taken on by the South Carolina Harmful Algal Bloom Task Force and was funded by the government. The Administration has proposed to terminate this program and the ASA urges Congress to continue funding this program at $600,000 to continue the work on the outbreak of algal blooms.

Two of the most successful state-federal cooperative efforts to improve the quality of our natural resources are the National Estuarine Research Reserve (NERR) and Coastal Zone Management (CZM) programs. The American Sportfishing Association is pleased with the proposed $16.4 million for NERR and the $10.012 million for research facilities at NERR sites. In addition, we are very pleased with the many efforts of these programs ranging from public access to non-point source pollution. The ASA also supports the Administration's request for $85 million for the CZM grants to help states and local communities work to improve coastal areas.

The Coastal Services Center makes valuable contributions toward stewardship and provides support to the coastal states in regards to advanced coastal decision support systems. This program has yielded innovative work in conjunction with state participation and the ASA urges funding at the $18 million level.

One important task of NOAA is to be able to access and treat damaged marine resources caused by releases of hazardous substances. The Damage Assessment and Restoration Program (DARP) directs these efforts and takes on the responsibility of restoring these damaged areas as quickly as possible to reduce the amount of loss of fisheries and marine habitats. The Association strongly supports the President's request for $17.199 million for damage assessment activities and restoration efforts of DARP.

The Sea Grant College Program provides critical research and educational opportunities for maintenance and improvement of marine resources. The Association rec-

ommends funding at the authorized level of $73 million and we also disagree with the proposed moving of the program to the National Science Foundation. NOAA is more efficient at connecting the researchers and their findings to the marine community.

Finally, Mr. Chairman, the ASA is concerned about NMFS' promotion and use of marine reserves to the exclusion of other proven management options. This has penalized recreational anglers and is far from a proven management tool for marine resources. Public closures should be the last management option, not the first. Furthermore, NMFS has prepared no standardized implementation guidelines, no conservation goals, or long term monitoring plans for the use of marine reserves. The ASA requests that funding for the planning and implementation of any future marine reserves be halted until management guidelines, such as those outlined in the Freedom To Fish legislation, are put in place.

Mr. Chairman, please make these recommendations part of the record for the Subcommittee's 2004 appropriations process.

PREPARED STATEMENT OF THE DORIS DAY ANIMAL LEAGUE

Mr. Chairman and members of the Appropriations Subcommittee on Commerce, Justice, State and Judiciary, thank you for the opportunity to submit testimony on behalf of the 300,000 members and supporters of the Doris Day Animal League requesting that the Federal Bureau of Investigation assign the crime of animal cruelty its own classification in the Uniform Crime Reporting Program.

The Significance of Animal Cruelty as a Crime: "The Violence Connection"

Animal cruelty, especially egregious acts, was once viewed as an offensive behavior unrelated to other crimes. Now it is recognized as a serious crime with important implications for human society. A growing body of research, produced over the last thirty years, establishes a clear link between animal abuse and human violence. One comprehensive study of data from a twenty-year period found that adults convicted of animal were more likely than their peers to engage in other forms of criminal activities, including violent crimes against humans, property crimes, and drug and disorderly offenses. Other studies conducted in a number of counties in the United States confirm the overlap between committing acts of animal cruelty and engaging in other types of criminal behavior. In addition to the association between animal cruelty and criminal behavior, there is also evidence that the severity of violence against animals can indicate the degree of aggressiveness toward human individuals. Research on incarcerated adult males demonstrated that the most aggressive inmates had the most violent histories of animal cruelty. It is worth noting that in dangerous situations such as a hostage taking, the FBI has included a history of animal cruelty among the factors used to determine an individual's threat level.

Another important link between animal abuse and human violence, with important policy implications, is the co-occurrence of family violence and animal abuse. In interview studies with domestic violence victims, between 54–71 percent of the women report that their partners also harmed or killed the family pet. Child abuse and animal abuse also are linked: animal abuse was confirmed in 88 percent of families under the supervision of a child welfare agency for physically abusing their children.

In addition to being linked to other types of criminal activity and family violence, animal abuse by children signals an important warning. The Federal Bureau of Investigation was one of the first to recognize the significance of juvenile animal cruelty when it reported that many serial killers had abused animals as children. It also has been reported that many of the school shooters had engaged in various forms of animal cruelty. The National Crime Prevention Council, the Department of Education, and the American Psychological Association all list animal cruelty as one of the indicators or warning signs of future violence. Furthermore, researchers agree that persistent aggressive behavior in childhood, termed "conduct disorder," tends to be fairly stable trait throughout life and is the single best predictor of later criminal behavior. Animal cruelty is one of the symptoms for a diagnosis of conduct disorder and therefore can be one of the earliest indicators that a child is at risk.

Not all children who abuse animals will become serial killers, school shooters, or criminals as adults. However, research clearly suggests that engaging in childhood animal cruelty conditions an individual to accept, or engage in, interpersonal violence as an adult.

Responses to "The Violence Connection"

Government bodies, professional organizations, and communities have responded to information about the animal abuse-human violence connection. For example, be-

fore 1990, only seven states had felony provisions in their animal anti-cruelty statutes; now 41 states and the District of Columbia have felony-level laws. As of this date, 24 states have provisions in their animal anti-cruelty statutes that permit or mandate psychological counseling for offenders.

In addition to changes in state animal cruelty statutes, awareness of the significance of animal abuse as a crime has resulted in the development of a number of programs. "Safe Pet" programs, in which the pets of domestic violence victims are provided safekeeping so that women feel free to leave dangerous situations, are being instituted in communities throughout the United States. Animal control officers are being trained to "cross report," that is, to look for signs of child and spousal abuse when investigating an animal abuse or neglect complaint. Intervention programs for children and adults who abuse animals have been developed and mental health professionals are being trained in this area of treatment.

Modifying the Reporting Categories of the Uniform Crime Reporting Program

The Uniform Crime Reporting (UCR) Program is a nationwide effort in which crime statistics are collected from nearly 17,000 city, county, and state law enforcement agencies. During 2000, the participating agencies represented 94 percent of the total U.S. population. The current UCR Program classifies offenses in two groups, Part I and Part II. Crimes vary from criminal homicide in Part I to vagrancy and curfew and loitering laws in Part II. Not only law enforcement, but also criminologists, sociologists, legislators, municipal planners, the media, and others interested in criminal justice use the statistics for research and planning purposes. However, under the current UCR Program, there is no category to report crimes of animal cruelty, even though animal abuse often is an indicator of other types of criminal behavior, including family violence.

Assigning the crime of animal cruelty to its own classification would have a number of advantages. Law enforcement agencies, researchers, policy planners, and others would be better able to understand the factors associated with animal abuse, track trends at the state and national level, and determine demographic characteristics associated with animal abuse—all of which would assist in promoting more effective intervention and prevention strategies to interrupt the cycle of violence. Finally, assigning animal cruelty its own category would assist law enforcement agencies by helping them identify and track individuals with histories of violence.

Proposed Report Language for the Senate Subcommittee on Commerce, Justice, State and Judiciary Appropriations

We respectfully request that the Subcommittee consider the following report language for the Commerce, Justice, State and Judiciary Appropriations bill:

"The Committee commends the Federal Bureau of Investigation (FBI) for its successful Uniform Crime Reporting (UCR) Program. Currently, there is no individual category for animal cruelty in the UCR Program even though animal cruelty is a crime in all states, certain acts of animal cruelty are felonies in 41 and the District of Columbia, and it is linked to other types of crime, including family violence. Therefore, there is no way to systematically track such cases. The current practice is to rely on the limited ability of local animal control agencies to monitor animal cruelty cases or literally check local court records. Given the current arrangement, state and national trends are impossible to identify.

"The Committee directs the FBI to provide the necessary resources to assign the crime of animal cruelty its own classification in the UCR Program by adding this category to its software and other reporting mechanisms. This will enable law enforcement agencies and researchers to track trends and better understand factors associated with committing animal abuse, allowing more effective interventions. Additionally, individuals who are more likely to commit other serious crimes could be identified.

"The Committee further directs the FBI to provide a report to the Committee by December 2003 on the integration of this category into its UCR Program."

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PREPARED STATEMENT OF THE UNIVERSITY CORPORATION FOR ATMOSPHERIC RESEARCH

On behalf of the University Corporation for Atmospheric Research (UCAR) and the university community involved in weather and climate research and related education, training and support activities, I submit this written testimony for the record of the U.S. Senate Committee on Appropriations, Subcommittee on Commerce, Justice, State and the Judiciary. This testimony pertains to the fiscal year 2004 budget request for the National Oceanic and Atmospheric Administration (NOAA). UCAR is a consortium of 66 universities that manages and operates the National Center for Atmospheric Research (NCAR) and additional atmospheric and related sciences programs. In addition to its member universities, UCAR has formal relationships with approximately 100 additional undergraduate and graduate schools including several historically black and minority-serving institutions, and 40 international universities and laboratories. The National Science Foundation (NSF) and other federal agencies, including NOAA, support UCAR.

INTRODUCTION

As one of the world's foremost scientific and environmental agencies, NOAA has responded to the needs of the nation in designing its budget and program to protect citizens, the environment and the economy. Last year the NOAA leadership conducted a nationwide program review, asking for input from NOAA's many stakeholders. Those responses are reflected in the subsequent strategic plan, "New Priorities for the 21st Century." We applaud the NOAA leadership for its vision, and urge the Committee to support the critical, evolving work of this agency. Within the NOAA fiscal year 2004 budget request, I would like to comment on the following offices and programs:

Office of Oceanic and Atmospheric Research (OAR)

The OAR supports a network of scientists and environmental research laboratories in order to provide the sound science upon which decision makers can frame effective regulations to solve environmental problems and upon which economic growth can be managed in an environmentally sound manner. The President's request for OAR overall is down 2 percent from the fiscal year 2003 final appropriation. However, since the fiscal year 2004 request, which preceded the fiscal year 2003 final numbers, was based on the fiscal year 2003 request and reflected a major increase for OAR, we believe that the Administration is demonstrating strong commitment to the work of OAR. Therefore, I ask the Committee to provide OAR with a five percent increase and fund the Office at $384.0 million in fiscal year 2004.

U.S. Weather Research Program (USWRP).—USWRP is an interagency program that is dedicated to making forecasts of high-impact weather more specific, accurate, and reliable, thereby saving lives and property, and helping regional economies. I urge the Committee to support the fiscal year 2004 request of $4.0 million for the USWRP Base and $1.3 million for THORPEX, an international program focused on extending weather predictability from the current 7 days to two weeks and double

the rate of improvements in forecast skill by 2012, and to support the request of $7.3 million for the High Impact Weather Program component of the USWRP.

U.S. Weather Research Program—Collaborations Fund.—Through the Office of Oceanic and Atmospheric Research (OAR) and the National Weather Service (NWS), NOAA bears a great responsibility for advancing the nation's weather research and the application of that research to improve weather forecasts and warnings. The best way to accomplish this is to form working alliances, or partnerships, between the scientific expertise that exists within NOAA and the country's broad expertise within the university and private sector communities. Competitive proposals and a peer review process through the establishment of a Collaborations Fund would ensure that the best research results and technologies are achieved for the resources available. I urge the Committee to establish the USWRP Collaborations Fund with a new allocation of $20 million in NOAA's Office of Oceanic and Atmospheric Research, in order to leverage the research and research applications expertise of this country toward accelerated implementation of the USWRP goals.

Climate and Global Change Program.—The climate variability predictions provided by the Climate and Global Change Program are absolutely critical to related national and international policy formulation and to efforts to adapt to and mitigate the effects of long-term climate change. The Program is an integral part of the interagency U.S. Global Change Research Program (USGCRP) that is the major U.S. contributor to the world's understanding of the global climate system. The President's request for this program is $73.0 million, down 2.3 percent from the fiscal year 2003 final appropriation. I urge the Committee to provide the Climate and Global Change Program $74.7 million at the very least, the level at which this program is funded for fiscal year 2003.

Phased-Array Radar.—NOAA requests $1 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 initiative will provide the meteorological research community with the first dedicated phased-array radar facility to collect real-time data around the clock. When fully implemented, tornado warning lead times could be doubled from 11 to a life-saving 22 minutes. I urge the Committee to support the $1 million request for the Phased-Array Radar.

Climate Observations and Services Program.—I urge the Committee to fund the $55.3 million fiscal year 2004 request for Climate Observations and Services. A robust observing system is perhaps the most critical tool for the development of more accurate weather and climate models. The increase for this program will build the climate observing system required to support the research, modeling, and decision support activities for the Administration's Climate Change Research Initiative (CCRI). I further urge the Committee to support the President's fiscal year 2004 request of $42.0 million for CCRI, our nation's key research contribution to the global issue of climate and environmental change.

Laboratories and Joint Institutes

The 12 NOAA Research Laboratories, located across the country with field stations around the world, conduct an integrated program of fundamental research, technology development, and services to improve understanding of the Earth and its oceans and inland waters, the lower and upper atmosphere, and the space environment. The Laboratories have established formal collaborative agreements with universities and non-profit research institutions to form 11 Joint Institutes to study the earth's oceans, inland waters, intermountain west, atmosphere, arctic, and solar-terrestrial environment. I would like to comment on the fiscal year 2004 request for the following laboratories:

Forecast Systems Laboratory (FSL).—The fiscal year 2004 request terminates the nation's Wind Profiler Network, 35 stations that provide hourly wind profiles from the ground to 53,000 feet to operational weather forecasters and weather models. These data provide invaluable support in the forecasting of tornadoes, winter storms and flash floods. I strongly urge the Committee to restore $4.1 million for the Wind Profiler Network and to thereby fund the Forecast Systems Laboratory $11.5 million for fiscal year 2004.

Boulder Facilities Operations.—Six of the 12 NOAA Research Laboratories, one NESDIS Data Center, one of OAR's 11 Joint Institutes, and the Denver Forecast Office of the National Weather Service (NWS) are all housed in Boulder at the David Skaggs Research Center. The fiscal year 2003 Omnibus Bill eliminated rent, maintenance, utility, and security charges assessed by the General Services Administration for this building. It is critical that the Committee support Boulder Facilities Operations at $4.5 million as requested for fiscal year 2004.

Adjustments to Base.—Failure to fund unavoidable increases to the base budget, such as inflationary costs, changes in costs for salaries, and good and services, can have a significant impact on the operations of an agency, and affect productivity over time when those increases have to be funded out of research programs. I urge the Committee to restore the $4.5 million that was cut from Adjustments to Base in the fiscal year 2003 Omnibus Bill, thereby increasing the fiscal year 2004 request to $10.0 million.

Space Environment Center (SEC).—The SEC is the national and world warning center for disturbances that can affect people and equipment working in the space environment. It provides real-time monitoring and forecasting of solar and geophysical events, conducts research in solar-terrestrial physics, and develops techniques for forecasting solar and geophysical disturbances. SEC's Space Weather Operations Center is jointly operated with the U.S. Air Force because DOD's smart weapons' accuracies, as well as the ability of ships, planes and special forces units to fix their positions using GPS, are adversely affected by space weather events. The fiscal year 20043 Omnibus Bill cut the SEC by $2.25 million, an amount that seems to have been restored in the fiscal year 2004 request. I urge the Committee to fund the fiscal year 2004 request of $8.3 million for the Space Environment Center.

National Weather Service (NWS)

As the nation's vulnerability to weather related hazards rises because of increasing population, enhanced infrastructure, and population movement toward cities in threatened regions such as coastal areas, the NWS strives to mitigate impacts through improved forecasts and warning systems for the protection of life and property. There are few agency programs that impact our daily lives and the health of our economy as profoundly as does the NWS. I urge the Committee to support the fiscal year 2004 NWS overall request of $820 million. Within NWS, I would like to comment on the following programs:

NWS Adjustments to Base.—As the largest and most labor-intensive service within NOAA—70 percent of its budget dedicated to labor—the NWS depends on full funding of personnel cost increases in order to sustain current service levels. In the past, reductions in ATBs resulted in cutbacks in NWS research grants and forecaster training programs. It is critical that the Committee support the $20.1 million to fund adjustments to base.

NOAA Center for Weather and Climate Prediction.—The Department of Commerce, the State of Maryland, and academic community advisors have all agreed on a shared vision to build a Center of Excellence for Environmental Research, Education, Applications and Operations in order to meet NOAA operational requirements to create research synergy in weather and climate prediction; to accelerate transition of new science and technology into operations; and to enhance recruitment opportunities. I ask that the Committee support the request of $10.4 million for this new state-of-the-art facility.

Advanced Hydrologic Prediction System (AHPS).—Seventy-five percent of all Presidential Disaster Declarations involve flood damages. AHPS will provide emergency managers with critical data with which to save lives and property, manage energy and water resources more efficiently, and enable a more rapid infusion of scientific advances into the system. Within the NWS Operations, Research, and Facilities account, I urge the Committee to support the fiscal year 2004 request of $6.1 million.

Aviation Weather.—Weather is the cause of approximately 200 U.S. general aviation pilot fatalities per year and over 70 percent of U.S. commercial airline delays that result in tremendous cost to customers and companies. The Aviation Weather program increases the number of aviation weather observations; transitions research into operations more efficiently; and develops and implements new training programs for forecasters, pilots, and air traffic controllers. I urge the Committee to support the NWS Aviation Weather initiative at the requested $2.5 million for fiscal year 2004.

NWS Weather and Climate Supercomputing and Backup (Systems Acquisition).—The critical nature of the separate request for NWS supercomputing backup cannot be exaggerated. The NWS forecast computing capabilities are located at a single facility which means that the nation's severe weather watches and warnings all emanate from one location that could fail for a number of reasons including faulty technology, power supply problems, or terrorism. The redundancy, provided by supercomputing backup, covers those risks and is a critical component of the Department of Commerce Homeland Security Initiative. When not in emergency use, the backup provides needed computing time for weather and climate research. I urge the Committee to support the fiscal year 2004 request of $19.3 million for NWS Weather and Climate Supercomputing and $7.2 million to implement the backup computer system.

Radiosonde Replacement Network.—There is little doubt that the obsolete infrastructure for this principle data source on upper air for all weather forecasts and models will fail by 2005 if it does not receive adequate modernization funding now. I urge the Committee to support the fiscal year 2004 request of $6.9 million for the Radiosonde Replacement Network in the NWS Procurement, Acquisition and Construction (PAC) account.

Advanced Weather Interactive Processing System (AWIPS).—This interactive computer system integrates all meteorological and hydrological data, and all satellite and radar data. AWIPS is a fundamental source of data for the research community and, when combined with NEXRAD radar, it enables the NWS to issue far more effective weather warnings and forecasts for the entire country. In the NWS Operations, Research and Facilities (ORF) account, I urge the Committee to support the fiscal year 2004 proposed amount of $37.6 million for AWIPS. In the NWS Procurement, Acquisition and Construction (PAC) account, I urge the Committee to fund AWIPS at the $16.3 million request at least, an amount level with fiscal year 2003.

Cooperative Observer Network.—The network's 11,000 weather observation sites are used to maintain the country's climate record and to provide data to NWS local field offices and to university laboratories. I urge the Committee to support the request of $1.9 million, the same as the fiscal year 2003 enacted level, for Cooperative Observer Network maintenance.

Central Forecast Guidance.—The NWS Central Forecast Guidance line provides most of the funding for the National Centers for Environmental Prediction (NCEP), nine centers within the NWS that all work together toward the common goal of using data for weather predictions and seasonal forecasts in order to save lives, protect property, and create economic opportunity. Forecasts that reach the public via media outlets originate at NCEP. In recent years, the centers have not been supported adequately to process weather data and transfer it into operations. In order to address this problem, I urge the Committee to support the fiscal year 2004 request of $45.1 million, a 3.7 percent increase over the fiscal year 2003 enacted level.

National Environmental Satellite, Data and Information Service (NESDIS)

NESDIS operates this country's space-based component of the global environment observing system, and manages the world's largest collection of atmospheric, geophysical, and oceanographic data representing 85 percent of the data used by the NWS for forecasting activities. Society depends on NESDIS for data that affect numerous activities including distributing energy supplies, maintaining satellite communications, developing global food supplies, increasing aviation safety, managing natural resources, protecting citizens from natural hazards, and transporting our nation's armed forces. I urge the Committee to support the fiscal year 2004 request of $91.2 million for NESDIS Environmental Satellite Observing Systems, an increase of $5 million over the fiscal year 2003 enacted level.

The rich data collected by the NESDIS satellite systems are acquired, processed, analyzed, archived and disseminated through the Data Information Management Systems to commerce, industry, agriculture, science and engineering, the general public, and government at all levels. While the Satellite Systems function collects data, the Data Centers and Information Services function makes those data useful and available, so I am disturbed to see that the data management function is recommended for a $5.3 million decrease. An increase in funding for the observing systems that collect data obviously should be coupled with an increase in funding for the management systems that make the collected data useful and accessible. I urge the Committee to appropriate, at the very least, $5.3 million above the request in order to restore the NESDIS Data Centers and Information Services to the fiscal year 2003 enacted level of $64.4 million in fiscal year 2004.

Educational Partnership Program with Minority Serving Institutions

Under-representation of minorities in earth science disciplines in this country is a serious issue that must be addressed by multiple programs across multiple agencies and institutions. I urge the Committee to support the $15.0 million request for NOAA's Educational Partnership Program with Minority Serving Institutions.

On behalf of the UCAR community, I want to thank the Committee for the important work you do for U.S. scientific research, infrastructure, education, and training. We understand and appreciate that the nation is undergoing significant budget pressures at this time, but a strong nation in the future depends on the investments we make in science and technology today. We appreciate your attention to the recommendations of our community concerning the fiscal year 2004 budget of the National Oceanic and Atmospheric Administration.

PREPARED STATEMENT OF THE NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Thank you for the opportunity to submit testimony to this Subcommittee regarding the appropriation for the Public Telecommunications Facilities Program (PTFP). As the President and CEO of the National Federation of Community Broadcasters, I speak on behalf of over 200 community radio stations and related organizations across the country. This includes the new Low Power FM service that has recently been authorized by the FCC. NFCB is the sole national organization representing this group of stations, which provide service in both the smallest communities and largest metropolitan areas of this country. Nearly half of our members are rural stations, and half are minority controlled stations.

In summary, the points we wish to make to this Subcommittee are that NFCB:

—Supports funding for PTFP that will cover the on-going needs of public radio and television stations.

—Supports funding for conversion of public radio and television to digital broadcasting.

—Requests report language to ensure that PTFP utilizes any digital funds it receives for radio as well as television needs.

Community radio supports $70 million in funding for the Public Telecommunications Facilities Program in fiscal year 2004.—Federal support distributed through the PTFP is essential to continuing and expanding the public broadcasting service throughout the United States. It is particularly critical for rural stations and for those stations serving minority communities. PTFP funds new stations, expanding the reach of public broadcasting to rural areas and to audiences that are not presently served by existing stations. In addition, it replaces obsolete and worn out equipment so that the existing stations can continue to broadcast high quality programming. Finally, with the advent of digital broadcasting, PTFP funding will help with the conversion to this new technology.

We support $70 million in funding to ensure that both the on-going program—currently funded in fiscal year 2003 at $43.4 million—will be continued, and that the increase to $70 million will be available to help cover the cost of radio and television converting to digital transmission. This increase in funding is particularly urgent this year because the FCC has now endorsed a standard for digital radio broadcasting and the television conversion deadline is imminent.

Federal funding is particularly critical to stations serving rural and underserved audiences which have limited potential for fundraising because of sparse populations, limited number of local businesses, and low income levels. Even so, PTFP funding is a matching program so that the federal money is leveraged with a local commitment of funds. This program is a strong motivating factor in raising the significant money necessary to replace, upgrade and purchase expensive broadcast equipment.

Community radio supports funding for conversion to digital broadcasting for public radio and television.—While public television's digital conversion needs are more immediate, the Federal Communications Commission has now approved a standard for digital radio transmission. The initial conversion of radio stations is being concentrated in 13 seed markets. The Corporation for Public Broadcasting (CPB) is using some of its previously appropriated digital funds to help public stations in these markets convert to digital, conduct additional research on AM radio conversion, and work with radio receiver manufacturers to build in the capacity to receive a 2nd audio channel. The development of 2nd audio channels will potentially double the public service that public radio can provide, particularly to unserved and underserved communities. This initial funding from CPB will only help a small number of the stations that will ultimately need to either convert or be left behind while the world goes digital.

We appreciate Congress' direction to the Corporation for Public Broadcasting that it utilize its digital conversion fund for both radio and television and ask that you ensure that the PTFP funds are used for both media. Congress stated, with regard to the fiscal year 2000 digital conversion funds:

The required (digital) conversion will impose enormous costs on both individual stations and the public broadcasting system as a whole. Because television and radio infrastructures are closely linked, the conversion of television to digital will create immediate costs not only for television, but also for public radio stations (emphasis added). Therefore, the Committee has included $15,000,000 to assist radio stations and television stations in the conversion to digitization . . . (S. Rpt. 105–300)

NFCB requests that the funding for digital conversion be committed in advance to facilitate the orderly transition of a very individualized process—a process that will be different at each station. Advance funding will give the system time to raise

the substantial matching funds that will be necessary and to know what additional funds will be needed to complete the process.

Thank you for your consideration of our testimony.

PREPARED STATEMENT OF THE REGIONAL INFORMATION SHARING SYSTEMS (RISS) PROGRAM

The Regional Information Sharing Systems (RISS) Program respectfully requests that Congress appropriate for fiscal year 2004, $50 million to continue their support in combating drug trafficking and organized crime.

These funds will enable RISS to continue 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 over 6,300 local, state, and federal law enforcement member agencies across the nation comprising over 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 3.9 million times per month during fiscal year 2002. 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, Australia, and England. 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.

RISS is a crucial force in fighting terrorism, increased violent criminal activity by street gangs, drug traffickers, sophisticated cyber criminals, and emerging criminal groups that require a cooperative effort by local, state, and federal law enforcement. 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.

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.

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 system and architecture is referenced and recommended in the General Counterdrug Intelligence Plan (GCIP).

The RISS Program promotes federal, state, local, and tribal law enforcement information sharing. RISS is the mechanism that state and federal law enforcement agencies are using to leverage their resources and existing systems for sharing sensitive but unclassified information. RISS has entered into a partnership with the High Intensity Drug Trafficking Areas (HIDTA) to electronically connect all of the HIDTA's to riss.net for communications and information sharing. Currently, 15 HIDTA's are electronically connected as nodes to riss.net and RISS is working to complete the connection of the remaining HIDTA's. Nine state agencies are currently connected as nodes on riss.net. An additional 15 state law enforcement agencies are pending connection as nodes to share information, including terrorism and homeland security information, using riss.net.

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 is currently working with the U.S. Department of the Interior, Bureau of Land Management (BLM), to connect all of the BLM offices to riss.net. Other systems connected to riss.net are the Law Enforcement Intelligence Unit (LEIU) and the National Drug Pointer Index (NDPIX). The National White Collar Crime Center (NW^3C) and the Financial Crimes Enforcement Network (FinCEN) are currently pending connection to riss.net as nodes.

During 2002, officials of the FBI Law Enforcement Online (LEO) system and the RISS system achieved interconnection of the two systems for distribution of sensitive but unclassified homeland security information to authorized users of both LEO and RISS. In addition, the Executive Office of the United States Attorneys (EOUSA) and the RISS Centers initiated actions to connect staff to riss.net at each of the 93 U.S. Attorneys' Offices (USAO) Anti-Terrorism Task Forces throughout the United States.

RISS is also expanding its resources to deliver the RISS Anti-Terrorism Information Exchange (RISS ATIX) to provide access through riss.net to additional groups of users for secure interagency communication, information sharing, and dissemination of terrorist threat information. These additional groups of users, referred to as RISS ATIX participants, will include public service, public safety, emergency management, utility, and other critical infrastructure personnel that have traditionally not been served by RISS. RISS ATIX participants will be assigned restricted access to certain specific RISS services and resources as appropriate in consideration of their roles with regard to terrorism and disasters.

All of these above mentioned state and federal agencies are integrating with and using the riss.net secure nationwide communications backbone to share criminal intelligence and alerts and homeland security information within their own agencies and among the other agencies. RISS needs funds to purchase hardware and software to support these agency system connections to riss.net to continue to provide and improve access for sharing information for law enforcement agencies across the country. In addition, RISS has developed RISS ATIX to provide first responders and critical infrastructure personnel with a secure means via riss.net to communicate, share information, and receive terrorist threat information. RISS is operating an unprecedented nationwide network for communicating critical information in a secure environment to both law enforcement and other first responders. To support the increased needs of these personnel and continue to maintain the RISS system and de-

mand for RISS services and resources, RISS is requesting an increase in funding to $50 million for 2004.

RISS continues to promote interagency investigations by improving capabilities for member agencies to quickly and easily access RISS databases and resources by expanding the enrollment of member agencies for access to riss.net through distribution of security hardware and software. 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, 2002, the number of criminal subjects maintained in the RISSIntel intelligence databases for all Centers combined was 1,079,369 with 258,907 new subjects being added in 2002. The combined databases of all six RISS Centers also maintained data on 1,712,307 locations, vehicles, weapons, and telephone numbers for a grand total of 2,791,676 data entries available for search. For the twelve-month period January through December 2002, the total number of inquiries by law enforcement member agencies to the RISSIntel database for all six regional intelligence centers combined was 766,845. These inquiries resulted in hits or information to assist law enforcement agencies in their criminal cases. All RISS Centers combined delivered 19,777 analytical products to member agencies in support of their investigation and prosecution efforts in 2002.

This support of law enforcement has had a dramatic impact on the success of their investigations. Over the three-year period 2000–2002, RISS generated a return by member agencies that resulted in 10,024 arrests, seizure of narcotics valued at almost $141 million, seizure of over $13 million in currency, and recovery or seizure of property valued at over $25 million. In addition, almost $3 million was seized through RICO civil procedures. In the 22-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 $12.7 billion dollars in recoveries at a total cost that approximates 2.72 percent of that amount, or a $37 return for every dollar spent.

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.

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. Local and state law enforcement, who depend on the RISS Centers for information sharing, training, analytical support, funding, and technical assistance, are anticipating increased competition for decreasing budget resources. The state and local agencies require more, not less, funding to fight the nation's crime/drug problem.

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 OCEAN CONSERVANCY

The Ocean Conservancy (TOC) is pleased to share its views regarding the marine conservation programs in the budgets of the National Oceanic and Atmospheric Administration's (NOAA) and the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. TOC requests that this statement be included in the official record for the fiscal year 2004 Commerce, Justice, State, the Judiciary and Related Agencies bill. TOC cannot overstate the importance of this Subcommittee in advancing marine conservation and greatly appreciates the funding provided in fiscal year 2003. TOC recognizes the constraints this Subcommittee faces this year and urges you to continue to make ocean conservation a top priority.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Conservation Trust Fund

Passed by Congress in 2000, the Conservation Trust Fund (also referred to as the Conservation Spending Category) is a groundbreaking bipartisan accomplishment and represents a major advancement in conservation funding. TOC is grateful that this Subcommittee has upheld its commitment to funding the Conservation Trust Fund over the last three fiscal years and calls for your continued commitment in fiscal year 2004 by dedicating $520 million for critical ocean and coastal conserva-

tion activities within NOAA. We also urge you to protect the integrity of the trust fund by limiting its uses for net increases rather than a substitute for base funding.

Coral Reef Conservation

NOAA plays a critical role in protecting coral reefs, serves on the successful Interagency Coral Reef Task Force and has major responsibilities for implementing the National Action Plan to Conserve Coral Reefs. Through monitoring, mapping, restoration and outreach activities, NOAA works with state, territory, local and other parties to reduce land-based pollution, overfishing, diseases, and other threats to coral reefs. TOC is disappointed that the Subcommittee cut funding for coral reefs in fiscal year 2003 and respectfully requests that at a minimum, funding be restored in fiscal year 2004. In addition, $2 million above the Administration's request is desperately needed to support local efforts to protect coral reefs and should be directed to the Coral Reef Conservation Fund established by the Coral Reef Conservation Act of 2000 (Public Law 106–562). This funding will leverage an additional $2 to $4 million in matching resources through partnerships with local, state and territory governments, universities, the private sector and others to fund on-the-ground coral reef conservation and management activities in the United States and its territories. This funding is one of The Ocean Conservancy's highest priorities.

National Ocean Service

Marine Sanctuary Program

Our nation's 13 sanctuaries encompass almost 18,000 square miles of our most significant marine resources. TOC requests the Subcommittee provide $37.8 million for sanctuary operations, $2 million above the Administration's request. 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 (MPAs)

TOC greatly appreciates this Subcommittee's $1 million increase in fiscal year 2003 to support NOAA's MPAs initiative and requests an additional $1 million increase in fiscal year 2004. This $5 million 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 recently formed Marine Protected Areas Advisory Committee and its working groups. This increase will allow NOAA to better assist stakeholders, including states, the National Park Service and others by holding regional workshops and providing training and technical assistance to determine how best to design and implement MPAs.

Nonpoint Pollution Implementation Grants

Nonpoint source pollution continues to be the nation's largest source of water pollution. There were over 13,410 closings and advisories at U.S. beaches in the year 2001. TOC supports the Administration's fiscal year 2004 request of $10 million to help coastal states and territories, with approved nonpoint plans, continue to make progress in implementing their priority activities.

National Marine Fisheries Service

The Ocean Conservancy remains concerned about the state of our nation's fisheries. As the $100 million for fisheries disaster assistance in fiscal year 2003 demonstrates, we must do a better job managing our fisheries. Below is what TOC believes are NMFS's most pressing needs.

Expanding Fisheries Stock Assessments

The status of roughly two-thirds of our commercially caught ocean fish populations is unknown due in large part to lack of funding for basic research and regular stock assessments. We applaud the Subcommittee's decision to increase stock assessment funding to $17 million in fiscal year 2003 and urge that this trend continues with $25 million in fiscal year 2004. Doing so will help reduce the backlog in research days-at-sea and give managers baseline information critical to managing our fisheries. This funding is one of The Ocean Conservancy's highest priorities.

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. TOC

recommends $25 million for fisheries observers in fiscal year 2004, $5 million above the Administration's request and encourages the Subcommittee to prioritize the following three programs.

Bycatch Observers

TOC fully supports the Administration's $2.8 million initiative to reduce bycatch. The $2 million within this initiative for bycatch observers will support approximately 2,000 observer days-at-sea, thereby enhancing the collection of bycatch data from commercial and recreational fishing vessels. Two fisheries in the Gulf of Mexico in desperate need of increased observer coverage are the bottom longline fishery and the shrimp otter trawl fishery. Longlines capture a variety of ocean wildlife besides the reef fish they target, including marine birds, sea turtles and soft corals. The shrimp fishery is believed to be the largest fishery in the Gulf of Mexico, but efforts to monitor the effort and catch are limited. With revised turtle excluder device regulations going into effect in August, it is critical that an observer program be established.

National Observer Program

While encouraged by the Administration's request to expand the national observer program, TOC believes that $7 million is still inadequate and recommends additional support for NMFS to meet its national observer needs.

West Coast Observers

TOC respectfully requests that the Subcommittee, at the minimum, return funding for West Coast Observers to the fiscal year 2002 level of $4.0 million.

Enforcement/Surveillance and Vessel Monitoring System

In addition to better data, enforcement of our fishery management laws is critical. Unfortunately, lack of funding has hampered NMFS's ability to kept pace with the need. TOC urges $46.9 million in fiscal year 2004 to address this shortfall so that more officers can be hired to better enforce our fisheries management laws. TOC supports expanding the Vessel Monitoring System (VMS) program. While we are pleased that the Subcommittee provided a slight increase in VMS in fiscal year 2003, we urge that the President's request of $7.4 million be fully supported in fiscal year 2004.

Essential Fish Habitat (EFH)

Given the need to better understand the impacts of fishing and other activities on EFH, and the need to more fully comply with the Magnuson-Stevens Fishery Conservation and Management Act's requirement to minimize impacts to those habitats, TOC believes that increased funding is crucial and requests $12.5 million in fiscal year 2004.

Atlantic Coast Cooperative Statistics Program

TOC greatly appreciates the Subcommittee's support of $2 million in fiscal year 2003 for this unique cooperative state and federal fisheries data collection program. We request $3 million in fiscal year 2004 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.

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 informing better management. TOC greatly appreciates the Subcommittee's rejection of the Administration's proposed cut in fiscal year 2003 and requests at least level funding in fiscal year 2004.

Pacific Highly Migratory Species Research

TOC supports funding for this program, believes the Administration's request of $750,000 is inadequate and requests $1.5 million in fiscal year 2004. Specifically, funding is needed to conduct stock assessments and biological studies and improve bycatch mitigation techniques for these fisheries.

Marine Mammal Protection

TOC believes the lack of adequate resources has severely hampered NMFS's ability to effectively implement the MMPA and requests $9.1 million in fiscal year 2004, $2 million above the Administration's request. This increase is necessary to fund top priority studies identified by the take reduction teams: to design and implement fishery management plans that will not endanger marine mammals; conduct re-

search on population trends, health, and demographics; and to carry out education and enforcement programs. It would also allow research into the causes of strandings and die-offs and identification of mitigation measures to prevent such deaths in the future.

Bottlenose Dolphin Research

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 recommends $3 million in fiscal year 2004 to reduce dolphin mortalities by refining population estimates, conducting bycatch estimates and increasing observer coverage.

Endangered Species

NMFS bears significant responsibility for administering the Endangered Species Act and is responsible not only for the recovery of already-listed species such as Northern Atlantic Right Whales (see below), smalltooth sawfish, Steller sea lions, and all species of sea turtles found in U.S. waters, but also for responding to listing petitions in a timely fashion, consulting with federal agencies on proposed actions that may affect listed species, designating critical habitat, and implementing recovery plans. TOC is concerned about NMFS's ability to meet its responsibilities under the ESA and respectfully requests the Subcommittee increase NMFS's ESA base funding by $2 million to meet its fiscal year 2004 demands.

North Atlantic Right Whales

With approximately only 300 North Atlantic Right Whales still alive, funding is needed to improve our understanding of right whales and to develop fishing technologies to reduce entanglements. TOC thanks the Subcommittee for its support of $10 million in fiscal year 2003 and requests level funding in fiscal year 2004.

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

International Fisheries Commission Account

TOC requests $200,000 for the State Department to support implementation of two landmark agreements, the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) and the Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South East Asia (IO). To date, nine nations, including Brazil, Costa Rica, Ecuador, Honduras, Mexico, the Netherlands, Peru, and Venezuela have ratified the IAC. To date, 23 countries have signed the IO agreement. Since ratifying the IAC and becoming a signatory of the IO agreement in 2000, the United States has played a leading role in the establishment of these instruments and continued leadership and support will ensure their early momentum continues.

MARINE MAMMAL COMMISSION

TOC requests that the Subcommittee support the Marine Mammal Commission at $1.895 million in fiscal year 2004, per the Administration's request.

ANTI-ENVIRONMENTAL RIDERS

TOC urges this Subcommittee to not attach any anti-environmental rider to this or any other appropriations bill. In the past, riders have been used by Members of Congress to rollback environmental protection and prevent NOAA from advancing marine conservation.

These programs and issues 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 2004. Thank you for considering our requests.

PREPARED STATEMENT OF THE ASIA FOUNDATION

The importance and continuing relevance of the Asia Foundation's mission and mandate have been underscored by the events of September 11 and the war on terrorism: to develop institutions of governance, including constitutional frameworks, legislative branch and judiciary; support civil discourse and conflict resolution; expand economic opportunity to improve the quality of life and give more people a stake in stability; and promote better understanding between the United States and the countries of Asia.

The Asia Foundation is gratified by the confidence of the Congress in its programs, as demonstrated by an increased appropriation of $10.44 million for fiscal year 2003, $1 million above the Administration's request. While the Administration has endorsed the work of The Asia Foundation by requesting an appropriation of $9.25 million for fiscal year 2004, the Foundation respectfully hopes that the Congress will once again add to its funding, given the unparalleled new challenges facing Asia and The Asia Foundation's distinctive capacity to address them. As the Subcommittee knows, The Asia Foundation implements concrete programs in Asia that improve governance and legal reform, protect human rights, promote economic reform and encourage peaceful, cooperative international relations.

In the face of growing anti-Americanism and the threats of rising extremism in countries with predominantly Muslim populations in Asia, where over 70 percent of the world's Muslims live, it is more important than ever to address the root causes of persistent poverty, lack of opportunity, and loss of faith in local leaders and institutions. These new circumstances in Asia highlight the importance and value of The Asia Foundation's programs. The Foundation is the only American organization with a distinctive history of fifty years of presence and engagement in Asia, especially in Afghanistan, Pakistan, and Indonesia, the front line states in the war on terrorism.

OVERVIEW

The United States and Asia both face new challenges, complicated by the war on terrorism, the war in Iraq and the instability likely to occur in its aftermath. More than ever, the United States must support political stability, and economic reform, and give attention to countries where recent events have exacerbated U.S. bilateral relations, in countries that have been traditional allies of the United States, as well as in the countries with predominantly Muslim populations in Asia. Working together with Asian organizations as a trusted partner through a network of 17 offices in Asia, The Asia Foundation is the only longstanding American nongovernmental, nonpartisan organization with local credibility, a nuanced understanding of the issues facing each country, and unparalleled access and relationships with government, nongovernmental groups, and the private sector. In addition to the importance of these programs in the lives of people of these countries, the Foundation's efforts also make an important and tangible contribution to public diplomacy for the United States.

THE ASIA FOUNDATION'S MISSION

The Asia Foundation's core objectives are central to U.S. 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 reform at the regional and national levels;
—Peaceful and Stable Regional Relations: promoting U.S.-Asian dialogue on security, regional economic cooperation, 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 Asia. Foundation assistance supports training, technical assistance, and seed funding for new, local organizations, all aimed at promoting reform, building Asian capacity, and strengthening U.S.-Asia relations. 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. The Foundation is distinctive in this role, not only providing the technical assistance necessary, as in the case of the drafting of the Afghan constitution, but also in providing grants that cover nuts and bolts necessities to support that effort, such as reference materials, equipment and administrative support costs for the Constitutional Commission. The Asia Foundation is a well recognized American organization, but its programs are grounded in Asia, helping to solve local problems in cooperation with Asian partners.

PROGRAMS

Examples of programs include:

—*Legislative Development.*—The Foundation has contributed to the development of legislatures in 17 countries in Asia through technical assistance, training

members and staff and facilitating interaction with the nongovernmental sector. The Foundation is the only American organization providing legislative training on responsible legislative practice, and orientation for all four newly elected provincial assemblies in Pakistan. The Foundation is also the only American organization providing technical assistance to the Constitutional Commission in Afghanistan for the drafting of the new constitution, the public consultation and Constitutional Loya Jirga process.

—*Civil Society.*—The Foundation is the single largest supporter of the nongovernmental 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 Cambodia, the Foundation continues to be the largest supporter of human rights, environment and research and policy NGOs in Cambodia. The Foundation's Pakistan programs support community based organizations that provide educational services in areas where none exist, particularly in the economically distressed border areas of the Northwest Frontier Province (NWFP). The Foundation also supports new NGO activities in Afghanistan, such as ASCHIANA which provides education for girls and young women denied schooling under the Taliban through a cooperative project with the National Geographic Society.

—*Human Rights, Conflict and Islam.*—The Foundation's human rights programs promote the protection and advancement of human rights through support of nongovernmental and governmental human rights efforts at the local, regional and national levels. The Foundation's programs focus on human rights education, 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 prevent trafficking and violence against women and alternative dispute resolution programs in conflict areas. The Foundation's twenty year history of working with mainstream Muslim groups in Indonesia, Pakistan and Mindanao in the Philippines makes it uniquely positioned 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 communicate messages of tolerance and non-violence. These innovative and sensitive programs can only be accomplished through an on the ground knowledge of the context facing mainstream Muslims, and through partnerships built on trust. The Foundation gives special attention to the troubled areas of Indonesia through support for local human rights efforts in Aceh, Papua and most recently, in the Maluku Islands. Programs include 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 East Timor, the Foundation provided technical assistance for the drafting of the constitution and new legislation, and for increased access to justice for citizens, by involving civil society and public consultation in the law making process. In China, the Foundation supports legal aid services and popular legal education in some of China's poorest provinces, including those with minority populations such as Yunnan and Xinjiang, and for millions of migrant women workers in Guangdong. In Nepal, the Foundation piloted mediation projects in western Nepal, areas under the heavy influence of the Maoist rebels, and continues to expand community mediation programs, legal reform within the courts, establishment of legal information systems, and the development of watchdog citizens' groups to raise awareness of corruption and misconduct. The Foundation supports reform of the Supreme Court in Indonesia, which has included civil society input in an unprecedented step to reform case assignment, audit its procedures and processes, and improve the quality of the judicial appointment process.

—*Economic Growth and Opportunity.*—Small and medium enterprises are a vital engine for economic growth, providing employment and opportunity for millions throughout the region. The Foundation's programs help to reform the environment for small business growth in Indonesia, Bangladesh, Thailand, and Sri Lanka 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.

—*International Relations.*—The Foundation continues to invest in young leaders through diplomatic training programs in U.S. universities for Chinese foreign affairs staff, fellowships for Vietnamese and Indian diplomats, and study programs for Southeast Asian young leaders. Programs also include support for the

Council for Security Cooperation in the Asia Pacific (CSCAP), training programs for compliance with trade agreements and the WTO for Chinese and Vietnamese officials, and track II programs on cross-straits relations and Northeast Asian security.

CONCLUSION

As the preceding examples of The Asia Foundation's work emphasize, the Foundation is a field-based organization that supports projects in Asia that build the capacity of Asian institutions and support reform efforts, while at the same time maintaining close links with the U.S. foreign policy community. We are first and foremost a grant making organization. The Foundation has consistently received national recognition for its efficient grant-to-operating 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 operate 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 partner in our programs with American and international public and private organizations to leverage our resources and make investments pay off. The Foundation's partnership with the Microsoft Corporation on the Cambodian Information Centers, the first project of its kind to expand Internet and media resources to all 22 provinces of the country, is but one example.

Public funding is essential to the Foundation's mission. 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 U.S. 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 funds are 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 needs of the Ministry of Women's Affairs in Afghanistan in 2001 and the National Human Rights Commission office in Aceh, during the height of the violence in the conflict-prone province in 2002.

Budget constraints resulted in significant reductions in the Foundation's annual appropriation in 1996. The current requested level for fiscal year 2004 is still well below the Foundation's $15 million annual appropriation 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 country office presence in Asia, although budget cuts did force closure of the Malaysia office in 1996.

But commitment to a field operation is not without risk, as seen in the situation facing U.S. embassies abroad. Now more than ever, the Foundation and its supporters believe that its critical and most important asset is its field office network in Asia, enabling the Foundation to address critical development and reform on the ground, especially in critical front line states such as Pakistan, Afghanistan, and Indonesia. Increased security measures to protect Foundation staff have been necessary, and Foundation offices all have contingency evacuation measures in place. Maintaining overseas offices costs more than maintaining operations within the United States and the new demands to ensure adequate security have added to this cost. Today, we face serious budgetary constraints. We cannot forsake the safety of our staff, but at the same time, we are, as always, committed to ensuring that the maximum possible amount of appropriated funds are dedicated to programs on the ground.

In closing, we believe that we have an 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. The Asia Foundation's programs represent a distinctive and 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.

PREPARED STATEMENT OF THE INVESTMENT COMPANY INSTITUTE

The Investment Company Institute[1] appreciates this opportunity to submit testimony to the Subcommittee in support of the fiscal year 2004 Appropriations request for the Securities and Exchange Commission (SEC). The Institute would like to commend the Subcommittee for its consistent past efforts to assure adequate resources for the SEC.

Mutual funds are one of the primary savings and investment vehicles for middle-income Americans. Today, more than 95 million investors in over 54 million U.S. households own mutual fund shares. Since 1990, the percentage of U.S. retirement assets held in mutual funds has more than quadrupled. Moreover, most mutual fund investors are ordinary Americans; the median household income of fund shareholders is approximately $62,000. These millions of average Americans deserve continued vigilant regulatory oversight of mutual funds. For this reason, sufficient funding of the SEC should be a priority. The Institute urges Congress to provide appropriations at a level sufficient to ensure the SEC's ability to fulfill its regulatory mandate.

The Administration's fiscal year 2004 budget proposes SEC funding at a level of $841.5 million. This greatly exceeds last year's appropriation of $711.7 million. The Institute supports this enhanced level of funding to support the SEC's operations, especially those of the Division of Investment Management, which regulates the mutual fund industry. Such resources will help the SEC to carry out its many important initiatives, which include, among other things, adopting requirements for improved shareholder reports, analyzing the feasibility of requiring new compliance related rules for investment companies and investment advisers, finalizing rules to combat money laundering, and finalizing amendments to the mutual fund advertising rules.

The recommended enhanced level of funding also will permit the SEC to monitor compliance with the many significant new requirements adopted as a result of the Sarbanes-Oxley Act of 2002, which include, among others, disclosure regarding codes of ethics for senior executive officers and the presence of financial experts on audit committees, certification of financial and other information, independence standards for public company auditors, and standards of conduct for corporate attorneys. Moreover, it will permit the SEC to fulfill its mandate to oversee the operation of the Public Company Accounting Oversight Board (PCAOB), including the ratification of fundamental rules and procedures for the PCAOB. We also are pleased that H.R. 658/S. 496, "The Accountant, Compliance, and Enforcement Staffing Act of 2003," has been introduced in both the House and the Senate. This bill would permit the SEC more flexibility in its hiring process, making it easier for the SEC to hire the staff it needs to carry out these additional responsibilities.

Several important SEC initiatives indicate an enhanced workload for the Division of Investment Management. First, the Division will be responsible for monitoring compliance with the new requirements related to proxy voting. Second, the Division will be responsible for providing the SEC with a report on the hedge fund industry, assisting with SEC hearings to be conducted in connection with this endeavor, and analyzing the need for, and potentially developing, new regulations related to hedge funds. Third, the Division will be instrumental in responding to Congressional inquiries related to mutual fund issues. These important initiatives, which will affect millions of American investors, will require additional staff to see that they are properly analyzed and to develop appropriate recommendations.

Adequate funding is also needed for the SEC's new enhanced risk-based inspection program, which began in fiscal year 2003 and will continue in fiscal year 2004. For investment companies and investment advisers, this means that those with relatively higher risk profiles will be examined every two years, while all remaining firms will be examined no less frequently than every four years. These more frequent inspections are a significant improvement over the five-year inspection cycle for investment advisers and investment companies that existed prior to fiscal year 2003, and the SEC's appropriations should be sufficient to continue this important initiative.

Finally, adequate funding is essential to the SEC's efforts to educate investors. The SEC's Internet website contains many sources of important information for investors, including an on-line publication explaining mutual funds and investor alerts

[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,929 open-end investment companies ("mutual funds"), 553 closed-end investment companies and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about $6.322 trillion, accounting for approximately 95 percent of total industry assets, and 90.2 million individual shareholders.

that help investors avoid scams and securities frauds. These and other SEC programs assist investors to understand the capital markets and establish realistic expectations about market performance. This is an integral part of the agency's mission to protect investors.

In order to accomplish these worthy objectives and to continue to function as an effective regulatory agency, we support that the SEC be funded at the level requested by the Administration and supported by Chairman Donaldson.

We appreciate your consideration of our views.

PREPARED STATEMENT OF AMERICAN RIVERS

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

This year, American Rivers was joined by more than 400 national, regional and local organizations concerned with river conservation throughout the United States [1] 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 2004.

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 two years since the release of the 2000 Federal Salmon Plan for the Columbia and Snake rivers, federal agencies have failed to fulfill nearly three-quarters of its requirements.

The Salmon Plan relies primarily on improving tributary and estuary habitat and reforming hatchery and harvest practices. While over 500 fisheries scientists and most 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—after a "check-in" this September—to partially remove the four lower Snake River dams or pursue other stronger recovery measures.

Inadequate federal funding is a major reason that implementation of the Salmon Plan has fallen so far behind. Full funding for fiscal year 2004 will require $529.3 million distributed among ten different federal agencies through five 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 approximately 50 percent this year, from the fiscal year 2003 level of $26.2 million to $39.7 million in fiscal year 2004. While this increase would be helpful, internal NMFS documents estimate that fully implementing the Salmon Plan would require an increase of closer to 200 percent.

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 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

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[1] These groups have endorsed the "River Budget for fiscal year 2004", 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

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 increasing funding for the Pacific Coastal Salmon Recovery Fund in fiscal year 2004, Congress can help restore 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 increase funding for the Pacific Coastal Salmon Recovery Fund to no less than $200 million in fiscal year 2004.

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 600 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 $18,500,000 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 ALLIANCE FOR INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE

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 U.S. 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 67 nongovernmental organizations, with nearly 8000 staff and 1.25 million volunteers throughout the United States. Through its members, the Alliance supports the international interests of 3300 American institutions of higher education.

With grassroots networks reaching all 50 states, Alliance members help advance the U.S. 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.

Our requests for the fiscal year 2004 exchange appropriation fall into three broad categories:

Core Exchange Budget—Bureau of Educational and Cultural Affairs

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, 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.

For example, the Bush Administration's request for the State Department's core exchanges in fiscal year 2004, excluding funding for programs provided for under the Freedom Support Act and SEED, appears to be level with the current year appropriation of $245 million. In fact, we understand that this "level funding" amounts to a reduction of approximately $7.5 million available for programs, when one factors in increased costs.

While exchange budgets have risen in recent years thanks to the leadership of this subcommittee, State Department figures for the core exchange budget—excluding Freedom Support Act and SEED funding—indicate that exchange funding has declined 40 percent in constant dollars over a 10-year period (1993–2002).

As our experiences since September 11, 2001, demonstrate clearly, we need public diplomacy and exchanges more than ever. We need to build trust and understanding for our people and our policy goals not just in the Muslim world—an effort that will be of critical importance—but around the globe. To win the war on terrorism and to rebuild Iraq, we will need the help of our friends and allies in every region of the world. This is a time to intensify and expand our public diplomacy, and we believe there is strong bipartisan support in Congress to do exactly that.

We therefore urge the subcommittee to fund the Department of State's core exchange budget at $286 million, the level authorized by the 107th Congress. This amount would provide for targeted, meaningful growth in every region of the world in support of our most important foreign policy objectives.

Exchanges with the countries of the former Soviet Union and Central Europe

We note that the Bush Administration budget request moves funding for exchange programs authorized by the Freedom Support Act (FSA) and SEED into the CJS bill for the first time. If the appropriations subcommittees agree with this change and the CJS subcommittee includes these programs in its bill, we urge you to substantially increase funding over the Administration's request.

The Administration has requested $100 million for these programs. Our best estimates suggest that this level represents a cut of approximately 28 percent. We hope the subcommittee will agree that this reduction is unwise in regions of the world of such strategic importance to the United States. This is particularly true when one considers the effectiveness and impact of these exchange programs.

We urge the subcommittee to fund FSA and SEED programs at an overall level of $145 million, which would allow for increases in program costs and a modest boost for these high priority activities.

A central aspect to the opening of the region has been the opportunity for the peoples of these countries to see how a democratic society functions, based on the principles of democracy and a free market economy. In recent Congressional testimony, former U.S. Ambassador to the Russian Federation James W. Collins said, "Efforts at reform in business and education—are just beginning to take hold. We're just starting to create an established and recognizable critical mass of individuals able to sustain our national interest in fostering reforms in these countries. Now is not the time to be reducing these efforts, particularly with Russia and Ukraine, whose challenges remain paramount. I believe there is no greater priority in Eurasia at this time than developing and sustaining the young leadership of that region in their associations with the West and that responsibility remains critically in our hands."

Islamic Exchange Initiative—Building Cultural Bridges

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 to the world, or of building the personal and institutional connections with these countries that support healthy bilateral relationships. Policy disagreements alone cannot account for the fact that many in Islamic countries regard the United States, the greatest force for good in human history, as a source of evil.

A Gallup poll conducted in February 2002 reported that 61 percent of Muslims believe that Arabs did not carry out the attack on the United States. That statistic alone speaks somber volumes about our failure to project our values and ideals effectively in Islamic nations.

Given the importance and urgency of the task and the broad arc of countries we will need to engage, stretching from Africa to Southeast Asia, we urge the subcommittee to appropriate $100 million for this purpose.

As a long-term solution to the profound problems of cultural misunderstanding, there is no substitute for public diplomacy. It must be a key component of our long-term effort to eradicate terrorism. Public diplomacy in the Muslim world 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. 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, will be critical to our success.

Changing minds—or merely opening them—is a long, painstaking process. There are no quick fixes. If we are to win the war on terrorism, there will be no avoiding the need to build bridges between the American people and the people of the Muslim world. We must begin this process now.

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.

Increasing the State Department's exchanges with the Islamic world will give us the means to develop productive, positive relationships. This initiative will engage the American public—in our communities, schools, and universities—in an effort to project American values. We will find no better or more convincing representatives of our way of life.

And the engagement of the American public will leverage significant additional resources to support this effort.

Initial efforts were made during the 107th Congress to both authorize and fund programs on a broad range of exchange activities to build relationships with the Islamic world and enhance U.S. national security.

We commend the subcommittee for funds made available in the fiscal year 2002 supplemental for Islamic exchanges. The $10 million appropriated by this subcommittee has been put to good use by the Department of State in key programs such as Fulbright, International Visitors, and English teaching.

We also recognize that this funding reflected the broad bipartisan support for an Islamic Exchange Initiative, clearly expressed in the passage in the House of the Hyde/Lantos Freedom Promotion Act, and in the Kennedy/Lugar Cultural Bridges Act, which attracted 12 cosponsors of both parties in the Senate.

A meaningful and effective Islamic exchange initiative will require $100 million above the appropriation for the State Department's core exchanges. We recognize that this is a significant amount of money. We believe, however, that this funding level is necessary and appropriate given the expanse of the Muslim world and the urgency and importance of the task at hand. Moreover, this amount of money spent on promoting our ideas and values is very small when compared to the sums we will expend on military hardware, but it is no less crucial to our success.

The level of support we have witnessed from senior members of both parties and both chambers underscores the timeliness and importance of this initiative. This is a moment when our national interests require Congressional leadership to build these cultural bridges.

Other program issues

In addition, we would like to draw the subcommittee's attention to three specific programs we believe are deserving of additional support:

—The Foreign Study Grants for U.S. Undergraduates program, also known as the Gilman Scholarship Program, assists students of limited financial means from the United States to pursue study abroad. Demand for the scholarships is enormous, demonstrated by the nearly 3,000 applicants from 44 states and Puerto Rico last year. Due to funding constraints, however, the program was only able to grant 302 awards.

—The Educational Partnership Program (formerly known as the College and University Affiliations Program) supports cooperation between U.S. colleges and universities and foreign post-secondary institutions in the form of faculty exchanges, curriculum development, collaborative research and other activities.

—Overseas Educational Advising/Information Centers serve as an important, unbiased information resource for prospective foreign students interested in the United States.

We have provided subcommittee staff with report language on these issues and welcome the opportunity to discuss them with you.

The U.S. exchange community stands ready to assist you in these efforts, and is grateful for your support.

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, I express our appreciation for the opportunity to share our views and concerns with you.

The work of this Subcommittee is vital to the success of our Nation's foreign policy. Your decisions determine whether we have the infrastructure and many of the tools of diplomacy needed to implement our policy. The Subcommittee's and the Congress's support of the Administration's request in meeting our staffing needs, improving our information technology systems, making our posts and missions more secure, and providing for an active exchange program is very much appreciated. Certainly Secretary of State Colin Powell and his staff also must be thanked for their hard work on our behalf as they make their presentations before the Congress. The Secretary consistently describes his current role as both the President's principal foreign policy advisor and as the CEO of the Department of State. It has been a long time since the Foreign Service has had a Secretary who has worn both hats so effectively.

As the representative of the Foreign Service, our major concern is the appropriations for the Administration of Foreign Affairs section of the appropriations bill. This area covers funding for personnel and especially the Secretary's Diplomatic Readiness Initiative (DRI), funding to bring the Department into the 21st Century in terms of information and communications technology, and the security of our people as they serve this Nation in over 250 posts and missions around the world.

CONTINUED VIGILANCE OF STAFFING NEEDS REQUIRED

With the fiscal year 2004 request of $97 million for the DRI to hire 399 additional foreign affairs personnel above attrition, we are in the final year of a three-year plan to fill an identified personnel shortfall of over 1,100 people.

As you know, several important 1999 and 2000 studies from very respectable organizations found the infrastructure of diplomacy "near a state of crisis." The Overseas Presence Advisory Panel (OPAP) reported in 1999:

"The United States overseas presence, which provided the essential underpinnings of U.S. foreign policy for many decades, is near a state of crisis. Insecure and often decrepit facilities, obsolete information technology, outmoded administrative and human resources practices, poor allocation of resources, and competition from the private sector for talented staff threaten to cripple our nation's overseas capability, with far-reaching consequences for national security and prosperity."

Fortunately the warnings in those studies were taken to heart. The Secretary and the Congress worked together to fill that personnel shortfall and to improve our information technology over three years. We are already beginning to see the benefits as new personnel are hired, the stress is being lifted from the shoulders of overly stretched personnel and there is an easing, though not a reduction, in the work expectations of "doing more with less." Foreign Service personnel are able to take needed training and participate in career development programs instead of having

to choose between training and filling an empty position, and a surge capacity is developing.

Further, because of the support for our information and communications technology systems, our equipment is modern and we have or will soon have classified and unclassified connectivity to every post that requires it, and access to the Internet from our desktops. Our communications and information systems are no longer the sad joke they had become, and there are plans to continue improvements in these areas including the SMART initiative to overhaul the systems for cables, messaging, information sharing, and document archiving.

The momentum that started two years ago needs to be maintained. The DRI needs to be successfully completed and the drive to improve our information and communications technology sustained.

However, Mr. Chairman, in terms of the DRI, I would also urge the Subcommittee to see adequate staffing as a dynamic process. The 1,158-person shortfall was identified nearly 3 years ago as existing at that point in time. Conditions have changed since then, and the complexity of the demands on diplomacy continue to grow around the world. Section 301 of Public Law 107–228, the Foreign Relations Authorization Act of 2003 requires the Secretary of State to submit a "Comprehensive Workforce Plan" for the Department for the fiscal years 2003 through 2007. "The plan shall consider personnel needs in both the Civil Service and the Foreign Service and expected domestic and overseas personnel allocations." AFSA would encourage the Subcommittee to consider these workforce plans for staffing considerations as a start to accommodate changes in the world in the coming years. We were near crisis until the Administration and the Congress stepped in to turn things around. The job is not done, and such a situation should not be allowed to occur again. As the Secretary often states, "diplomacy is the first line of offense," and there are serious consequences for the economy, the welfare and the security of our nation if diplomacy is not adequately funded to do the job.

EMBASSY SECURITY—STILL MUCH TO BE DONE

AFSA believes that together, the Department of State and the Congress have been making impressive strides in improving the security of our posts and missions abroad. After the 1998 east Africa bombings of our embassies, the Accountability Review Boards (ARB), chaired by Admiral William Crowe, looked into the cause of those bombings and made several important conclusions. First, they found that there was a new face to international terrorism and a new threat environment. Secondly, the ARB found that the cause of the bombings could not be placed at the doorstep of any single individual but that it was a systemic problem of inattention.

". . . there was a collective failure by several Administrations and Congresses over the past decade to invest adequate efforts and resources to reduce the vulnerability of U.S. diplomatic missions around the world to terrorist attacks."

The "new threat environment" continues to haunt us as seen by the continued attacks on the symbols of our country at home and abroad. However, we have seen the second lesson addressed through a major multi-year increase in security funding in both the hiring of additional security personnel and in security upgrades that has left no facility abroad unimproved. This increased funding is paying off as evidenced by the minimal damage done to the American Consulate in Karachi in a terrorist bombing in July 2002.

Mr. Chairman, despite significant upgrades to the security of our facilities around the world, the General Accounting Office reported in its March 20, 2003 testimony before the Senate Committee on Foreign Relations:

". . . even with these improvements, most office facilities do not meet security standards. As of December 2002, the primary office building at 232 posts lacked desired security because it did not meet one or more of State's five key current security standards. . . . Only 12 posts have a primary building that meets all 5 standards. As a result, thousands of U.S. government and foreign national employees may be vulnerable to terrorist attacks."

The Foreign Service does not seek hilltop fortresses in which to do our work. Such would be counterproductive to our purpose for being in a country. We accept the dangers that are part of our profession, but we also expect that our government, which sends us to these posts, should seek to provide for our safety as much as possible. AFSA urges that funding continue at its current, if not an accelerated pace, to complete the work of securing our posts and missions abroad.

"Soft Targets".—There is a subset of our concerns about the security of our posts and missions abroad. As you know from our testimony submitted to the Sub-

committee last year, threats to "soft targets" are a major concern to the Foreign Service. In just the past year, we have had a mother and daughter killed in a church in Islamabad, Pakistan, and an USAID official assassinated in front of his house in Amman, Jordan. We also saw the bombing of a nightclub that was popular a Western tourist spot in Bali, Indonesia. The threats to "soft targets" are very real for us. To Foreign Service members, the term "soft targets" means our spouses and children as we try and lead a somewhat normal life of going to school, to church, and on other family outings.

Mr. Chairman, we appreciate and thank you for your personal concern and leadership in this area. It is clear that through your and this Committee's work, the legislative branch understands that more than bricks and mortar need to be protected, but the Foreign Service community as well. The lead that this Committee took in setting aside funds to examine the threat against schools abroad that our children attend, and the Senate's designation, through your work, to have $10 million additional funds for soft target protection in the fiscal year 2003 Supplemental Appropriations add to our appreciation. While the additional funds for embassy security were significant, we were sorry to see that Conference recommendations had dropped the additional funds specifically designated for soft target protection.

AFSA urges this Subcommittee to continue in its efforts to provide additional funding to shore up this important part of our overseas security. "Soft targets" is a descriptive euphemism, but what we are really talking about is the lives of our people and their families as they serve this Nation abroad.

CONCLUSION

Mr. Chairman and members of the Subcommittee, I again wish to express our appreciation for the opportunity for the American Foreign Service Association to share our views and concerns with you. The decisions you make affect both our professional and private lives as we serve this Nation abroad. You directly help determine how safe we are at work and in our housing abroad; what our working conditions are like, from having to work in converted cargo boxes to comfortable, fully equipped offices; whether we have adequate staffing to share the work and whether we have information and telecommunications software and equipment to talk to our Colleagues around the world. We thank you for your understanding these past few years, and we ask for your continued support in the fiscal year 2004 funding process and beyond.

PREPARED STATEMENT OF THE ASSOCIATION OF SMALL BUSINESS DEVELOPMENT CENTERS

Mr. Chairman, Mr. Ranking Member and members of the Subcommittee, I am Donald Wilson, President of the Association of Small Business Development Centers (ASBDC). The Association is grateful for the opportunity to submit this testimony for the record of the Subcommittee's fiscal year 2004 hearings.

ASBDC's members are the 58 State, Regional and Territorial Small Business Development Center programs comprising America's Small Business Development Center Network. All Small Business Development Center (SBDC) grantees, located throughout the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam and American Samoa, are members of the ASBDC.

Since its establishment by Congress in 1980, America's Small Business Development Center Network has provided in-depth counseling of an hour or more, and training of two hours or more, to roughly 10 million small business owners and aspiring entrepreneurs. In addition, millions more entrepreneurs have used the network as an informational resource for answers to questions as simple as how to get a business license or where to get an employer identification number.

ASBDC urges the Subcommittee to fund our nation's SBDC network at its currently authorized level of $125 million in the fiscal year 2004 Commerce-Justice-State Appropriations bill. The Association recognizes the difficult funding choices that the Subcommittee must make in these difficult times, and that ASBDC's recommendation represents a significant increase in the current funding level for the SBDC program. However, America's SBDC network can help our country recover from its current economic stagnation, create desperately needed new jobs, and generate the additional Federal revenues needed to reduce the budget deficit.

First, it is important to note that Federal funding for the SBDC network generates more revenue for the Federal treasury than it costs the taxpayer. The President's fiscal year 2004 Budget points out that an independent evaluation of the SBDC program indicated that each $1 spent on SBDC counseling resulted in $2.78 in tax revenues. The SBDC program generated an estimated $182.9 million in Fed-

eral revenue in 2001—an excellent return for a Federal investment of $88 million for the nationwide SBDC program.

In addition, America's SBDC network has a proven record of creating jobs and generating growth for America's small businesses. At the beginning of the most recent recession in 2001, as large corporation after large corporation announced layoffs, long-term counseling clients of the SBDCs added 46,688 new jobs, saved 34,215 existing jobs, started 12,872 new businesses, increased sales by $3.9 billion, and saved an additional $4.3 billion in sales. In addition, SBDC long-term counseling helped small businesses obtain an estimated $2.7 billion in financing in 2001. That means every dollar spent on the operation of the SBDC network leveraged approximately $15.89 in new capital raised by long-term SBDC clients in 2001.

Based on its record over the past 10 years, with funding of $125 million our nation's SBDC network could help SBDC long-term counseling clients to:

—create an estimated 111,744 new full time jobs;
—increase sales by an estimated nine billion dollars;
—produce an estimated $266 million in additional revenue for the Federal government; and
—produce an estimated $397 million in additional tax revenue for State governments.

Federal funding for the national SBDC network is an investment in the job creation potential of America's small business sector—the engine of our nation's economy. Today, job creation by small businesses has declined as America's entrepreneurs struggle in a sluggish economy. Initial weekly unemployment claims have been above 400,000 for the past eleven consecutive weeks—a clear indication that the economy is still struggling to recover from recession. In fact, 2001 and 2002 were the worst two consecutive years of job creation in the American economy since the 1950's.

America's SBDC Network can help the small business sector of our economy generate jobs again, but we need the resources to do the job. Federal funding available for distribution to the SBDC program decreased between fiscal year 1994 and fiscal year 2004 (after accounting for inflation, earmarks and the establishment of the SBDC program in Guam and American Samoa)—while Federal government receipts increased by 26 percent in constant dollars. In addition, as a result of the 2000 Census, 24 States—including Kentucky, Maryland, New Mexico and Wisconsin—are subject to receiving less Federal funding for their SBDC programs than they received in 2001—simply because their populations did not grow as fast as other State populations.

There is room in the Federal budget for increased resources for our nation's SBDC network. For example, the Small Business Administration (SBA) Budget proposal for fiscal year 2004 calls for increasing the SBA's Salaries and Expenses account to $219 million. That is an increase of $57 million (35 percent) compared to fiscal year 2002, and an increase of $10 million (5 percent) compared to the SBA's fiscal year 2003 Budget proposal. However, the SBA's Budget proposal calls for cutting the SBA Non-Credit Business Assistance account to $141 million in fiscal year 2004. This is the account that funds SBDCs and other programs that provide direct assistance to small businesses. For those programs, the SBA's Budget proposes to cut $26 million (20 percent) compared to fiscal year 2002, and $3 million (2 percent) compared to the SBA's fiscal year 2003 Budget proposal. Funding for SBA can be more wisely spent on direct assistance for small businesses rather than on administrative overhead.

I urge you to consider that Federal funding for the SBDC network is now more important than ever, as State governments across the country—including possibly Colorado, Hawaii, Kentucky, Maryland, New Hampshire, Texas, Vermont, Wisconsin and others—are cutting back on their contributions to the SBDCs. This is not because of lack of support for the SBDC program, but rather because of the revenue crises faced by State governments across the country. Unless Federal support for the national SBDC network is able to make up for cuts in State funding, SBDC program capacity across the United States will have to be severely cut back. Counselors will have to be laid off and service centers will have to be closed. The job creation and economic development activities of the SBDC network will be curtailed proportionately—at the very time that the economy is in need of a stimulus.

Recent and pending state budget cuts in SBDC funding will assure that America's Small Business Development Center network will contract even further this year without a significantly increased federal appropriation. Rural areas which have unique economic development needs have already been adversely impacted by the closing of centers and the laying off of counselors. Unlike other federal management and technical assistance programs, federal dollars appropriated to the SBDC program leverage roughly three additional non-federal dollars. The decline in state re-

sources as result of the crisis in state budgets cannot possibly be made up from private sector sources in the current economic climate. The Federal government needs to recognize the growing financial plight of the SBDC network in these trying economic times. If the Federal government does not allocate resources to the SBDC program at a level approximating $125 million for fiscal year 2004, the management and technical assistance needs of tens of thousands of small firms will go unmet and thousands of private sector jobs will likely be lost. The resulting decline in economic activity will surely have a significantly negative impact on state and federal budgets. The remarkable infrastructure of over 900 SBDC service centers developed over the past twenty-three years will deteriorate even further as more service centers are closed and dedicated counselors are laid off.

The work of America's Small Business Development Center Network is constantly being recognized by others. The Bill J. Priest Institute for Economic Development, a Division of the Dallas County Community College District, was the only recipient of the Texas Award for Performance Excellence in 2002. The award is patterned after the Malcolm Baldrige National Quality award and recognizes Texas organizations that excel in world-class management, achievement, and performance excellence in applying quality and customer satisfaction principles. A critical component of the Institute is the Dallas Regional SBDC. NAMTAC, the National Association of Manufacturing and Technical Assistance Center's, presented its 2002 Outstanding Project of the Year Award to the New York State SBDC for its efforts to help small businesses recover from the September 11, 2001 terrorists attack in that state. The Maine SBDC program late last year was awarded the Margaret Chase Smith Maine State Quality Award. This award recognizes organizations for performance excellence based on criteria corresponding to the Malcolm Baldrige National Quality Award.

In June of last year Secretary of Commerce Evans presented the Black Hawk College Export Trade Center, a special component of the Black Hawk College SBDC, with the President's "E" Award for Exporting Excellence. This prestigious award was created by President John F. Kennedy to recognize U.S. Businesses or organizations that have demonstrated outstanding growth and innovation in exports or export service. ASBDC is proud of the accomplishments of its members and their capable and committed personnel.

The Subcommittee's consideration of fiscal year 2004 funding for the SBDC program comes at a critical time for our nation's economy. Small businesses generate 52 percent of Gross Domestic Product, represent 99 percent of all employers and employ 51 percent of all private sector employees. During the past decade small businesses created roughly 70 percent of net new jobs in our economy. But all is not well with the small business sector. The most recent data available from SBA's Office of Advocacy finds that in 2001 small business bankruptcies nationwide increased nearly 13 percent over the previous year. No doubt, newer national figures will show those numbers further increasing. The majority of small business owners have never received any formal entrepreneurial training. The majority has never managed a business during an economic downturn. The need for management and technical assistance within the small business sector is greater today than ever before. The Department of Labor confirms that when unemployment rises, self-employment rises.

There are 23 million small business owners in the United States, and the Kauffman Foundation estimates that one in 10 adult Americans is seeking to start his or her own business. Forty percent of SBDC clients are women (SBDC's served over a quarter million female clients last year) and 22 percent are minorities. Demand for entrepreneurial services among these constituencies is exploding.

SBA figures for fiscal year 2002 show that SBDC counseling cases and training attendees combined increased from 610,000 in fiscal year 2001 to 650,000 in fiscal year 2002 despite an increase in federal funding of less than $100,000. These client numbers represent real people, your constituents, individuals, many with families, and mortgages, tuition payments and dreams. They are real people like Dr. Harris Goldberg, a chemist from Hillsborough, New Jersey who was featured in a December 16, 2002 article in the Wall Street Journal. Dr. Goldberg had been laid off, decided to seek assistance at his local SBDC and now has his own successful firm providing employment to others.

If we are to have any chance of growing this economy at the level needed to provide jobs and enhance federal revenues, there must be a clear determination by Congress to provide the resources to increase the service capacity of the SBDC program. ASBDC appreciates the Subcommittee's support for the SBDC network in past years. I urge you to support an appropriation of $125 million for our nation's SBDC network in the fiscal year 2004 Commerce-Justice-State Appropriations bill. Thank you.

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

CZM Grants to States—$80 million

CZM Program Administration—$7.5 million

Non-point Pollution Implementation Grants—$15 million

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. Increased funding for this program in fiscal year 2004 would advance protection of coastal, ocean, and Great Lakes species and their habitats; maintain the natural shoreline such as beaches, dunes and wetlands; and enhance scientific research and education, while allowing for certain economic growth.

Many Conservancy chapters already pursue mutual goals with state CZM programs. We are working to strengthen these partnerships in light of our heightened emphasis on conserving freshwater, coastal, and marine biodiversity.

National Estuarine Research Reserve System

Operations—$18 million

Procurement, Acquisition and Construction—$15 million

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 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.

We work closely with New Hampshire's Great Bay, Florida's Apalachicola Bay, Alaska's Kachemak Bay, South Carolina's ACE Basin, and Mississippi's Grand Bay reserves. As preserve managers, we at the Conservancy know first hand that the NERRS implements solid science to inform communities about how coastal ecosystems function, how humans affect them, and methods for improving their condition.

National Marine Sanctuaries—$38 million

The Nature Conservancy urges the Committee to fund the National Marine Sanctuary Program at their fully authorized level of $38 million in fiscal year 2004 and we support the President's funding request for $10 million for Procurement, Acquisition & Construction for the Sanctuaries. 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.

The Conservancy is currently working cooperatively with the NMS program and the National Marine Sanctuary Foundation to develop effective volunteer programs for all of the Sanctuaries to better leverage federal investments with the "sweat equity" of those thousands of committed volunteers across the country. We are also working with the Monterey Bay NMS to determine overlapping goals and opportunities for collaboration as the sanctuary reviews its management plan. Finally, our most extensive experience has been with the Florida Keys NMS where their management plan, developed in cooperation with the state of Florida and the Sanctuary Advisory Committee, is being implemented.

Coastal and Estuarine Land Conservation Program—$60 million

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 Nature Conservancy supports a significant increase in funding ($60 million) for the CELCP in fiscal year 2004.

In addition, we have identified four high-priority projects for CELP funding in fiscal year 2004:

—Crow's Nest (VA)—$4 million
—Gustavus Land Access and Enhancement (AK)—$1.5 million
—Amsterdam Beach (NY)—$3 million
—Ingleside (TX)—$500,000

Fisheries Habitat Restoration—$20 million

The Nature Conservancy strongly supports NOAA's coastal habitat restoration efforts, and recommends funding levels of $20 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 seed money to local communities across the country for the restoration of vital habitats including wetlands, seagrass beds, mangroves, anadromous fish spawning areas, and coastal rivers. Additionally, it would increase the CRP's geographic scope and the 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 meaningful, on-the-ground restoration of freshwater, coastal, and marine habitat. Since partnering with the CRP in 2000, we have already directed $1 million to community-based projects in Florida, New York, Connecticut, North Carolina, Delaware, Virginia, California, and Texas. With one year remaining in our national partnership, we are excited about what lies ahead.

Pacific Salmon Recovery Program

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 shown 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 Funding for Pacific Salmon Recovery), and in the Northeast ($30 million for an equivalent Atlantic Coastal Salmon Recovery Fund), is now 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 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. The time is right to establish a similar approach and complementary funding for USFWS and NMFS.

Marine Protected Areas—$5 million

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 es-

tablish MPAs and identify and protect biodiversity within them in places such as the Florida Keys, the Exuma Cays Land and Sea Park in the Bahamas, and Kimbe Bay in Papua New Guinea.

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—$30.25 million (total)

The Nature Conservancy supports the President's request for $28.25 million in fiscal year 2004 for activities that benefit coral reefs, including:

—National Ocean Service—$16 million + $2 million
—National Marine Fisheries Service—$11 million
—Ocean and Atmospheric Research—$500,000
—NESDIS—$750,000

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.

The Conservancy urges the Committee to add to the President's request $2 million for grants to support on-the-ground conservation efforts. The availability of a small pot of funds that could be made available as grants to community-based efforts to address land-based sources of pollution or to support collaborative efforts to identify and designate Marine Protected Areas would be of substantial benefit to implementing the Coral Reef Task Force Action Plan.

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.

Estuary Restoration Program—$1.2 million

The Nature Conservancy supports the President's request of $1.2 million for NOAA in fiscal year 2004 to carry out their duties related to this 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 habitat that has been degraded by population growth, dams, and pollution. The Estuary Restoration Act emphasized the need for a centralized source of information on restoration activities, that provides for a consistent monitoring methodology that supports an iterative process and meaningful measures of success.

International Conservation

Technical Assistance under CZMA—$1 million

International Cooperation under NMSA—$500,000

We recognize the significant accomplishments of the National Ocean Service (NOS) over the past several years in developing international capacity for integrated coastal management and marine protected area management particularly in Asia, the Pacific, and the Caribbean. NOS provides critical environmental leadership, for example: in the development of the recently ratified Protocol on Specially Protected Areas and Wildlife (SPAW) in the wider Caribbean region, its support of the International Coral Reef Initiative and the Global Coral Reef Monitoring Network, its leadership of IUCN's World Commission on Protected Areas (Marine) and especially extensive preparations for the marine program of the World Parks Congress in September 2003. We encourage increased allocation of resources toward these and other international activities with $1 million added to appropriations under Section 310,

Technical Assistance, of the Coastal Zone Management Act, and $500,000 added to appropriations under Section 305, International Cooperation, of the National Marine Sanctuaries Act.

PREPARED STATEMENT OF THE AMERICAN BAR ASSOCIATION

I am Jonathan Ross a lawyer in private practice with the Manchester, New Hampshire law firm of Wiggin & Nourie. This testimony is submitted at the request of the President of the American Bar Association, Alfred P. Carlton, Jr., to voice the Association's views with respect to the fiscal year 2004 appropriations for the Legal Services Corporation and the Judiciary's Defender Services Program.

I submit this testimony in my capacity as Chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. This Standing Committee serves the ABA and the nation by examining issues relating to the delivery of civil legal assistance and criminal defender services to the poor. It maintains a close liaison with state and local bar association leaders, providing information and developing policy and initiatives on civil legal aid and indigent defense.

LEGAL SERVICES CORPORATION

The ABA recommends LSC's fiscal year 2004 appropriation be increased to $387.7 million.—The ABA is profoundly grateful for the Subcommittee's inclusion of the Harkin-Smith-Domenici amendment in the Senate's version of the fiscal year 2003 appropriation bill. This amendment increased LSC's funding by $19 million and was intended to prevent drastic funding cuts to legal aid programs serving 26 states. We are also grateful for the Subcommittee's hard work to ensure that half of that amount, $9.5 million, was included in the final version of the fiscal year 2003 appropriations bill.

As you know, the Corporation redistributes grants to local legal aid programs every 10 years using a formula based on the most recent census. This reallocation resulted in significant cuts to service areas in these 26 states, including Ohio, Mississippi, Pennsylvania, Missouri, Kentucky, Alabama, Texas, Wisconsin, Vermont, Louisiana, Illinois, West Virginia, Minnesota and Michigan. Because of the static nature of LSC funding and the 5.74 percent increase in the poverty population nationwide, even states whose poverty population (and LSC-eligible clients) remained the same or actually increased may have received funding cuts.

At present, however, no state is able to meet the current demand for legal assistance, as programs must continue to turn away eligible clients with all but critical legal needs. In addition to the increase in the number of eligible clients as a result of the increase in the national poverty population, almost every state has already experienced or expects significant decreases in supplemental funding provided through state legislatures and/or Interest on Lawyer Trust Accounts (IOLTA).

At the same time, various credible studies—state and national—continue to show that despite the combined efforts of legal aid programs and private bar pro bono attorneys, 80 percent of the legal needs of those in poverty go unmet. These people are substantially the "working poor" who encounter legal problems relating to family relationships, domestic violence, health, employment, housing and other basic life issues. Such hardships have only increased in scope and frequency since the terrorist attacks and as a result of the faltering economy. Now, with the mobilization of U.S. forces for the war in Iraq, there has been an increased demand for legal services among our servicemen and women, many of whom qualify for legal aid.

We understand that your Subcommittee faces many difficult funding choices right now. However, assuring access to our justice system for low-income individuals to resolve their legal problems peacefully is essential to preserving the rule of law. At this time, the ABA respectfully requests that the Subcommittee fund LSC at $387.7 million for fiscal year 2004.

The LSC has historically been grossly under-funded. In 1996, Congress reduced LSC's funding by 30 percent from $415 million to $278 million and required many reforms in the way the LSC operated and restricted the activities of its local program grantees. The LSC has fully implemented all the required reforms, insuring that local grantees focus on meeting the basic, everyday legal needs of the poor. The appropriation has increased modestly since 1996, to $338.8 million for fiscal year 2003, but this amount is less than half the funding, in constant dollars, that LSC received in 1980.

We estimate that, with inflation, the amount needed to merely bring LSC to pre-1996 levels would be $490 million. The ABA therefore urges Congress to restore LSC's funding to $490 million. In view of other pressing needs, we recognize that this cannot be accomplished at once, and ask the Subcommittee to increase LSC's

funding from the fiscal year 2003 level of $338.8 million to this amount over a three-year period starting with a $51.1 million increase in fiscal year 2004.

At the very minimum, the ABA urges the Subcommittee to provide at least $352.4 million for fiscal year 2004, as recently requested by the Legal Services Corporation. LSC's request represents an increase correlating to the increase in the poverty population reported by the 2000 census.

The Legal Services Corporation Plays A Vital Role in the Justice System.—For more than a quarter century, the Legal Services Corporation has been a lifeline for Americans in desperate need. For poor Americans, LSC-funded legal services programs have been there at times when they had nowhere else to go. These are just a few examples of the millions of people legal aid lawyers help every year:

—Alexander and his wife had to move to another state for health reasons. They were unable to sell their mobile home, and eventually the lender repossessed the unit. Later, a collection agency notified them that they still owed $12,000 on the note. At age 84, Alexander, who took pride in his good credit rating, wanted to do the right thing. He could not, however, pay the amount owed, nor could he afford an attorney. The local legal services office was able to assist him in obtaining a settlement agreement. He paid the settlement amount and was able to keep his good credit rating. He has returned to the work force part time and is caring for his ailing wife.

—Mark, 38 years old, was dying from non-Hodgkin's lymphoma. Conventional chemotherapy had helped, but he needed a special type of bone marrow transplant to ensure that the lymphoma would not recur. Without the procedure, his doctors predicted that he would have only one year to live. Medicaid denied the procedure, claiming that this type of transplant was not a covered benefit even though it is considered the current standard of care for the disease. Mark's legal services attorney successfully argued that the denial was improper. The transplant was successful, and Mark is now home and seeking employment.

The Corporation, formed in 1974 with bipartisan Congressional support and the endorsement of the Nixon Administration, was created to ensure that all Americans have access to a lawyer and the justice system for civil legal issues regardless of their ability to pay. Today, this is more important than ever. A weak economy has created pressing new legal needs for many Americans who have lost employment or suffered other setbacks. According to the 2000 census, more than 36 million Americans live in poverty, making more than one in six Americans eligible for LSC-funded representation.

The National Legal Aid Program Merits Strong Congressional Support Because:

—*LSC-funded programs provide basic legal services for poor Americans in every Congressional District in the country.*—LSC disburses 95 percent of its annual federal appropriation to 161 local legal aid programs serving low-income individuals and families in every county and Congressional District in the country. Boards consisting of leaders in the local business and legal communities set the priorities for and oversee these programs, which are required by law to provide basic legal services to the poor.

—*LSC-funded legal aid lawyers save and protect American families.*—Local legal aid programs make a real difference in the lives of millions of low-income American families by helping them resolve everyday legal matters, including family law, housing, and consumer issues, and by helping them obtain wrongly denied benefits such as social security and veterans' pensions. LSC-funded programs often provide assistance to those who suddenly qualify and need legal assistance, such as when natural or national disaster strikes; LSC-funded programs were instrumental in assisting September 11 victims and families. Many low-income military families qualify for legal aid, and seek help with such matters as estate planning, consumer and landlord/tenant problems and family law.

—*LSC-funded programs are the nation's primary source of legal assistance for women who are victims of domestic violence.*—Legal aid programs identify domestic violence as one of the top priorities in their caseloads. While domestic violence occurs at all income levels, low-income women are significantly more likely to experience violence than other women, according to the U.S. Bureau of Justice Statistics. Recent studies also show that the only public service that reduces domestic abuse in the long term is women's access to legal aid.

—*The White House, the Congress and the American people support the LSC.*—President Bush supports funding for the LSC, recognizing that "[f]or millions of Americans, LSC-funded legal services is the only resource available to access the justice system." A bipartisan majority in Congress supports LSC; the Harkin-Smith-Domenici amendment ultimately added $9.5 million to LSC's fiscal year 2003 budget at a time when many other domestic programs were being cut or flat-funded. The American public agrees that federal tax dollars should fund

LSC: a national poll reported in 2000 that 82 percent of those surveyed supported government-funded legal aid.

—*The private bar cannot replace the services provided by LSC-funded programs.*—The private bar actively encourages and organizes its members to provide pro bono legal services. Among many other efforts, the ABA's Standing Committee on Legal Aid to Military Personnel helps the military and the Department of Defense improve the effectiveness of legal assistance in civil matters to an estimated nine million servicemen and women and their dependents. However, a well-funded federal legal services program is essential to leverage other resources—human and financial—to help meet the legal needs of the poor. Without adequate federal funding, these non-LSC resources would be both less abundant and less effectively utilized—and, in many cases, would not exist.

CRIMINAL JUSTICE ACT: DEFENDER SERVICES PROGRAM

The ABA supports the request of the U.S. Judicial Conference for an hourly rate increase from $90 to $113 for compensation for panel attorneys who represent indigent defendants under the Criminal Justice Act. This modest increase is needed to continue to attract and retain competent panel attorneys. We also support the Judiciary's request for funds sufficient to increase the maximum hourly capital panel attorney rate from $128 to $157. The current capital panel attorney rate has not been raised since 1989, and now does not even cover overhead costs for many attorneys doing this most difficult work, work often done under highly stressful, emergency conditions. The Florida Supreme Court recently concluded that every capital case by definition involves "extraordinary circumstances and unusual representation." Without a fee increase, scores of qualified attorneys will simply stop taking capital cases.

CONCLUSION

The American Bar Association urges the Subcommittee to provide adequate funding for the Legal Services Corporation and the Defender Services Program. These two programs are essential for ensuring "equal access to justice" for all.

Thank you for your consideration.

PREPARED STATEMENT OF THE NATIONAL CENTER FOR VICTIMS OF CRIME

My name is Susan Herman, and I am the executive director of the National Center for Victims of Crime. I submit this testimony to urge members of the Subcommittee on Commerce, Justice, State and the Judiciary to raise the cap on the Victims of Crime Act (VOCA) Fund to $685 million for fiscal year 2004. In addition, I urge you to prevent the creation of additional earmarks off the top of the VOCA Fund.

The National Center for Victims of Crime is the leading resource and advocacy organization for victims of crime. We are well acquainted with the funding needs of the nation's crime victim assistance programs. Since its founding in 1985, the National Center has worked with public and private non-profit organizations and agencies across the country, and has provided information, support, and technical assistance to hundreds of thousands of victims, victim service providers, allied professionals, and advocates. Our toll-free information and referral Helpline keeps us in touch with the needs of crime victims nationwide. Through our day-to-day interactions with our members and with the 7,800 crime victim service providers in our service referral network, we are aware of the work they do and of the impact that funding decisions at the federal level have on their ability to meet the needs of victims. We also interact with crime victim service providers through our Training Institute, which offers training on a variety of issues to service providers throughout the country. In short, we hear from victims and service providers every day about the impact and importance of the VOCA Fund.

As you know, the VOCA Fund consists of fines and penalties imposed on federal offenders. The bulk of the money is distributed each year by formula grants to the states to fund both their crime victim compensation programs, which pay many of the out-of-pocket expenses incurred by victims, and victim assistance programs, such as rape crisis centers, domestic violence shelters, victim assistants in law enforcement and prosecutor offices, and other direct services for victims of crime.

Last year's $600 million cap on the VOCA Fund translated to a cut in funding for crime victim assistance programs of approximately eight percent. This eight percent funding decrease resulted from a change in the VOCA formula enacted in October 2001 as part of the anti-terrorism legislation, the USA PATRIOT Act, Pub. L.

107–56. That change increased the amount of VOCA Funds paid to states for their crime victim compensation programs, leaving less available for grants to victim service agencies.

The amount of VOCA money a state receives for compensation is limited to a percentage of what that state paid out in a given year. Previously, states received a reimbursement of 40 percent of what they paid out in crime victim compensation. Beginning in fiscal year 2003, that amount increased to 60 percent of what the state paid out. The increase in VOCA funds that states received for compensation programs limited the funds available for crime victim services. The USA PATRIOT Act had coupled the formula change with an incremental annual increase in the VOCA cap that would have offset the loss of funds for victim services. That annual increase mechanism, however, was stricken by language in the appropriations measures for fiscal year 2002.

The impact of that eight percent cut has been significant for programs already suffering from reduced private giving and state support. From around the country, programs have reported to us that they have had to:

—*Lay off staff, or reduce full time staff to part time.*—Uniformly, programs reported that they were already operating at bare bones levels. The only area left to cut is staff time, which directly reduces services available to victims. Many programs also reported that there were no similar agencies or services in their area to whom victims could turn. The following response from a Louisiana rape crisis center was typical: "We have already cut as many positions as we can without shutting down entirely. We counsel victims of sexual assault, and any cut will mean no counseling for those victims." In many instances, programs have only one or two paid staff, and the reduction in their time will necessitate elimination of extensive volunteer programs because there will be insufficient professional oversight and coordination.

—*Limit their geographic coverage.*—For instance, from Colorado, Michigan, and Virginia we heard from programs that had been serving victims in 5 to 10 counties; now they have had to pull back from service in the outlying regions, leaving those victims without services. Some programs serving rural victims can no longer reimburse mileage or phone costs for volunteer advocates who offer services throughout a large area.

—*Discontinue services for special populations of victims.*—In some places, victim assistance programs have recently conducted or been a part of needs assessments and strategic planning efforts, and thus have a clear picture of special victim populations which are not being adequately served. Many services that had been developed for special populations are being eliminated because of reduced funding. One program from Minnesota stated that their "immigrant and refugee program to sexual assault victims will be cut. The bilingual advocate for this program will most likely be laid off. The outreach to this population in our community has been building for the past 8 years. The trust and confidence from the community will be eroded. Most importantly, an underserved community will go unserved."

—*Discontinue services for secondary victims.*—For example, many battered women's programs, which had relied on VOCA funding to support services for the children who witnessed or sustained abuse, are having to restrict and even eliminate those services. A North Carolina shelter told us, "In [our] county there have been two domestic violence murders in 2003 one of which was a stalking case. The five children involved in those cases need our programs and we may not have the resources to serve them. Then what?"

—*Turn away crime victims.*—Victim service providers from Alabama, Massachusetts, and Nevada all reported that the numbers of victims seeking assistance, and the numbers of schools and other organizations seeking outreach programs, have increased at the same time the available funding has decreased. One North Carolina program noted, "County guidance counselors and medical professionals continue to identify and refer more and more children who are victims of family violence, sexual assault and sexual abuse due to the education provided by this agency to teach them how to recognize child victims/witnesses of domestic violence. Yet, we will not be able to offer our afternoon programming or summer programs to additional children until some of the current children enrolled in the program age out."

The effect of this year's cuts have been significant. The National Center for Victims of Crime is asking that the VOCA Fund cap be raised to $685 million for fiscal year 2004, to help programs make up for the loss in funding this year and enable them to begin to expand their programs. When we asked victim assistance programs about their spending priorities for any increase in funding, they reported the following needs:

—*Services to immigrant victims of crime.*—All over the country, there are limited services, or even a complete absence of services, for large groups of immigrant victims of crime. Such victims are often linguistically or culturally isolated. Without the availability of interpreters or bi-lingual service providers, such victims cannot access the services that may otherwise be available. Additionally, victims who come from a society where the police are not trusted, or a culture where sexual violence is unmentioned or domestic violence is condoned, often require a different approach to providing services. Effective victim services require ready access to service providers who are culturally knowledgeable and sensitive to these varying needs, and programs in Arizona, Georgia, Michigan, Mississippi, Nebraska, and Wyoming all listed providing services to immigrant victims as a priority.

—*Services to victims in rural jurisdictions.*—Too many victims in rural jurisdictions still lack access to basic services. In many parts of the country, victims are hundreds of miles from the nearest rape crisis center or battered women's shelter. Victim service providers in Alabama, Idaho, Kentucky, and Montana all reported a need to expand efforts to cover multi-county areas through the creation of satellite offices, the use of volunteers or staff to travel to victims' homes or other locations; or to increase the use of the Internet to serve victims in rural communities.

—*Assistance to victims with disabilities.*—One area of greatest need is in reaching and serving crime victims with disabilities: developmentally disabled victims, mentally ill victims, hearing impaired victims, and others whose disability makes them simultaneously more vulnerable to crime and less able to access existing services. Many service providers, including programs in Michigan, Minnesota and Pennsylvania, would like to expand their programs to provide appropriate services to such crime victims.

—*Assistance to elderly victims.*—A number of victim assistance programs noted a need to increase their services to elderly victims of crime, who often lack other forms of support and who may require a service provider to visit them in their homes. Victim assistance programs in Ohio, Pennsylvania, Texas and Wyoming all listed services to elder victims as a priority.

—*Assistance to teen victims.*—Many victim assistance programs are hoping to extend services to teen victims of crime, especially teen victims of dating violence. Providing prompt services to teen victims can significantly lessen the lifelong impact of crime, and programs in Indiana, Iowa, Minnesota, and Texas all described a need for services to teen victims.

—*Providing more timely services to victims.*—Victims in many programs are waiting weeks or months to get into counseling or support groups; victims in the criminal justice system may not be contacted until close to the trial stage. Victim service providers in Colorado, Massachusetts, New York, and Virginia all spoke of the need to hire additional staff to eliminate or significantly reduce such waiting periods for services.

—*Serving victims of non-violent crime.*—As the incidence of identity theft and fraud have increased, and the understanding of the impact of non-violent crime on victims has grown, many victim assistance programs, including those in Minnesota, Ohio, and Pennsylvania, expressed a desire to expand their services to include such victims.

—*Technology investments to enhance victim services.*—Many victim assistance programs reported that outdated computer equipment limits their efficiency. There is also a great need for case management software and assessment tools to help programs improve and evaluate their effectiveness in serving victims of crime. Programs in Kentucky, Pennsylvania and Texas all noted such needs.

Finally, while our first priority is to see the cap on the VOCA Fund raised to $685 million for fiscal year 2004, we also urge you to discontinue earmarks for federal positions off the top of the VOCA Fund. New earmarks on the Fund have been enacted over the last several legislative sessions, limiting the amount of money ultimately available to states to fund local programs. These earmarks provide for victim/witness coordinators in U.S. Attorneys' offices, for victim assistance in the FBI, and for an automated victim notification system at the federal level. Such expenditures are expected to be nearly $34 million in fiscal year 2003. These earmarks result in a significant decrease in funding available to help the vast majority of crime victims—victims whose cases are prosecuted and who are served at the state and local levels. Such federal positions may be warranted, but surely Congress can find other sources of revenue to support federal employees.

The most important action Congress can take to help this nation's victims of crime is to provide the funding for services and compensation programs that help them rebuild their lives. Congress' creation of the VOCA Fund in 1984 was a land-

mark action that fundamentally changed the way our society responds to victims of crime. We urge you to continue this great effort, by raising the cap on the VOCA Fund to $685 million, and resisting pressure to earmark the Fund. We must continue the progress of our national response to victims of crime.

PREPARED STATEMENT OF THE CALIFORNIA INDUSTRY AND GOVERNMENT CENTRAL CALIFORNIA OZONE STUDY (CCOS) COALITION

Mr. Chairman and Members of the Subcommittee: On behalf of the California Industry and Government Central California Ozone Study (CCOS) Coalition, we are pleased to submit this statement for the record in support of our fiscal year 2004 funding request of $500,000 from the National Oceanic and Atmospheric Administration (NOAA) for CCOS as part of a Federal match for the $9.1 million already contributed by California State and local agencies and the private sector. NOAA was under contract for approximately $700,000 to measure winds and temperatures during the CCOS field study. Currently, NOAA is under contract for $250,000 to participate in the CCOS data analysis and modeling. This request will partially replace funding already spent for NOAA's participation in CCOS.

Most of central California does not attain federal health-based standards for ozone and particulate matter. The San Joaquin Valley is developing new State Implementation Plans (SIPs) for the federal ozone and particulate matter standards in the 2002 to 2004 timeframe. The San Francisco Bay Area has committed to update their ozone SIP in 2004 based on new technical data. In addition, none of these areas attain the new federal 8-hour ozone standard. SIPs for the 8-hour standard will be due in the 2007 timeframe—and must include an evaluation of the impact of transported air pollution on downwind areas such as the Mountain Counties. Photochemical air quality modeling will be necessary to prepare SIPs that are approvable by the U.S. Environmental Protection Agency.

The Central California Ozone Study is designed to enable central California to meet Clean Air Act requirements for ozone State Implementation Plans (SIPs) as well as advance fundamental science for use nationwide. The CCOS field measurement program was conducted during the summer of 2000 in conjunction with the California Regional $PM_{10}/PM_{2.5}$ Air Quality Study (CRPAQS), a major study of the origin, nature, and extent of excessive levels of fine particles in central California. CCOS includes an ozone field study, a deposition study, data analysis, modeling performance evaluations, and a retrospective look at previous SIP modeling. The CCOS study area extends over central and most of northern California. The goal of the CCOS is to better understand the nature of the ozone problem across the region, providing a strong scientific foundation for preparing the next round of State and Federal attainment plans. The study includes six main components:

—Developed the design of the field study
—Conducted an intensive field monitoring study from June 1 to September 30, 2000
—Developing an emission inventory to support modeling
—Developing and evaluating a photochemical model for the region
—Designing and conducting a deposition field study
—Evaluating emission control strategies for upcoming ozone attainment plans

The CCOS is directed by Policy and Technical Committees consisting of representatives from Federal, State and local governments, as well as private industry. These committees, which managed the San Joaquin Valley Ozone Study and are currently managing the California Regional Particulate Air Quality Study, are landmark examples of collaborative environmental management. The proven methods and established teamwork provide a solid foundation for CCOS. The sponsors of CCOS, representing state, local government and industry, have contributed approximately $9.1 million for the field study. The federal government has contributed $3,730,000 to support some data analysis and modeling. In addition, CCOS sponsors are providing $2 million of in-kind support. The Policy Committee is seeking federal co-funding of $6.25 million to complete the data analysis and modeling portions of the study and for a future deposition study. California is an ideal natural laboratory for studies that address these issues, given the scale and diversity of the various ground surfaces in the region (crops, woodlands, forests, urban and suburban areas).

There is a national need to address national data gaps and California should not bear the entire cost of addressing these gaps. National data gaps include issues relating to the integration of particulate matter and ozone control strategies. The CCOS field study took place concurrently with the California Regional Particulate Matter Study—previously jointly funded through Federal, State, local and private sector funds. CCOS was timed to enable leveraging the efforts of the particulate

matter study. Some equipment and personnel served dual functions to reduce the net cost of the CCOS field study. From a technical standpoint, carrying out both studies concurrently was a unique opportunity to address the integration of particulate matter and ozone control efforts. To effectively address these issues requires federal assistance.

For fiscal year 2004, our Coalition is seeking funding of $500,000 from the National Oceanic and Atmospheric Administration (NOAA). Meteorological data were continuously collected during the CCOS field program. Extensive meteorological data collected as part of the field study can be used by NOAA to strengthen its ongoing research activities such as improving meteorological forecasting and providing information on weather conditions along the Pacific coast for use in U.S. weather models. In addition, CCOS provides data for research on air flows in complex terrain. The improved results obtained from this research have national applicability.

Thank you very much for your consideration of our request.

PREPARED STATEMENT OF THE MONMOUTH UNIVERSITY SCHOOL OF SCIENCE, TECHNOLOGY AND ENGINEERING

ESTABLISHMENT OF THE CENTER FOR COASTAL WATERSHED MANAGEMENT

The Department of the Interior's policies and practices reflect the fact that clean water is essential to all Americans. Water resources in the United States provide water to drink, water to irrigate crops, provide habitat for a diversity of fish and wildlife, as wells as provide for recreational opportunities such as fishing, boating, and swimming. However, the U.S. Environmental Protection Agency (EPA) has acknowledged that a majority of our watersheds have water quality problems that include contamination with pathogens or toxic chemicals, nutrient enrichment, fish and wildlife habitat loss, and invasive species. According the EPA, these problems continue to impair watersheds nationwide and prohibit the attainment of water quality goals. They conclude by stating that problems are complex and varied, and that governments working alone cannot solve all of them.

The Nation's fish and aquatic resources are among the richest and most diverse in the world and annually they provide ecological, social, and economic benefits to citizens and visitors. However, despite efforts to conserve fish and other aquatic resources, a growing number are declining and in need of special protection or management efforts in some part of their natural or historic range. According to the U.S. Fish and Wildlife Service (FWS), the reasons for these declines are linked largely to habitat loss or alteration and the impacts of harmful exotic or transplanted species. To move forward in efforts to conserve and manage aquatic resources and their habitats across the country, FWS acknowledges the need to take an ecosystems approach and form partnerships that promote collaboration among governmental agencies, organizations, and individuals.

Rationale for a Coastal Watersheds Approach

New Jersey is a state richly endowed with coastal resources. These resources support traditional fisheries and maritime industries as well as more contemporary businesses and rapidly growing new concepts in residential development. However, because of the rapid growth of both resident and tourist populations, the nation's most densely populated state faces enormous pressures balancing growth demand with the limited nature of its coastal resources.

The marine ecosystems within the state currently exhibit signs of stress and deterioration, as documented in the scientific and popular literature. As coastal use and development increase and coastal population continues to rise, impacts on the environment will become even more severe. Among the most important impacts of concern in the coastal zone are degradation and loss of habitats and the deterioration of water quality.

The health and vitality of New Jersey's marine resources are dependent upon the ability of governmental decision-making processes to protect and enhance the coastal environment and reduce environmental risk associated with unwise development and waste disposal practices. However, throughout the past decade New Jersey citizens have been disillusioned by what many perceive as an apparent inability to properly manage the coastal zone even after such events as beach closures, nuisance algal blooms, fish kills, contamination of habitats and organisms with pathogens and toxic chemicals, sewage treatment problems, depletion of fish stocks, and rampant coastal development resulting in nonpoint pollution problems in ocean waters, coastal bays, their tributaries and watersheds. A significant part of this frustration is due to the inability of multiple governmental units to collectively respond to very complex environmental phenomena.

THE CENTER FOR COASTAL WATERSHED MANAGEMENT

Progress To Date

Projects conducted by the Monmouth University Center for Coastal Watershed Management will assist federal, state and local agencies, communities, and organizations in achieving their goals and objects as they relate to coastal watersheds and their natural and living resources.

During the past year, as plans for the Center for Coastal Watershed Management were under development at Monmouth, a number of projects dealing with watershed research and education were initiated:

—Bacterial source tracking (BST) methodologies are being used for identification of specific sources of fecal contamination in local rivers, lakes, and estuaries.
—Rapid bioassessment (RBA) techniques are being used to characterize several streams and lakes in Monmouth County.
—Fish communities in Whale Pond Brook, Deal Lake, Wreck Pond and the Manasquan River Estuary are being characterized using passive and active fishery sampling techniques.
—Local watershed and community groups have been assisted with organization and implementation of stream cleanups and assessments of impairments to the Whale Pond Brook and Poplar Brook watersheds.
—STE has hosted or conducted numerous seminars and workshops dealing with coastal and watershed issues in conjunction with a variety of groups:
  —Atmospheric Deposition (NJ Sea Grant Program)
  —Nuisance Algal Blooms (NJ Sea Grant Program)
  —Early Life History of Fishes of the Mid-Atlantic (NOAA/NMFS)
  —Watershed Educators Workshop (NJDEP/Monmouth County)
  —Stormwater Management and Restoration Techniques for Coastal Ponds and Lakes (NJDEP/Monmouth County)
  —Volunteer Watershed Monitoring (NJDEP/Monmouth County)
  —Watershed Area 12 Congress (NJDEP/Monmouth County)
  —Water Monitoring Training Course (Monmouth County/YSI, Inc.)

Current and Future Objectives

In New Jersey, persistent coastal issues remain to be addressed, including nonpoint source pollution, headwaters destruction, deposition of pollutants into waterways, and habitat degradation. The State of New Jersey has acknowledged the need for creative, comprehensive solutions to watershed preservation, protection, and management. In 1997, Department of Environmental Protection (NJDEP) began implementing a statewide watershed management framework to provide a means to further restore and maintain the physical, chemical, and biological integrity of waters in the state using sustainable management principles that allow a more holistic, rather than site-specific, approach to most effectively protect water resources. The state's watershed management framework is based on three key components: a geographic focus; continuous improvement based on sound science; and partnership/stakeholder involvement.

The Monmouth University Center for Coastal Watershed Management (MU CCWM) will be housed within the School of Science, Technology and Engineering. The Center will spearhead the application of science and technology to the effective management of watershed resources in New Jersey's coastal environment. The Center, in partnership with the Monmouth County Health Department and with other regional organizations, will serve as a focal point for the development of leading edge approaches to the solution of problems facing local communities and decision-makers at all levels of government by:

—Promoting interdisciplinary studies of coastal watersheds by Monmouth University faculty, students, associates, and colleagues; and
—Fostering collaboration between citizens, watershed and community organizations, governmental agencies, local businesses, the scientific community, and other parties interested in watershed management and restoration.

Specific objectives of the Monmouth University Center for Coastal Watershed Management include:

—Strengthen teaching, research, and outreach at Monmouth University with emphasis on programs crossing university departmental boundaries as they relate to the environmental, social, and economic aspects of coastal watershed management.
—Provide a forum for the integration of knowledge from a wide array of technical disciplines in addressing watershed management issues.
—Establish an analytical capability to provide scientific information necessary for making informed watershed management decisions.

—Facilitate access to objective and scientifically sound information on effective techniques to protect and restore coastal and urban watersheds.
—Conduct community outreach programs highlighting the need for greater protection of our waters and reliable and effective ways of protecting and restoring coastal and urban watersheds.
—Conduct workshops and special programs for pre-college students and educators from local school districts.
—Conduct continuing professional education programs for practicing professionals in the form of short courses, workshops, and seminars.
—Involve undergraduate students in faculty-supervised independent research related to ecology, natural resource management, environmental and resource economics, and local environmental issues.
—Maximize University participation in the local, regional, and statewide watershed initiatives.

PREPARED STATEMENT OF THE AMERICAN MUSEUM OF NATURAL HISTORY

About the American Museum of Natural History

The American Museum of Natural History [AMNH] is one of the nation's preeminent institutions for scientific research and public education. Since its founding in 1869, the Museum has pursued its mission to "discover, interpret, and disseminate—through scientific research and education—knowledge about human cultures, the natural world, and the universe." It is renowned for its exhibitions and collections of more than 32 million natural specimens and cultural artifacts. With nearly four million annual visitors—approximately half of them children—its audience is one of the largest, fastest growing, and most diverse of any museum in the country. Museum scientists conduct groundbreaking research in fields ranging from all branches of zoology, comparative genomics, and informatics to earth, space, and environmental sciences and biodiversity conservation. Their work forms the basis for all the Museum's activities that seek to explain complex issues and help people to understand the events and processes that created and continue to shape the Earth, life and civilization on this planet, and the universe beyond.

Today more than 200 Museum scientists with internationally recognized expertise, led by 46 curators, conduct laboratory and collections-based research programs as well as fieldwork and training. The Museum's research programs are organized under five divisions (Anthropology; Earth, Planetary, and Space Sciences; Invertebrate Zoology; Paleontology; and Vertebrate Zoology), along with the Center for Biodiversity and Conservation (CBC). The Museum also conducts graduate training programs in conjunction with a host of distinguished universities, supports doctoral and postdoctoral scientists with highly competitive research fellowships, and offers talented undergraduates an opportunity to work with Museum scientists.

The Museum's Center for Biodiversity and Conservation, founded in 1993, is dedicated to enhancing the use of rigorous scientific data to mitigate critical threats to global biodiversity. The CBC draws on the strengths of the Museum's scientific, education, and exhibition departments to integrate this information into the conservation process and to disseminate it widely. It forges key partnerships to conduct conservation-related field projects around the world, train scientists, organize scientific symposia, present public programs, and produce publications geared toward scientists, policy makers, and the lay public. Each spring, the CBC hosts symposia that focus on conservation issues. In 2002, the symposium, "Sustaining Seascapes: the Science and Policy of Marine Resource Management," was co-sponsored by NOAA's Marine Protected Areas Center, along with other federal and private organizations, and examined the large-scale conservation of marine ecosystems, giving special consideration to novel approaches to the sustainable management of biodiversity and fisheries. The focus of 2003's symposium, held March 20–21, was on conservation issues related to increased ecotourism in Southeast Asia.

The Museum's vast collections are a major scientific resource, providing the foundation for the Museum's interrelated research, education, and exhibition missions. They often include endangered and extinct species as well as many of the only known "type specimens"—examples of species by which all other finds are compared. Within the collections are many spectacular individual collections, including the world's most comprehensive collections of dinosaurs, fossil mammals, Northwest Coast and Siberian cultural artifacts, North American butterflies, spiders, Australian and Chinese amphibians, reptiles, fishes, and one of the world's most important bird collections. Collections such as these are historical libraries of expertly identified and documented examples of species and artifacts, providing an irreplace-

able record of life on earth. They provide vital data for Museum scientists as well for more than 250 national and international visiting scientists each year.

An exciting chapter in the Museum's history will occur this spring when one of the flagship and most popular halls—the Hall of Ocean Life—reopens after an extension renovation. Drawing on the Museum's world-renowned expertise in Ichthyology as well as other areas of vertebrate as well as invertebrate zoology, the Hall will be pivotal in educating visitors about the oceans' key role in sustaining life on our planet. It will feature two new "Spectrum of Life" walls highlighting the extraordinary diversity of marine life, a completely renovated two-story diorama of the Andros Coral Reef, a spectacular sea floor slab from the late Jurassic Period, and panels showcasing fossil specimens and some of the earliest signs of life on Earth, as well as the beloved, and refurbished, 94-foot-long giant blue whale. The renovated Hall of Ocean Life, together with the new Halls of Biodiversity, Planet Earth, and the Universe and the rebuilt Hayden Planetarium (part of the new Rose Center for Earth and Space), will provide visitors a seamless educational journey from the universe's beginnings to the formation and processes of Earth to the extraordinary diversity of life on our planet.

With the reopening of the Hall of Ocean Life, the Museum will have a singular opportunity for public education about marine environments, and it will draw on its vast educational resources to do so. In its Halls of Biodiversity, Planet Earth, and Ocean Life, the Museum presents current science news through Science Bulletins—multimedia productions that bring the latest science news and discoveries to the public using high-definition video documentaries, kiosks, and the web. The Bulletins will present features on such issues as marine biodiversity report, ocean life discoveries, and more. In addition, the Museum's Education Department provides standards-based curricular materials and on-site programs for more than 400,000 students and teachers who visit the Museum in school and camp groups each year, as well as professional development programs for teachers, Moveable Museums that travel to schools and community sites, a model after-school program, award-winning online educational resources, and lectures, workshops, and field excursions for adult learners. The Museum's National Center for Science Literacy, Education, and Technology, launched in 1997 in partnership with NASA, employs innovative technologies to bring educational materials and programs to online audiences nationwide.

COMMON GOALS OF NOAA AND THE AMERICAN MUSEUM

Today, as throughout its history, the National Oceanic and Atmospheric Administration [NOAA] is committed to describing and predicting changes in the Earth's environment and to conservation and wise management of the nation's coastal and marine resources. It dedicates itself to forecasting environmental changes, providing decision makers with reliable scientific information, and fostering global environmental stewardship.

The American Museum shares NOAA's commitment to these environmental goals and to the scientific research, technologies, and public education that underlie them. Indeed, informed environmental stewardship and preservation of our planet's biodiversity and resources—in marine, coastal, and other natural environments and habitats—are integral to the Museum's most fundamental purposes. Museum scientists conduct research worldwide on conservation biology and habitat protection. Their investigations advance scientific understanding and public awareness of these vital issues. The Museum has also long been at the forefront of developing new research modes and methods, and today, throughout the science divisions and the CBC, AMNH investigators are exploring applications of GIS and remote sensing technologies to advance research pertinent to conservation and protecting threatened species and habitats.

The research programs of the CBC and the science divisions are enhanced by the Museum's research resources and technological capacity. New research tools—including molecular technologies, new collection types, innovations in computation, and GIS and remote sensing—are revolutionizing the way research can be conducted and data analyzed, as well as the way museum collections can be used and accessed by scientists, educators, policy makers, and the general public. The Museum has significant resources in these areas which it would bring to bear in its proposed partnership with NOAA. These include the following:

Molecular Laboratories.—The Museum's molecular systematics program is at the leading edge of comparative genomics and the analysis of DNA sequences for evolutionary research. It includes two Molecular Systematics Laboratories, with sophisticated technologies for sequencing and advanced genomics research. In these labora-

tories, more than 40 researchers in molecular systematics, conservation genetics, and developmental biology conduct their research on a variety of study organisms.

Frozen Tissue Collection.—The Museum is expanding its collections to include preserved biological tissues and isolated DNA in its new super-cold storage facility. This collection is an invaluable resource for research in many fields, including conservation biology, genetics and comparative genomics because it preserves genetic material and gene products from rare and endangered organisms that may become extinct before science fully exploits their potential. Capable of housing one million specimens, it will be the largest super-cold tissue collection of its kind. In the past two years, 15,000 specimens not available at any other institute or facility have already accessioned. At the same time, the Museum is pioneering the development of collection and storage protocols for such collections. To maximize use and utility of the facility for researchers worldwide, the Museum is also developing a sophisticated website and online database that includes collection information and digitized images.

Supercomputing.—Museum researchers now have onsite access to a 560-processor cluster—the fastest parallel computing cluster in an evolutionary biology laboratory and one of the fastest installed in a non-defense environment. This computing cluster, constructed in-house from scratch, represents one of the key achievements of Museum scientists who, over the last eight years, have taken a leadership role in developing and applying new computational approaches to deciphering evolutionary relationships through time and across species. Their groundbreaking efforts in cluster computing, algorithm development, and evolutionary theory have been widely recognized and commended for their broad applicability for biology as a whole. Indeed, the bioinformatics tools these Museum scientists are creating will not only help to generate evolutionary scenarios, but also will inform and make more efficient large genome sequencing efforts pertinent to biodiversity science as well as be applicable in other informatics contexts, in non-genomics areas of evolutionary biology as well as in other disciplines.

Remote Sensing and Geographical Information Systems Technologies.—The CBC houses a Remote Sensing/Geographical Information Systems (RS/GIS) lab which has had noted success since it was launched in the fall of 1998. Wise conservation policy requires effective knowledge of the distribution of species and ecological communities at local, regional, and global scales. Without this information, it is difficult to decide where to allocate scarce conservation resources. Remote sensing technologies can provide essential data on such things as land-cover and land-use, as well as sea surface temperatures and chlorophyll content. GIS makes it possible for scientists to compare and visualize the relationships among satellite and legacy data, raw standardized samples, and data obtained through ground truthing. Because it provides the database backbone than can connect field work to analysis, GIS is becoming an indispensable component in environmental data analysis and is thus revolutionizing work in conservation.

The CBC uses its RS/GIS technologies in biodiversity and marine reserve research in various ways—for example, to identify sites suitable for biological inventory; to provide supplementary quantitative and qualitative data in and around study sites (e.g. extent of habitat fragmentation); and to develop persuasive visual depictions and digital presentations for reports, publications, and meetings.

Building on the scientific strengths and resources outlined above, the Museum now proposes to launch, in partnership with NOAA, a basic and applied research initiative that employs the latest technologies to advance scientific understanding of resource management and stewardship issues for marine and coastal environments. The explosion of research technologies creates a unique window of opportunity for the Museum to develop new ways to integrate these state-of-the-art analytical tools into its biological and environmental research, as well as to present results to the public in its exhibition halls, websites, and educational programs. It is this intersection of research capability and technological opportunity that underlies the planned initiative.

The Museum proposes a multifaceted initiative to include work in areas of concern it shares with NOAA, such as the following:

Conservation research using GIS.—Museum vertebrate and invertebrate zoologists carry out ambitious field work and collection expansion programs throughout the tropical freshwaters of the globe, conduct biotic surveys, and explore marine ecosystems:

—Ichthyologists, for example, study the evolution, behavior, and conservation of the largest and most diverse populations—and one of the most endangered of all vertebrate groups—the fishes. Their work concerns not only discovery and classification of many still unknown species but also the protection and conservation of many species whose habitats and survival are at risk.

—Invertebrate zoologists are discovering many species of marine invertebrates. Field research in the Florida Keys, for instance, is documenting for the first time the extraordinary biodiversity of marine mollusks.

These researchers, in studying endangered ecosystems, marine species, and marine reserves, can use GIS to develop finer, tighter, more precise datasets. Also, GIS analysis enables them to ask more sophisticated and flexible questions, and to discover patterns, series, and gradations.

Biodiversity conservation.—CBC investigators are conducting important research field projects relying on the capacities of GIS/RS. They include:

—*Marine reserve networks.*—Researchers in the CBC's marine program are using GIS to analyze the physical, biological, and cultural processes affecting coral reef systems in the Bahamas. GIS is an indispensable tool in this research, because it allows the researchers to integrate maps with sets of biophysical and socioeconomic data and to create dynamic models for testing hypotheses about marine reserve networks in a spatially realistic framework.

—*Humpback whales in Madagascar.*—Collaborating researchers from the American Museum and the Wildlife Conservation Society are using GIS to track the migrations of Humpback whales in the western Indian Ocean region. They are creating a database that contains identification photos, biopsies, DNA sequences, and sighting information for hundreds of individual whales. Being able to identify individuals at the genetic level will enable researchers to unravel the complex migration patterns of Humpbacks with greater accuracy, thus improving conservation practices and increasing understanding of marine sanctuaries, the status of whales, their population structure, abundance, and recent trends in their distribution.

—*Biotic surveys and inventories.*—The CBC conducts floral and faunal surveys in ecologically threatened regions of Bolivia and Vietnam. Both countries are extremely rich in biodiversity that is threatened by high rates of deforestation and inadequate conservation planning. These biotic surveys provide essential data on the distribution and abundance of species, thus enabling researchers to analyze the role of climate change on land cover and develop plans to reduce threats to biodiversity. They also create an opportunity for Museum researchers to train local field biologists and conservation managers how to conduct surveys using remote sensing data and biophysical measures and how to apply results to the long-term management and conservation of biodiversity.

Collections data and access.—Museum researchers can use GIS to bring the Museum's vast collections alive and to increase exponentially the analyses that researchers can carry out for conservation research and decision making. By coupling GIS with the Museum's increasingly strong web presence to provide easy access, researchers worldwide will be able to pose more sophisticated questions and uncover new connections and relationships among the collections data. For example, by using georeferenced data, researchers can compare current maps with legacy data to trace environmental changes over time.

Public education and outreach.—As an added benefit of the proposed partnership with NOAA, the Museum plans to feature current NOAA-related science and discovery in the renovated Hall of Ocean Life as well as in its other educational programs and resources. With access to GIS applications and datasets, the Science Bulletins, for example, can promote public understanding of current science through global earth science-related datasets, maps, and more.

These research applications for GIS and other technologies demonstrate the Museum's enormous potential for using cutting-edge tools to help advance environmental forecasting, provide decision makers with reliable scientific information, and foster global environmental stewardship.

We therefore request $1 million to join in partnership with NOAA to advance basic and applied research that will strengthen resource management and conservation of marine and coastal environments and public understanding of these issues. In so doing, the Museum will support its participatory share with funds from nonfederal as well as federal sources. By generating critical scientific knowledge about the vital role of ocean and marine environments, we can advance our shared commitment to environmental stewardship so pivotal to our nation's and our planet's health.

PREPARED STATEMENT OF THE CITY OF GAINESVILLE, FLORIDA

Mr. Chairman: On behalf of the City of Gainesville, Florida, I appreciate the opportunity to present this written testimony to you today. The City of Gainesville is seeking federal funds in the fiscal year 2004 Commerce, Justice, State and Judiciary

Appropriations bill to assist with the following innovative projects the City is undertaking:

—The Joint Communications Project, to facilitate communication and data sharing between our urban area public safety and court system agencies. The project is an innovative crime data gathering, reporting and training system that will include a Geographic Information System (GIS), interactive Internet/Intranet applications, Crime Mapping and automated reporting through the use of laptop computers. The goal is to obtain accurate, timely information that will be shared with the appropriate criminal justice system entities and/or individuals and to focus efforts on training others in this highly technical area of law enforcement.

Joint Communications Project

The City of Gainesville seeks a federal funding strategy to implement an innovative crime data gathering, reporting and training system that will include a Geographic Information System, (GIS), interactive Internet/Intranet applications, Crime Mapping and automated reporting through the use of laptop computers. Though portions of this project have been attempted by other agencies, the Gainesville Police Department will become one of the first law enforcement agencies in the state to gather, analyze and provide information regarding crime and quality of life type incidents in such an efficient, comprehensive and automated manner.

The goal is to obtain accurate, timely information that will be shared with the appropriate criminal justice system entities and/or individuals and to focus efforts on training others in this highly technical area of law enforcement. At least one outcome of this effort will be the facilitation of communication and data sharing between our urban area public safety and court system agencies through the use of system-wide technology upgrades. The impact for the entire region is considerable, since this county serves as the regional center for much of rural north Florida's medical care, disaster management, and criminal justice services. The estimated funds needed to continue these efforts are $4.77 million.

The City of Gainesville, located in the north central portion of the State of Florida, is a diverse community of 110,000 and serves as the county seat for Alachua County and its additional 130,000 residents. Gainesville is the home of the University of Florida and serves as the regional business center for the surrounding, predominately rural counties. The community is served primarily by three law enforcement agencies, the Gainesville Police Department, the University Police Department and the Alachua County Sheriff's Office representing approximately 625 sworn men and women. The City of Gainesville has been a proven leader for many years in the field of law enforcement with innovative programs developed here being adopted by agencies from around the nation. Over the past 15 years the City has been dedicated to the principles of Community Oriented Policing and is one of the few agencies in the nation to apply its concepts department wide. The City and County serve as the regional center for much of rural north Florida's medical care, disaster management, and criminal justice services.

The need for this system is driven by the lack of availability of resources provided to tier 1 (population over 250,000) and tier 2 (seat of government) cities that have been funded by prior Federal initiatives. Although the region has a total population over 450,000 and geographic area of 8,500 square miles, it is not within the primary grant recipient categories in previous efforts. However, considerable efforts have been made to provide resources through other means and utilizing existing resources. The estimated funds needed to continue these efforts are $4.77 million.

This community faces problems endemic to communities nationwide. In a time where the individual on the street can obtain any amount of immediate and up to date information, the law enforcement officer must often make decisions based on information that is incomplete or out of date. The City of Gainesville has taken steps to attempt to partially remedy this situation by combining communications systems with area law enforcement in an effort allowing neighboring agencies to at least communicate by voice transmission. What we are seeking is the funding to take these initial steps to the next level providing the officer on the street with clear, complete, and accurate information about the situations they encounter. Included in this project is the benefit of data sharing between agencies working in this community allowing better informed decision making and improved distribution of resources. The various portions of this program are designed to work together to provide improved, more effective service to the residents of this community.

The project consists of:

—Equipping law enforcement, fire personnel and emergency medical responders with interoperable mobile data communications system. ($3.54 million), and

—System wide upgrades to improve data collection, incident assignment and dissemination of data to allow combined operations. ($1.23 million).

Communications interoperability and accurate, timely data collection are crucial to law enforcement and disaster response. Recent events such as acts of domestic terrorism, natural disasters, anti-war protests and mass casualty tragedies have highlighted the importance of coordinated interactions among public safety agencies from all levels of government. This ability to interoperate among public safety responders can be measured in lives saved. Interoperability consists of the ability of public safety personnel from one agency to communicate by radio and data transmission with personnel from other agencies on demand and in real time. To achieve interoperability requires improving public safety wireless communications by addressing each of the five areas of interoperability—coordination and partnerships, funding, spectrum, standards and technology, and security.

The Alachua County Sheriff, with funding from the City and County, operates a combined communication center constructed in fiscal year 2000 with $4.2 million in local funding. The center serves five law enforcement agencies, eleven fire rescue agencies, the county correctional facility, multiple government agencies of the city and county, a regional airport, and an industrial fire brigade. The local city owned utility, Gainesville Regional Utilities, provides an owned and operated 800 Mhz. Trunked Radio System (voice-only) to all of these agencies, along with another, the University of Florida's Police Department. This project has demonstrated the nadir of the interoperability standard promulgated by the FCC and other Federal agencies. The infrastructure for digital interoperability has also been built into the system, but thus far only one agency, because of its small numbers of units, has been able to make that next step into wireless data communications. The funds being sought for data interoperability will take the system to the next step by enhancing joint response capability, information sharing, data acquisition, intelligence gathering and dissemination, data security, and agency efficiency. While each entity alone and in joint projects such as the communications center has attempted to address these shortcomings, the high capital cost of these acquisitions is the major stumbling block to providing the final step to what is truly the pinnacle of interoperability achievement in a medium-sized community (225,000 total county population).

The utilization of a mobile data system has numerous advantages for the law enforcement officer as well as for the public. Removing the reliance on strictly verbal communication by way of radio and widening the information flow through direct data communications results in an enhancement of the ability to successfully resolve problems in the field. Laptop computers as in-car computer aided dispatch terminals significantly increase the ability for public safety officers to communicate.

Computers used in this manner can perform many important tasks. The mobile data computers can send and receive information between the officer and the dispatcher, including calls for service. Non-emergency calls are forwarded from the dispatcher to the appropriate unit without the need to transmit the information verbally over the radio, thus saving "air-time" for use in emergency situations and reducing the possibility of misunderstanding or receiving incorrect information. This also allows an increase in the amount of information the officer in the field has available in responding to situations. Additionally there is the potential for a decrease in the need for additional dispatchers even if the number of calls for service increases.

Through the use of mobile data computers officers and supervisors can find the location of other officers and check on their current status. Eliminating the need for officers to request this information from a dispatcher gives all members of the agency a complete picture of the availability of officers for calls for service. Officers can also refer to information about calls awaiting dispatch and information regarding previous calls for service. Officers would be able to view past and current activity within his/her assigned area. Obtaining pertinent information in a timely manner permits the officer(s) to make more informed strategic and investigative decisions. This accessibility to information would permit officers to better inform citizens and business owners regarding activities. In addition officers would be able to communicate vehicle-to-vehicle by sending messages from one officer to another. This eliminates the need for officers to use "air-time" with less important transmissions. Law enforcement officers can conduct computer checks on wanted persons and stolen vehicles without having to tie up a dispatcher. This allows officers to check a large number of persons and vehicles, which can significantly increase the number of people who are arrested for warrants and the number of recovered stolen vehicles. A single dispatcher can only handle one (1) request at a time, while the computer system can handle numerous requests at the same time.

In a time where crime knows no geographical boundaries, the ability to easily share timely information between differing agencies is of great importance. The abil-

ity for field officers to share information is a growing concern. Incidents spill across jurisdictional boundaries and there is an increasing need to share resources between agencies. The widening of the data pipeline to the field officer allows more flexibility and increases the amount of information readily available. The use of mobile data computers would allow increased and easier information sharing which should improve the ability of officers to respond to most situations.

PREPARED STATEMENT OF THE HOOPA VALLEY TRIBE

He Yung: my name is Clifford Lyle Marshall, Chairman of the Hoopa Valley Tribe. The Hoopa Valley Tribe is located in Northern California and in the County of Humboldt. Our treaty was signed providing the whole Hoopa Valley as a reservation. It was not until 1876 that an executive order was signed acknowledging this treaty. Since first European contact the culture and tradition remains to this day.

The culture of the Hoopa Valley People is a way of life. Our ceremonial dances are healing or payer dances. These dances are held for spiritual meaning performed at sacred places, to balance the world. The Hoopa Valley People lived in harmony for over 10,000 years prior to European Contact. We had our own laws and rules that our people followed to live together and settle controversial issues by a form of payment.

Currently we have a Tribal Court and Tribal Police Department that operates on a daily basis and is utilized by the Hoopa and surrounding Communities. We do not receive any of the monies for fines or tickets issued on the Hoopa Valley Tribal Reservation this money is collected by the State of California. This is not helping our community as far as administering the law enforcement or Tribal Court Programs. Our community looses approximately $750,000 annually in fines that should be distributed back to the Hoopa Valley Tribe to offer more services to our community. Further, the county refers probationary matters, such as counseling and the like, to our Human Services Department without paying part of expenses. This is becoming costly and burdensome to the Tribe.

Law Enforcement operations consist of many diverse activities which are directed toward the attainment of Department objectives. Activities such as patrolling and issuing traffic citations are not objectives in themselves, rather, they are methods of achieving the real objectives of preventing and deterring crime, arresting criminal offenders, and preventing traffic accidents.

Law Enforcement needs:

—15 Full Time Officers (at $36,000 per year) = $540,000.00
—6 Part Time Positions (at $18,000 per year) = $108,000.00
—7 Dispatchers
—2 Full-time: × $22,880.00 = $160,160
—5 Part-time × $11,440.00 = $57,200
—Vehicles: 3 at 35,000 = $105,000
—Gas/maintenance/other = $50,000
—Communications = $12,000.00

Tribal Court Needs

A new building. The current building is over 78 years old. We are growing as a community and will need to grow to accommodate the needs as follows:

—Automated Case Management System: $26,000
—Personnel and Automated Court Services: $395,000
—Law Library: $15,457
—Structural Modification: $1,336,000.00
—Tribal Court Improvements: $43,800

TRIBAL COURT NEEDS ASSESSMENT

The Hoopa Valley Tribal Court's prospective improvements are listed below according to the level of priority within each category. We have included a brief summary of information, which follows each list. Please note that some of the items are listed below as autonomous functions and the court lists them in the interest of demonstrating their supplemental impact upon the court's ability to function effectively within our jurisdiction.

Unresolved Essential Tribal Court Needs

—Automated Case Management System $26,000.00
—Telephone System with Voice Mail

Our court currently operates on a hard paper file system with very little computer management backup. This creates a burden upon the court because it compromises

the court's ability to effectively manage its caseload. As our caseload begins to increase as a result of recent legislative activity, the daily operations of the tribal court will increasingly begin to diminish in the absence of the above listed requirements.

Our current telephone system is antiquated and problematic. Our Court employs the use of a single answering machine, which makes it necessary to personally manage all incoming telephone calls, which is often an ineffective use of the current clerk's time.

Funding Requirements for Personnel and Ancillary Court Services

Existing Positions

—Court Liaison Officer/Bailiff Subsidization $24,000.00

Proposed Positions

—Deputy Court Clerk $27,000.00
—Public Defender $45,000.00
—Probation Officer $40,000.00
—Mediator/Mediation Services Provider $70,000.00
—Associate Judge $60,000.00
—Legal Aid Provider $36,000.00
—Guardian Ad Litem $46,000.00
—Public Guardian $47,000.00

Our existing personnel have repeatedly proven themselves committed both to the Tribal Court and to its community. Although the budget has not previously allowed for any substantial increases, the tribal court staff deserves to be adequately compensated for their exemplary work. The Hoopa Valley Tribal Police Department has recently provided the court an opportunity to utilize a Court Liaison Officer who functions as a liaison between the court, the law enforcement department, and the community. The court would like to retain this myriad of services by supplementing the CLO salary in conjunction with the Hoopa Valley Tribal Police Department.

Law Library

—Three Computers $6,000.00
—One Computer Printer $257.00
—Subscription to Lexis-Nexis on line legal search engine $600.00
—Self Help Legal Aid Manuals $8,600.00

Our Court is required to provide a legal library to the public. This library currently consists of the entire Hoopa Valley Tribal Law and Order Code and the Indian Law Reporter. These often prove sorely inadequate in meeting our public's needs. We would ultimately like to provide three computers that would allow citizens to conduct legal research via a computer generated legal search engine. We would also like to empower our litigants to represent themselves using Self-Help manuals that we would provide in our library.

Necessary Structural Modifications

—Secured Parking Area $10,000.00
—Court Renovation $126,000.00
—Juvenile Detention Facility $585,000.00
—Youth Regional Treatment Facility $615,000.00

The court staff currently utilizes 90 percent of the court's available parking. This creates a problem for persons attempting to access the court. Our courthouse also needs a great deal of structural renovation. Our courthouse has had very basic maintenance services in the 38 years that it has existed. Our building requires a great deal of renovation and preventive maintenance in order to secure its continued existence for the coming years. We have a new juvenile justice avenue available in our court. The effectiveness of this juvenile court would be tenfold with the use of ancillary programs such as a detention facility and a treatment facility. The court is ready to assist juveniles and the families of juveniles in need, and these ancillary programs would greatly increase our effectiveness in doing so.

Tribal Court Improvements

Tables, Chairs, Desks $10,000.00
Fireproof File Cabinets $800.00
Metal Detector $5,000.00
Court Automobile $28,000.00

Some additional minor improvements such as these listed above would assist in the daily functioning of the court. Our courtroom needs plaintiff and defendant tables, and we are currently utilizing very old court furniture that belongs to the state

court. We need additional file cabinets with the ability to protect our files from damage, and security and convenience necessitate the additional listed items.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF UNIVERSITY FISHERIES AND WILDLIFE PROGRAMS

The National Association of University Fisheries and Wildlife Programs (NAUFWP) appreciates the opportunity to submit testimony concerning the National Sea Grant Program in the fiscal year 2004 budget of the National Oceanic and Atmospheric Administration (NOAA). NAUFWP represents approximately 55 university programs and their 440 faculty members, scientists, and extension specialists, and over 9,200 undergraduates and graduate students working to enhance the science and management of fisheries and wildlife resources.

The Office of Oceanic and Atmospheric Research (OAR) is the main research arm of NOAA, contributing to all other Line Offices and Strategic Plan goals and providing the scientific basis for national policy decisions in key areas. OAR supports a world-class network of scientists and environmental research laboratories, and partnerships with academia and the private sector. NAUFWP supports the President's fiscal year 2004 request of $380.6 million for Oceanic and Atmospheric Research.

The National Sea Grant College Program provides essential academic research, education, and extension services for the oceans community. Sea Grant research is critical to the maintenance and improvement of the nation's marine resources. We were concerned by the Administration's proposal in fiscal year 2003 to move the Sea Grant College Program to the National Science Foundation (NSF). While the NSF's record of accomplishment in basic research is unparalleled, their strength is not in the deployment of applied research, education, and extension—the very characteristics that have made the National Sea Grant College Program so successful. Unfortunately, the Sea Grant program has been under funded for many years. Therefore, NAUFWP strongly supports the maintenance of the Sea Grant Program in the NOAA budget, and urges Congress to appropriate $68.41 million for this program in fiscal year 2004.

NAUFWP supports the National Invasive Species Act Program, and the Marine Aquaculture Program, two partnership programs within NOAA that provide information to support policy and management decisions, increase knowledge of coastal and marine ecosystems, and provide the scientific basis for enhancing the Nation's marine economic sector. NAUFWP supports the Administration's $1 million increase for the NOAA Invasive Species Initiative, and the $2.6 million request for the NOAA Marine Aquaculture Program. We urge Congress to appropriate these amounts for fiscal year 2004.

Thank you for considering the views of universities with fisheries and wildlife programs. We look forward to working with you and your staff to ensure adequate funding for fish and wildlife research, education, and conservation.

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