

**DEPARTMENT OF TRANSPORTATION AND  
GENERAL SERVICES ADMINISTRATION:  
FISCAL YEAR 2002 BUDGET**

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**HEARING**

BEFORE THE  
SUBCOMMITTEE ON TRANSPORTATION AND  
INFRASTRUCTURE  
OF THE  
COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
ONE HUNDRED SEVENTH CONGRESS  
FIRST SESSION  
ON

OVERSIGHT OF THE PROGRAMS OF THE U.S. DEPARTMENT OF TRANSPORTATION AND GENERAL SERVICES ADMINISTRATION FOR FISCAL YEAR 2002

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MAY 10, 2001  
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ONE HUNDRED SEVENTH CONGRESS

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**DEPARTMENT OF TRANSPORTATION AND  
GENERAL SERVICES ADMINISTRATION:  
FISCAL YEAR 2002 BUDGET**

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**THURSDAY, MAY 10, 2001**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 628, Senate Dirksen Building, Hon. James M. Inhofe (chairman of the subcommittee) presiding.

Present: Senators Inhofe, Warner, Chafee, Baucus, Reid, and Smith [ex officio].

**OPENING STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. The meeting will come to order.

Today, the subcommittee will receive testimony regarding the President's budget for fiscal year 2002 for the Department of Transportation and General Services Administration.

I do have a statement. Rather than go into detail in the statement, I will place it into the record, because I want to get started on this. We have an unfortunate thing today. We have at the same time as this hearing, even though we timed this one first, we set this one first, we have the Senate Armed Services Committee where we have all three Service Secretaries up for confirmation. So I am going to be going back and forth. Senator Smith is on both committees also. So we will be trading back and forth. I will be trying to get Senator Reid or Senator Baucus or others who come along to Chair in our absence so we can just keep this hearing going.

Let me just mention one thing, since I am the only Republican here and confession is good for the soul, I would advise both of my colleagues over here that one of the things this President did was nobody knew who he was appointing for the very top key positions. I did not have any idea that Norm Mineta was going to be considered or was going to be interested in this job until I heard about it. So I immediately called and I said, "Norm, do you remember in the years that you were in the House the only Republican that came to all of your fundraisers and considered you among their best friends?" He said, "This must be Jim Inhofe."

[Laughter.]

Senator INHOFE. We are just so honored to have you in this position. I would say to my colleagues who perhaps have not worked as closely with him as I have, for the 8 years I was over in the House, I have never worked with anyone who was more dedicated and more committed and who worked harder than Secretary Mineta. So we are delighted to have you here.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE  
STATE OF OKLAHOMA

Today, the subcommittee will receive testimony regarding the President's budget request for fiscal year 2002 for the Department of Transportation and the General Services Administration. I understand that in recent years it has not been the practice of the subcommittee to conduct oversight on the Department of Transportation budget request; however as we approach reauthorization of TEA-21, I believe it is critical that we carefully scrutinize how the program is being administered. Likewise, the subcommittee has a responsibility to make sure that the stewardship of Federal real estate assets are being seen to and we welcome the opportunity to hear from GSA and the Courts on their space needs.

I want to extend a special welcome to Secretary Mineta because we served together on what was then the House Public Works and Transportation Committee. It was during that time that ISTEA [Intermodal Surface Transportation Efficiency Act] was enacted and Secretary Mineta was the chairman of the Surface Transportation Subcommittee. It is very fitting that you are now administering the second generation of ISTEA . . . I cannot think of a better qualified individual.

With that said, I want to advise you that there are some areas of the President's budget that has caused some concern with respect to what appears to be a diversion of funds from the TEA-21 formula. I look forward to hearing what you have to say about how this proposal will protect the delicate TEA-21 funding balance . . . and I know I do not need to school you on how delicate that balance is.

Also, as you are aware, the Environment and Public Works Committee has been very concerned with the progress of environmental streamlining implementation. Our disappointment with the proposed rule of last summer has not necessarily been abated. I hope that in your comments will give the subcommittee the assurances it seeks regarding this important TEA-21 reform.

Finally, I want today's hearing to be the first of many conversations we have over the next several month on laying the groundwork for reauthorization. I have some new ideas on how I believe we can ensure States have more money to spend on their infrastructure. I appreciate my views may not be shared by others but I believe that if we are going to continue to build on the progress that has been accomplished by ISTEA and TEA-21, we need to not shy away from bold ideas. Specifically, I want to explore the option of giving States the opportunity to opt out of a portion of the Federal highway program by keeping their gas tax dollars in the State and sending only that portion to Washington that is needed to fund national priorities. I recognized as someone who was taught at the feet of Chairman Bob Roe and Congressman John Paul Hammerschmidt this is a radical idea but one that I believe has merit and deserves discussion.

I am also pleased to have GSA Acting Administrator Thurman Davis to discuss GSA's Public Building program and Judge Jane Roth to update the subcommittee on the housing needs of the U.S. Courts. I had the opportunity to visit with Judge Roth yesterday and she highlighted for me the space requirements of the courts. As I told Judge Roth then, it would be my goal to work diligently with the courts and GSA to address those needs to the greatest extent possible.

With that, I will yield to Senator Baucus for his opening statement.

**OPENING STATEMENT OF HON. MAX BAUCUS,  
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman. I think we all have the highest regard for the Secretary. Each of us has known him in different capacities, in different times, different situations, but for a long period of time. And in each of those, he has just been one

super great guy. I first knew the Secretary, I hate to admit it, it was a good number of years ago, but we were both Watergate babies. We came to the Congress together in 1974, and I might say it was probably one of the best classes. We are very proud of our group.

Anyway, Norm and I worked on a lot of projects over in the House, particularly on ISTEPA, I might say, because he was very active in the Intermodal Transportation Efficiency Act. Was Bud Shuster the chairman then? I have forgotten.

Mr. MINETA. Bob Roe.

Senator BAUCUS. That is right, Bob Roe was chairman at the time.

Senator INHOFE. How could you forget that?

Senator BAUCUS. Well, it is pretty hard to forget Bud Shuster, too.

[Laughter.]

Senator BAUCUS. And then later on, he became Commerce Secretary, Transportation Secretary. It really shows that a lot of people have so much faith in Mr. Mineta in so many different capacities, so many different ways. He was elected to Congress, and then serving as Commerce and then Transportation Secretaries, and in different Administrations. It is quite a mark. I am thinking, frankly, of somebody from Montana years ago who was in somewhat the same capacity, and that was Mike Mansfield, former Senator representing Montana, who was appointed by President Carter to be Ambassador to Japan. And when President Reagan became President, President Reagan recognized that Ambassador Mansfield was such a solid person that he carried over Senator Mansfield to continue to be Ambassador to Japan. I think he is one of the best Ambassadors we have had to represent the United States of America. And Mr. Mineta is in the same capacity.

Mr. Chairman, this hearing though is about more than Secretary Mineta, so I will go on to the substance of the hearing.

The very basic point I want to make is that I deeply appreciate the ideas and the programs that the Administration is suggesting to improve our highway system. They are a lot of good ideas and I think that we should look at them very closely. But at the appropriate time. I very, very firmly believe that it does not make sense to open up TEA-21. If the programs suggested are adopted, that would mean that our States would receive about \$430 million less in direct highway funding. That is not something I think we should do.

I have worked very hard, as has Senator Reid, and I know you have, too, Mr. Chairman, on these highway bills. They have worked. They have worked well. I think because the highway users and Members of Congress know that we are going to take these up, spend a lot of time trying to figure out the formulas, the provisions, and then enact them, and not reopen these bills for another 6, 8, 10 years. And the same applies here with respect to the current highway program. It is working. It is working well. And if we start to reopen TEA-21, then many other groups are going to come in and say "Hey, what about me? What about our program?" And a lot of them are going to be very worthwhile programs. But, again, they take money away from the States under the formula.

That makes it difficult for States to plan. My State of Montana has a devil of a time, I might say, Mr. Chairman, trying to find the matching funds to match the Federal dollars that Montana receives. And if it is on again, off again—that is, if the amounts that Montana receives goes up and down like a yo-yo—as a consequence of different programs that we may or may not be enacting, that is, reopening TEA-21, it makes it very difficult for States to plan. It also makes it very difficult for contractors to plan. These jobs are not something you put together in a week or a month or a year. They take many years to plan. And not to belabor the point, but just to say that I feel very strongly, having worked with Senator Chafee, Senator Warner, in particular, Senator Byrd, Senator Graham, and others as the principal architects of TEA-21, that now is not the time. Next year would be the time to start looking at programs when we do reenact the next highway bill in the following year.

So, Mr. Chairman, I will stop at that point. I notice that Judge Roth is in the audience. I do not know if I will be able to stay for her testimony. But I have a very long association with Judge Roth with respect to our courts and the courthouses and the Administrative Office of the Courts, and certainly her husband, Senator Roth. They are two wonderful people. I just want to thank Judge Roth for the great progress we have made on this issue of how we finance and plan courthouse construction. I deeply appreciate the Judge's very good, hard work.

[The prepared statement of Senator Baucus follows:]

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Mr. Chairman, I would like to make an opening statement before Secretary Mineta speaks and then a separate one before our second panel.

I am pleased that for the first time before the Transportation Subcommittee, we will be hearing from our newest Secretary of Transportation—Norman Mineta. Mr. Mineta is well known to many of us. We had the opportunity to work with him not only at the Department of Commerce but when he served as chairman of the House Committee on Public Works during the development of the Intermodal Surface Transportation Efficiency Act or ISTEA. I welcome Mr. Mineta here this morning.

I'd like to start off this morning by mentioning how much TEA-21 has helped our Nation address our infrastructure needs and our employment needs. This is especially true in my State of Montana. TEA-21 has been a crucial tool for us. The bill is not perfect, but it's a very good bill that an overwhelming majority agreed upon, at the end of the day. Along with Senators John Chafee and John Warner, I was directly involved in drafting TEA-21 in the Senate. I consider it a priority to make sure that TEA-21 is implemented intact until it expires in 2003.

I must point out that the documents provided by the Department of Transportation assert that the Bush Administration's budget proposal actually funds TEA-21 intact. The Administration claims that their budget funds the guaranteed levels for surface transportation as prescribed in TEA-21. I do not agree. The Bush budget includes several new statutory proposals which, if enacted, would change TEA-21 in several fundamental ways. Taken together, these proposals have the effect of prioritizing research programs and discretionary grant programs at the expense of highway construction dollars to the States. Under this budget, the States would receive almost \$430 million less in direct highway construction funds than they would under TEA-21. I cannot and will not support proposals that would take critical highway construction dollars, guaranteed by TEA-21, away from the States and divert those dollars to other programs. When we enacted TEA-21 we said that we were putting the trust back into the Highway Trust Fund, and I'm not prepared to change TEA-21 in ways that would detract from that promise.

I can understand why the Administration feels the need to fund these programs. They have merit. They're good programs. In fact there are additional programs out there that are meritorious. However, all these worthy programs have one thing in common—they are not part of TEA-21 or at least not consistent with the prescribed

funding levels in TEA-21. Any deviation, regardless of its merit, is outside the scope of a bill that achieved a delicate balance. Any small change could open the door to an even bigger one.

I emphasize that I don't reserve this criticism solely for this year's budget proposal. I have been equally critical of budget proposals in recent years that only loosely resembled TEA-21. In fact, one thing I can say about this year's budget proposal is that it shows some restraint. Past proposals by the Administration have called for even fewer construction dollars to the States in exchange for other programs. Thankfully, those budgets were not enacted.

I'd like to quickly mention two other areas in which I intend to question the Secretary about after his statement. First is the concept of repealing all or part of the Federal gas tax. Bad Idea. If the 4.3-cent fuel tax is repealed, there will be terrible consequences to this country again.

I am against repeal for two main reasons. First, any repeal would undermine TEA-21 which is so important to economic development in Montana and throughout the country. Second, repeal of the gas tax will not reduce the price of gas at the pump.

On this subcommittee Senators Voinovich, Warner, Reid and I fought repeal on the Senate floor on three separate occasions last year. On each occasion, reason prevailed. There was no gas tax repeal. I hope that we can count on Secretary Mineta to help us prevent repeal if this issue comes up.

The next issue I'd like to speak about is environmental streamlining. To your credit, Mr. Secretary, you have made repeated statements regarding the need to streamline the process by which environmental approvals are obtained to construct new runways for airports. I applaud this initiative but I emphasize that equal attention should be spent on streamlining the approval process for highways. At present, the process for allowing highway projects to move forward is painfully long. The rule that was issued last year missed the mark. It is my hope that you will go back to the drawing board, as they say, and issue a regulation that will help States expedite the project approval process without and I emphasize without weakening environmental protections.

Thank you for being here today Secretary Mineta. I look forward to your remarks.

Senator INHOFE. Thank you, Senator Baucus.

I should have mentioned that we will have a second panel with Judge Roth, and I hold her in the highest esteem, as I am sure we all do up here, as well as Thurman Davis, who is the Acting Administrator of GSA. That will be Panel II.

Senator Reid.

**OPENING STATEMENT OF HON. HARRY REID,  
U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Thank you very much, Mr. Chairman. When you talked about the "unfortunate thing," I was surprised when you talked about the unfortunate thing in your mind today was the Armed Services Committee meeting at the same time we are meeting. I thought you were talking about the budget we were going to have to vote on.

Senator BAUCUS. We thought that was the confession of the soul.

Senator REID. Mr. Chairman, we all hold Secretary Mineta in the highest regard. I had the good fortune to serve with the Secretary as a Member of the House of Representatives and worked with him during the time that he was moving the last transportation bill. Like you, when I first heard he was being selected, I reached out to tell him that I hoped he would take the job. He is certainly qualified to do so. As I have indicated, and we have all indicated, there are few people as well qualified to handle the job as Secretary Mineta. And it is a difficult job that he has.

For example, Las Vegas has tremendous traffic problems with their being the fastest growing area and the fastest growing State. Just this week a new study by the Texas Transportation Institute

estimated that in 1999 traffic congestion cost \$78 billion in just wasted fuel and productivity. And to no one's surprise, the study confirmed that traffic congestion has tripled since 1982, with the average person now spending 36 hours a year stuck in traffic. I have experienced this, as I have indicated, in Nevada. We have growth that has changed the traffic patterns in Nevada.

As the new ranking member on this full committee, I take this issue seriously and look forward to working with Senator Baucus and this most important subcommittee on the TEA-21 reauthorization process.

One issue that I find we may need to take a look at is magnetic levitation. In this year's budget, there has been a decision made not to fund this and not to have funding that we have had in the past. I think, Mr. Secretary, this is something you need to take a look at. I just left an appropriations subcommittee hearing with Secretary Paige, who is the new Secretary of Education. I am very impressed with this man because he is saying we need to do things differently. I think in transportation you need to take a look at doing things differently. Carrying people 250 miles, we cannot continue doing that with cars and with airplanes. It is so inefficient to travel these short distances by airplane or by car. We have to look at something else. And the only area that I think that we can look—the highways are jammed, we cannot build more roads, we cannot build more airports—we need to look at ways of traveling on high-speed rail, and I think one of the ways we need to look is with this magnetic levitation, which was invented in this country but yet the technology, because of the Federal Government dropping the ball as we did in the 1970's, it is now being done in Japan and Germany.

So I would ask, Mr. Secretary, that you personally take a look at magnetic levitation, high-speed rail, because I think it is the only way that we can efficiently carry people for these short hops that most of the passengers are now being carried by car and by airplane. So I would hope that you would do that and report back to the committee at the subsequent time.

We cannot ignore transportation infrastructure problems generally. I know that you know as well as anyone within this Administration, if not better, that we cannot close our eyes hoping the problem will go away. So I look forward to a constructive year with this committee and this subcommittee, and you have to be an integral part of that, Mr. Secretary.

Thank you, Mr. Chairman.

[The prepared statement of Senator Reid follows:]

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Thank you Senator Smith for holding this hearing. I would also like to thank our witnesses on the second panel for coming Thurman Davis, Acting Administrator of the General Services Administration, and Judge Jane Roth. I look forward to working with both of you, and in particular to discussing energy efficiency in Federal buildings.

However, today I will focus on transportation.

Welcome Secretary Mineta. There are few people better qualified than you to lead the Department of Transportation and I am pleased that President Bush made such an excellent choice in your appointment.

That said, you have a tough job ahead of you. The importance of transportation issues is increasing thanks to growing public frustration over delayed flights, con-

gested roads, and overcrowded mass transit facilities. Our transportation system is bursting at the seams as demand overwhelms our infrastructure's limited supply.

Just this week, a new study by the Texas Transportation Institute estimated that in 1999 traffic congestion cost \$78 billion in wasted fuel and lost productivity. And to no one's surprise, the study confirmed that traffic congestion has tripled since 1982, with the average person now spending 36 hours a year stuck in traffic. I have experienced this trend firsthand in my home State of Nevada. Las Vegas, the fastest growing metropolitan area in the country, has seen the average traffic delay per person quadruple since 1982. In fact, one related study showed Las Vegas to have the second worst "congestion burden" in the Nation. And with continuing growth, this problem is only going to get worse.

As the new ranking Democrat on the Environment and Public Works Committee, I take my leadership responsibilities on this issue seriously, Mr. Secretary, and I look forward to working closely with you throughout the TEA-21 reauthorization process.

I would like to take this opportunity to raise one issue of particular concern. Our needs in transportation are enormous and we will have to find ways to address these needs while reauthorizing surface transportation programs in 2003. A critical piece of the solution will be more funding. We cannot solve our traffic problems without more and better roads. We also cannot solve our problems without substantially increasing our investment in mass transit to give commuters another transportation option. And we desperately need to invest billions of dollars in high-speed rail corridors across the Nation, not to mention magnetic levitation. And this does not even begin to touch on our aviation and coast guard needs. The bottom line, Mr. Secretary, is that more budgetary resources are going to be necessary to address our transportation problems, and I am concerned that the budget proposal this Administration put forth does not leave room for these needs in future years. I am concerned that once we pass giant tax cuts, there just won't be anything left for our other priorities.

Mr. Secretary, we cannot ignore out transportation infrastructure problems. You know that better than anyone and I hope that you will be a voice of reason within the Bush Administration, sounding the alarm on this issue. We cannot close our eyes and hope this problem goes away. We need to meet it head on.

Again, thank you for coming and I look forward to working with you very closely on transportation issues over the next few years.

Senator INHOFE. Thank you, Senator Reid.

Senator Chafee.

Senator CHAFEE. Thank you. I would just like to welcome fellow mayor and now Secretary Mineta. I look forward to your testimony.

Senator INHOFE. Senator Smith.

**OPENING STATEMENT OF HON. BOB SMITH,  
U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE**

Senator SMITH. Let me just say welcome, Mr. Secretary, a distinguished House colleague. I had the privilege of serving with you for I do not know how many years, I think six at least. Welcome. Good to see you here. How is it sitting in that cabinet meeting with all those Republicans?

[Laughter.]

Mr. MINETA. Fine.

[Laughter.]

[The prepared statement of Senator Smith follows:]

STATEMENT OF. HON. BOB SMITH, U.S. SENATOR FROM THE  
STATE OF NEW HAMPSHIRE

Thank you Mr. Chairman. I would like to extend a warm welcome to Secretary Mineta on his first appearance before this committee as the new Secretary of Transportation—it's good to see you again.

We are all aware of his vast experience with transportation issues from his days as the House committee chairman. I do want to commend you for the budget's full funding of TEA-21 guarantees. We all know how important full funding is because highways are the backbone to all other modes of transportation. For example, in

New Hampshire the Manchester Airport Access Road will serve the fastest growing airport in the country. The project is expected to cost \$75 million and construction will be completed by 2004. Another project in my State is the widening of I-93 in southern New Hampshire, which will cost \$280 million. This project will include park and ride lots, and express bus lanes serving travel to Boston, with construction beginning in 2003. Being a small State, with a relatively small allocation of Federal dollars, these major projects take a big chunk out of available funds—so my State needs every penny it gets and more.

As you know, TEA-21 provides that annual funding reflects actual gas tax receipts—RABA adjustment. Due to the strong economy, this budget contains \$4.5 billion more than what was estimated in TEA-21. I am pleased that this budget restrains from significant diversions of these funds to non-highway projects, as was the case in the past.

We are interested in taking a closer look at the new program proposals that are contained in this budget, but this committee has resisted any mid-course changes to TEA-21 in the past, and will continue to resist it during this Congress. For now, we want to work with you to be prepared to meet these needs in the next reauthorization bill that we will be crafting over the next couple years.

With TEA-21's continued funding increases, one of this committee's highest priorities is environmental streamlining. I was proud to have co-authored the provision in TEA-21 to make sure project construction is not delayed. I am working closely with Federal and State agencies in New Hampshire on a pilot project, the widening of I-93. This project is of the utmost importance to New Hampshire and me.

Over the next couple of years, this project will provide one model for how to raise issues early, work together on solutions, stay on schedule, and fully address all environmental standards. This issue requires leadership from the Secretary, and from the Federal Highway Administration.

I will certainly urge that the next Federal Highway Administrator makes environmental streamlining a priority. I am pleased to support the budget request for increased planning funds to implement environmental streamlining.

The President's budget highlights the TEA-21 innovative financing program. It provides \$123 million to leverage up to \$2.4 billion in Federal credit assistance for about \$7 billion in infrastructure investments.

We need to become better at innovative financing, because we cannot meet the Nation's tremendous infrastructure needs now and in the future with our old institutional mold for laying down the interstate system. I intend to continue my predecessor's efforts in this area by introducing a bill to allow the private sector to take a more active role in building and operating transportation infrastructure through tax-exempt bond financing.

I believe that increased private sector involvement in transportation infrastructure is imperative if we are to meet the needs of the 21st century. I hope this bill will receive full support from the Administration and my colleagues here on the committee.

Mr. Secretary, thank you again for coming here today, and thank you Mr. Chairman for holding this important hearing.

Senator INHOFE. Senator Smith, I mentioned before you came in that you and I both have this conflict with the confirmation of our Service Secretaries, so you and I will be trading off here.

I think it is kind of ironic, Secretary Mineta, that you are certainly one of the two architects of ISTEA and now you are coming in to administer the second generation. We are looking forward to that. We are pleased to recognize you at this time for any opening statement that you might have. If you could confine your opening statement to 5 minutes or so, your entire statement will be made a part of the record.

Senator REID. Mr. Chairman, before you leave, could I have permission to submit my questions in writing to the Secretary and have him respond in the next couple of days?

Senator INHOFE. Of course. During the course of this—

Senator REID. No. I am going to have to leave. I will submit them and ask the Secretary to get back to me.

Senator INHOFE. Yes. We will do that.

**STATEMENT OF HON. NORMAN Y. MINETA, SECRETARY OF  
TRANSPORTATION, DEPARTMENT OF TRANSPORTATION,  
WASHINGTON, DC**

Secretary MINETA. Mr. Chairman, Chairman Smith, members of the subcommittee, it really is a great pleasure for me to have this opportunity to be before you today and to have this opportunity to work with you on the challenges that face our Nation's transportation system.

First of all, I thought I was looking at a House committee as I was looking at all of my former colleagues here. But I have got to admit, the view is radically different from this side of the table as compared to that side. But I do look forward to working with all of you.

Transportation is key to our Nation's well-being, whether measured as economic growth, as international competitiveness, or as quality of life. A safe and efficient transportation system is essential to keeping people and goods moving and for cities and communities to be prosperous. Congestion and delay not only waste our time as individuals, they also burden our businesses and our entire economy with inefficiency and higher costs. So, transportation is vital to the productivity and, therefore, the success of virtually every business in America.

As a whole, the multi-modal transportation system of this Nation works well in maintaining the strong economic performance of the United States, and Congress deserves a great deal of the credit for this sustained good performance. Congressional enactment of TEA-21 and AIR-21 put in place levels of capital investment that will help improve safety and relieve congestion. The Bush Administration strongly supports and is requesting full funding of the guaranteed levels for surface transportation and for the authorized capital and operating levels for air transportation as part of the President's fiscal year 2002 budget.

The most fundamental challenge that we face is to get everyone working together in a spirit of partnership to solve these problems. So, as Secretary, I intend to devote the bulk of my energies to working across party lines, reaching across sectoral divides, and building consensus to achieve solutions.

Let me touch very briefly on several topics covered more fully in my written testimony.

First of all, safety. Without a doubt, the United States has an enviable transportation safety record. We lead the world in safety in many modes of transportation. Working together we can and will improve this record. Safety is the Administration's highest priority in transportation. Our 2002 budget includes \$7.3 billion for transportation safety programs, some 7.5 percent above fiscal year 2001.

The Administration's fiscal year 2002 budget request provides full funding for highway and highway safety programs at the level guaranteed under TEA-21. We will continue to work with State and local highway engineers and with the consulting and construction industries to provide guidance on ways to make the highway system safer.

And as it relates to motor carrier safety, we propose \$400 million for 2002. That represents about a 49 percent increase above 2001.

That increase is devoted to enforcement and infrastructure needs at our southern border.

Mobility.—When I took this job, I knew that a central challenge for the Department would be to address the gap between the demand for transportation and the capacity of our transportation infrastructure. So I want to discuss, in particular, the congestion problems that we have in highways. Our latest Conditions and Performance Report to Congress projects that by 2003 highway capital investment by all levels of government will reach the level of our “cost to maintain” scenario. Now this scenario projects the investment required to maintain the average physical condition of highways and bridges at current levels, while still allowing for some comparably attractive investments in capacity expansion.

Improving management of our resources.—While expansion of our transportation system capacity is necessary, we also need to make more efficient use of our existing infrastructure. The search for new technological and innovative solutions to our mobility challenges is well supported in the fiscal year 2002 budget.

Ensuring mobility for all Americans.—Despite the capacity challenges we face, many of us take the tremendous mobility options we have for granted. President Bush wants to address the mobility gap for Americans who do not have mobility options. The budget requests funding within the New Freedom Initiative for two new programs relevant to transportation to help integrate Americans with disabilities into the work force.

Streamlining the Environmental Review Process.—The Administration’s goal is to lessen the environmental effects of transportation, and the budget includes \$6.6 billion, an almost 8 percent funding increase, for these efforts. We are looking at ways to make the process of environmental review more efficient while ensuring environmental protection and concern for public sensitivity about noise, air, and water quality, other natural resources, and communities.

In conclusion, Mr. Chairman and members of the committee, the United States enjoys the safest and best transportation system in the world. Nevertheless, we face safety and capacity challenges. The funding requested in the President’s fiscal year 2002 budget, as well as the management and accountability improvements that we will make over the next year, will help us to meet these challenges.

So I look forward to working with all of you and with the Members of Congress over the coming year to ensure that a safe transportation system continues to support a strong economy and improve the quality of life for all of the American people. Thank you very much, Mr. Chairman. I am ready to take your questions.

Senator INHOFE. Thank you, Mr. Secretary. We have had an occasion to look at your testimony, your written submitted testimony, and there are some things of great interest to us. In there, you said, “Slow decisionmaking does not translate into better environmental results.” I think this goes to the heart of what we tried to accomplish in TEA–21. But I am disappointed that there is still no reasonable guess as to when the new Administration will be issuing a rule on environmental streamlining. I wonder if you have any ideas on when we can expect such a rule, and your thoughts

on that issue. I think probably environmental streamlining is a concern I have heard more than any single concern that people are facing right now.

Secretary MINETA. Mr. Chairman, because of the capacity challenges that we all face, trying to get projects from initiation to completion in as short as possible time is really a very large priority of our Department. It is a priority in which I am vastly interested. So the whole process is one that we want to address in a sensitive way that does not also impact in a negative way in terms of the environmental concerns that people have.

I think there are things that we can do in a departmental and administrative way. As an example, in the aviation field, when a decision is made to go ahead with a new runway—usually there is an FAA local team that is put together to take a look at that application. They look at it and nurture it, they go through the process, package it up, and then send it to Washington, DC, for the national FAA office to take a look at it. And then the national team goes through the process and deals with the issues. What I am now saying is, when we get those applications for local projects and there is a local team put together, that we superimpose on it the national team, so that we are working simultaneously rather than consecutively in order to cut down the time period.

I think the same thing with State environmental impact reports and Federal environmental impact statements. We ought to do those together so that they will be moving along in order to be able to cut down the time period and be able to deal with a lot of the mutual concerns at the same time.

Senator INHOFE. I think so, too. That will be music to a lot of ears around the country. What you might be thinking about, maybe for the record, is get as specific a time line as you would be looking at right now in terms of how we have been doing things and how we are going to be doing things in the future. Because I think that is a very important thing. I know that you are not prepared to do this right now, and you do not have the help that you need yet, but if you could do that, that would be helpful.

Secretary MINETA. I will submit that for the record.

Senator INHOFE. All right. That would be great. Mr. Secretary, I want to say also that I came over from the House to the Senate in 1994. Of course, I served with you for 8 years prior to that time in the Transportation Committee in the House, then I chaired the Clean Air Committee after I got over here, and it was not until this year. So in that interim period of time, 6 or 7 years, I was not really into the transportation issues as much. I was shocked in terms of our infrastructure needs, the congestion that is out there, and you mentioned also the gap between demand for transportation and the capacity of our transportation infrastructure. I am sure you are familiar with the Society of Engineers, "Report Card on the State of the Nation's Infrastructure." So you are coming in at a time that is going to be very difficult and at a time when we are going to have to do some acceleration and meet these needs. Do you have any thoughts about the changes that have taken place just since you have been out and are assuming this new position and how you are going to try to meet those increased needs?

Secretary MINETA. First of all, there are many areas I think where, through the use of technology, we can improve the use of the infrastructure we have. If I could use an example. In New York they were doing manual toll collection. They were doing 400 cars per-lane per-hour. Electronic toll collection was introduced and at that point they were doing 1,100 cars per-lane per-hour. Now that is up to close to 1,400 cars per-lane per-hour. So by going to a technology solution, using intelligent transportation systems, without additional lanes, which you could not have built in New York City, they were able to increase the through-put. I think there are a number of things of that nature that we should be able to do in terms of the use of technology, just by making better use of the concrete that is already there.

Airports.—All the airplanes want to take off between 7 o'clock and 10 o'clock. They all want to land between 4 o'clock and 7 o'clock in the evening. So we have this sort of two periods in which we have heavy use of runways. And then you, as a pilot, know, Senator, we have this vast period from let's say 11 o'clock until 3 o'clock in which there is not as heavy use of that concrete. Is there a way that we can move some of that traffic that is at the "dumb-bell" hours and move them to the "bar" in-between in order to get more efficient use of that concrete. I think that is what we have got to be doing without having to resort to necessarily more concrete. More concrete is still needed in many regions. But I think we also have to be looking at more efficient use of what we have there already.

Senator INHOFE. You are probably aware, Oklahoma is the first State to try this electronic tickets. It has worked very, very well. So we were the leader there.

One last thing and then I will ask Senator Smith to chair this meeting and recognize Senator Baucus. You have probably seen that there have been some recommendations by the American Road Builders and Transportation Association and other associations to increase Federal gas tax. At the same time, we hear people demanding that it be repealed altogether because of the high cost of fuel. Do you have any comments about that?

Secretary MINETA. Actually, as far as any repeal is concerned, Mr. Chairman, I would be in opposition to it. I think that is where the Administration is. Given our needs in terms of infrastructure, the continued income into the Highway Trust Fund would be required, and there would be no thought about repealing the gas tax.

Senator INHOFE. Yes. I felt it necessary to bring that up.

Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

If I may followup on that, Mr. Secretary. I am quite confident that the Administration would not be in favor of total repeal. There is an issue last year, though, to repeal part of it, not all of it but part, say the 4.3 cents. I am wondering what the Administration's view on that might be.

Secretary MINETA. I do not believe that there is any portion of it that is under consideration for repeal. Right now, I think from what I understand it is the status quo—do not increase it, do not repeal it. I remember when there was some discussion in the past about whether or not the gas tax should be a percentage of the cost

of gasoline, so that it would go up as the price of gasoline went up. But I have not heard of any discussion of that recently.

Senator BAUCUS. I appreciate that because I think it would be a mistake, frankly, a big mistake to repeal any portion of the Federal gas tax. First of all, as we all know, that means fewer resources into the Highway Trust Fund and all the consequences that would flow from that just as we are trying to get more efficiency in our highways. Second, I am not sure it would actually reduce gasoline prices. My hunch is that if there were a partial roll-back in Federal gasoline taxes it would not be reflected at the pump. We would still have virtually the same problems that we now have. But I appreciate very much your response.

Could you give us a few more thoughts about environmental streamlining. You said you are spending about \$6.6 billion. Everyone is for streamlining and virtually no one is for degradation of the environment. So what more precisely do you have in mind?

Secretary MINETA. Senator, in terms of some of the specifics, as you know, there were regulations being proposed last year, and then they were pulled back. We are in the process right now of taking a look at that whole issue of issuing the regulations for environmental streamlining. Right now, it is a little premature for me to even get into this thing because I am not really conversant on what specifics we are going to be dealing with. This is something I prefer to submit to the committee in writing.

[The information to be provided follows:]

We at the Department of Transportation remain convinced that a coordinated set of initiatives can go far to expedite the completion of important transportation projects, in the highway, transit, and airport areas. DOT's goal is to reduce unnecessary delays in the environmental review and permitting process, while protecting the environment and complying with the more than 60 environmental laws enacted by Congress over time. The support and cooperation of involved Federal agencies is a prerequisite for reaching good transportation/environment decisions more quickly. The Department has worked hard to gain interagency cooperation through initiatives that include: (1) executing a national Memorandum of Understanding with EPA, COE, DOI, Department of Agriculture, U.S. Army Corps of Engineers, and the Advisory Council on Historic Preservation, formalizing their commitment to work with us on streamlining; (2) entering into programmatic agreements with other agencies to allow groups of projects that meet certain criteria to be processed in more streamlined ways; (3) participating in pilot streamlining projects with State DOTs and Federal resource agencies; (4) convening an interagency workshop for the HQ and field offices of other Federal agencies to identify and address streamlining issues; (5) developing proposed dispute resolution procedures through which we would resolve disagreements; (6) developing procedures and models that permit State DOTs to reimburse Federal resource agencies for additional positions to expedite environmental reviews; (7) analyzing data on EISs to ascertain causes of delays and areas needing attention; (8) developing baseline performance information by which to gauge progress in environmental streamlining; and (9) showcasing exemplary environmental procedures and projects of State DOTs, as models for other States and to build credibility with Federal resource agencies.

In response to the committee's specific inquiry, it is the case that some steps would involve support from Congress; for example, fully funding FHWA's request in the fiscal year 2002 President's budget for \$13 million for streamlining pilot projects, data collection, dispute resolution procedures, and other deployment of streamlining; communicating the importance of streamlining to Federal resource agencies; supporting Administration efforts to use innovative methods to finance the Federal staffing needed to expedite environmental reviews and permit actions required by Federal laws; working with the Administration to harmonize Federal environmental laws with NEPA, so as to maximize opportunities for concurrent reviews; and working with the Administration during the reauthorization of TEA-21 and environmental laws, to find more efficient, effective and flexible mechanisms to achieve national environmental goals.

Senator BAUCUS. That is fine. And knowing you, Mr. Secretary, I know that you are going to have a very balanced approach to all of this, and I mean look very closely, very hard at any recommendation to make sure that it is fair, that it is balanced. This country basically wants to have everything. It is human nature to want everything. We want streamlining, but we also want clean air, clean water, and do not want solid waste dumped in the ground. So I urge you to just make sure that there is no environmental degradation when we do streamline.

One other question I have is with respect to section 305 in the President's budget proposal for the Federal Highway Administration. It basically says that none of the funds appropriated in this act shall remain available for obligation beyond the current fiscal year, et cetera, unless expressly so provided herein, provided that not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Transportation may be transferred between such appropriations. My concern is whether that means that funds, the 5 percent, could be transferred, say, from the Federal Highway Administration to, for example, the Federal Railroad Administration. What is contemplated by that section?

Secretary MINETA. I think we are saying within the modes. We are saying within the modes, but we are trying to do some of the things that we think are of priority interest. Most of it I think, again, in terms of any deviation from the TEA-21 bill, is related to RABA. And there, we have moved some funds around in order to deal with new initiatives, or to deal with new priorities such as trying to comply with the arbitration panel of NAFTA on our having to comply with the NAFTA law on opening the southern border.

Senator BAUCUS. Could you provide a more detailed explanation for the record on that.

Secretary MINETA. Relating to section 305?

Senator BAUCUS. Correct. On what is intended, and what is the point of the section, and what does the Administration have in mind.

[The information to be provided follows:]

[Note: Please see the supplemental information on page 13.]

Senator BAUCUS. Finally, I would just like all of us to think a little bit about, sort of the bigger picture, sort of a nagging question; and that is, how do we plan the next highway bill to address, for want of a better expression, all this traffic congestion? It is just getting worse. You touched on it with electronic pass-through systems, which I think are very helpful. But I have a hunch that the problem is going to be severe in the next several years. It is just getting worse and worse. There is probably some mathematical equation where it is going up arithmetically or geometrically or exponentially. I just think that we have an obligation now to go the extra mile and put a lot of really smart heads together to figure out, oh, my gosh, what are we going to do—because these highway bills tend to be in 6-year intervals—what are we going to do now in writing the next highway bill that makes an honest, good faith, solid effort to address additional congestion on our highways.

Secretary MINETA. Well, as you are so very well aware, most all, I guess I would be safe in saying, highway transportation planning

is a bottoms-up approach; it comes from local government, State government, and then, to the extent that those plans fit into the national plan, those would then move forward. But to some extent local authorities, when they are planning for something, can only plan for current needs and not build into it additional capacity because of the concern about inducing growth. So, because of the sustainable communities kind of philosophy that is prevailing today, when you build a highway, by the time it opens, after you have completed construction, it is probably very close to capacity. So we are not in a position to build in a lot of extra capacity once the project is completed.

And so to that extent, I think we are always sort of a day late and a dollar short. On the other hand, growth is at this rate [hand demonstration] and maybe the dollar amount is like this [hand demonstration]. So the faster we go, the behinder we get. That is, to me, a fact of life of trying to match resources with needs, and needs are going to have to be determined on a priority basis. So to that extent, I think we have to be hard-nosed about making some of these decisions.

Senator BAUCUS. I appreciate that. It is a question of alternatives and choice. But with increased productivity and increased efficiency and more creativity, we ought to be able to somewhat address that problem.

Secretary MINETA. That is right. That is why I said technology. Absolutely.

Senator BAUCUS. I would just encourage, and I know you are anyway, but I just encourage all of us to give it a hard look.

Secretary MINETA. In ISTEA, when we first put in ISTEA, we put in what was then known as "IVHS," Intelligent Vehicle Highway Systems. We put \$600 million into ISTEA originally because we were trying to kick-start this whole approach. And most of it went into research and development. Today, what I am more interested in is deployment, not more R&D. And what I am also thinking about is—just as I hate to always use this example—is ATIS, Advance Travel Information Sign. I do not need that sign to say "congestion ahead." I am already in the middle of traffic going 5 miles an hour. What I need that sign to tell me is how to get out of the jam I am in. Is there an alternative way to go so I can avoid the congestion ahead? To me, those are the kinds of things that would be helpful. And that is where I think we have a lot more work to do.

There are ways that we are already saving a tremendous amount of money utilizing intelligent transportation systems. With sensors that are embedded in the road, highway departments can deploy the sand trucks at one temperature, and as it gets colder they will deploy the trucks to get out and spread something else, and finally they get to the point of having to get the trucks out there to spread the salt. I know in the case of Minnesota, they have already indicated how many millions of dollars that they have saved in terms of overtime, in terms of supplies because of what they have done in terms of utilizing intelligent transportation systems.

Senator BAUCUS. I appreciate that. You might also just do some studies on traffic growth trends, particularly around cities, and be a bit provocative about it, get some people's attention so that more

people are thinking about trying to find some solutions to all of this. I know that commuters' problems are getting worse, not better.

Secretary MINETA. Absolutely.

Senator BAUCUS. And it is just something that we need to address.

Thank you, Mr. Chairman, very much.

Senator SMITH [assuming the chair]. Thank you, Senator Baucus. Senator Chafee.

Senator CHAFEE. Mr. Secretary, we are going to be voting on a tax cut in several hours. And in hearing some of the testimony here about the infrastructure needs, certainly Senator Inhofe mentioned that, the needs for infrastructure, the decaying infrastructure around the country, and Senator Reid talked about investment in Mag-Lev, you mentioned increasing our intelligent transportation systems, I am sure all that comes with a cost. Is there a part of you that wishes we could devote some of this tax cut into what Senator Graham from Texas calls "non-recurring expenses," especially in transportation, whether it is investment in mass transit or some of the other needs I mentioned?

Secretary MINETA. Well, I think what we have submitted in this budget is a matching not only of financial resources to the needs that exist, there is also the question of "is the transportation industry capable of utilizing what is there?" If there is a tremendous new sum of money going in, and just in highways alone it is \$33 billion in 2002 that is being requested, the question about whether or not the industry can absorb that amount without being sloppy at doing the work is a concern.

Having been a member of the Investigations and Oversight Subcommittee of the Public Works and Transportation Committee on the House side, the history of that subcommittee was it was created right after the 1956 highway bill because of the graft and corruption that occurred. I remember when I came to that subcommittee in 1977 it had the largest staff of any of the subcommittees. Professional staff at that point was made up of 27 retired FBI employees who did nothing but look at contracts, looking at jobs across the country. I want to make sure, as we have this infusion of new money, that we get a 10-sack concrete job and that we not end up with a 7-sack concrete job.

So I am always trying to make sure that we are getting value for the money that is expended. I want to make sure that we are able to absorb the funding. I know the needs are there. The question is, is the industry able to handle it, including the State and local officials?

Senator CHAFEE. Is it fair to ask that if we could assume that we were getting that 10-sacks of concrete instead of the 7 sacks, that we could manage that with increased resources for some of these needs?

Secretary MINETA. I am not really sure at what level we do not get the 10-sack concrete job. Right now, given the tremendous increase in the amounts that are available, I think given proper inspection of work force, I think we can handle what is there now. At what point we get diminishing returns, I have not really looked at. But that is an interesting question and it is something I am

going to have to know as we prepare for the reauthorization of TEA-21. That is, how much more we ought to be increasing levels to meet the demand that is out there, how do we get capacity up, and how much more can we increase, which is going to be based on that very question that you are posing.

Senator CHAFEE. Thank you very much, Mr. Secretary.

Secretary MINETA. Incidentally, I just saw Jim Repass and he said to say hello.

Senator CHAFEE. Thank you, Mr. Secretary.

Senator SMITH. Thank you, Senator Chafee.

Good morning, Mr. Secretary. I want to, first of all, commend you for your budget in that you refrain from trying to divert any of the \$4.5 billion in RABA funding, extra dollars, if you will, due to the strong economy. In the past, we have seen these funds try to be diverted away to non-highway uses. I think you are doing the right thing. They were collected for that purpose and I believe they should be used for that purpose.

You mentioned you want to take a little more time on the environmental streamlining, and several of us have asked you questions about that, so I think you can see that it is a rather high priority. I will not press you on it. I know you want to take some time to think it through. But I think where there was concern on a lot of our parts was that there seemed to be, I think we had a hearing last fall with some of the highway folks, and there seemed to be a little misunderstanding about the streamlining, what we wanted to do with it. It seemed to be confusing to some. It seemed like it was causing more regulation and more concerns as opposed to less.

As one who participated in the drafting of those provisions, I think it is clear that we were looking really to provide some concurrency so that we do not have this delay after delay after delay, a resolution dispute process, time periods for review. I have been working on sort of a pilot project on I-93 and we would be happy to submit some of the information that we have, if we have not already done it at the staff level, as to how that is working. It is amazing when you find out that a number of the agencies and entities that are involved in the building of a highway, whether it is fish and Wildlife, the EPA, the DOT, New Hampshire DOT in this case, or whatever, sometimes they do not all sit down together. And when they do, it is amazing how fast things move along. So that is really what the intent was. I would hope that we could work with you to be sure that is really where we go on that specific project.

Secretary MINETA. I would like to hear your results on that pilot program on I-93. That would be helpful. I think part of the problem when you have Corps of Engineers, EPA, National Marine and Fisheries, there is really no, so to speak, lead Agency and each is delegated their responsibilities. And so you are sort of the tail waiting for the something else to happen. So to try to say to another Agency, "Hey, hurry up." "Get a life." "Get over it." But you just cannot.

Senator SMITH. I think you need a lead Agency. And speaking for myself, having that be in your shop would not trouble me at all. I think it is the place where it should be. But I do think that it is amazing that sometimes you just do not know who goes next

and, therefore, there are delays that occur. Highway 101 in New Hampshire took 25 years to build—I think it was probably even before your time in Congress and mine—it took 25 years to do just basically a few miles of highway. There were several deaths, and largely due to all kinds of delays that came about after the highway was laid out, there was very little concurrency, frankly, and there were legitimate environmental concerns that were addressed, but it just took a long, long time to do it.

Secretary MINETA. While I was at Commerce, Mr. Chairman, the whole issue of the San Francisco Airport and the building of the additional runways came up. Part of the conversation was whether or not they have to have some Bay fill in terms of the runway. I said to the San Francisco Airport folks, “Look, at Commerce we have got Coastal Zone Management and we have got National Marine Fisheries, can we at Department of Commerce help you in terms of the environmental impact report that you have to prepare for the possibility that you are going to go into the Bay.” I think there are those kinds of ways we can, Department of Commerce, or EPA, or Department of Transportation, we can work together to make sure that we try to compress that time period.

Senator SMITH. This is just using the pilot as an example. We have had I think four meetings, if I am not mistaken, and it has worked well. There does not seem to be any animosity or clashing, just working through it. And it does seem to work.

I might just add a footnote on this. I do not know if you have picked, you have not announced anyway, your Federal Highway Administrator nominee. I would hope that when you do that the streamlining issue could be important to that person as well. Because I think you are hearing from a lot of members that there is a lot of concern about that.

Secretary MINETA. Sounds like I am going to have to tattoo “environmental streamlining” on my forehead.

Senator SMITH. I would ask another question. Let me first of all say I think I understand what your view is because your budget reflects it, but in your highlights, your innovative financing program, this year’s innovative financing provides \$123 million which we think can leverage up to \$2.5 billion in Federal credit assistance for maybe \$7 billion or so in infrastructure investments. I believe that innovative financing kind of gets us out of the box a little bit, breaks the mold, if you will. I commend you for that and I hope that we can move forward to do more creativeness, if you will, in innovative financing and getting the private sector involved in some of these matters.

Secretary MINETA. Absolutely, the public-private financing. And you folks were very instrumental in terms of TIFIA financing, Garvey bonds, other kinds—

Senator SMITH. Tax exempt bonds, right.

Secretary MINETA. Tax exempt bonds, other kinds of financing mechanisms. And, again, we will keep exploring them. The big thing is this whole issue of public-private partnerships and trying to make sure that is encouraged.

Senator SMITH. I see my colleague, Senator Warner, has arrived. Senator Warner, myself, and Senator Inhofe are juggling back and forth. We have the Service nominees for the Army, Navy, Air

Force, and so we have been going back and forth. So I apologize, I am going to go back to the committee where Senator Warner just came from.

Secretary MINETA. No problem.

Senator SMITH. At this point, I will yield to Senator Warner.

Secretary MINETA. Mr. Chairman, I am also very proud to be a Service Secretary. I am Secretary for the Coast Guard.

Senator SMITH. That is right. That is exactly right.

**OPENING STATEMENT OF HON. JOHN W. WARNER,  
U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA**

Senator WARNER [assuming the chair]. You know, Chairman Smith, I am also serving on this panel looking at terrorism. We had our distinguished former colleague and now Secretary before us and he brought that up. I think it is the first time in the 23 years that I have been in the Senate that I have ever heard anybody say that.

Secretary MINETA. Well, I am proud to be Secretary for the Coast Guard, sir.

Senator WARNER. Well, repeat it over and over again. I like that. And I think the men and the women of the United States Coast Guard appreciate that. They are always sort of struggling and there is a lot of competition between the Services of our great Nation, as it should be. But anyway, let me go to the matters at hand here.

I was privileged some years ago, each of us in Congress has a little apogee now and then, but I was at the right place at the right time to be chairman of this subcommittee which you are appearing before today when we enacted the 1995 and 1998 highway bills. And now we are up for reauthorization here probably in 2003. But we as a committee have to bring to the attention of our Secretaries of Transportation—and incidently, you know, 60 percent of your budget comes through this committee, pretty substantial part of your budget—we have to bring to their attention the requirements of the Administration to fulfill certain commitments by law which are in those legislations.

For example, one of the most significant achievements of TEA-21 was fulfilling the promise that gas taxes consumers pay at the gas pump will be used to maintain and expand our network of highways. At this time, with 2 years remaining on the authorization of TEA-21, our first priority must be to ensure that this important legislation is implemented. While there may be some good ideas out there for new spending from time to time, they must be considered during the comprehensive reauthorization of TEA-21.

I want you to sort of check the balance sheets and make sure that all of that money is not harbored. I know how we work it in the accounting of the Government to offset deficits and so forth. But it is law, it comes in at the gas pump, into the Highway Trust Fund, and it is supposed to go out. One of the landmark decisions we made was to eliminate the donee/donor disparity between the States, so that we now have a floor of 90 cents on the dollar going back.

I have strongly stated during past appearances, that is when other predecessors have been before this subcommittee, the Presi-

dent's budget is not totally—and I say this respectfully—consistent with TEA–21. We have your commitment here this morning to go back and examine that. I would appreciate it if you would provide for the record your response as to agreement or nonconcurrency with my observation.

[The prepared statement of Senator Warner follows:]

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE  
COMMONWEALTH OF VIRGINIA

I wish to join with other members in welcoming Secretary Mineta to the committee. This is your first appearance before the committee, but I hope you will make it a practice to come before the committee regularly and call on us whenever we can work with you.

Mr. Secretary, I was privileged to be chairman of this subcommittee for 5 years, during which time we enacted the National Highway System Designation Act in 1995 and TEA–21 in 1998.

One of the most significant achievements of TEA–21 was fulfilling the promise that gas taxes consumers pay at the gas pump will be used to maintain and expand our network of highways.

At this time, with 2 years remaining on the authorization of TEA–21, our first priority must be to ensure that this important legislation is implemented. While there may be many good ideas out there for new spending programs, they must be considered during the comprehensive reauthorization of TEA–21.

So, Mr. Secretary, as I have strongly stated during past appearances by your predecessors, the President's budget is contrary to TEA–21, and I don't believe this is a wise course of action.

The President's budget proposes to spending Highway Trust Fund dollars on programs not authorized by this committee. It proposes to spending Highway Trust Fund dollars on special programs, that may have value, but they have not been considered during the authorization process.

The overall result of your budget proposal will be to reduce critically needed transportation dollars to our States to fund these new programs.

If we begin opening up TEA–21 now, in a piecemeal fashion, I am concerned that the traveling public will suffer, that safety on our highways will suffer, and that our States struggling to come to grips with severe traffic congestion will suffer by changing the rules in the middle of the game.

Mr. Secretary, I share these views with you and want you to know that I am looking forward to working with you to develop the new authorization bill in 2003. We should not, however, make major changes now without consideration to all of the needs of our transportation network.

Mr. Secretary, traffic congestion remains a complex problem for most urban communities resulting in lost time and productivity in the workplace, increased air pollution, and less time for people to spend with their families.

The metropolitan Washington region, regrettably, is well-known for the many problems resulting from this gridlock.

There are many important transportation projects on the drawing board that will make a difference in reducing congestion—the new Wilson Bridge, Metrorail to Tysons and rail to Dulles, extension of the HOV network, and others.

The problem is that these projects won't happen overnight while our congestion is worsening. The only thing we can do now is to provide incentives to increase transit ridership and telecommuting.

Secretary MINETA. Well, first of all, let me respond to you in writing. There are variations from TEA–21, admittedly. As you have indicated, the President's budget fully guarantees the funding under TEA–21 for the Highway program as well as for transit. But to the extent that we are using some of the RABA funds for other things, like compliance with the ruling of the NAFTA arbitration panel that has ruled now that we have to comply with NAFTA and open up the southern border, and to that extent, we are using some of the RABA funds for infrastructure needs for increasing the number of motor carrier safety inspectors for the opening up of the border.

The President met with President Fox earlier this year on March 22, it was our team from DOT, in conjunction with the U.S. Trade Representative, that met with the Mexican officials and set out a schedule for how to open up the border on the first of January 2002.

Senator WARNER. I think you and I will have a very friendly but very thorough dialog on this, because I find in the President's program that Highway Trust Fund dollars are being spent on programs that have not been authorized by this committee. That is a fairly blunt factual statement, which you may address and come back to me on.

[The information to be provided follows:]

I believe firmly in the principle of honoring the provision of TEA-21—primarily to provide for the highway and transit preservation and capacity increases we so badly need. However, the President's budget does request that Congress make minor realignments to meet newly emerging needs, such as meeting our obligations under the North American Free Trade Agreement (NAFTA) to open our southern border to commercial vehicle traffic, under a comprehensive safety regime, beginning in January 2002. I would also note the significance to disable Americans of the President's New Freedom Initiative proposal. Taken together, the increases would enable the Administration to fulfill its commitments to increasing transportation safety, including border-crossing safety, and improving the efficiency of our existing infrastructure. The Department stands ready to work with the committee to adequately fund the initiatives in question.

Under the President's budget, the amount of fiscal year 2002 obligation limitation distributed to the States would be about \$427 million less than what would be received under a TEA-21 distribution without the proposed modifications. This difference is attributable to providing additional funding for the following initiatives: New Freedom Initiative (\$145 million); Border Infrastructure Improvements (\$56.3 million); additional funding for the National Corridor Planning and Development and the Coordinated Border Infrastructure Programs (\$30 million); planning and technology research and deployment and initiatives critical to safety and infrastructure improvements (\$25 million); additional funds for Federal Motor Carrier Safety Administration (FMCSA) operations and research (\$45.6 million); full funding of research and technology programs within the Federal-aid obligation limitation (\$39.1 million); and the net of adjustments for differences between outlay rates for FHWA and FMCSA (\$108 million) and changes in the pro rata share computations resulting from the initiatives listed above (an increase in obligation authority of \$21.8 million).

Secretary MINETA. Right. That is right.

Senator WARNER. This budget proposes to spend Highway Trust Fund dollars on special programs that may have great value, Mr. Secretary, but they have not been considered during the authorization process by the Congress. So having been privileged to serve in this body, I think you understand the concern that we have as a co-equal branch of government and our responsibilities.

The overall result of your budget proposal will be to reduce critically needed transportation dollars to the 50 States. That is, again, a very blunt observation, but I do make it. If we begin opening up TEA-21 now in a piecemeal fashion, I am concerned that the traveling public will suffer, that safety on our highways may well suffer, and that our States struggling to come to grips with severe congestion on our highways, particularly in the region which I am privileged to represent in northern Virginia, will suffer likewise.

Now I share your views in many ways. And I share these views with you most respectfully. And we will respond to the submission I am asking you to make for the record today to take me on, if you desire. I could not imagine a more desirable person to wrestle with in the public before the press than you. We will just have a grand

struggle right out there on this subject, particularly as summer comes on and highways get congested and the pollution goes up. We will have at it.

[Laughter.]

Senator WARNER. Now let's address this Metropolitan Washington Region, because we have really got gridlock second to none here. There are many important transportation projects on the drawing board that will make a difference in the future in reducing that congestion. Foremost among them, the new Wilson Bridge, Metro/rail to Tyson's Corner, and rail/bus service to Dulles, the extension of the HOV network, and so forth. I will be working with you in the years to come on that. But all this takes time. Right now, today, that congestion exists and the responsibility devolves upon you and me and others to see what we can do with interim measures to alleviate, if only in small ways, this congestion.

So I bring to your attention two things. Your Department is commended for being a leader among the Federal agencies and departments in the promotion of the Transit Benefits Program. Others are lagging behind that sector. I would like to call to your attention and urge your active involvement in ensuring that the Department complies with the current Federal law on telecommuting. This year agencies are mandated to allow up to 25 percent of eligible workers to telecommute. And you are thoroughly familiar with that.

Secretary MINETA. It seems to be working.

Senator WARNER. As far as we know, the employees are not abusing that. They are grateful to have that added time off the highways. Hopefully, that time can be devoted to their families and other needs to maintain lifestyle.

Since the Department decides which positions are eligible for telecommuting, I urge you to allow those Federal employees interested to do so to the extent you possibly can do it. Recent studies have shown that workers who telecommute occasionally show increased productivity. I believe it is also good for retention of the Federal work force. And that is an aging work force and on the rise. I do not know whether or not we have the assurance that the high quality of young people coming in can match the high quality of people that we have today. Further, a study by George Mason University contends that for every 1 percent of the work force that telecommutes there is a 10 percent reduction in traffic. Now that is quite a statistic, but there it is. And that is a distinguished educational institution in our State.

Can you give us some thoughts on telecommuting from the experience you have had in the brief time you have been there in your Department and how you might encourage your fellow department heads, secretaries to do likewise in their departments.

Secretary MINETA. Senator Warner, probably the biggest direct experience I had on that issue was at the time of the Northridge earthquake in southern California. I remember where I-5 and State Route 14 joined, that structure had come down. And so we did two things at that time. One is, we put a temporary rail line up into Palm Dale and Los Angeles. The other was to set up a number of telecommuting centers. There was no question that it had an impact on the amount of traffic on the road.

In our Department, we have a lot of people across the country, whether they be Federal Highway Administration, Federal Railway Administration, people who are doing work out of their homes, away from their offices because of the nature of their responsibilities. So we are working at this issue of telecommuting. We are going to be bringing more attention to this on a departmental basis in order to utilize telecommuting in urban centers where the gridlock is a lot more apparent than it would be, let's say, in Resume Speed, IA. So we want to utilize telecommuting as an alternative to commuting to a workplace to do their work.

Senator WARNER. That is very interesting. So that, in your judgment, is a proven system?

Secretary MINETA. We are using it right now, and we intend to expand on its use.

Senator WARNER. We also have programs whereby employees in the Federal Government can get some compensation if they resort to carpooling and/or public transportation. Are you a supporter for those concepts?

Secretary MINETA. In fact, we are going from the \$65 a month to \$100. We are increasing the amount that is available under law to our employees from the present level.

Senator WARNER. Well, again, many of those initiatives have come from this committee. We will keep working with you. I hope you can come up with some short-term initiatives to help alleviate this.

Secretary MINETA. These are areas in which there is no silver bullet. For every community, there is a different approach. There is no cookie-cutter approach to trying to deal with transportation problems. Los Angeles is such a relatively low density population center that extending light rail or subways there would not have the same impact as it does here or other regions of the country where you have higher densities and you have concentrated movements of corridors of travel. I think maybe in the San Francisco Bay area, again, you can identify certain corridors. But there are some places in the country where you have a lot of traffic, gridlock, but a cookie cutter approach will not answer the question.

Senator WARNER. I return to my observation about my view that there is a disparity between your budget and the requirements under law on the TEA-21.

Secretary MINETA. Admittedly, as I said, Mr. Chairman.

Senator WARNER. Right. We understand that.

Secretary MINETA. The \$427 million I know is a deviation from TEA-21 requirements.

Senator WARNER. We have, fortunately, in this committee a chairman and a ranking member and others who have spent a lot of years on the committee and have a good deal of a corporate knowledge of transportation issues. And those were landmark pieces of legislation. As such, they could be a deficiency which you feel has to be addressed now. Now I defer to my chairman and ranking member here, but if there were one or two, if somehow we could package it up and not have it be viewed as encroaching on the reauthorization of the highway bill in the years to come, perhaps we might look at a quick legislative fix. Maybe I am being a little presumptuous. When we did TEA-21 we did our best. But as

you well know having served in the Congress, sometimes our best in the years to come is disproven by facts and experience. So take a look at it, counsel the chairman and ranking member.

Secretary MINETA. I will. For instance, one of the initiatives that the President has embarked on this year is what is referred to as the New Freedom Initiative in order to be able to give more transportation mobility options to those who are covered under the Americans with Disabilities Act. So, again, recognizing that there are \$427 million in deviations from TEA-21, \$145 million of that was for the New Freedom Initiative.

I recognize, having been chairman of an authorizing committee, I recognize the prerogative that comes with that responsibility.

Senator WARNER. Well, we are fortunate on this committee to have had the wisdom of a marvelous Senator John Chafee, whose son proudly serves here today, and pushed entire new frontiers. And he would be the first to say that we put them into law and if somehow they are not working well, let's try a new frontier. But we should never stand still in our efforts to work as a Congress with a President to improve the transportation for our citizens.

And I conclude with one other observation which relates to the civil aviation side. I have the highest respect for Dan Golden and what he has done. He is a man of remarkable enthusiasm and vision, drive. But he and I have had an ongoing debate for several years about the reduction of funding in the NASA budget which is applied toward NASA's area of responsibility for civil aviation.

It is very significant, Mr. Secretary, how the space activity somehow I think has kept on going; indeed, I support space. But if we cannot do our jobs every day here at home and do them in a more efficient manner and maintain some quality of life, all of which are being attacked by the congestion on America's highways and in the airways, then it seems to me we have got to go back and reevaluate have we made the proper allocation between this Nation's dedication to space and this Nation's dedication to just the every day mundane struggle to get to and from work, be it on surface transportation or in the airways.

I would like to have you provide for the record your analysis of those expenditures out of the NASA budget as they impact in your judgment on civil aviation, primarily in the area of safety, and whether or not it would be wise for the Congress to once again consider that allocation and give more emphasis to the requirements today of civil aviation. Now this is not a popular subject. But I have never sat around here trying to be popular. Mr. Golden and I have had a very respectful dialog as recently as just a few weeks ago when he was before the Commerce Committee on this very, very point. Because I am concerned as I visit and utilize these airports and listen to my constituents. We have two major airports for America serving the Nation's Capital, and I keep abreast of those problems.

[The information to be provided follows:]

The U.S. Department of Transportation is heavily engaged with NASA in the joint planning, funding, and execution of aviation research programs in such diverse areas as advanced air traffic management systems, aircraft noise and emission reduction, aircraft structural safety, atmospheric hazards to flight, and aviation human factors. Decreased aeronautics funding has caused individual NASA programs to take longer to develop and to be concluded at reduced levels of technical

maturity. Effectively this has resulted in the Department and industry funding the final stages of development. We have long been aware of the reduced funding at NASA and have planned accordingly, with the result that the attainment of the Department's Strategic Goals are not at risk.

Senator WARNER. So I thank you. And I thank you again for continuing public service. You have a remarkable career and you bring to bear on this office, as you have on previous offices, a wealth of experience and leadership. Welcome.

Secretary MINETA. Thank you very much, Senator Warner. Having served on the Science Committee on the House side, I am very well aware of that. I remember when I used to talk to Dan Golden about that same subject matter. He used to always say that the "A" in NASA was very important. But after I left Congress and I was with a private company, I would go back to Dan and say that what is happening in aeronautics, because of the fact that he had to keep putting money into the shuttle and the International Space Station, it was draining money away from aeronautics.

Senator WARNER. That is it.

Secretary MINETA. And I said that if this continued, Lewis Center, Langley, and Ames were going to get shut down because the aeronautics budget was going down. Now just recently, in terms of preparation for my testimony before the Transportation Appropriations Subcommittee, I took a look at the FAA-NASA relationship on aviation research. It has gone down tremendously. So that in terms of not only NASA's share, but even our share at FAA on research and development has gone down. I think, as I recall the figure now, I think we are—

Senator WARNER. About 40 percent.

Secretary MINETA. I was going to say at less than 50 percent of where we were on the whole research budget. So when it comes to aviation noise or other kinds of considerations, we are really eating into the future prospects. But the only problem is that those decisions get made at a higher pay grade.

Senator WARNER. Oh, now do not beg off on that. You are now the Secretary of Transportation.

Secretary MINETA. Yes, sir, but I am still staff.

Senator WARNER. Do not use that anymore. You are at the table.

Secretary MINETA. I am at the table, without a doubt.

Senator WARNER. We may be a co-equal body but we are lowly 535. You are but one. You know the subject and I am so heartened by what you tell me. Here is an aviator right over here. I was talking about the disparity and the declining budget in NASA toward civil aviation. I said to my friend Dan Golden the other day in the Commerce Committee that the burden of proof is on you to show that those reductions have not contributed to the worsening situation that we see every day in civil aviation, the congestion at the airports and all other types of things. He respectfully accepted the question.

Secretary MINETA. I am very proud to be the Secretary of the Department of Transportation. But I am only staff to the President of the United States.

Senator WARNER. I am not going to accept that, not from a strong man like you.

[Laughter.]

Senator WARNER. I thank you, Mr. Chairman, and the witness. Senator INHOFE [resuming the chair]. Thank you, Senator Warner.

We will now excuse the first panel. We have a vote in progress. I do not know whether you know that, Senator Warner, there is a vote taking place right now. There is 10 minutes left. So what we are going to do is excuse this panel. It will take about 5 minutes to go vote. There is only one vote, so we will be right back.

And, again, Norm, I am looking forward to working with you.

Secretary MINETA. Absolutely. Thank you, Mr. Chairman.

[Recess.]

Senator INHOFE. The hearing will come to order.

Welcome, Administrator Davis and Judge Roth. I note, Mr. Davis, you are accompanied by Mr. Jenkins.

Let's start with you, Judge Roth, for opening remarks, and then Administrator Davis. Ladies first.

**STATEMENT OF HON. JANE R. ROTH, JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, WASHINGTON, DC**

Judge ROTH. Thank you, Senator. Senator Inhofe, on behalf of the entire judiciary, I would like to express our appreciation for the authorizations of courthouse projects that this subcommittee recommended and the full committee approved last year.

For fiscal year 2002, President Bush's budget request includes \$216.8 million for courthouse construction projects, and \$130.3 million for court-related repair and alterations projects. The subcommittee's letter to the White House in support of funding for courthouse construction was very helpful in achieving this result.

The Committee on Environment and Public Works has previously provided authorizations for 11 of the 12 courthouse projects in the President's budget request. Some of these projects are on the judiciary's prioritized list for fiscal year 2002 and some are from previous years and may need to have their authorizations increased for inflation.

The Judicial Conference has, however, proposed 9 new projects for fiscal year 2002 that were not in the President's budget request, for a total of 20 project at a total cost of approximately \$665 million. These additional projects are sorely needed. They include: Rockford, IL; Cedar Rapids, IA; Nashville, TN; Savannah, GA; Fort Pierce, FL; Jackson, MS; Austin, TX; San Diego, CA; and San Jose, CA. The Senate has already provided authorizations for four of these projects, although these resolutions may need to be increased due to inflation. In past years, the committee has requested that GSA provide written information on projects that were not included in the President's budget. We urge the subcommittee to make a similar request this year. I have attached a chart to this statement that summarizes the judiciary's fiscal year 2002 plan and the President's budget request. We have also provided the subcommittee staff with a fact sheet on each courthouse project that describes the current situation and the need for the project.

We understand from GSA that three of the 20 projects might be delayed until next year due to circumstances beyond the judiciary's or GSA's control. GSA tells us that the delay of these three projects will bring the total cost from \$665 million down to \$480 million.

These projects, in Salt Lake City, UT; Cape Girardeau, MO; and Orlando, FL, could be authorized in a future year. Two other projects, Eugene, OR and Little Rock, AR, are not ready for construction funding as anticipated, but do need site and/or design money this year.

The Judicial Conference also supports construction of a Federal office building in Atlanta, GA, to house the Court of Appeals staff and potentially other Federal agencies.

The judiciary does not agree with OMB's unilateral decision to eliminate small amounts of space that the judiciary needs due to special requirements in some courts. Shortsightedly making these courthouses smaller than needed will only necessitate the judiciary returning to Congress to request additions to relatively new courthouses at greater expense to taxpayers. We hope you will authorize the projects based on the requirements submitted by the courts. Details of these changes will be provided to the subcommittee staff.

An example of the problems caused when a facility is built smaller than needed is the Brooklyn, NY courthouse annex. Additional funding is needed to build out a total of eight courtrooms and eight chambers in the annex as planned and authorized to accommodate the judges who will be working when the annex opens and to permit the planned renovation of the existing courthouse. The judiciary urges the subcommittee to ensure that GSA constructs the necessary space. If this is not done, the new building will be full on the day it opens, and indeed the entire complex may not be able to accommodate the court when the annex opens. In our view, responsible planning and responsible spending justifies further action by the subcommittee to complete this important project. I will submit for the record a separate statement by Judge Raymond Dearie of the Eastern District of New York—Judge Dearie is in the hearing room with us today—that elaborates on the serious housing problem that will be created if GSA does not build enough space in Brooklyn.

In my statement, I have discussed how the judiciary over the past decade has embarked on a number of programs to ensure that courthouses are built only where needed to replace facilities that are full to capacity and often aged, obsolete, and lacking in security. Our long-range planning efforts, prioritization of projects, and design guidelines have ensured that our projects are needed, are functional, and are economical.

But let me close by noting that the workload of the Federal courts continues to increase, necessitating additional judges and court staff. In the last 10 years, criminal cases have increased 32 percent, civil cases 20 percent, and bankruptcy filings 68 percent. Congress provided 9 new Federal district judgeships in fiscal year 2000 and 10 more in 2001. The Judicial Conference of the United States is currently requesting that 54 more Article III judgeships be created. The judiciary's problems are particularly acute along the southwest border, where drug and immigration enforcement efforts have caused the workload to more than double and where proximity to the Mexican border magnifies security risks. Three of the twenty courthouse projects requested for fiscal year 2002 are located along the southwest border.

In conclusion, the judiciary asks that you authorize, in accordance with the judiciary's stated needs, the new courthouse projects on the attached list that have not already been authorized or that need their authorizations increased.

Thank you for the opportunity to testify before the subcommittee. I will be happy to take any questions.

Senator INHOFE. Thank you, Judge Roth.  
Administrator Davis.

**STATEMENT OF THURMAN DAVIS, SR., ACTING ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY WILLIAM JENKINS, ACTING DEPUTY ADMINISTRATOR, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION**

Mr. DAVIS. Thank you, Mr. Chairman. We have submitted a complete statement for the record, so I will summarize if I may.

Senator INHOFE. That would be great.

Mr. DAVIS. In the Public Buildings Service, our Capital Investment and Leasing Program plays a key role in providing the necessary resources to maintain current real property assets and acquire new replacement assets. The capital programs support several portfolio objectives: maximizing Federal Buildings Fund income, minimizing the drain on unproductive assets, preserving the historic and cultural assets placed in GSA's trust, and managing other diverse responsibilities integral to the management of the Nation's largest real estate portfolio. All proposed projects are evaluated in the context of the entire national portfolio. We consider three options when evaluating our client Agencies' requirements. These include: construction and acquisition of new facilities, repair and alteration of existing facilities, or leasing space from the private sector.

Our first capital program priority is the repair and alteration of our existing inventory to ensure that its value and condition does not decline. More than 43 percent of our own buildings are over 50 years old and 51 percent are between the ages of 21 and 50 years old. We are requesting a Repairs and Alterations program this year of \$826.7 million for an increased emphasis on the overall maintenance and viability of these assets. The highlights of GSA's fiscal year 2002 program include: \$370 million for the basic program; \$400.8 million for the construction phase of the Modernization and Alterations program. Our annual Repairs and Alterations program is approximately 2.5 percent of the inventory's replacement value, which is roughly about \$33 billion. That falls within the range of a 2 to 4 percent of the private sector's practices.

To allocate the limited resources of the Federal Buildings Fund for Repair and Alterations, we evaluate and rank our proposals based on economic justifications, project timing and execution, physical urgency, client/Agency needs, and historical significance. By applying these criteria to our decisionmaking process, we prioritize our major repair and alteration projects and ensure that the most important projects in our national portfolio are funded.

We are requesting a Construction and Acquisition of Facilities program this year of \$663 million. This includes: \$216.8 million for 12 Federal judiciary projects; \$276.4 million advance appropria-

tions approved in the fiscal year 2001 Appropriations Act for 4 Federal judiciary projects; \$17.339 million for design and construction of six border stations; \$34 million for the construction of the National Oceanic and Atmospheric Administration facility out in Suitland, MD; \$4.6 million for the U.S. Mission to the United Nations; and \$2.8 million for the U.S. Census Bureau facility out in Suitland, MD.

We recommend new construction where it meets the new housing needs of specific Federal agencies or to consolidate several dispersed agencies with economically feasible long-term needs in a given location. PBS traditionally pursues construction and ownership solutions for special purpose and unique facilities, such as border stations and courthouses, which are not readily available in the real estate market.

This concludes our opening remarks. We would be pleased to take your questions.

Senator CHAFEE [assuming the chair]. Thank you very much, sir. I am taking over the gavel for the time being. Thank you for your patience all morning and enduring the recess. I will be reading your testimony at the appropriate time. And if there are any questions from the members, they will submit them in writing.

So, since I just arrived, who is next?

Judge Roth.

Judge ROTH. I have already gone.

Senator CHAFEE. Thank you.

Mr. DAVIS. We all have spoken. So we have made all of our opening remarks already.

Senator CHAFEE. Everybody has given their testimony?

Mr. DAVIS. Yes, sir.

Senator CHAFEE. Thank you very much. Spend your money wisely.

Mr. DAVIS. OK. Thank you.

Senator CHAFEE. Thank you very much.

With that, we will conclude the hearing.

[Whereupon, at 12:08 p.m., the subcommittee adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. NORMAN Y. MINETA, SECRETARY OF TRANSPORTATION

Mr. Chairman, members of the subcommittee, it is a great pleasure to appear before you today and to have the opportunity to work with you on the challenges that face our Nation's transportation system.

Transportation is key to our Nation's well-being, whether measured as economic growth, as international competitiveness, or as quality of life. Three decades ago, when I was Mayor of San Jose, CA, I learned that the tool that made the most difference in my community was transportation. Nothing else had as great an impact on our economic development, on the pattern of growth, or on the quality of life. What I have found in the years since is that this is true not just locally, but also nationally. A safe and efficient transportation system is essential to keeping people and goods moving and cities and communities prosperous. Congestion and delay not only waste our time as individuals, they also burden our businesses and our entire economy with inefficiency and higher costs. The bottom line is that transportation is pivotal in generating and enabling economic growth, in determining the patterns of that growth, and in determining the competitiveness of our businesses in the world economy. Transportation is vital to the productivity and, therefore, the success of virtually every business in America.

As a whole, the multi-modal transportation system of this Nation works well in maintaining the strong economic performance of the United States and, more broad-

ly, world commerce. This committee and the rest of Congress deserve a great deal of the credit for this sustained good performance. Congressional enactment of TEA-21 and AIR-21 put in place levels of capital investment that will be important in improving safety and relieving congestion across the board. The Bush Administration is requesting full funding of the guaranteed levels for surface transportation and the authorized capital and operating levels for air transportation, as part of the President's 2002 budget, and we look forward to working with Congress to enact these levels.

Still, we can, and must, do more. We must strengthen our commitment to keeping safety our paramount concern, particularly at a time when the national focus is on system efficiency, while trying to squeeze additional capacity from the system wherever possible. Safety must always be our highest priority in transportation.

The most fundamental challenge we face—and the most daunting—is not just increasing safety, reducing congestion, or modernizing the aviation system. These are enormous challenges, to be sure, but our biggest challenge is to get everyone working together in a spirit of partnership to solve these problems. We all created these problems, and together we can solve them. So, as Secretary, I intend to devote the bulk of my energies to working across party lines, reaching across divides, and building consensus to achieve solutions. Working together we can ensure the safety of the traveling public and manage the gap between the demand for transportation and the capacity of the transportation infrastructure.

#### SAFETY

The United States has an enviable transportation safety record. We lead the world in safety in many modes of transportation—but we must constantly search for improvement. Working together we can and will improve this record. Safety is the Administration's highest priority in transportation. Our 2002 budget includes \$7.3 billion for transportation safety programs, 7.5 percent above 2001. Continued and increased investments in highway safety, aviation safety, rail safety, motor carrier safety, pipeline safety, and hazardous materials safety are necessary and critical to the future success of our transportation system as a whole.

Despite significant improvements over the past three decades, traffic crashes continue to represent a leading public health problem. Our highways claim more lives than any other mode of transportation. Although the number of highway fatalities in recent years has been held relatively flat, despite significantly rising numbers of vehicles on our roads, preliminary data for 2000 reveals that the number of highway fatalities increased slightly while the number of vehicle-miles traveled remained essentially the same. And this occurred even though seat belt use rose to a record high 71 percent. Over the coming year, the Department will review our motor vehicle safety efforts, with emphasis on identifying the most effective means to provide the public with the greatest possible safety improvement for each dollar spent. Highway safety improvements are critical to reducing these fatalities. Success will depend on a balanced approach that addresses the behavioral, vehicular, and roadway infrastructure and operations safety problems and opportunities.

Within DOT, we are pursuing a multi-faceted agenda to improve transportation safety that encompasses legislation, common-sense regulations, driver behavior programs, enhanced law enforcement, and infrastructure-based solutions. But safe transportation is a shared responsibility. The Federal Government is but one player. To succeed in addressing the safety issue, a combination of improved education, enforcement, engineering, and emergency services is needed. The Federal Government must take an active leadership role; the Department must take an active leadership role. I take this responsibility very seriously. I believe that, working with State and local governments, public interest groups, industry, and private citizens, together we can meet this challenge.

The Administration's fiscal year 2002 budget request provides full funding for highways and highway safety programs at the level guaranteed under the Transportation Equity Act for the 21st Century (TEA-21)—\$32 billion. This is an increase of \$2 billion above the fiscal year 2001 enacted level. The increased resources will allow us to maintain our high-quality highway network, while achieving our goal of improving safety.

The fiscal year 2002 budget also proposes that highway research and technology programs be excluded from the proportionate obligation limitation reduction, so that all contract authority provided by TEA-21 will be available for use. The Department will conduct appropriate research and development programs that underpin behavioral, vehicular, and roadway safety. The increased research and technology resources will be used to carry out a comprehensive program aimed at reducing fatalities and injuries through providing new technologies and tools to highway agencies.

Our efforts are focused on the types of crashes considered high-priority, because of number and severity. These include run-off-road, speed-related, intersection-related, and crashes involving pedestrians and bicyclists.

The roadway can be designed, built, and operated in such a way as to reduce the number and severity of crashes. The Interstate highway system, one of the safest roadways in the world, is an excellent example of safety by design. We will continue to work with the State and local highway engineers, and with the consulting and construction industries to provide guidance on ways to make the highway system safer. We all have a vested interest in creating a safer, more efficient, transportation system for the American people.

As you know, Intelligent Transportation Systems (ITS) offers a unique opportunity for greater public safety and it can enhance the capacity of our emergency response system to save lives. For example, we all know that telecommunications companies are working to improve emergency notification systems—specifically wireless E-911—and we are supporting this important work. We need a comprehensive end-to-end system of emergency notification and response. The system should automatically route emergency calls to the closest public safety answering point and inform the dispatcher of the caller's location, provide data about the severity of the crash, and notify the necessary responders, as well as communicate this information to traffic management centers. Such a system will also enable the judicious use of emergency resources by responding with only that equipment necessary for managing a crash. Further, a comprehensive emergency response system will not only help to save lives at the time of a crash, but also help to prevent other crashes in the future by providing data that will allow us to build safer cars and roadways.

Although great progress has been made recently in increasing the safety at highway-rail crossings, the Department is involved in developing technology and procedures to continue that trend. Several Department projects are being conducted that look at ITS as a means to improve safety and mobility at highway-rail grade crossings. For example, ITS technology is being developed to determine when an obstruction is on the crossing and make that information available to the engineer so he can take the proper action. With the recent designation of high-speed rail corridors, more sophisticated warning systems will be required for crossings on those routes.

The intelligent vehicle initiative (IVI) is aimed at preventing crashes by fostering the introduction of driver assistance safety products. This program will increase traffic safety by expediting the commercial availability of advanced vehicle control and safety systems that may be augmented by interaction with the infrastructure. In order to achieve this, the Department must ensure that safety is not compromised by the introduction of in-vehicle systems. A particular interest for the IVI is the safety impact of combining multiple systems, such as route guidance and navigation, adaptive cruise control, cellular telephones, and in-vehicle computers. We will investigate the impact that these systems may have on driver behavior by measuring any changes in the level of driver workload and distraction.

The second part of the Federal role in IVI, addresses our responsibility for reducing deaths, injuries and economic losses resulting from motor vehicle crashes. This role, which is a cornerstone of the Department's mission, will be carried out by facilitating the development, deployment, and evaluation of driver-assistance safety products and systems aimed at reducing rear end, rollover, and run-off-road crashes.

The President's 2002 budget also includes \$400 million, 49 percent above 2001, for motor carrier safety, with a total of \$100 million, \$88 million above 2001, devoted to enforcement and infrastructure needs on our southern border. This increase is essential to allowing the United States to honor the North American Free Trade Agreement safely and responsibly.

#### MOBILITY

When I took this job, I knew that a central challenge for the Department would be to address the gap between demand for transportation and the capacity of our transportation infrastructure. Even though the physical condition of our infrastructure—the highway and runway pavement conditions and the condition of our bridges—is improving, the demand for the use of that infrastructure is increasing. The gap between capacity and demand generates the traffic we all face on the highways, at our airports, and at our ports. Congestion and inefficiency in transportation are not just inconvenient and aggravating—though they certainly are that—they are also a tax that burdens every business and every individual. Congestion on our highways and delays at our airports are increasing. We have to find ways to lighten that burden.

The Nation's transportation system is complex and intertwined, and congestion in any one mode—whether it be aviation, highways, or rail—impacts the flow of trans-

portation in every mode. Thus, focusing on highway congestion merely shifts the bottleneck to aviation, rail, or transit, rather than managing or eliminating it. Meeting the congestion challenge will require working together to develop an intermodal solution. We cannot focus our efforts on highway congestion or aviation congestion; we must focus our efforts on transportation congestion.

I want to discuss, in particular, the congestion problems we have in highways. Our latest Conditions and Performance (C&P) report to Congress—the 1999 Status of the Nation’s Highways, Bridges, and Transit: Conditions and Performance—projects that by 2003 highway capital investment by all levels of government will reach the level of our “Cost to Maintain” scenario (\$56.6 billion in constant 1997 dollars). This scenario projects the investment required to maintain the average physical conditions of highways and bridges at current levels, while still allowing for some comparably attractive investments in capacity expansion. The Federal-aid highways funding levels proposed in the President’s 2002 budget, along with the projected investments of our State and local government partners, should put us on track to achieve this goal.

While we are pleased with the progress we have made, we are predicting that congestion will continue to increase at current levels of investment. The 1999 C&P report projected that maintaining average travel time costs, or time lost by travelers due to delay, would require an additional investment of \$17.1 billion annually by all levels of government. Reducing highway congestion will not be easy. Addressing this problem will require a mixture of investments by all levels of government to improve the operations and efficiency of our existing facilities and the selective addition of new capacity. To be effective in dealing with specific bottlenecks in the system we will need to be prepared to use whatever mix of improvements is most cost effective in each individual case.

There isn’t a day that goes by without a metropolitan newspaper or TV station reporting on the anger, frustration, and seeming futility of congestion. FHWA’s *Highway Statistics* reports that, from 1980 to 1998, vehicle travel increased 72 percent while miles of public roads increased only 1 percent. A recent Texas Transportation Institute (TTI) study estimates the cost of congestion in just 68 urban areas has grown from \$21 billion in 1982 to \$78 billion in 1999 (36 hours per driver per year and 6.8 billion gallons of wasted fuel). This means that the average length of the congested period increased from about 2 to 3 hours in 1982, to 5 or 6 hours by 1999. And this is no longer just a phenomenon of the big city. The average length of congested daily travel for small urban areas tripled between 1982 and 1999.

A report released by the Federal Highway Administration in February, *Moving Ahead: The American Public Speaks on Roadways and Transportation in Communities*, further confirms the highway congestion problem. The report’s survey results indicate that although 65 percent (a 15 percentage point increase since the completion of a similar 1995 study by the National Partnership for Highway Quality) of the highway travelers are satisfied with the major highways they travel most often, there are several areas that require attention. For example, the traveling public wants more operational improvements to traffic flow, continued improvement in pavement condition, and more effective ways to deal with or to decrease traffic congestion in work zones.

President Bush’s budget request proposes full funding for the transportation capital improvements critically necessary to solving our capacity challenges over the long run. Highway, transit, aviation, and rail infrastructure investments total \$42.8 billion, 39 percent above the average annual investment over the prior 8 years. This investment is not the sole answer to our capacity constraints, but it will help. It includes:

- A Federal-aid highway obligation limitation of \$31.6 billion, almost 7 percent above 2001.
- An airport grant obligation limitation of \$3.3 billion, the level contained in AIR-21.
- Total transit investment of \$6.7 billion, almost 8 percent above 2001.

#### *Improving Management of Our Resources*

While strategic expansion of our transportation system capacity is necessary, it is not the only answer to managing growth and congestion. We need to make more efficient use of our existing infrastructure. The search for new technological and innovative solutions to our mobility challenges is well supported in the 2002 budget, with investment in technology, research, and development proposed at \$1.2 billion, 7.5 percent above 2001. The budget includes a total of \$504 million for highway-related research, 30 percent above 2001.

Highways are the very backbone of our Nation’s transportation system, and the Eisenhower Interstate Highway System did an extraordinary job of knitting our

country together and making efficient nationwide highway transportation a reality both for people and for goods. The result was a quantum leap in the productivity and the competitiveness of our economy. But we are now losing that productivity to bottlenecks in the system, and gains made nationwide are too often being lost to lack of coordination among the affected parties.

Intelligent Transportation Systems and Operations can make a difference in how we attack the congestion and productivity problems. In the past, we have developed a number of strategies to help solve particular operating problems. These include retiming traffic signals, installing ramp-metering lights, creating high occupancy vehicle (HOV) and high occupancy toll (HOT) lanes, and initiating various management activities to deal with single issue problems such as work zones, parking, or access. With the advent of ITS, many of these techniques can be used dynamically, or on the fly, to adjust to changing conditions. These techniques are not new. But, while they have been used, they were not being coordinated to reduce congestion.

We first became aware of this when we had to deal with unique special events such as the Olympic Games in Los Angeles and Atlanta and, of course, in Salt Lake City next year. Unusual demands were placed on the infrastructure and transportation system. In order to cope with these demands, various operational groups came together in a truly coordinated effort to cope with these increased demands by forming a "Task Force."

All the parts of the task force—ranging from transit, to first responders, to tow truck operators, to media—worked together to facilitate the smooth flow of vehicle traffic and pedestrians.

This concept is being further enhanced through our efforts in increasing interoperability among communication systems for public safety and by using ITS data gathering techniques and equipment to provide managers with the most up-to-date information on all aspects of a situation as quickly as possible. The new Traffic Management Centers facilitate integration of the efforts of agencies such as police and other municipal staff to more effectively respond to transportation disruptions and public safety needs.

Effective solutions to transportation bottlenecks must involve a high degree of local, metropolitan, and State involvement to build the broad spectrum of support necessary to overcome resistance and to solve the problem. We recognize that this cannot be a one-size-fits-all approach, and that the combination of solutions needed in one location will not be the same combination of solutions needed in another location.

Every instance requires its own mix of new highway capacity, better management of existing capacity, Intelligent Transportation Systems, transit, pedestrian improvements, and so on. To be effective in dealing with these bottlenecks we have to be prepared to use whatever mix of transportation alternatives will work, and we have to take a balanced approach to all alternatives. We have to constantly be looking for what works and what is the most cost-effective solution to the problem.

Major action is underway at the Department to tackle surface transportation congestion. Technology offers particular promise. Federal research helps build stronger roads and bridges. With new technologies and new, longer lasting materials that are easier to apply, we can "get in, get it done, and get out." The safer and less disruptive that work zones are to the user, the better.

We are working closely with our partners in the urbanized areas to develop regional architectures that will support ITS and operations technologies. These technologies will be key in reducing travel delay and improving mobility for the traveling public and the freight industry. The technologies include: traveler information systems, emergency response systems, electronic toll collection, traffic responsive signal systems, and state-of-the-art transportation management systems. The Bush Administration proposes \$253 million in ITS initiatives for 2002, a 32 percent increase over the current year. The challenge now is to deploy the systems so that there is enough information to say something more than: "Congestion ahead." Wouldn't it be great if, instead, that electronic sign told you: "Take exit 34. Left on Main. Go 3 miles. Re-enter highway." Now, that is an intelligent transportation solution. This information would come from a variety of sensors and input devices, including the Global Positioning System (GPS), coordinated through a Traffic Management Center (TMC) with multi-agency participation. That must be our management goal.

Other ways of using existing transportation facilities and services more effectively can also relieve congestion. High occupancy vehicle lanes, incentives for ridesharing, and other options are available for more livable transportation systems. Telecommuting offers another approach to reduce demand on capacity constrained highways by allowing employees to work at home or at centers close to home.

One long-term strategy we are continuing to explore for highways is value pricing. Several States have implemented value pricing on a pilot basis on highways financed with the proceeds of tolls. The concept of assessing relatively higher prices for travel during peak congestion periods is the same as that used in other sectors of the economy to respond to peak-use demands. For example, hotel rooms cost more during peak tourist seasons. By using fees which vary by time-of-day and location of use to manage demand and reduce congestion, system performance is improved. It provides improved service to transportation users, makes more efficient use of existing transportation capacity, and reduces the need for future capacity expansion.

Nonetheless, in addition to maximizing our system capacity through improved operations, we recognize that we must improve our capacity with new facilities when appropriate. We may also be able to make increased use of private sector roads and private funding of airport capacity to bridge the gap between capacity and supply. We commit ourselves to work with all of our partners and stakeholders in the other modes, the environmental community, and others when instituting new facilities. We are working very closely with the States, MPOs, and local governments to integrate land use policies with the planning process. These issues remain under the purview of State and local officials, but we can serve as a technical resource to encourage positive land use planning. In addition, we are committed to better understanding and responding to the needs of the freight community, in all areas of land use, transportation planning, and system operation. If we are to balance the mutual goals of productivity, safety, environment, and quality of life, we must consider both passenger and freight concerns in the planning and program development processes.

I also must let you know that one of my priorities is to ensure that the Federal Government gets what it pays for and that major transportation projects are managed wisely and appropriately. I have seen too many instances of large cost increases in transportation projects that make the projects appear unconstrained and out of control. We at the Department need to be in front of this, not behind it! The Department has improved the oversight processes used to monitor the progress of major transportation projects and identify problems early, establish core competencies for project managers, and hold project managers accountable for the quality of project oversight and performance. I feel strongly that with the increased Federal investment in transportation infrastructure in the past few years, we also need to be especially aware of the potential for waste, fraud and abuse and develop mechanisms to identify it early and prevent it. If we pay for a 10-sack concrete job, we should get a 10-sack concrete job, not a 7-sack job.

We will not stand behind projects that are not justified. For example, on April 4, 2001, DOT's Inspector General issued an Interim Report on the Seattle Central Link Light Rail Project, recommending that Federal funds and funding decisions for the Project be held in abeyance until FTA and Sound Transit complete a specific set of actions related to cost estimation, project scope, cost control, and until overall financing plans have been addressed. I have accepted the IG's recommendations, and FTA has begun implementing the actions identified in the IG's report.

I know that the cost of the Central Artery Tunnel Project in Boston is of concern to this committee. I share this concern. While there is no guarantee that the cost will not further increase, Federal funds for this project were capped at \$8.549 billion last year. I have asked the Department's Inspector General (IG) to look into the recent Massachusetts Inspector General's report stating that the total cost will exceed \$18 billion. Although I have not yet received our IG's report, I do not intend, at this time, to recommend any increase in the Federal funding cap.

Because of concerns over significant cost and schedule overruns in large scale transportation infrastructure projects, my predecessor Secretary Slater created a DOT task force to make recommendations to strengthen DOT's oversight of these large projects. The Department's Inspector General and the General Accounting Office have also reviewed DOT's oversight of large scale projects, and made recommendations to strengthen that oversight. The IG stated that there was a need to identify and apply best practices to oversight of major projects and find systematic solutions to problems. The General Accounting Office recommendations for oversight of large highway and transit projects included recommendations similar to the IG's regarding requiring more refined cost estimates and finance plans. The DOT task force's recommendations are now being implemented, and I will followup on this implementation.

#### *Ensuring Mobility for All Americans*

Despite the capacity challenges we face, many of us take the tremendous mobility options we have for granted. President Bush wants to address the mobility gap for Americans who do not have mobility options. The budget requests funding within the New Freedom Initiative for two new programs relevant to transportation. These

programs will help Americans with disabilities by increasing access to assistive technologies, expanding educational opportunities, and promoting increased access into the work force and daily community life. From the Revenue Aligned Budget Authority (RABA), the Administration requests \$145 million for the transportation component of the New Freedom Initiative. The proposal calls for the Federal Transit Administration (FTA) to administer the program on a reimbursable basis from the FHWA. There is already a strong linkage between the highway and transit programs under current law, as transit is an eligible expense of some of the highway programs. In fiscal year 2000 for example, States flexed \$1.6 billion of highway funding for transit programs.

The transportation programs proposed for the New Freedom Initiative are:

(1) \$45 million to be used for pilot programs run by State or local governments in regional, urban, and rural areas. These pilot programs will be selected on the basis of the use of innovative approaches to developing transportation plans that serve people with disabilities. The Administration will work with Congress to evaluate the effectiveness of these programs and encourage the expansion of successful initiatives.

(2) \$100 million to be used to establish a competitive matching grant program to promote access to alternative methods of transportation. Potential grant recipients include Centers for Independent Living, Assistive Technology Centers, vocational rehabilitation centers, and other community-based organizations that seek to integrate Americans with disabilities into the work force.

The \$145 million provided from RABA is the only component of the New Freedom Initiative funded within the Department of Transportation and is part of a much larger program that includes the Small Business Administration, the Department of Education, and the Department of Housing and Urban Development. Key proposals receiving funding in the President's budget include \$20 million for a new Access to Telework Fund, to provide Federal matching funds to States to guarantee low-interest loans for individuals with disabilities to purchase equipment necessary to telework from home, and a \$1 billion increase for special education programs, including Part B grants to States both proposals under the Department of Education.

The Administration believes that every American should have the opportunity to participate fully in society and engage in productive work. Unfortunately, millions of Americans with disabilities are locked out of the workplace because they are denied the tools and access necessary for success. Through the "New Freedom initiative," the Administration plans to help integrate Americans with disabilities into the work force.

#### STREAMLINING THE ENVIRONMENTAL REVIEW PROCESS

The Administration's goal is to lessen the environmental effects of transportation, and the budget includes \$6.6 billion, an almost 8 percent funding increase, for these efforts. They include the Federal Highway Administration's Congestion Mitigation and Air Quality Improvement (CMAQ) Program, Coast Guard's response to oil spills, and our efforts to reduce airplane noise.

The CMAQ Program, in particular, is a highly flexible, innovative, and successful program. This is a program that can make a difference in addressing congestion in urban areas and, in doing so, we will assist areas that do not meet Federal air standards to reaching their air quality goals. CMAQ has funded valuable projects, such as alternative fuels, transit, traffic flow improvements, auto emissions inspections, ridesharing, teleworking, and bicycle and pedestrian projects. It's a good example of a Federal/State/local partnership working together to meet multiple goals and improve the lives of our citizens.

While ensuring environmental protection and responding to public concerns about noise, air and water quality, other natural resources, and communities, we are also looking at ways to make the process of environmental review more efficient. Options include improving staff resources, fostering interagency cooperation, and more intelligent use of current streamlining tools.

Slow decisionmaking does not translate into better environmental results. The important thing is to get the appropriate Federal and State environmental safeguards identified early and built in as the project progresses. Local cooperation is a key component of improving the environmental process. Local officials must be our active partners in this effort if we are to make significant progress. That means, for example, that we have to deal with local problems of surface traffic congestion and continue to reduce the problems of aircraft noise and air pollution near airports.

I know how important environmental streamlining is for meeting the transportation demands of the 21st Century, especially for highways and transit under TEA-21. On May 25, 2000, the Department published interrelated notices of pro-

posed rulemaking (NPRMs) in the Federal Register. The proposed regulatory revisions reflected statutory changes made by TEA-21 in the areas of: (1) metropolitan and statewide planning, (2) consistency with the national ITS architecture and standards, and (3) NEPA implementation for projects funded or approved by FHWA and FTA.

The final rule for the ITS architecture and standards was published on January 8, 2001, and went into effect on April 8, 2001. Regarding the proposed NEPA and Planning rulemakings, I know that your full committee held a hearing on September 12, 2000, to discuss them and that significant issues were brought out at that hearing. I also received and have responded to the March 20 letter from the leaders of your committee and I appreciate the grave concerns expressed about the NPRMs. I can assure you that this matter is of the highest priority for the Department of Transportation and that most careful consideration is being given to our options. I will be reviewing the NEPA NPRM, along with the companion NPRM on transportation planning, to decide how best to implement the congressional intent to reduce project development time. I value your comments highly and I will keep this subcommittee and the leadership of the committee fully informed.

Guiding projects through the planning and review processes faster, while ensuring environmental protection, is a complex undertaking, with conflicting interests among stakeholders. But it is one we must work on expeditiously, because it is critically important to our transportation system and our economy.

In addition to the proposed rulemakings, the Department is taking, and has taken, other steps to streamline the environmental process for highway and transit projects. FHWA and FTA have enhanced interagency coordination by signing a National Memorandum of Understanding (MOU) on Environmental Streamlining between the Department and six other Federal agencies. This formalized the agencies' commitments to expedite Federal highway and transit projects while fulfilling their responsibilities to protect the environment. Similarly, three regional MOUs have been signed and some type of streamlining activity has been initiated in about 30 States. A Federal interagency working group was formed and has been meeting regularly to advance streamlining among the affected Federal agencies at the national level and throughout the field offices. The working group engages State transportation and other industry and environmental interests in pursuing streamlining goals. For example, this past November, the Department conducted a national training workshop on streamlining for Federal agencies. Congressional staff also presented their concerns to the group.

An environmental streamlining action plan has been drafted, providing a blueprint for national and State level activities. The action plan promotes the use of existing Federal Agency powers for administrative delegation of authorities to States and pilot projects to promote expedited reviews; encourages the use of flexible mitigation approaches, such as wetland banking or compensation strategies that promote investment in environmentally sensitive geographic regions, in lieu of project site-specific mitigation only; establishes performance evaluation measures, including the development of timeframes at the project level; and specifies the development of a dispute resolution system. The action plan is periodically updated and used to track progress.

The Department expects to promote and provide technical support for the expanded use of Federal agencies' existing administrative authorities to achieve process efficiencies and concurrent, rather than consecutive, reviews. This includes delegation of authority from Federal agencies such as the U.S. Army Corps of Engineers and the Advisory Council on Historic Preservation, to State agencies to act on their behalf in carrying out Federal regulations, partnership agreements for conducting concurrent reviews, and project agreements for specific time commitments. The Department is also working to address the TEA-21 requirements for elevation to the Secretarial level of interagency disputes that are causing delays.

#### CONCLUSION

In conclusion, the United States enjoys the safest and the best transportation system in the world. Nevertheless, we face safety and capacity challenges. The funding requested in President Bush's 2002 budget, as well as the management and accountability improvements we will make over the next year, will help us to meet those challenges.

I look forward to working with this subcommittee and all Members of Congress over the coming year to ensure that a safe transportation system continues to support a strong economy and improve the quality of life for all of our people.

RESPONSE BY HON. NORMAN MINETA TO AN ADDITIONAL QUESTION FROM  
SENATOR SMITH

TRUCK SAFETY AT U.S./MEXICO BORDER

*Question.* Mr. Secretary, the President's budget proposal requests funding for increased motor carrier safety oversight and enforcement activities and for building inspection facilities at the U.S./Mexico border, but we have few details on how this money will be distributed.

I am concerned that opening the borders in full compliance with NAFTA may be imminent, and yet under the previous Administration little progress was made to ensure Mexican trucks entering this country will comply with U.S. safety standards.

Can you tell us whether there will be a comprehensive implementation plan to address the various near and long-term needs for cross border truck safety before the border is further opened?

*Response.* FMCSA has prepared a comprehensive draft plan to ensure that the NAFTA cross-border provisions are implemented effectively and on time. To guide the development and implementation of the plan, the FMCSA has established several teams to identify and implement the various program activities that will be necessary to integrate Mexican operations fully into our operating, safety, and enforcement programs. Activities encompassed in the draft plan circulated for review include very specific screening and monitoring procedures to ensure safe carrier, vehicle and driver operations in the United States.

Here are some of major program strategies, activities, and milestones planned or undertaken to date to prepare for the opening of the Southern border.

- *Rulemaking.*—On May 3, 2001, DOT published in the Federal Register proposed regulations governing the application process for Mexican-domiciled carriers that wish to operate in the United States and the process by which DOT will review the safety records of carriers during the first 18 months of their U.S. operations. The new requirements will ensure that carriers understand and are able to comply with U.S. requirements. Final regulations will be published by November 2001.

- *Resources.*—To support comprehensive State and Federal motor carrier safety enforcement activities, the Department is requesting \$88.2 million in additional funds in its fiscal year 2002 budget. The request includes \$13.9 million to hire an additional 85 Federal staff to perform safety inspections and conduct safety audits of Mexican carriers. We have also requested \$54 million to provide the Federal share for new/modified State inspection facilities construction (23 border crossings with truck traffic are currently without permanent State inspection facilities). We have requested \$2.3 million for immediate Federal construction needs to provide areas to park vehicles placed out-of-service. The Department is also proposing that an additional \$18 million be available to support the staffing of State facilities and increase State motor carrier border inspection activities. All Federal enforcement personnel will be hired and trained by December 2001.

- *Education and Outreach.*—The FMCSA, in concert with the border States, will be conducting a series of safety compliance seminars to educate Mexican carriers and drivers on what they need to know to operate in compliance with Federal and State regulations. The seminars will include a very detailed explanation of new application requirements. These safety compliance seminars are in addition to ongoing efforts to translate and distribute educational materials to Mexican carriers and drivers. The seminars will be conducted from August to November 2001.

- *Application Processing Procedures.*—Procedures are being developed to ensure that all applications are evaluated accurately and consistently and only qualified carriers are approved to operate. Procedures will be developed by September 2001. An application-processing center will also be established by September 2001 to specifically review, evaluate, and process new applications from Mexican carriers.

- *Safety Review Procedures.*—To ensure the safe operation of the Mexican carriers, the rulemaking requires that safety reviews of each carrier's operations be performed. Within 18 months of receiving authority, all Mexican carriers must submit to a safety review by providing records to a Federal safety investigator and participating in a review of its operating procedures. Procedures for conducting the review will be in place by August 2001.

- *Safety Data Bases.*—The FMCSA will focus on improving the information systems available to Federal and State enforcement officials in order to verify application information directly with Mexican transportation officials, automate the review of the applications, provide real-time safety performance and other data to Federal and State inspectors and effectively monitor the safety performance of Mexican motor carriers operating in the United States. All inspectors will have access to

available U.S. and Mexican driver licensing, carrier, and other safety data bases by January 1, 2002.

- *NAFTA Coordination.*—We will continue to work with Mexico to increase regulatory compatibility between our countries, establish cooperative agreements on the exchange of safety information, and provide technical assistance to build compatible compliance and enforcement programs in Mexico. The adoption and implementation of comparable programs in Mexico will provide greater assurance that vehicles entering the United States are already in compliance with safety standards.

RESPONSES BY HON. NORMAN MINETA TO ADDITIONAL QUESTIONS FROM  
SENATOR INHOFE

WORK ZONE SAFETY

*Question 1.* The historic Federal investment in highway improvements provided by TEA-21 is resulting in a dramatic increase in highway construction projects across the Nation. While this is good news for the safety and efficiency of our highway and bridge network, it also means more roadway construction work zones in the short term.

I have been concerned about the public safety threat posed by roadway work zones to American motorists and the men and women of the construction industry for some time. In 1999, 868 people were killed and 39,000 injured in roadway work zone accidents. It has come to my attention that a disproportionate number of work zone accidents involve commercial motor vehicles. Specifically, in 1999 26 percent of these work zone fatalities resulted from crashes involving large trucks—while commercial vehicles only make up about 3.3 percent of all vehicles and 7.5 percent of U.S. vehicle miles traveled.

The Federal Highway Administration was previously involved in the National Work Zone Safety Information Clearinghouse to help promote solutions to work zone safety challenges by providing information about a wide range of work zone safety technical and operational issues. With the enactment of the Federal Motor Carrier Safety Improvement Act, Congress provided substantially more Federal resources for commercial motor vehicle safety activities, including some discretionary funds for national priorities under the Motor Carrier Safety Assistance Program.

Given the safety challenge posed by commercial motor vehicles moving through construction work zones, wouldn't Federal involvement be appropriate to help ensure we are doing all that we can to make the Nation's roadways as safe as possible for all who use them? Also, do you believe an information-based entity, such as the National Work Zone Safety Information Clearinghouse, could play a valuable role in this type of endeavor?

Response. Trucks are clearly over represented in work zone crashes, and clearly warrant Federal involvement. The Federal Highway Administration (FHWA) and Federal Motor Carrier Safety Administration (FMCSA) have numerous efforts underway to address work zone safety and operations, all focused on heightening awareness and developing solutions for this issue. The two agencies continue to evaluate ways to improve work zone safety for both passenger vehicles and large trucks, and States, at their option, can use their Motor Carrier Safety Assistance Program funds (both basic and high priority funds) for public information efforts, including work zone safety enforcement initiatives aimed at commercial vehicles.

The National Work Zone Information Clearinghouse certainly plays a role in this type of endeavor. The industry/government partnership created by the Clearinghouse focuses on compiling and making readily available the latest work zone safety related information, for researchers, business, industry, Government Agencies and the public, and provides a forum for exchange and coordination of solutions and ideas. As originally envisioned, the Clearinghouse is now successfully operating without funding from FHWA, handling over 24,000 information requests annually.

HOURS OF SERVICE RULE

*Question 2.* Clearly, there are significant problems with the proposed rule regarding Hours of Service if only in the public relations battle. What is the intention of the Bush Administration with respect to the proposed rule?

Response. We are still considering the various options available to us based on our analysis of the 53,000 comments received. Our decision will depend on whether we need more information or additional comments that would require a supplemental notice of proposed rulemaking, or have the basis for issuing a final rule. The Department's fiscal year 2001 appropriations legislation prohibits the Department from issuing a final rule before October 1, 2001, but allows other stages of rule-

making to proceed. We expect to make a decision on our options this summer and are committed to keeping you informed about whatever steps we take.

*Question 3.* It has been suggested to me that the proposed rule as currently drafted would actually put more trucks on the roads during daylight hours thereby increasing the safety risk to the public. Is this a concern and if not why not?

Response. The regulatory evaluation to the proposed rule discussed the impact of both shifts in traffic to daytime and the increased use of inexperienced commercial vehicle drivers. Because of uncertainty regarding both the magnitude and consequences of these changes, we did not attempt to quantify the safety impacts of these possible changes. In recognition of the uncertainty, we asked anyone who may have specific data on this point, to bring it forward so that we could more accurately identify the impacts.

The FMCSA held three public roundtable discussions in September and October 2000 to gather specific data on this issue. If our review of the comments and additional analyses demonstrate that more drivers and more vehicles may be needed particularly during peak daytime hours, we could consider this fact as part of any subsequent evaluation and subsequent changes in our proposal.

*Question 4.* As you and your staff are likely aware, Sec. 345 of the 1995 National Highway System Designation Act (Public Law 104-59) granted limited exemptions under the Hours-of-Service regulations for transportation of agricultural commodities and farm supplies, transportation and operation of ground water well drilling rigs, transportation of construction materials and equipment, drivers of utility service vehicles, and snow and ice removal.

The language in this Section states: "If the Secretary determines that public safety has been adversely affected by an exemption granted under this section, the Secretary shall report to the Congress on this determination." To the best of my knowledge, Congress has not received any such report. Is it your understanding that the Department of Transportation has submitted a report to the Congress that examines the vehicle safety performance of drivers of commercial motor vehicles which transport agricultural commodities and farm supplies, drivers which transport and operate ground water well drilling rigs, drivers which transport construction materials and equipment, drivers of utility service vehicles, and drivers of snow and ice removal equipment?

Response. The Department of Transportation has not submitted a report to the Congress that examines the vehicle safety performance of drivers of commercial motor vehicles under Sec. 345 of the NHS Act.

*Question 5.* The language further states: "The Secretary may conduct a rule-making proceeding to determine whether granting any exemption provided by subsection (a) (other than paragraph (2)) is not in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles."

Again, has the Department of Transportation made a determination that the exemption granted specifically to the drivers of commercial motor vehicles covered under SEC. 345 is "not in the public interest" and "would have a significant adverse impact on the safety of commercial motor vehicles?" If so, what research, evidence or criteria has the Department used to satisfy this congressionally mandated two-pronged test?

Response. The Department of Transportation has not made a determination that the exemption granted specifically to the drivers of commercial motor vehicles covered under Sec. 345 is "not in the public interest" and "would have a significant adverse impact on the safety of commercial motor vehicles."

*Question 6.* Does the Agency consider this rulemaking to be an appropriate review of the 1995 National Highway System Designation Act exemptions? If so, what data supports such a sweeping deletion of the exemptions across the board in almost all industries? Also, has the Agency properly considered the costs to the economy of such sweeping deletions? What data supports the sudden decision to remove tree farming and timbering from agriculture?

Response. The FHWA received a petition on July 1, 1996, from the Advocates for Highway and Auto Safety (AHAS) seeking rulemaking to reevaluate the Sec. 345 exemptions. The NPRM granted the AHAS petition and FMCSA is considering it as a part of the Hours of Service rulemaking.

Although the FMCSA has not conducted specific monitoring programs for currently exempted drivers, a significant amount of the sleep and fatigue research evaluated in preparing the NPRM suggests that a 24-hour restart provision, like that authorized by the Sec. 345, may not be sufficient to overcome accumulated fatigue. We have at least six such studies and we can supply additional information directly from the public docket upon request. The FMCSA, therefore, proposed in the NPRM

a slightly longer break in the interests of public safety. The NPRM would require drivers to take a “weekend” of at least 32 consecutive hours, including two consecutive midnight to 6 a.m. periods.

The NPRM also proposed narrow definitions for significant terms used in Sec. 345 that the statute does not define. The FMCSA has had difficulty enforcing Sec. 345 when the carrier is operating outside the broad conditions contained in Sec. 345. The terms farmer, agricultural commodity, and farm supply have been ambiguous to FMCSA and our State enforcement partners. In addition, Federal statutes are ambiguous concerning whether tree farms and timber harvesting meet current statutory definitions of a farmer and agricultural commodities, respectively. See 7 USC 1a(4), 7 USC 499a(b)(4), 7 USC 608c(2), 7 USC 1428(c), 7 USC 1441, 7 USC 1631, 7 USC 1731, 7 USC 1736o(c), 7 USC 5602, 7 USC 7412, 12 USC 1141j(g), 15 USC 714, 21 USC 346a(a), and 42 USC 1755.

The regulatory evaluation to the proposed rule discussed the impact of exemptions. Because of uncertainty regarding both the magnitude and consequences of these changes, FMCSA did not attempt to quantify the safety impacts of these possible changes. In recognition of the uncertainty, FMCSA asked anyone who may have specific data on the exemptions, to bring it forward so that FMCSA could more accurately identify the impacts.

The FMCSA held three public roundtable discussions in September and October 2000, and invited discussion of the question of exemptions, including the proposed definitions of who is a farmer. Consistent with our statutory mandate in the Motor Carrier Safety Improvement Act of 1999 that “the Administrator shall consider the assignment and maintenance of safety as the highest priority,” the Agency intends to carefully consider requests for exemption that are supported by sound, compelling safety data.

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RESPONSES BY HON. NORMAN MINETA TO ADDITIONAL QUESTIONS FROM  
SENATOR REID

GAS TAX

*Question 1.* Last year there was a serious effort in Congress to repeal or suspend the gas tax. This effort was defeated in the Senate because most Senators understood that suspending the gas tax would do little to reduce gas prices, threaten critical highway, transit, and aviation spending, and provide windfall profits to the oil companies and OPEC.

Unfortunately, it now appears that there will be another effort this year to suspend the gas tax. So far the Bush Administration has refused to come out strongly against this shortsighted proposal. What is your position on temporarily suspending the gas tax? Can we expect President Bush to strongly oppose any effort in Congress to suspend or repeal and portion of the Federal gasoline or diesel tax?

Response. Instead of reacting to short-term price fluctuations, I believe that we can most benefit consumers by addressing the problem of fuel costs through solutions that increase supplies and provide for long-term energy needs. The President’s energy plan offers such solutions.

MAGNETIC LEVITATION

*Question 2.* I was very disappointed earlier this year when the Las Vegas magnetic levitation project was not chosen as one of the two finalists by the previous Secretary of Transportation. The Las Vegas project provides the fastest and least expensive way to test this new technology and begins the process of connecting two of our Nation’s fastest growing metropolitan areas—Los Angeles and Las Vegas.

I hope we can revisit this selection process with the new Administration. In addition, I am interested in hearing of the new Administration’s commitment to the magnetic levitation program. Does your decision not to include funding for this program in your fiscal year 2002 budget request indicate a lack of interest?

Response. I appreciate your strong expression of interest in the Department’s role in future Maglev developments, and your support for a Los Angeles—Las Vegas application of this technology. However, because of my prior employment with Lockheed Martin Corporation, which was involved in one of the two projects selected by former Secretary Rodney E. Slater, I am recused from departmental decisionmaking on this subject matter. I have advised Deputy Secretary Michael P. Jackson of your interest in future advances in this program at the Department.

## HIGH-SPEED RAIL

*Question 3.* One component of our transportation system that has been consistently under funded and underutilized is our passenger rail infrastructure. Last year, despite strong support, the High-Speed Rail Investment Act did not make it into the final budget package and many of us in the leadership made commitments to the legislation's sponsors that we would do our best to move the legislation forward this year.

Senators Joe Biden and Kay Bailey Hutchison reintroduced this legislation earlier this year and now have 57 sponsors. Mr. Secretary, I know that you understand the importance of providing high-speed rail in selected corridors as a transportation option. Can you tell me if the Bush Administration will be supporting passage of the High-Speed Rail Investment Act?

Response. I support the principle embodied in the bill of providing a dependable source of capital investment for high-speed rail development that is not in competition with other transportation funding priorities. I have not had an opportunity to discuss the specifics of the legislation with its most important constituencies, Amtrak and the States. Nor have I had a chance to discuss the funding concept Federal tax credits in lieu of interest on the bonds—with Secretary of the Treasury O'Neill. But I believe that finding sources of funding for high-speed rail capital investments is important and I will work within the Bush Administration to quickly develop our position on the high-speed rail investment legislation.

## DOT BUILDING

*Question 4.* In November 1997, this committee authorized the General Services Administration to procure a new headquarters building for the Department of Transportation. Recent news articles have suggested that there has been a delay in this procurement. Would you explain the reason for this delay? What is the present status of this project?

Is it true that the Department of Transportation is housed in a building where the lease has expired for over a year? What is DOT paying for its current headquarters space and how does that payment compare to market rates in the District of Columbia?

Response. In July 1997, the House Committee on Transportation and Infrastructure passed a Committee Resolution providing GSA with authority (in the absence of funding for Federal construction) to enter into an operating lease for a headquarters building for the Department of Transportation (DOT). In November 1997, the Senate Committee on Environment and Public Works also passed a Committee Resolution authorizing GSA's procurement of a DOT Headquarters lease. The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, directed GSA to enter into an operating lease to acquire space for the DOT headquarters. Pub. L. 105-277, 112 Stat. 2681, 2681-505. That Act also provided that the leases meet the guidelines for operating leases set forth in the joint statement of the managers for the conference report to the Balanced Budget Agreement of 1997, as determined by the Director of the Office of Management and Budget.

GSA issued the Solicitation for Offers (SFO) for the DOT Headquarters lease procurement in November 1999. Phase I proposals were received in December 1999. Five finalists were identified to compete in Phase II of the procurement in March 2000, and their initial Phase II proposals were received in June 2000. Following extensive discussions with the offers and requests for revised proposals, GSA began consulting with OMB in October 2000 with regard to the budgetary scoring issues referenced in the Act. This process is ongoing.

It is important to note that while information regarding this procurement has been widely reported in the press, including reports of the purported winner, this information is entirely speculative and premature. In fact, the procurement remains open and on-going pending resolution of scoring issues with OMB and GSA's publication of the Final Environmental Impact Statement (FEIS). We hope to reach resolution with OMB on these issues in the near future and publish the FEIS thereafter.

DOT is currently housed in predominantly two leased facilities, the Nassif Building and the Transpoint Building. GSA's lease at the Transpoint Building does not expire until May 15, 2003. With respect to the Nassif Building, GSA's lease expired on March 31, 2000. Since that time, a series of standstill agreements have been executed with the building's landlord to provide the Government with the legal right to continue to occupy the space. Under these agreements, GSA continues to pay the landlord at the rental rate in effect as of the lease expiration date, approximately \$31,000,000 per year net utilities.

GSA is actively seeking to negotiate an extension to the lease consistent with the committee resolutions recently passed authorizing GSA's execution of an interim lease for DOT. Should an interim lease be negotiated, the agreed upon rent would be retroactive to April 1, 2000 and we would be required to pay the difference between the rent we are paying, \$31,000,000 and the negotiated rent.

The incumbent landlord of the Nassif Building recently withdrew from the procurement for the new DOT headquarters building, opting instead to seek a 10-year lease extension. However, its interim lease proposal is longer and more expensive than the one authorized by the Committee Resolutions, which cap the annual rent at \$37,851,057 (fully serviced) or \$34,890,093 (net utilities). We believe the prospectus cap reflects a fair market rent for the Nassif Building.

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RESPONSE BY HON. NORMAN MINETA TO AN ADDITIONAL QUESTION FROM  
SENATOR WARNER

DOT BUILDING

*Question.* In November 1997, with close consultation with the Department and GSA, this committee authorized GSA to acquire new space for the Department of Transportation headquarters.

At that time, the committee was advised that the resolution provided the executive branch all of the authority needed to accomplish this goal. Given that the Department has been in a hold-over lease status since before 1997—paying premium rental rates for a substandard facility—we have been anxious for this important project to move forward.

We have waited patiently as GSA and DOT went through the procurement process, and as was recently announced in the press, a winner has been selected. Yet, I would like to ask why no official announcement has been made by GSA or the Department? It appears that once again, no progress is being made.

Can you advise the committee about the status of this procurement, and when a selection will be publicly announced?

Also, I would be interested in knowing if the Department's General Counsel has expressed any concern about the Government's exposure to litigation? The apparently successful offeror, having been identified in the press, might have some reason to enforce his claim.

Response. In July 1997, the House Committee on Transportation and Infrastructure passed a Committee Resolution providing GSA with authority (in the absence of funding for Federal construction) to enter into an operating lease for a headquarters building for the Department of Transportation (DOT). In November 1997, the Senate Committee on Environment and Public Works also passed a Committee Resolution authorizing GSA's procurement of a DOT Headquarters lease. The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, directed GSA to enter into an operating lease to acquire space for the DOT headquarters. Pub. L. 105-277, 112 Stat. 2681, 2681-505. That Act also provided that the lease meet the guidelines for operating leases set forth in the joint statement of the managers for the conference report to the Balanced Budget Agreement of 1997, as determined by the Director of the Office of Management and Budget.

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It is important to note that while information regarding this procurement has been widely reported in the press, including reports of the purported winner, this information is entirely speculative and premature. In fact, the procurement remains open and on-going pending resolution of scoring issues with OMB and GSA's publication of the Final Environmental Impact Statement (FEIS). We hope to reach resolution with OMB on these issues in the near future and publish the FEIS thereafter.

With respect to DOT's current housing arrangements, the Agency is presently housed predominantly in two leased facilities, the Nassif Building and the Transpoint Building. GSA's lease for DOT at the Transpoint Building does not expire until May 2003. With respect to the Nassif Building, GSA's lease expired in March 2000. Since that time, a series of stand still agreements have been executed with the building's landlord to provide the Government with the legal right to con-

tinue to occupy that space. Under these agreements, GSA continues to pay the landlord at the rental rate in effect as of the lease expiration date. GSA is actively seeking to negotiate an extension to the lease consistent with the Committee Resolutions recently passed authorizing GSA's execution of an interim lease for DOT. The incumbent landlord of the Nassif Building recently withdrew from the procurement, opting instead to seek a 10-year lease extension. However, its interim lease proposal is longer and more expensive than authorized by the Committee Resolutions.

Finally, as to concerns regarding litigation, this is a concern for any action of this size and scope. However, the GSA project team has carefully consulted with the GSA General Counsel to ensure that actions are reasonable and in accordance with applicable laws and regulations, and continues to do so.

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STATEMENT OF HON. JANE R. ROTH, JUDGE, U.S. COURT OF APPEALS

Mr. Chairman and members of the subcommittee: I appreciate the opportunity to testify in my capacity as the chairman of the Judicial Conference's Committee on Security and Facilities.<sup>1</sup> Chairman Inhofe, I look forward to working with you, Senator Baucus, the other members of the Subcommittee, and your staffs in the future.

On behalf of the entire judiciary, I would like to express our appreciation for the authorizations of courthouse projects that this subcommittee recommended and the full committee approved last year. Unfortunately, not all these projects have received appropriations yet. We hope to get those much needed projects funded and moving ahead this year.

FISCAL YEAR 2002 COURTHOUSE PROGRAM

President Bush's fiscal year 2002 budget request includes \$216.8 million for courthouse construction projects and \$130.3 million for court-related repair and alteration projects. The subcommittee's letter to the White House in support of funding for courthouse construction was very helpful in achieving this result. While the judiciary appreciates the fact that some courthouse construction funding was included in the Administration's budget request, the Judicial Conference proposes 20 projects for funding in fiscal year 2002 at a total cost of approximately \$665 million.<sup>2</sup>

The judiciary supports the President's budget request for courthouse projects. The Committee on Environment and Public Works has previously provided authorizations for 11 of the 12 courthouse construction projects in the President's budget request. Some of the projects are on the judiciary's prioritized list for fiscal year 2002 and some are from previous years and may need to have their authorizations increased for inflation.

There are also nine new projects not included in the President's budget which the judiciary supports for fiscal year 2002: Rockford, IL; Cedar Rapids, IA; Nashville, TN; Savannah, GA; Fort Pierce, FL; Jackson, MS; Austin, TX; San Diego, CA; and San Jose, CA. The Senate has already provided authorizations for four of these projects, although these resolutions may need to be increased now to match GSA's latest estimates due to inflation. In past years, the committee has requested 11(b) studies for projects which were not included in the President's budget. We urge the subcommittee to make a similar request this year. I have attached a chart to this statement that summarizes the judiciary's fiscal year 2002 plan and the President's budget request.

We understand from GSA that three projects might be delayed until next year due to circumstances beyond the judiciary's or GSA's control. These projects, in Salt Lake City, UT; Cape Girardeau, MO; and Orlando, FL, could be authorized in a future year. Two other projects, Eugene, OR and Little Rock, AR, are not ready for construction funding as anticipated, but do need additional site and/or design money this year. The requests for additional site and design money for Eugene and Little Rock are included in the President's budget request for fiscal year 2002.

The Judicial Conference also supports construction of a Federal office building to house the court of appeals staff and potentially other Federal agencies in Atlanta, GA.

SOME FISCAL YEAR 2002 COURTHOUSES HAVE SPECIAL REQUIREMENTS

The judiciary is in disagreement with OMB's unilateral decision to eliminate small amounts of space which the judiciary needs due to special requirements in

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<sup>1</sup>The Judicial Conference of the United States is the judiciary's policymaking body.

<sup>2</sup>The judiciary determined this amount by applying a factor for inflation to previous GSA estimates.

some courts. Our planning guidelines are intended to recognize that some courts operate differently from others and handle different types of cases. For example, for some projects on our fiscal year 2002 list, the judicial councils of the various circuits have determined that a senior judge<sup>3</sup> will need exclusive use of a courtroom for longer than 10 years. Such special requirements result in minor increases in square footage and minimal costs in the long term. The judiciary plans to use these courthouses for decades into the future; shortsightedly making them smaller than needed will only necessitate the judiciary returning to Congress to request additions to relatively new courthouses at greater expense to taxpayers. We hope you will authorize the projects based on the requirements submitted by the courts. Details of these changes will be provided to subcommittee staff.

An example of the problems caused when a facility is built smaller than needed is the Brooklyn, NY courthouse annex. Additional funding is needed to build out a total of eight courtrooms and eight chambers in the annex as planned and authorized to accommodate the judges that will be working when the annex opens and to permit the planned renovation of the existing courthouse. The judiciary urges the subcommittee to ensure that GSA constructs the necessary space. If this is not done, the new building will be full on the day it opens, and indeed the entire complex may not be able to accommodate the court when the annex opens. In our view, responsible planning and responsible spending justifies further action by the subcommittee to complete this important project. I will submit for the record a separate statement by Judge Raymond Dearie of the Eastern District of New York which elaborates on the serious housing problem that will be created if GSA does not build enough space in Brooklyn.

#### THE PROJECT BACKLOG

Ten years ago, the judiciary, Congress, and the GSA embarked on a construction program to replace court facilities. Some existing courthouses are at full capacity with no room for expansion. Most are aged and obsolete, cannot provide adequate security, and cannot accommodate emerging technology. Due to a lack of funding, the program is now seriously behind schedule. In fiscal years 1998 through 2000, the previous Administration did not include any funding for courthouses in its budget request. In fiscal year 2001, the Administration included funding in its budget for only 7 of the 21 courthouses approved by the Judicial Conference. Congress has appropriated funds for courthouse construction only twice in the last 4 years. This has created the backlog.

Delayed funding of courthouse projects can result in significant cost increases. Although GSA has estimated that construction costs were increasing an average of 3-4 percent for each year of delay, there have been some situations where escalation factors have been significantly higher. As a result, had the 20 projects the judiciary supports in fiscal year 2002 been built when they were originally scheduled, the projected costs would have been approximately \$50 million lower than they are today due to inflation.

#### NEED FOR NEW COURTHOUSES

In spite of these delays, the workload of the Federal courts continues to increase, necessitating additional judges and court staff. In the last 10 years, criminal cases have increased 32 percent, civil cases have increased 20 percent, and bankruptcy filings have increased 68 percent. Congress provided 9 new Federal district judgeships in fiscal year 2000 and 10 more in fiscal year 2001. The Judicial Conference of the United States is currently requesting that 54 more Article III judgeships be created. Furthermore, about 127,000 persons are under the supervision of the judiciary's probation and pretrial services officers. These officers need space to conduct drug testing and to hold meetings with those under supervision.

Many of the courthouses in use today are more than 50 years old and do not meet the needs of a modern-day justice system. A major problem is security for the jurors, witnesses, court employees, judges and the public. Oftentimes, the courthouses lack separate routes of circulation so that prisoners are transported through the same areas and elevators as judges, jurors and members of the public. Some courthouses do not have holding cells adjacent to courtrooms or sally ports for bringing prisoners into the courthouses in a secure manner. The courthouses frequently have operational problems such as inadequate heating and ventilation systems and electrical systems that are incompatible with modern technology requirements. For example, in some older courthouses, the infrastructure will not allow the wiring necessary for courtroom technologies such as video evidence presentation systems, video-

<sup>3</sup>Senior judges are those judges who are eligible to retire but who continue to try cases.

conferencing systems, and electronic methods of taking the record, which will streamline trials and improve the quality of justice.

A courthouse project is not proposed for consideration unless the district's long-range facility plan indicates that there is no more room for judges in the existing facility. Usually this determination is made after all executive branch agencies and court-related units (probation, pretrial services, and the bankruptcy court) have been moved from the existing building. Therefore, the projects on the judiciary's Five-Year Plan are urgently needed when they are placed on the plan and delays only exacerbate operational problems. We have provided subcommittee staff with a fact sheet on each courthouse project that describes the current housing situation and the need for a project at that location.

The judiciary's problems are particularly acute along the southwest border, where drug and immigration enforcement efforts have caused the workload to more than double and where proximity to the Mexican border magnifies security risks. Three of the twenty courthouse projects requested for fiscal year 2002 are located along the southwest border. We have provided copies of a video on the southwest border court problems to committee staff. I would like to have shown it to the subcommittee as part of my testimony today, but time constraints have made that impossible. I urge you, however, to take the time to view it in the near future.

#### COST CONTAINMENT

The Federal judiciary, working with GSA, has taken many steps to economize and ensure better management of the courthouse construction program without sacrificing functionality. The courthouse construction process has become increasingly rigorous, disciplined and structured over the past several years as a result of these actions.

On the recommendation of the National Academy of Public Administration, the judiciary began its *long-range facilities planning process* in 1988. The objective of the planning process is to determine the ability of existing facilities to meet the judiciary's projected future space needs. The planning process was designed to provide the judiciary with a systematic, a political method of identifying and defining the need for new courthouse projects. In January 2001, the General Accounting Office issued a very positive report to Congress about the judiciary's long-range planning process. In May 2000, the consulting firm of Ernst & Young, which was retained by the judiciary to study the courthouse program, found that the facilities planning process has been effective. The judiciary received GSA's Annual Achievement Award for Real Property Innovation for the long range planning process in 1998.

In 1993, GSA instituted a *benchmarking* process to evaluate the cost of proposed new construction projects and to help identify potential savings. Baseline benchmarks were established for Federal courthouses based on industry data. The benchmarks are then adjusted for project specific conditions such as costs for seismic construction and geographic location. For example, a benchmark would suggest a range of acceptable costs for a courthouse project in Washington, DC from \$145 to \$170 per square foot in 1993 dollars. The benchmarks have been adjusted over time to incorporate security construction criteria adopted by GSA subsequent to the bombing of the Murrah Federal Building in Oklahoma City and to accommodate technological advancements. GSA uses benchmarks to compare costs of Federal construction with private sector buildings and to compare courthouse projects nationwide. Construction cost estimates are now based on the benchmarks.

In 1996, at the urging of Congress, the judiciary began *prioritizing* courthouse construction projects against defined criteria. The judiciary uses a scoring system to develop an annual, prioritized Five-Year Courthouse Project Plan. Congress uses the scoring system and the Five-Year Plan to allocate resources for courthouse construction, funding permitting. Ernst & Young found that the scoring process was logical and appropriately focused on facilitating judicial functions. The scoring criteria take into account security problems; building conditions; the number of judges affected by a lack of space; and the length of time the facility has not been able to accommodate additional judges.

Courthouse construction conforms to the *U.S. Courts Design Guide*, which identifies the functional requirements for courthouses. The 1997 edition incorporates new criteria in response to economic constraints. In 1997, a cost estimating consultant determined that these changes would result in an average of 5 percent savings in the cost of projects. These changes include: prohibiting the use of exotic hardwoods; encouraging GSA's private sector design architects to develop a selection of finishes that responds to construction cost limitations, optimizes long-term value, and satisfies functional requirements; defining in greater detail the amount of circulation areas needed in order to limit this space; prohibiting architects or court staff from

adding spaces not contemplated in design; and encouraging shared use of space common to all court offices, such as conference and training rooms.

## SUMMARY

The judiciary is truly grateful for the resources provided for the courthouse construction program so far. However, recent delays in courthouse funding have created a backlog of facilities that need replacement. The judiciary has outgrown these facilities and they suffer from serious security and infrastructure problems. Improvements made to the planning process and design standards over the years help to ensure that the courthouse program meets the judiciary's workload needs in an economical and functional manner. Therefore, the judiciary asks that you authorize, in accordance with the judiciary's stated needs, the new courthouse projects on the attached list that have not already been authorized or that need their authorizations increased.

Thank you for the opportunity to testify before the subcommittee. I would be pleased to answer any questions you might have at this time.

## Judicial Branch Courthouse Construction Program for FY 2002

(Dollars in Millions)

Project (In Priority Order Approved by Judicial Conference)	Project Phase on Judiciary's Plan	Amount Recommended by the Judiciary in FY 2002	Amount Requested in President's Budget
From Previous Plans:			
Brooklyn, NY .....	Design & Construct .....	\$32.000	\$3.361*
Washington, DC .....	Construction .....	6.595	6.595
Buffalo, NY .....	Site & Design .....	0.716	0.716
Springfield, MA .....	Design & Construct .....	6.473	6.473
Miami, FL .....	Construction .....	15.000	0
On FY 2002 Plan:			
1. Fresno, CA .....	Construction .....	121.2	121.225
2. Erie, PA .....	Construction .....	30.7	30.739
3. Eugene, OR .....	Construction .....	75.2	4.470**
4. El Paso, TX .....	Site & Design .....	11.1	11.193
5. Mobile, AL .....	Site & Design .....	11.3	11.290
6. Norfolk, VA .....	Site & Design .....	11.8	11.609
7. Las Cruces, NM .....	Design .....	4.1	4.110
8. Salt Lake City, UT .....	Construction .....	76.5	0***
9. Little Rock, AR .....	Design & Construct .....	75.0	5.022**
10. Rockford, IL .....	Site & Design .....	4.9	0
11. Cedar Rapids, IA .....	Site & Design .....	15.1	0
12. Nashville, TN .....	Site & Design .....	14.3	0
13. Savannah, GA .....	Construction .....	46.5	0
14. Fort Pierce, FL .....	Site & Design .....	4.5	0
15. Jackson, MS .....	Site & Design .....	12.3	0
16. Austin, TX .....	Site & Design .....	8.5	0
17. San Diego, CA .....	Design .....	14.3	0
18. Cape Girardeau, MO .....	Construction .....	36.9	0***
19. Orlando, FL .....	Construction .....	71.3	0***
20. San Jose, CA .....	Site & Design .....	19.4	0

\*Only a portion of this money is for the new courthouse annex, with the remainder to be spent on design of U.S. Attorney space in the General Post Office. GSA's prospectus does not specify how the funding request is to be divided.

\*\*These funds are for additional site and/or design only and do not include construction money as planned. A prolonged site selection process for the Eugene project and a change in design plans for the Little Rock project resulted in their not being ready for construction in fiscal year 2002.

\*\*\*GSA indicates these projects may not be ready for any additional funding in fiscal year 2002.

## RESPONSES BY JUDGE JANE R. ROTH, TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

*Question 1.* There has been much confusion over the issue of sharing courtrooms. We have a desire to make sure that courthouses are used to the fullest extent possible and have surmised that sharing of courtrooms only makes sense. However, I have learned over the years that what seems to be a logical solution does not necessarily mean it is so. I understand the sharing of courtrooms is one such case.

Please explain to the subcommittee what the current position of the Judicial Conference is on courtroom sharing and how such a procedure affects the function of the courts.

Response. The Judicial Conference policy, adopted in 1997, is to provide one courtroom for every active district judge. With regard to visiting judges and senior judges who do not draw a caseload requiring substantial use of a courtroom, the policy requires that the circuit judicial councils determine how many courtrooms a proposed facility needs. The policy provides the following planning assumptions:

(1) If a senior judge will be provided with a courtroom, it will be occupied by the judge for 10 years after taking senior status;

(2) It will take 3 years for a new judgeship to be established and for the judge to begin work once a court's caseload warrants an additional judgeship;

(3) A replacement judge will begin working 2 years after the judge being replaced takes senior status; and

(4) Active judges will take senior status in the year they are eligible.

Courtroom sharing occurs throughout the judiciary where it is feasible. In particular, courtrooms are regularly shared by senior judges who do not carry a substantial caseload. The comprehensive assessment of the judiciary's space and facilities program completed by Ernst and Young in 2000 found, for those projects for which data was available, a 5:4 ratio of district judges to courtrooms in the Five Year Courthouse Project Plan.

The judiciary has carefully considered the issue of courtroom sharing and has concluded that further sharing of courtrooms would be onerous. For an active trial judge, a courtroom is an indispensable resource. If a judge does not have ready access to a courtroom, justice will be delayed and in some cases, denied. A courtroom is integral to the constitutional guarantees of the 1st amendment right of assembly, 5th amendment right of due process, 6th amendment right to a public criminal trial, and 7th amendment right to a civil jury trial.

Courtroom scheduling is a dynamic part of a judge's case management activities to control hundreds of cases. In our judicial system, individual judges are accountable for the management of cases assigned to them and for the movement of their dockets. Judicial experience demonstrates that civil cases settle when courtroom availability is assured. If it becomes clear that a courtroom may not be available, settlements will be much more difficult to obtain. In addition, priority must be given to criminal cases due to the short timeframe established under the Speedy Trial Act. It is not possible to predict accurately the length of trials, hearings or other proceedings or to predict if a particular trial or proceeding will occur. The notice requirements established by the due process clause of the Constitution prevent one matter from being quickly substituted for another to fill an unexpectedly available facility. Security concerns would also be a major factor if criminal defendants were forced to be moved around the courthouse or brought to courtrooms that lack holding cells.

The General Services Administration has estimated that it costs about \$1.5 million to construct a courtroom and its associated spaces (including jury rooms, attorney conference rooms, public waiting rooms, and prisoner holding cells). If a courthouse has a life expectancy of 30 years (a conservative figure), the cost of one courtroom is about \$50,000 a year. The cost to the system and to litigants will likely be much greater than the savings that would be achieved by sharing. In addition to new administrative costs that would be incurred by the Government because of the need to juggle courtrooms, the last-minute cancellation of even one civil jury trial due to the lack of a courtroom can result in many thousands of dollars in legal fees and expert witness costs for the litigants. Delays in criminal proceedings would add costs for the Department of Justice's U.S. Attorneys and U.S. Marshals. Given the expected continued growth of Federal cases in most districts, sharing courtrooms would shorten the useful life of a courthouse and simply escalate future costs for needed expansion of courthouses that would be under-built.

*Question 2.* When I served as the ranking minority member on the House counterpart to this subcommittee, there was real concern about how courthouses were designed and planned. As your testimony notes, the courts in consultation with GSA have developed a new process whereby courthouse planning is done. Thank you for the effort and work the courts have put into that process. How is the new system working? Is it allowing the courts the flexibility it needs to address your unique housing requirements?

Response. The judiciary's facilities planning process is working very well. The goal of this process is to provide the judiciary and GSA with a systematic, objective method of identifying and defining space requirements. That goal is being achieved. Congress has been making authorization and funding decisions based on the judi-

ciary's planning process for several years. Recent objective assessments of the process by Ernst and Young and the U.S. General Accounting Office find that it accurately represents the judiciary's space needs.

The judiciary's long-range facilities planning process examines the ability of existing facilities to meet the judiciary's projected future space needs. Historical caseload data form the basis for projecting court space requirements. Projected numbers of judges and staff are derived from these caseload projections. Available space in the currently occupied buildings is then compared against projected future space requirements to determine if existing buildings can house projected judges and staff. If a district's long-range facilities plan shows that a building cannot accommodate projected growth, the judiciary advises GSA that there is the potential need for additional space at a given location. The judiciary gives each new construction project a score that reflects its relative urgency. The judiciary scores projects based on four criteria: year out of space; security problems; physical condition of building; and number of judges affected by lack of facility space. The judiciary's Five-Year Courthouse Project Plan lists the projects by score over 5 years.

Within the confines of the long-range planning process and the scoring system there is sufficient flexibility so that each judicial district can consider its own particular circumstances and needs. Variations in court practices and the flexibility that courts have to determine how to spend their personnel and other operating funds affect the composition of their work force, which in turn, affects the court's space needs. The Administrative Office of the U.S. Courts does compare the personnel projections provided by local courts to its own statistical data and discusses differences with the districts to help them improve their predictions. These controls are in place to ensure consistent application of the planning methodology.

While the long-range facilities planning process is essentially sound, the judiciary is undertaking several refinements and modifications that have been recommended by Ernst and Young to improve the process further. These improvements should enhance reliability and consistency, promote greater accountability, and potentially save money.

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STATEMENT OF HON. RAYMOND J. DEARIE, DISTRICT JUDGE,  
EASTERN DISTRICT OF NEW YORK

Mr. Chairman and members of the subcommittee: On behalf of the court in the Eastern District of New York, I appreciate the opportunity to submit a statement regarding the Brooklyn, NY courthouse project that is pending authorization before your subcommittee. When the existing building was constructed more than 40 years ago, the planners underestimated the anticipated growth of the court and built a facility far too small for the judiciary's needs. Judges in the Brooklyn Division have extremely heavy and complex caseloads, well above the national average for district judges. Three new judgeships are currently authorized by the Judicial Conference for the Eastern District—at least two of those judgeships will be assigned to the Brooklyn court. Moreover, senior judges continue to carry full caseloads to ensure the court is able to fulfill its responsibilities.

The lack of foresight with the original building led to the need for this latest new courthouse project. This project has involved demolition of a large part of the former Federal building/courthouse and the construction of a new courthouse annex on that site to house all of the district court, followed by renovation of the remaining portion of the building to provide space for future growth. It has taken nearly 20 years to get this new courthouse annex planned, designed and under construction. The construction funding for this project was appropriated in fiscal year 1997. Unfortunately, it is now clear that the new courthouse annex as currently planned will also be too small and will not be able to house all the judges when it opens.

The current shortfall in space results from the fact that during two separate procurement actions on the part of the General Services Administration for the courthouse, the construction bids received by GSA were above the funding level authorized and appropriated by Congress. GSA chose to redesign the project, modifying some features of the building and dramatically reducing the scope of the project by first, entirely eliminating four floors from the building and second, only shelling out an additional four floors. This last action means that four floors (9–12) in the new building, which were originally planned as space for eight courtrooms and eight chambers, will be left as shelled space and unavailable for court use.

GSA bases the size of a courthouse on a 10-year projection of space needs. Projecting out 10 years to 2012, the judiciary will need to have 34 courtrooms in Brooklyn. However, only 25 courtrooms (16 in the new annex and 10 in the old courthouse) will be available in 2012 if GSA does not build out the eight courtrooms and

eight chambers planned for the four empty floors in the new annex. Moreover, if the eight courtrooms and eight chambers are built, not only will the total project meet the needs of the judiciary for approximately 10 years, but there will already be enough judges to fill the new annex upon its completion in 2003.

As mentioned earlier, the second portion of this courthouse project involves the renovation of the existing courthouse. GSA has requested \$3.791 million in this year's budget to design that renovation. The original plan was for all the judges to move to the new annex upon completion and leave the existing courthouse empty during the time of its renovation. When the renovation is completed, the additional space in that building will be needed for judges currently working and others added to the court by that time.

Unfortunately, with the eight courtrooms and chambers cut from the annex, GSA is now proposing to undertake the renovation with the judges still occupying the existing building. It is clearly unworkable to occupy the courthouse during the extensive renovation that is planned. The noise and activity will make it impossible to hold court and the removal of asbestos and PCBs required in the renovation will expose the public and everyone in the court to hazardous materials. Last, there will not be a sufficient number of courtrooms and chambers available for the 28 to 30 judges who will need accommodation during the renovation.

Certainly, the build-out of the eight courtrooms and chambers now would be the most efficient and the most economic way to accommodate space needs of the Brooklyn court. GSA's experience in Brooklyn has made it clear that costs are rapidly rising in the local construction market. The current estimate of \$26 million to complete these courtrooms and chambers now as part of the on-going construction project will be significantly increased if GSA waits to do it later as a separate project. Providing these rooms in the new annex will also permit the judges to occupy the annex during renovation of the existing building, thus saving substantial time and costs for the renovation project, as GSA has recognized.

It is also important to note that the space shortages I have described are all predicated upon the GSA completing the new annex and starting renovation of the old courthouse on the dates currently projected by GSA. Unfortunately, this project has a history of not meeting target completion dates. For example, when the construction contract for the new annex was finally awarded in October 1999, the completion was planned for May 2002. I have been informed that the completion date has slipped to January 2003. Any further delays in the project will exacerbate the crowding that will take place as new judges are scheduled to replace senior judges steadily through the next decade.

The judiciary has been more than patient, as this project has evolved. We have been working under very difficult circumstances, managing an ever-increasing caseload in extremely overcrowded and dangerous conditions. Brooklyn is the only place in the country where the Judicial Conference of the United States has declared a judicial space emergency. The means of ending the inconvenience to the public and litigants and to permit the efficient operation of the court is within our grasp. The logical solution is to proceed now with building out the eight courtrooms and chambers which were planned for floors 9-12 of the new annex and which are critically needed.

I strongly urge the subcommittee to act at this time to authorize funding in fiscal year 2002 for the \$26 million which GSA has indicated would be needed to complete construction of all eight courtrooms and eight chambers this year. On behalf of the court, I appreciate your interest and will be happy to answer any questions about the serious housing situation in Brooklyn that the subcommittee might have.

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STATEMENT OF THURMAN DAVIS, SR., ACTING ADMINISTRATOR,  
GENERAL SERVICES ADMINISTRATION

Good morning, Mr. Chairman and members of the subcommittee. My name is Thurman Davis and I am the Acting Administrator, U.S. General Services Administration (GSA). I am accompanied by William Jenkins, Acting Deputy Administrator for the Public Buildings Service of GSA. I am pleased to appear before you today to provide information on the President's fiscal year 2002 budget request for the Federal Buildings program.

The Public Buildings Service manages space in approximately 8,300 buildings. Over 1,800 are Government-owned and 6,500 are leased from the private sector. More than 400 of the Government's properties have historic significance based on their age, building type, architectural style, or involvement in culturally significant events. PBS customers include all Federal departments, independent agencies and commissions, the Judiciary, and Members of Congress.

Our Capital Investment and Leasing Program plays a key role in providing the necessary resources to maintain current real property assets and acquire new or replacement assets. The capital program supports several portfolio objectives:

- Maximizing Federal Buildings Fund (FBF) income;
- Minimizing the drain of unproductive assets;
- Preserving the historical and cultural assets placed in GSA's trust; and
- Managing other diverse responsibilities integral to the management of the Nation's largest real estate portfolio.

All proposed projects are evaluated in the context of the entire national portfolio. We consider three options when evaluating our client Agency requirements. These include the construction and acquisition of new facilities, repair and alteration of existing facilities, or leasing space from the private sector.

#### REPAIR AND ALTERATION

Our first capital program priority is the repair and alteration of our existing inventory to ensure that its value and condition does not decline. More than 43 percent of our owned buildings are over 50 years old and 51 percent are between the ages of 21 to 50 years old.

We are requesting a Repairs and Alterations program of \$826.7 million for an increased emphasis on the overall maintenance and viability of our assets. The highlights of GSA's Fiscal Year 2002 Program include:

- \$370,000,000 for the Basic Program;
- \$400,781,000 for the construction phase of the Modernization/Alterations Program;
- \$6,650,000 for Heating, Ventilation and Air Conditioning Modernization; and
- \$15,588,000 for the Removal of PCB.

The facilities under PBS's stewardship have a functional replacement value of \$33 billion, and the repair and upgrade of these facilities is our top priority.

To allocate the limited resources of the Federal Buildings Fund for Repairs and Alterations projects, we evaluate and rank our proposals based on the following criteria: (1) Economic Justification, (2) Project Timing and Execution, (3) Physical Urgency, (4) Client/Agency Needs and (5) Historical Significance. PBS applies these criteria while:

- Protecting the safety and health of tenants in owned and leased assets;
- Altering vacant space in owned assets to relocate client agencies from leased space into Government-owned space when available; and
- Completing planned phased modernization projects (follow-on phases of multi-phased projects).

When evaluating repair and alteration projects, we also closely examine proposed project scopes to ensure that they meet client Agency requirements and facility needs. We work to determine if any possible changes in project scope can be made to realize cost savings, without jeopardizing the project's goals. Refining project scopes may free up additional funding for more projects.

By applying these criteria to our decisionmaking process, we prioritize our major repair and alteration projects and ensure that the most important ones in our national portfolio are funded.

#### NEW CONSTRUCTION

We are requesting a Construction and Acquisition of Facilities program of \$663 million. The highlights of GSA's Fiscal Year 2002 Program include:

- \$216,803,000 for 12 Federal Judiciary projects;
- \$276,400,000 advance appropriation approved in the fiscal year 2001 Appropriation Act for four Federal Judiciary projects;
- \$17,339,000 for design and construction of six border stations;
- \$9,060,000 for the design of the FDA Consolidation, Montgomery County, Maryland;
- \$5,000,000 for the Southeast Federal Center remediation site in Washington, DC;
- \$6,268,000 for the site and design of a Federal Bureau of Investigation in Houston, TX;
- \$34,083,000 for the construction of a National Oceanic and Atmospheric Administration II facility in Suitland, MD;
- \$4,617,000 for the U.S. Mission to the United Nations;
- \$2,813,000 for the U.S. Census Bureau in Suitland, MD;
- \$5,900,000 for non-prospectus construction projects; and
- \$84,406,000 for repayment to the Judgement Fund.

We recommend new construction where it will meet the new housing needs of a specific Federal Agency or to consolidate several dispersed agencies with economically feasible long-term needs in a given locality. PBS traditionally pursues a construction and ownership solution for special purpose and unique facilities (such as border stations and courthouses) which are not readily available in the real estate market. Our construction request includes funding for site acquisition, design construction and management and inspection cost of Federal facilities.

That concludes my prepared statement, Mr. Chairman, and I will be pleased to answer any questions.

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RESPONSE BY THURMAN DAVIS TO AN ADDITIONAL QUESTION FROM SENATOR WARNER

*Question.* In November 1997, with close consultation with the Department and GSA, this committee authorized GSA to acquire new space for the Department of Transportation headquarters.

At that time, the committee was advised that the resolution provided the executive branch all of the authority needed to accomplish this goal.

Given that the Department has been in a hold over lease status since before 1997—paying premium rental rates for a substandard facility—we have been anxious for this important project to move forward.

We have wait patiently as GSA and DOT went through the procurement process, and as was recently announced in the press, a winner has been selected. Yet, I would like to ask why no official announcement has been made by GSA or the Department?

It appears that once again, no progress is being made.

Can you advise the committee about the status of this procurement, and when a selection will be publicly announced?

Also, I would be interested in knowing if the Department's General Counsel has expressed any concern about the Government's exposure to litigation? The apparently successful offeror, having been identified in the press, might have some reason to enforce his claim.

*Response.* In July 1997, the House Committee on Transportation and Infrastructure passed a Committee Resolution providing GSA with authority (in the absence of funding for Federal construction) to enter into an operating lease for a headquarters building for the Department of Transportation (DOT). In November 1997, the Senate Committee on Environment and Public Works also passed a Committee Resolution authorizing GSA's procurement of a DOT Headquarters lease. Congress then fully authorized and directed GSA to enter into an operating lease by statute. The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277, 112 Stat. 2681, 2681-505).

GSA issued the Solicitation for Offers (SFO) for the DOT Headquarters lease procurement in November 1999. Phase I proposals were received in December 1999.

Five finalists were identified to compete in Phase II of the procurement in March 2000, and their initial Phase II proposals were received in June 2000. Following extensive discussions with the offerors and requests for revised proposals, GSA began reviewing the budget scoring analyses based on the final proposals as evaluated with OMB in October 2000. This process is ongoing.

It is important to note that while information regarding this procurement has been widely reported in the press, including reports of the purported winner, this information is entirely speculative and premature. In fact, the procurement remains open and ongoing pending resolution of scoring issues with OMB and GSA's publication of the Final Environmental Impact Statement. We hope to reach resolution with OMB on these issues in the near future. With respect to DOT's current housing arrangements, the Agency is presently housed predominantly in two leased facilities, the Nassif Building and the Transpoint Building. GSA's lease for DOT at the Transpoint Building does not expire until May 2003. With respect to the Nassif Building, GSA's lease expired in March 2000. Since that time, a series of stand still agreements have been executed with the building's landlord to provide the Government with the legal right to continue to occupy that space. Under these agreements, GSA continues to pay the landlord at the rental rate in effect as of the lease expiration date. GSA is actively seeking to negotiate an extension to the lease consistent with the Committee Resolutions recently passed authorizing GSA's execution of an interim lease for DOT. The incumbent landlord of the Nassif Building recently withdrew from the procurement, opting instead to seek a 10-year lease extension. However, its interim lease proposal is longer and more expensive than authorized by the Committee Resolutions.

Finally, protests and lawsuits by competitors in any action of this size and scope are a concern and certainly, the longer the process takes, the greater the risk to the Government that such a protest or lawsuit will be filed. Throughout this procurement, we have consulted with our Office of General Counsel to ensure our actions are reasonable and in accord with applicable laws and regulations. We are confident that we have conducted a proper procurement to date and, intend to continue doing so.

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RESPONSES BY THURMAN DAVIS TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

*Question 1.* Could you provide my office with more figures on the work being proposed on the Muskogee, OK Courthouse? Your request for \$8,214,000 sounds a bit high to me. I cannot fathom how one could spend that much money in Muskogee on an existing building. However, I understand that the alterations may be rather extensive and I would like to get more specific information on costs.

Response. The renovation of the 123,510 gross square foot Muskogee, OK Courthouse includes the following:

- a complete upgrade/replacement of the mechanical, plumbing and electrical systems;
- installation of a building-wide fire alarm and sprinkler system;
- removal of lead based paint and asbestos;
- renovation of restrooms to comply with ADA requirements and;
- renovation to the interior finishes primarily on floors two through four.

This project reflects an extensive renovation and replacement of the operating systems of a 1915 courthouse. The project is further complicated by the fact that the building contains two District and one Magistrate courtrooms that must remain in operation during the renovation process.

*Question 2a.* There is a prospectus in the fiscal year 2002 GSA Capital Investment Program requesting design funds for a 771,265 square foot facility for the Bureau of the Census to be built at the Suitland Federal Center. This includes reprogramming of design funds approved last year for the renovation of Building No. 3, the current headquarters of Census. This renovation will take place later, and perhaps too late for its use by 2010, the next decennial.

Since GSA is asking for reprogramming of design funds for the renovation of building No. 3, just what does GSA propose to do with this building? Is the building really worth renovating?

Response. GSA does not intend to renovate FOB 3 as part of a plan to provide long-term housing for Census, because financial analysis shows that the total cost to the Government is less under a scenario of all new construction. This scenario also meets the mission needs of Census more appropriately and allows employees to vacate environmentally contaminated areas more quickly. (New construction accelerates occupancy by as much as 3 years.) Thus, GSA has requested that the previously appropriated \$5.2M design funds be reprogrammed to allow use for design of new construction.

The all-new construction alternative proposes the construction of two new buildings totaling 1.5 million gross square feet and 3,100 structured parking spaces on the Suitland Campus. The total development cost for both buildings is approximately \$340 million, \$9 million more than the combination (new construction/renovation) alternative. However, once swing space and move costs are taken into consideration, the all-new construction scenario is the most cost effective by approximately \$40 million.

GSA currently proposes the construction of two new buildings and associated parking to house Census at the Suitland Federal Center. This proposal modifies the request included in the fiscal year 2002 prospectus for \$8,013,000 in authority to design one new building as the first phase of the Census project. GSA has provided committee staff with a change sheet indicating that \$8,187,000 in additional design authority is now required. The Department of Commerce will provide the additional funds required for design.

Any future plan to renovate FOB 3 will depend on the identification of suitable tenants and the analysis of the costs of redevelopment for their occupancy.

*Question 2b.* What other Agency will be housed in this building?

Response. The future use of FOB 3 and the identification of potential occupants depend on how the two new buildings now proposed to accommodate Census are located on the Suitland Federal Center site. From a master plan perspective, if two new buildings are constructed proximate to FOB 3, traffic management issues may preclude certain future uses of the building with implications for proposed tenancy.

Further analysis is needed to determine the most appropriate future use of this building, and may evaluate adaptive re-use of historic elements of the building in lieu of a complete renovation.

*Question 2c.* Are you contemplating an infill project to expand the size of building No. 3?

Response. Complete renovation of FOB 3 is a sound investment only if you include an infill project. The infill increases gross square feet only 20 percent, yet increases rentable square feet almost 50 percent due to a new, efficient layout. Since renovation of FOB 3 is not now being proposed to meet the phase 2 requirements of Census, any future infill proposal would have to be evaluated in relation to alternative tenancy and the overall development potential of the Suitland campus.

*Question 2d.* If GSA proposes to renovate this structure for Census after occupancy of the new building, what is the timeframe for design and construction of renovations to Building No. 3?

Response. GSA does not intend to renovate FOB 3 as part of a plan to provide long-term housing for Census. GSA now proposes to construct two new buildings in proximity to FOB 3 to accommodate the total Census housing requirement on the Suitland Campus. This proximity will generate traffic management issues that may preclude renovation of the building for certain uses. Further analysis and discussion will be necessary to determine the most appropriate use of the building, including suitable adaptive re-use of its historic elements.

*Question 2e.* Where is this renovation project on the priority list for funding in the out years?

Response. GSA does not plan to propose the renovation of FOB 3 as phase 2 of the project to meet the requirements of Census. The analysis of alternative uses of the building will determine the scope, cost, and priority of any future year funding request.

*Question 2f.* Has GSA considered other options, such as building two buildings for Census, or building a larger facility to accommodate all of Census employees, in time for the next census.

Response. GSA has considered different options to provide a more suitable housing solution for Census. Analysis has shown that construction of two new buildings is the Government's overall least expensive solution. If construction of the two buildings were to begin in fiscal year 2003 and fiscal year 2004, this scenario would allow occupancy in December 2006. Census has stated that this would meet their decennial census requirements. To construct one large facility does not significantly impact timing or cost, though it would require all funding up front. One large building also results in a structure well beyond the current scale of existing Suitland structures, both on campus and off.

*Question 3a.* The Administration is requesting over \$84 million in funding for the Judgment Fund Repayment. What is this fund and what kinds of activities are funded by this fund?

Response. The Judgment Fund is administered by the Financial Management Service of the Department of the Treasury. In 1956, Congress enacted a permanent, indefinite appropriation (The Judgment Fund) for the payment of final judgments which were "not otherwise provided for" (31 U.S.C. § 1304(a)). The Judgment Fund is available for most court judgments and Justice Department compromise settlements of actual or imminent lawsuits against the Government. Over the years, Congress added several administrative claim awards such as judgments from Agency boards of contract appeals under the Contract Disputes Act of 1978. The Act provides, in pertinent part, that.

a. Judgments.—Any judgment against the United States on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 1304 of Title 31.

b. Monetary Awards.—Any monetary award to a contractor by an Agency board of contract appeals shall be paid promptly in accordance with the procedures contained in subsection (a) of this section.

c. Reimbursement.—Payments made pursuant to subsections (a) and (b) of this section shall be reimbursed to the Judgment Fund provided by section 1304 of Title 31 by the Agency whose appropriations were used for the contract, out of available funds or by obtaining additional appropriations for such purposes.

41 U.S.C. § 612. The request for \$84.4 million represents reimbursements that are due to the Judgement Fund for fiscal years 1997–2000.

*Question 3b.* If these funds are being used for cost overruns for courthouse construction projects, what details can you provide?

Response. The funds are for the payment of final judgments, Justice Department compromise settlements, and administrative claim awards. Interest and attorney's fees may be included as well as considerations of the risk and cost to the Government of trial. Claims may arise from causes such as design deficiencies, differing site conditions, and government caused delays that increased contractor costs.

*Question 3c.* Are these cost overruns a result of decisions by the Judiciary, or are they a result of inflation in the construction industry?

Response. Some may be a result of changes requested by the Judiciary for changed requirements. Some are a result of unforeseen or changed conditions discovered during construction. They are not a result of inflation in the construction industry. Inflationary pressures are more acute during the construction contract procurement process (bidding). However, the contracts cannot be awarded without sufficient funds. Therefore, this does not contribute to claims.

*Question 3d.* Please provide a list of each project, the original construction and total cost estimate, and the overruns that each project has experienced.

Response. The original estimated construction cost (ECC) and total estimated project cost (TEPC), and the current ECC and TEPC including the claims for fiscal years 1997–2000 are as follows:

[In Millions of Dollars]

Project	Orig ECC	Orig TEPC	Curr ECC	Curr TEPC
MA, Boston, John Joseph Moakley U.S. Courthouse .....	\$167,180,070	\$222,820,000	\$165,382,945	\$235,044,000
NY, New York, Joseph Addabbo Federal Building .....	83,301,000	92,765,000	113,661,753	126,089,341
NY, White Plains, U.S. Courthouse .....	23,105,000	29,768,000	29,505,667	36,223,616
NJ, Newark, M.L. King, Jr. Federal Building .....	57,836,000	70,436,000	56,199,798	70,327,504
NJ, Trenton, Clarkson S. Fisher Federal Building and U.S. Courthouse .....	25,939,000	30,143,000	43,027,298	43,527,298
FL, Tampa, Sam M. Gibbons U.S. Courthouse .....	68,058,000	84,564,000	61,956,840	78,462,840
MN, Minneapolis, U.S. Courthouse .....	87,772,000	91,333,000	94,035,575	99,399,871
MO, Kansas City, Charles E. Whittaker Federal Courthouse .....	96,755,000	112,181,000	104,261,000	119,717,000
CA, Los Angeles, Edward R. Roybal Center and Federal Building .....	137,198,000	150,046,000	161,201,860	180,413,111
OR, Portland, Mark O. Hatfield U.S. Courthouse .....	115,483,000	133,810,000	116,856,400	136,708,400
DC, Washington, FBI Field Office .....	57,690,000	102,111,000	65,216,192	100,788,929

*Question 4.* Last year only four courthouse projects were funded, (Los Angeles, CA; Biloxi-Gulfport, MS; Richmond, VA; and Seattle, WA) and four were "Advanced funded" (District of Columbia, Miami, FL; Springfield, MA; and Buffalo, NY). What is the status of the four projects that were advanced funded for fiscal year 2002?

Response. *Washington, DC.*—The proposed increased cost for the Washington, DC Courthouse Annex reflects 3 percent escalation resulting from the 1-year delay in receiving authorization necessary to award a construction contract. A small additional contingency cost was also included due to the very active construction market and the difficulty GSA is now experiencing in awarding construction contracts of this size. The design of the project is nearing completion and the construction contract is scheduled for award in the second quarter of 2002.

*Miami, FL.*—In the 106th Congress, the Senate authorized the Miami project with a level of funding appropriate for construction of 16 courtrooms in 2001. The House proposed a level of funding appropriate for construction of 12 courtrooms in the Miami courthouse in compliance with the U.S. Courts Design Guide, with no departures from the Design Guide's provisions. Most of the projects approved by Congress for the fiscal year 2001 courthouse construction program did not depart from the Design Guide's provisions. A letter from the Florida congressional delegation requested that the House authorize the full 16 courtroom courthouse. A more recent letter, dated May 23, 2001, from the Chief Judge of the Southern District of Florida to the chairman, subcommittee chairman and ranking members of the Committee on Transportation and Infrastructure requested that the committee authorize a

courthouse with 14 courtrooms and room to expand to a total of 16 courtrooms in future. House authorization for a project that meets this request is currently pending.

GSA did not request additional funds for the Miami courthouse project in 2002 because we determined that a 12 courtroom courthouse could be built within the \$121,900,000 in the fiscal year 2002 advance appropriation. If the number of courtrooms increases beyond 12, additional funding will be required to offset the inflation escalation and additional contingency requirements in Miami.

*Springfield, MA.*—Site acquisition is planned by September 2001. Design completion is scheduled for May 2002. A site preparation and excavation contract is planned for award in January 2002, with the core & shell contract to be awarded in September 2002.

*Buffalo, NY.*—GSA initiated the site selection and the architect/engineer (A/E) procurement in April 2001. Site acquisition and A/E procurement will be completed when funds become available in fiscal year 2002.

*Question 5.* What is the status of the Miami project? Will this project be a 12, 14, or 16 courtroom project?

Response. In the 106th Congress, the Senate authorized the Miami project with a level of funding appropriate for construction of 16 courtrooms in 2001. The House proposed a level of funding appropriate for construction of 12 courtrooms in the Miami courthouse in compliance with the U.S. Courts Design Guide, with no departures from the Design Guide's provisions. Most of the projects approved by Congress for the fiscal year 2001 courthouse construction program did not depart from the Design Guide's provisions. A letter from the Florida congressional delegation requested that the House authorize the full 16 courtroom courthouse. A more recent letter, dated May 23, 2001, from the Chief Judge of the Southern District of Florida to the chairman, subcommittee chairman and ranking members of the Committee on Transportation and Infrastructure requested that the committee authorize a courthouse with 14 courtrooms and room to expand to a total of 16 courtrooms in future. House authorization for a project that meets this request is currently pending.

GSA did not request additional funds for the Miami courthouse project in 2002 because we determined that a 12 courtroom courthouse could be built within the \$121,900,000 in the fiscal year 2002 advance appropriation. If the number of courtrooms increases beyond 12, additional funding will be required to offset the inflation escalation and additional contingency requirements in Miami.

*Question 6.* What is the status of the Orlando, FL courthouse project? How far along is the design of this project?

Response. In March 2001, GSA, along with representatives from the judiciary, met with Congressmen Young and Istook to discuss this project. The present design meets or exceeds all of the court's requirements for safety and acoustics while also meeting established requirements for energy efficiency. However, during that meeting it became apparent that the court's needs changed since the design began with regard to the number and shape of the courtrooms. While the court has yet to confirm the number of each courtroom type (district, magistrate, or bankruptcy) and the shape desired for these courtrooms, GSA asked the design team to proceed with developing a revised plan for the building. This revised plan will be based on the court's (recently revised) projected number of courtrooms and limited information GSA received from the courts concerning the shape of each courtroom type. These revisions will not include dramatic changes to the building's exterior.

The Design Development Phase of this project was approximately 50 percent complete when Congress and the court asked GSA to revise the design to reflect new requirements. The design team is investigating revisions to the design that will meet the court's needs. When this is completed the design can again move forward.

*Question 7.* There are six projects on the Judiciary's priority list for fiscal year 2001 that did not receive funding in fiscal year 2002 in accordance with the funding plan. (Miami, FL; Salt Lake City, UT; Rockford, IL; Cedar Rapids, IA; Nashville, TN.; and Savannah, GA.) What is the status of each project?

Response. *Miami, FL.*—In the 106th Congress, the Senate authorized the Miami project with a level of funding appropriate for construction of 16 courtrooms in 2001. The House proposed a level of funding appropriate for construction of 12 courtrooms in the Miami courthouse in compliance with the U.S. Courts Design Guide, with no departures from the Design Guide's provisions. Most of the projects approved by Congress for the fiscal year 2001 courthouse construction program did not depart from the Design Guide's provisions. A letter from the Florida congressional delegation requested that the House authorize the full 16 courtroom courthouse. A more

recent letter, dated May 23, 2001, from the Chief Judge of the Southern District of Florida to the chairman, subcommittee chairman and ranking members of the Committee on Transportation and Infrastructure requested that the committee authorize a courthouse with 14 courtrooms and room to expand to a total of 16 courtrooms in future. House authorization for a project that meets this request is currently pending.

The District Court for the Southern District of Florida is currently evaluating its housing options for Miami to determine the total number of courtrooms required there. GSA did not request additional funds for the Miami courthouse project in 2002 because we determined that a 12 courtroom courthouse could be built within the \$121,900,000 in the fiscal year 2002 advance appropriation. If the number of courtrooms increases beyond 12, additional funding will be required to offset the inflation escalation and additional contingency requirements in Miami.

*Salt Lake City, UT.*—In 1997, \$11,474,000 was appropriated for construction of an annex to the existing Moss Courthouse. The annex site contained historical structures (Odd Fellows Building and other historic structures). There was heavy opposition from the City, the historic preservation community, and the community at large due to adverse impacts on the historical structures and the City redevelopment plans. A second site across the street from the existing courthouse was identified for a stand-alone courthouse. After initial support from the City there were objections to building on the site from the City as well as business organizations and Senator Bennett. The landowner was also an unwilling seller.

Currently, the District Court for the District of Utah, Senator Bennett, the city of Salt Lake and the historic preservation community are in discussions regarding the site location for the proposed project. GSA intends to submit a construction prospectus for funding in fiscal year 2003.

*Rockford, IL.*—Following discussions with the Judiciary, the requirements phase of the project has been completed. Based on the Judiciary's prioritized funding plan for fiscal year 2002, the project could not be funded with the level of funding available.

*Cedar Rapids, IA.*—Following discussions with the Judiciary, the requirements phase of the project has been completed. Based on the Judiciary's prioritized funding plan for fiscal year 2002, the project could not be funded with the level of funding available.

*Nashville, TN.*—Following discussions with the Judiciary, the requirements phase of the project has been completed. Based on the Judiciary's prioritized funding plan for fiscal year 2002, the project could not be funded with the level of funding available.

*Savannah, GA.*—The project is on hold pending resolution of questions on the number of district courtrooms to be provided in the existing historic courthouse and the new annex. The House Transportation and Infrastructure Committee has not authorized the project's construction citing the increased estimated project cost, and construction funding has not been appropriated.

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RESPONSES BY THURMAN DAVIS TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

*Question 1a.* I am very interested in the proposals included in the President's budget request for two projects in Brooklyn, New York. (1) a project in the building now under construction, and (2) a project to renovate the existing building. These projects are needed to alleviate a Judicial Space Emergency declared by the Judicial Conference in 1989.

It is my understanding that the plans for the new annex indicate that only 12 district judge courtrooms and chambers and four magistrate judge courtrooms and chambers will be built out at occupancy, resulting in a total of 16 courtrooms and chambers. It is also my understanding that funds have been included in the President's budget request to provide for the build-out of three additional magistrate judge chambers in this new building, that the court in Brooklyn does not find this proposal acceptable, and that this request is being made without prior consultation with the court.

The court believes instead that eight additional courtrooms and chambers must be constructed, not just three chambers, for a total of 24 courtrooms and chambers. The court further believes that the new building will not be capable of housing all the judges currently on board, or that are reasonably expected to be on board, by the occupancy date in 2003 if the Administration chooses not to build out the additional eight courtrooms and chambers now.

Response. The construction prospectus, approved by Congress in 1996, describes the courts space needs in Brooklyn. The prospectus called for a 10-year requirement

for 17 courtrooms for 17 district judges and 8 courtrooms for 8 senior district judges, for a total of 25 courtrooms in the new annex. In addition, the prospectus called for the re-use of 10 courtrooms and an unassigned ceremonial courtroom for 10 magistrate judges, for a total of 11 courtrooms in the existing Celler building. Overall, 25 courtrooms would be provided in the new annex and 11 would be provided in the existing Celler building, for a total of 36 courtrooms for 35 judges. The prospectus defined the 10-year projections as the total space requirement 10 years from occupancy. At the time the prospectus was approved, the date of occupancy was projected to be fiscal year 2000.

The Courtroom Utilization Study, dated March 9, 2001, provided by the judiciary, quantified the dramatic reduction in the requirements for the Brooklyn project on which the current build-out is based. The March 9, 2001, study projects 12 district judges, 7 senior district judges (3 of which will exceed the 10-year eligibility for a courtroom under the U.S. Courts Design Guide), and 9 magistrate judges, for a total of 28 judges. The new annex construction includes build-out of 12 district judge courtrooms and chambers and 5 magistrate judge courtrooms and chambers, for a total of 17 courtrooms and chambers. The existing Celler building will contain 11 existing courtrooms upon completion of the renovation project.

The courtroom eligibility model contained within the U.S. Courts Design Guide assumes that Senior Judges will require a courtroom for 10 years after they become Senior Judges. The three Senior Judges indicated above will not be eligible for a courtroom upon completion of the Annex construction project. Therefore, 25 of the Judges will be eligible for courtrooms in the 10-year period. There will be a total of 28 courtrooms, 17 in the new annex and 11 in the existing building when construction is complete. During the phased renovation of the Celler building, a minimum of two floors of courtrooms, or seven to eight courtrooms, will remain available at any given time. Therefore, a total of 24 or 25 courtrooms will be available for use during the entire renovation period.

*Question 1b.* Can you please explain why the GSA budget justification states that 21 courtrooms and chambers will be provided in the new annex, rather than the 16 courtrooms and chambers that are now under construction? Can you also please explain why the GSA budget justification states that 21 courtrooms and chambers will be provided in the new annex when there is a capacity in the building to construct 24 courtrooms and chambers?

It is my understanding that GSA's budget justification states that the courthouse will meet the 10-year space requirements of the court and that the site will accommodate the 30-year expansion requirements of the court. Can you please explain how the current construction plan meets these requirements? Can you please explain GSA's plans to address the needs of the court after 2011, after which time it is believed that the entire Brooklyn court complex will be fully occupied?

I understand that the capacity to build four courtrooms and chambers for district judges and four courtrooms and chambers for magistrate judges is available on floors 9–12 of the building now under construction. Given the fact that it has taken almost 20 years to plan, design, and construct a new building in Brooklyn and the complex nature of this project, it seems that it would make good sense from a cost-effectiveness and operational perspective to build out all of the available courtrooms now, so that GSA will not have to come back to this committee for authorization of courtrooms and chambers in the new building in the future.

Response. GSA budget justification statement regarding 21 courtrooms was in error. It should have read, "The new Annex will provide 17 courtrooms and chambers."

There is a requirement for 25 courtrooms within 10 years. The capacity for 8 additional courtrooms in the new courthouse represents built-in 30-year expansion capability. The construction prospectus states that the balance of the District Court's 30-year requirements can be accommodated by relocating executive and courts-related agencies into leased space to provide additional space for the district court as needed. This method of temporarily moving other tenants into the courthouse is commonly used to provide expansion capability within courthouses for the long-term needs of the judiciary. The other tenants act as "place-holders" for future courtroom and chambers space, allowing the judiciary to temporarily offset rent payments to GSA until such time as the courtrooms and chambers are required.

*Question 1c.* Can you please provide information on the proposal that GSA made to the Office of Management and Budget during this budget cycle concerning the build-out of the eight courtrooms and chambers? What is the estimated cost of the eight courtrooms and chambers based on: (1) an open market government estimate, and (2) a bid from the contractor now building the new courthouse? How much will

these estimates increase each year that construction of the courtrooms and chambers on floors 9–12 is delayed?

Response. GSA had discussions with OMB regarding the construction projects in Brooklyn leading up to the formulation of the Administration's fiscal year 2002 budget request. The purpose of these discussions was to determine the most appropriate method of accomplishing the renovation of the Celler building following completion of the annex project. The Administration concluded that the judiciary space needs could be met without constructing additional courtrooms at this time by utilizing a phased construction approach. The estimated cost to build eight courtrooms and chambers is \$26,000,000. This estimate was provided by a contracted construction management firm assisting GSA with the oversight of the project, and is based on the open market estimate for New York City in 2003 dollars. GSA uses an annual rate of 3.2 percent for escalation of construction cost for future projects. We assume that the cost of the courtroom build-out will escalate at approximately that rate if the construction is put off to a future year.

*Question 1d.* The district court project in Brooklyn also contemplates renovation of the existing courthouse, which has 10 courtrooms and chambers in addition to some makeshift space for magistrate judges. I understand that on April 17, 2000, the court stated it would not agree to a renovation while the building is occupied. Instead, the court believes the building should be completely vacated so that the renovation can be completed without exposing the public to asbestos, other hazardous materials such as PCBs, and the noise and other disruption associated with renovating a 40-year-old building.

Is it true that GSA relocates Federal agencies during the period that major renovations are taking place in other projects throughout the country? If so, in the case of Brooklyn, will GSA ensure that the court can be accommodated in the new building during the renovations of the existing Celler building in order to ensure there are no disruptions to court operations and that the public and court employees are not unnecessarily exposed to hazardous materials during the renovations?

Response. The judiciary is a particularly challenging client to relocate temporarily because of its unique and expensive space requirements; therefore, GSA intends to renovate the Celler Building in phases. While it is clearly more convenient to renovate space in unoccupied buildings, GSA has extensive experience with the renovation of partially and, in some cases, fully occupied buildings. For example, the Department of Justice main headquarters building in Washington, DC, is in phase two of a three-phase complete modernization. In each phase, one-third of the building is being renovated while the other two-thirds is occupied. Similarly, in Brooklyn, by vacating two or more floors, GSA can mitigate the concerns of noise and hazardous materials exposures outlined in the question above. Excessively noisy work will be performed during non-business hours, and floors under renovation will be contained to prevent occupant and public exposure to hazardous materials during the demolition phase of the renovations. During the renovation, several floors of the Celler building will remain fully functional and available for the court's use.

*Question 1e.* I understand that there is usually a premium cost associated with renovating a building while it is occupied. Can you please provide information on the difference in cost between renovating the building when it is completely vacated versus completing the project while the building is still occupied and in use? What premium will the Government have to pay the contractor for renovating the building if it were to be occupied by the courts during the renovation?

Response. There is a premium for performing work in an occupied building; however, this cost is mitigated by the costs associated with providing interim space for the court's needs. The proposed Celler building renovation has an estimated construction cost (ECC) of approximately \$43 million. The GSA could save approximately \$9 million if the building was vacated prior to construction start. The \$9 million increase consists of a need to do a percentage of the renovation work during off-hours, additional escalation of the project due to a longer construction schedule, and multiple tenant moves associated with swinging into and out of interim space while construction takes place. This \$9 million is more than offset by the \$26 million required to build-out the additional courtrooms and chambers in the new annex. Therefore GSA has proposed that renovations take place while the Celler building is partially occupied.

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RESPONSES BY THURMAN DAVIS TO ADDITIONAL QUESTIONS FROM SENATOR REID

*Question 1.* Please detail for me the progress that GSA has made in implementing Executive Order 13123. How much funding has GSA requested in fiscal year 2002 to implement energy efficiency initiatives that will help to ensure compliance with

Executive Order 13123? What specific actions does GSA plan to take in fiscal year 2001 and fiscal year 2002 to improve the long-term energy efficiency of Federal buildings?

Response. Pursuant to Executive Order 13123, GSA completes an Annual Energy Scorecard identifying its actions to implement the Executive order (Attachment 1). According to a recent DOE evaluation of our scorecard, GSA is in full compliance with the Executive order (Attachment 2).

There are no specific items in the fiscal year 2002 budget, however, all energy related projects in the prospectus and non-prospectus program will be carried out consistently with the Executive order. GSA developed and submitted to the Department of Energy a fiscal year 2001 implementation plan to implement Executive Order 13123 (Attachment 3).

*Question 2.* President Carter and President Clinton have both signed Executive orders requiring the General Services Administration to look first at downtown locations when considering where to locate Federal facilities. However, despite these Executive orders, there seems to be a growing trend toward Federal agencies leaving downtowns and locating in new suburban developments.

We are facing numerous land and traffic problems resulting from suburban sprawl. These Executive orders were meant to promote smart growth and downtown redevelopment. I would like to know how successful GSA has been at implementing these orders and accomplishing the goal of keeping Federal agencies from relocating out of urban areas and into the suburbs. Please provide specific information that shows GSA compliance with the Executive order and justification for any cases wherein GSA deviated from it.

Response. GSA, in coordination with the White House, in 1996 developed new implementing regulations (Interim Rule D-1, 41 CFR Part 101-17.205) for Executive Order 12072 concerning the location of Federal facilities in urban areas. These new regulations require Federal agencies to give first consideration to central business areas when determining the delineated areas for their space requirements in urban areas and to provide justification for any delineated area that includes areas outside of central business areas. Furthermore, the regulations require Federal agencies to communicate with local officials regarding any action considering a delineated area outside the central business area. GSA has successfully followed these instructions by ensuring that: (1) Agency justifications are consistent with the exceptions provided by the regulation and (2) that local officials know about and are given the opportunity to provide recommendations for and objections to any space action considering a location outside central business areas. GSA is not aware of any actions where it has deviated from the above mentioned regulations. However, if you have questions or concerns regarding a specific space action, please contact us.

*Question 3.* Please provide a copy of GSA's response to the recently completed draft GAO report, "Better Guidance and Monitoring Needed to Assess Purchases of Environmentally Friendly Products."

Response. A copy of GSA's comments to GAO Report, "Better Guidance and Monitoring Needed to Assess Purchases of Environmentally Friendly Products" is attached (Attachment 4).

*Question 4.* Please provide a quantitative and qualitative description of the solid and hazardous waste disposed of annually from GSA-owned or operated facilities, or where GSA has an agreement or contract for waste management, including the method of its disposition, i.e. storage, treatment, landfill, incineration, etc.

Response. GSA does not normally collect data on the total solid and hazardous waste stream of all GSA-owned and operated buildings. Based on GSA Recycling Program (GRP) data, provided by GSA's Regional offices, the total solid waste stream for all GSA-owned and operated buildings, excluding hazardous waste, was approximately 1,409,448 tons in fiscal year 2000.

GSA does not receive any data for the solid waste stream removed from delegated or leased buildings since the operation of these buildings/locations are the responsibility of the delegated Agency or the lessor. Should the committee wish us to request this data, we will forward any further information to you upon its receipt.

Regarding the method of disposition of the solid waste, each municipality has its own method for disposal of its solid waste, i.e., landfill, incineration, etc. The vendor contracted to remove the solid waste from GSA's locations would dispose of it in accordance with each local municipality's chosen method of disposal.

GSA has recycled approximately 43,411 tons of material from the office waste stream nationwide in fiscal year 2000, representing approximately 30.8 percent of the solid waste stream from those locations. This figure represents the efforts of the GRP which encompasses over 1,100 Federal office locations nationwide.

This material is sold to local recycling vendors and GSA receives income from the sale of recycled materials as dictated by local current market values. GSA received approximately \$918,741, nationwide, from the sale of this material in fiscal year 2000.

Finally, GSA generates hazardous waste occasionally during its construction, repair, and other daily operations. Since this is not a constant waste stream, GSA does not have an annual hazardous waste total. Should the committee wish us to request this data from each of our regional offices, we will provide this material to you upon its receipt. When such material is generated, it is disposed of in accordance with all applicable Federal, State, and local regulations.

*Question 5.* Please provide information on all GSA-owned, leased or operated facilities' annual energy consumption, including motor fuel, electricity, and natural gas, and the associated energy costs.

Response. Please see GSA's annual energy data report submitted to the Office of Management and Budget in December 2000 (Attachment 5).

*Question 6.* Does GSA encourage distributed generation of electricity from renewable energy sources at GSA-owned, leased or operated facilities? If not, does GSA plan to develop this capability or to incorporate such requirements into future new construction or building retrofit specifications?

Response. Yes, GSA specifically encourages its 11 regional offices to submit line item energy program funding projects that utilize distributed generation technologies annually. Pending funding approval, GSA will rank these projects according to life-cycle cost accounting analyses and approve those which will significantly impact our Agency energy reduction and/or improve our ability to compete for low cost electricity in a deregulated electricity market.

