AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2010

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

ALAN B. MOLLOHAN, West Virginia, *Chairman*

PATRICK J. KENNEDY, Rhode Island
CHAKA FATTAH, Pennsylvania
ADAM SCHIFF, California
MICHAEL HONDA, California
C.A. "DUTCH" RUPPERSBERGER, Maryland
PETER J. VISCLOSKY, Indiana
JOSÉ E. SERRANO, New York
FRANK R. WOLF, Virginia
JOHN ABNEY CULBERSON, Texas
ROBERT B. ADERHOLT, Alabama
JO BONNER, Alabama

NOTE: Under Committee Rules, Mr. Obey, as Chairman of the Full Committee, and Mr. Lewis, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

JOHN BLAZEY, DIXON BUTLER, ADRIENNE SIMONSON,
TRACEY LATURNER, DIANA SIMPSON, and DAREK NEWBY
Subcommittee Staff

PART 7

	Page
Federal Law Enforcement Response to U.S.-Mexico Border Violence	**1**
Drug Enforcement Administration	**115**
Legal Services Corporation	**193**
Department of Justice	**269**
Department of Commerce	**383**
National Aeronautics and Space Administration	**587**

Printed for the use of the Committee on Appropriations

PART 7—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2010

COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2010

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

ALAN B. MOLLOHAN, West Virginia, *Chairman*

PATRICK J. KENNEDY, Rhode Island
CHAKA FATTAH, Pennsylvania
ADAM SCHIFF, California
MICHAEL HONDA, California
C.A. "DUTCH" RUPPERSBERGER, Maryland
PETER J. VISCLOSKY, Indiana
JOSÉ E. SERRANO, New York
FRANK R. WOLF, Virginia
JOHN ABNEY CULBERSON, Texas
ROBERT B. ADERHOLT, Alabama
JO BONNER, Alabama

NOTE: Under Committee Rules, Mr. Obey, as Chairman of the Full Committee, and Mr. Lewis, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

JOHN BLAZEY, DIXON BUTLER, ADRIENNE SIMONSON,
TRACEY LATURNER, DIANA SIMPSON, and DAREK NEWBY
Subcommittee Staff

PART 7

	Page
Federal Law Enforcement Response to U.S.-Mexico Border Violence	**1**
Drug Enforcement Administration	**115**
Legal Services Corporation	**193**
Department of Justice	**269**
Department of Commerce	**383**
National Aeronautics and Space Administration	**587**

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE

51–291 WASHINGTON : 2009

COMMITTEE ON APPROPRIATIONS

DAVID R. OBEY, Wisconsin, *Chairman*

JOHN P. MURTHA, Pennsylvania
NORMAN D. DICKS, Washington
ALAN B. MOLLOHAN, West Virginia
MARCY KAPTUR, Ohio
PETER J. VISCLOSKY, Indiana
NITA M. LOWEY, New York
JOSÉ E. SERRANO, New York
ROSA L. DeLAURO, Connecticut
JAMES P. MORAN, Virginia
JOHN W. OLVER, Massachusetts
ED PASTOR, Arizona
DAVID E. PRICE, North Carolina
CHET EDWARDS, Texas
PATRICK J. KENNEDY, Rhode Island
MAURICE D. HINCHEY, New York
LUCILLE ROYBAL-ALLARD, California
SAM FARR, California
JESSE L. JACKSON, JR., Illinois
CAROLYN C. KILPATRICK, Michigan
ALLEN BOYD, Florida
CHAKA FATTAH, Pennsylvania
STEVEN R. ROTHMAN, New Jersey
SANFORD D. BISHOP, JR., Georgia
MARION BERRY, Arkansas
BARBARA LEE, California
ADAM SCHIFF, California
MICHAEL HONDA, California
BETTY McCOLLUM, Minnesota
STEVE ISRAEL, New York
TIM RYAN, Ohio
C.A. "DUTCH" RUPPERSBERGER, Maryland
BEN CHANDLER, Kentucky
DEBBIE WASSERMAN SCHULTZ, Florida
CIRO RODRIGUEZ, Texas
LINCOLN DAVIS, Tennessee
JOHN T. SALAZAR, Colorado

JERRY LEWIS, California
C. W. BILL YOUNG, Florida
HAROLD ROGERS, Kentucky
FRANK R. WOLF, Virginia
JACK KINGSTON, Georgia
RODNEY P. FRELINGHUYSEN, New Jersey
TODD TIAHRT, Kansas
ZACH WAMP, Tennessee
TOM LATHAM, Iowa
ROBERT B. ADERHOLT, Alabama
JO ANN EMERSON, Missouri
KAY GRANGER, Texas
MICHAEL K. SIMPSON, Idaho
JOHN ABNEY CULBERSON, Texas
MARK STEVEN KIRK, Illinois
ANDER CRENSHAW, Florida
DENNIS R. REHBERG, Montana
JOHN R. CARTER, Texas
RODNEY ALEXANDER, Louisiana
KEN CALVERT, California
JO BONNER, Alabama
STEVEN C. LaTOURETTE, Ohio
TOM COLE, Oklahoma

BEVERLY PHETO, *Clerk and Staff Director*

COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2010

TUESDAY, MARCH 24, 2009.

FEDERAL LAW ENFORCEMENT RESPONSE TO U.S.-MEXICO BORDER VIOLENCE

WITNESSES

BILL NEWELL, SPECIAL AGENT IN CHARGE, ATF PHOENIX DIVISION
JOSEPH ARABIT, SPECIAL AGENT IN CHARGE, DEA EL PASO DIVISION
PHIL GORDON, MAYOR, CITY OF PHOENIX
DAVID SHIRK, ASSISTANT PROFESSOR AND DIRECTOR OF THE TRANS-BORDER INSTITUTE

OPENING STATEMENTS OF THE SUBCOMMITTEE CHAIRMAN AND RANKING MEMBER

Mr. MOLLOHAN. The hearing will come to order.

Well, good afternoon. We are here today to discuss the rising tide of drug cartel-related violence in the U.S.-Mexican border region and our federal response to this problem.

As with any issue related to the border, this problem has many dimensions and it requires a response with many dimensions.

Other Subcommittees have already examined the border security and foreign aid elements of our response and today we will be focusing on the law enforcement response.

It would be difficult to overstate the severity of the situation in Mexico today. There have been over 7,000 cartel-related killings in Mexico since the beginning of 2007, including increasingly brazen attacks on law enforcement, political and governmental targets.

The level of brutality in many of the attacks is truly appalling, with details so gruesome that they could come straight from the script of a horror movie.

This violence is being fueled by the constant northward trafficking of tons of narcotics and the southward trafficking of cash and weapons.

This traffic has created a literal war zone in the streets of some Mexican towns and states as the Mexican government has deployed its military to join law enforcement officers in pitched battles against these cartels.

The United States has both an interest and an obligation to help Mexico overcome these difficult challenges. We are fortunate to have a dedicated partner in President Calderon, who has staked his personal and professional legacy on beating these cartels.

The Department of Justice has a significant role to play in aiding his struggle and we look forward to hearing more today about how our federal law enforcement entities can bring their resources and expertise to bear on this situation.

At the same time, we must also be cognizant of the potential for spill-over violence, when the violent crimes of these Mexican cartels begin to cross the border into our southwestern states and beyond.

We have seen lots of media reports over the past several months about cartel-related violence springing up in states from Arizona to Maine. It is important for us to assess the potential for spill-over violence, look at the impacts cartel-driven violence has had on our local communities, and discuss strategies to prevent it.

In doing so, we must balance the need to acknowledge the seriousness of the situation with the need to avoid unnecessary hysteria.

It is my hope that our hearing today will inform the Subcommittee's discussion of these issues over the next few months. We certainly could not have picked a more timely date to kick off that discussion as the Administration has announced just this morning a comprehensive border violence policy that takes advantage of the significant new resources this Subcommittee provided for border crimes over the last few months.

Those resources include over $15 million in regular and supplemental funds for ATF's Project Gun Runner, $21 million for DEA to expand its enforcement operations along the border and in Mexico and Central America, and 10 million for DEA to target Mexican methamphetamine trafficking.

It is my intention to follow-up on these investments with a Subcommittee trip to the southwest border region to assess further the adequacy of the recommendations made to this Committee, the adequacy of resources provided to date, and additional needs for consideration in fiscal year 2010.

Our witnesses today will also help to provide perspective and to set the stage for the 2010 process.

First, we will hear from Professor David Shirk, the Director of the Trans-Border Institute at the University of San Diego.

Did I pronounce that correctly, Professor?

Mr. SHIRK. Yes. Thank you.

Mr. MOLLOHAN. Dr. Shirk will place current events within the broader context of crime and judicial reform in Mexico and will give his assessment of both the Mexican and U.S. responses to the violence.

Next we will hear from the panel which includes Mayor Phil Gordon from the City of Phoenix, Special Agent Bill Newell from ATF's Phoenix Division, and Special Agent Joseph Arabit from DEA's El Paso Division.

These three witnesses are on the ground in our southwest border states addressing this problem every day. They will testify about the challenges that they face, discuss their efforts to combat cartel-related violence and its underlying causes, and suggest ways to improve on strategies going forward.

I would like to thank all the witnesses in advance for their time today. They all took a big effort to get here and we appreciate the

opportunity to have the benefit of their expertise. We look forward to a lively discussion with them.

Before we begin, I would like to first turn to my Ranking Member, Mr. Wolf, for any opening remarks that he might like to make.

Mr. WOLF. Thank you, Mr. Chairman.

I really do not have any. Just to welcome the witnesses.

There seems there is not a day that goes by that we do hear about this. We have also heard that there are reports of the spill-over and these gangs operating in other areas. I am anxious to find out if there is any connection between these gangs and MS13 or any domestic gangs, but look forward to your testimony.

Thank you.

Mr. MOLLOHAN. Professor Shirk, your written statement will be made a part of the record and you can proceed with your oral testimony as you wish.

Mr. SHIRK. Thank you, Mr. Chairman.

On behalf of the University of——

Mr. MOLLOHAN. You have to push your button in and you might want to pull it a little bit closer to you so you will not have to lean.

Mr. SHIRK. Can you hear me now?

Mr. MOLLOHAN. I can hear you fine, but it is being——

Mr. SHIRK. Can you hear me now? Okay. Thank you.

OPENING STATEMENT OF PROFESSOR DAVID SHIRK

First of all, thank you, Mr. Chairman, on behalf of the Trans-Border Institute at the University of San Diego.

Thank you to the other members of this Committee for the invitation to provide testimony on the recent surge in drug violence in Mexico and the border region.

You have already explained very well the importance and urgency of this issue. So I would like to talk a little bit about our efforts to monitor the situation in the southwest border region and provide some testimony about the efforts that are being made currently to address those problems.

Our organization has been monitoring a wide array of rule of law challenges through something called the Justice in Mexico Project, an ongoing research initiative that pays special attention to drug violence, justice sector reform, and other problems related to the rule of law in Mexico.

I would like to focus especially today on the challenges that are presented to U.S. border communities and the possible strategies and resource allocations that can be helpful in addressing the challenge of Mexican drug violence.

From the outset, I want to state clearly and definitively that while the escalating drug war violence presents a major challenge to the Mexican state and to the United States, the prospect of a state collapse in Mexico and the prospect of high-level spill-over violence perpetrated by Mexican organized crime appears to be greatly exaggerated at this time.

Still, there is no doubt that high-impact crime and violence and the ineffectiveness and corruption of the state's public security apparatus present severe challenges in Mexico.

Our data find, from reports from the Mexico City based Reforma Newspaper, that the vast majority, that is roughly 60 percent, of

over 13,000 cartel-related killings in Mexico since 2005 occurred in five Mexican states, Chihuahua, Sonora, Michoacan, Baja California, and Guerrero. Of these, Mexican border states accounted for approximately 40 percent of all cartel-related killings.

Since 2000, the Mexican government has embarked on a deliberate strategy to try to break the cartels down into smaller, more manageable pieces that can be dealt with more effectively by state and local law enforcement.

The disruption and fragmentation of organized crime networks has led to increased in fighting and competition, effectively replacing the cartels with organizations that are, in fact, smaller, but also far more dangerous and unpredictable and far less manageable.

One thing is certain. The current rate of killings, more than 400 per month, puts Mexico on track to have another very bad year in 2009.

There is also no doubt about the trans-national nature of organized crime or the fact that there are significant measures that we can take to better address the problem here in the United States.

Although some of the issues, I believe, are often overblown by inaccurate media reporting and hyperbolic rhetoric, there are significant concerns about the reach and the proliferation of violent trans-national organized crime networks in the United States, the southbound flow of arms and bulk cash from the southwest border region into Mexico, kidnappings and other diversified criminal activities in U.S. border states, the impacts of Mexican drug-related violence in U.S. healthcare facilities, and the possible corruption and penetration of U.S. law enforcement agencies.

In the interest of time, I will just highlight a couple of these.

First of all, it is important to say that the violence raging between the Mexican cartels or what is left of them has not spilled over in the kind of extreme violence that has become so prevalent in Mexico. The overall efficacy and integrity of U.S. law enforcement has prevented this from happening, at least prevented the cartels from operating as audaciously as they do in Mexico.

Moreover, while literally hundreds of Mexican cartel operatives and Mexican Nationals involved in the drug trade have been detected or arrested in the United States, it is not clear that the cartels' retail operations are exclusively Mexican or to what extent U.S. subsidiaries form part of the distribution chain.

Our hasty and careless response to these concerns could prove costly, counterproductive to our relationship with Mexico, and ultimately ineffective in addressing the actual problems we face.

While better legislation is needed to contain the spread of high-powered weapons and their use, more resources should and I am glad to see are being directed towards the regulation of gun sales and the investigation of illegal gun trafficking in the southwest border region, the tracking and seizure of drug profits, and the support of long-term development of rule of law reform in Mexico.

Unfortunately, I see only three possible scenarios for a dramatic reduction in drug violence in Mexico and the border region. The first is a pact between what is left of the major cartels that would reestablish the agreed upon structuring of organized crime in Mexico. Such an arrangement is less likely today, however, because the

cartels are so fragmented. Moreover, even if it were possible, it would be contrary to the best interests of the United States and Mexico.

A second scenario is for a major change in U.S. drug policy and the regulation of psychotropic drugs as a public health problem rather than a strictly law enforcement problem.

The first and best solution is to reduce overall drug consumption in the United States. Eventually consideration also needs to be given to finding the least harmful ways to regulate the drug market and address drug consumption as a public health problem more so than as a security problem.

In the short term, though, barring a major improvement in the situation in Mexico's domestic rule of law and barring any major changes in U.S. drug policy, a continuation of the Mexican government's current approach, the atomization or expulsion of the cartels from Mexico seems to be the most politically viable option.

On the one hand, this will imply sustained investment in current rule of law reform initiatives and a costly hard-fought battle against the cartels that will undoubtedly require tens of billions of dollars and result in continued violence over the next few years.

On the other hand, this approach will also result in a quote, unquote balloon effect as major drug trafficking operations move outside of Mexican territory and develop new routes in the Caribbean, Guatemala, and elsewhere as we have already begun to see.

In the end, if Mexico is to succeed in its efforts to combat transnational organized crime, U.S. cooperation will be essential. Mexico has worked very closely with the United States in recent years to enhance bi-national cooperation and these efforts deserve our ample appreciation and support.

Thank you so much for the opportunity to provide this testimony, and I look forward to your questions.

[Testimony of Professor David Shirk follows:]

"Drug War Violence in Mexico and the Border Region: Implications for the United States"

Testimony by David A. Shirk
Director, Trans-Border Institute, University of San Diego

Delivered to the House of Representatives Sub-Committee on Commerce, Justice, and Science, Chairman: Hon. Alan Mollohan

March 24, 2009

On behalf of the Trans-Border Institute at the University of San Diego, I would like to thank Chairman Mollohan and other members of this subcommittee for the invitation to provide testimony on the recent surge of drug war violence in Mexico and the border region. Because of our geographic proximity to and economic integration with Mexico, its domestic security concerns are also of critical concern to the United States, and especially to U.S. border communities. Moreover, because the United States is the primary market for illicit drugs and the main source of weapons used by Mexican criminal organizations, we have a special responsibility to assist in developing an effective response to these concerns.

Our organization has been monitoring a wide array of rule of law challenges in Mexico and the border region through an on-going research initiative titled the *Justice in Mexico Project*, with special attention to drug war violence, justice sector reform, and other problems related to the rule of law in Mexico. Today, I will direct my remarks to providing an explanation of the security situation in Mexico and the border region, which has deteriorated significantly over the last five years. I will also offer comments about the specific concerns that these challenges present for U.S. border communities, which has been the subject of much recent discussion. Finally, I will offer my recommendations on the possible strategies and resource allocations that can best enable U.S. law enforcement to respond effectively to these security challenges.

Understanding drug war violence in Mexico and the border region

One of the most pressing public concerns in Mexico and the border region in recent years has been the proliferation of crime and violence. The situation has become so severe that some U.S. analysts consider Mexico (along with Pakistan) to be on the brink of collapsing into a failed state. I want to state clearly and definitively that —while the escalation of drug war violence presents a major challenge to the Mexican state— the prospect of a state collapse appears to be greatly exaggerated at this time. Unlike Pakistan (or Colombia), where insurgent groups control broad swaths of territory and compete for control of the state, the Mexican government sustains a monopoly on the means of coercion throughout the country. Moreover, despite real and justifiable concerns about elevated levels of crime and violence, the vast majority of Mexican citizens continue to go about their daily lives normally.

Still, there is no doubt that high-impact crime and violence —and the ineffectiveness and corruption of the state's public security apparatus— present severe challenges for Mexico. According to independent media accounts of Mexico's drug war violence, there have been over 13,000 cartel-related killings (an average of 3.2 per 100,000 persons) since 2005: with an estimated 1,500 in 2005; 2,200 in 2006; 2,300 in 2007; 6,000 in 2008, and 1,300 in the first three months of 2009. Our review data reported by the Mexico City-based newspaper Reforma suggests that the vast majority of these killings —roughly 60%— occurred in five Mexican states: Chihuahua (20.1%), Sinaloa (14.4%), Michoacán (10.6%), Baja California (9.6%), and Guerrero (7.6%). It is important to note that Mexican border states accounted for a disproportionate share — approximately 40%— of total cartel-related killings. This said, the rate and geographic distribution of drug war violence has varied considerably over the last three years, with sudden surges and declines in different states.

I cautiously refer to these as "cartel-related" killings because Mexican government officials

estimate that some 90% of these actually target members of organized crime; however, whether they represent genuine monopoly "cartels" is highly debatable. Most of the balance of victims in Mexico's cartel-related killings comprises law enforcement and government officials targeted by organized crime. Indeed, organized crime groups have killed hundreds of government personnel at the federal, state, and local level in recent years. Thus far in 2009, the Mexico City-based Reforma newspaper reports that 74 police officers have been killed, as well as at least 4 Mexican military personnel.

In addition to the sheer volume of bloodshed, recent violence has been particularly extreme and gruesome. Organized crime groups now routinely employ torture, display messages (or "*narco-mensajes*") on victims' bodies, and remove heads and other body parts in order to intimidate rival cartels, the government, and the public. In Tijuana, thirty minutes south of where I live, one trafficker reportedly dissolved over 300 bodies in lye, earning himself the nickname "the soup maker" (*el pozolero*). Also of great concern is the targeting of journalists, businessmen, and ordinary civilians by organized crime groups. For example, though notoriously difficult to quantify, Mexico's official rate of kidnappings has risen to roughly 600 per year, up from about half that amount in 2004 when the dramatic increase in violence began.

Again, while these extreme forms of violence are not typically reflected in the day-to-day experiences of most Mexicans, they clearly represent a major challenge for the Mexican government. Even before the recent surge in violence, Mexico's criminal justice institutions demonstrated significant limitations, troubling dysfunctions, and persistent corruption. In recent years, the Mexican federal and state governments have worked hard to address these problems, introducing reforms that will bring major changes to the administration of justice, with new trial and sentencing procedures, and expanded due process protections. However, these represent intermediate and long-term solutions, which must be fostered through substantial and sustained

investments in the judicial sector in order to bring about an overall improvement in the rule of law in Mexico. In the meantime, the Mexican government has increasingly relied on the military —one of the country's most respected institutions— as a last resort in the struggle against trans-national organized crime networks. The military is a blunt instrument for domestic law enforcement, and its sustained involvement presents a real threat to human rights and democratic governance in Mexico.

Ultimately, despite these enormous and concerted efforts, what is most disturbing about recent drug war violence is that the Mexican government appears unable to stop it in the near term. Indeed, experts on Mexican drug trafficking —like Luis Astorga and Carlos Antonio Flores— note that the violence is the direct result of the Mexican government's greater commitment of resources to combating organized crime. In the past, when the Mexican political system was less pluralistic and more hierarchically centralized, organized crime networks were able to operate relatively undisturbed, thanks to the corruption of high-level government officials. Since 2000, the federal government has embarked on a deliberate strategy to try to break down the cartels into smaller, more manageable pieces that can be dealt with more effectively by state and local law enforcement.

In recent years, however, the disruption and fragmentation of organized crime networks — notably, the Tijuana-based Arellano Felix cartel, the Matamoros-based Gulf cartel, and the Culiacán-based Sinaloa cartel— has led to increased infighting and competition for control over previously-established drug territories and routes (or "plazas"). New contenders for control include the Beltran Leyva organization and a series of small-time organizations, such as the "La Familia" organization in Michoacán. These groups are arguably smaller, but —by virtue of their unpredictability, their lack of hierarchical structure, and the frenzied competitiveness that has resulted from their proliferation— they are also far less "manageable." They have also begun to

cultivate a substantial domestic market for drug consumption in Mexico, and have become more diversified in their involvement in a broad range of profit-oriented criminal activities (such as kidnapping, selling pirated goods, human smuggling, etc.).

Moreover, there is no end in sight. Violence has tended to surge and decline periodically and in different parts of the country, producing a steadily rising and widely dispersed toll. Hence, while drug-related violence has abated significantly in some parts of Mexico, it remains extreme in others. One thing is certain: the current rate of killings —more than 400 per month— puts Mexico on track to have another very bad year in 2009.

Addressing the Special Concerns of U.S. Southwest Border Communities

In recent months, there has been growing alarm about the possible impacts of Mexico's drug war violence on U.S. Southwest border communities in the states of California, Arizona, New Mexico, and Texas. I want to emphasize that —as is the case regarding drug violence in Mexico— some of these concerns are significantly overblown. Inaccurate media reporting and hyperbolic rhetoric have contributed to increasing support for the militarization of our border with Mexico through the deployment of National Guard troops. Meanwhile, well-intentioned efforts to address the problem of arms trafficking have produced proposals for increased inspections at southbound border ports of entry to Mexico. I am very concerned that such measures are likely to prove costly, potentially counter-productive in our relationship with Mexico, and ultimately ineffective in addressing the actual problems we face in Southwest border communities.

Recent concerns have focused largely on the reach and proliferation of violent transnational organized crime networks in the United States; southbound arms trafficking from the Southwest border region to Mexico; kidnappings and other diversified criminal activities in U.S. border

states; the impacts of Mexican drug-related violence on U.S. health care facilities; and the possible penetration of U.S. law enforcement agencies.

First, it is important to point out that the reach of transnational organized crime networks is not limited to the states and communities immediately adjacent to the border. Rather, these organized crime networks extend to the wholesale and retail level in cities and communities throughout the United States. It is through these networks that organized crime reaps its highest profit margins. Still, while literally hundreds of Mexican cartel operatives have been arrested in the United States, it is not clear that the cartels' retail operations are exclusively "Mexican" or to what extent U.S. subsidiaries form part of the distribution chain.

Whatever the case, thus far, the struggles between Mexican cartels over routes into the United States have *not* "spilled over" in the form of the kind of degree of extreme violence that has become so prevalent in Mexico. In part, this is a testament to the effectiveness of U.S. law enforcement, and the importance of having a modern, highly professional criminal justice system. The overall efficacy and integrity of U.S. law enforcement makes it much more difficult for the cartels to operate as audaciously as they do in Mexico, where open gun battles and brazen daylight assassinations have been common.

Second, with the escalation of violence in Mexico, the Mexican federal government has seen significant increases in the number and array of arms seized, with dramatic growth in the proportion of high-powered weapons (including 9mm pistols, .38 caliber "super" pistols also known as cop killers, .45-caliber pistols, and AR-15 and AK-47-type assault rifles, grenades, and bazookas). Despite the large number of weapons confiscated in recent years, the sale and personal possession of firearms is tightly regulated in Mexico, where there were only about 4,300 legally registered firearms in 2007. The legal availability of firearms and the relatively weak regulation of gun sales in the United States —where only 5% of the roughly 54,000 registered gun dealers

inspected annually— makes our country the primary source of weapons for Mexican organized crime syndicates. Indeed, authorities estimate that 90% of weapons confiscated in Mexico came from the United States. For geographic reasons, the border provides an important conduit for weapons headed to Mexico. A 2007 ATF trace of weapons confiscated in Mexico found that 1,805 (73.5%) of 2,455 weapons came from three of the four U.S. border states: Arizona, California, and Texas. Since the Bureau of Alcohol, Tobacco, and Firearms (ATF) initiated "Operation Gunrunner" to help stop the southbound flow of guns, there are reportedly around100 U.S. firearms agents and 35 inspectors for the entire 2,000-mile border region. Funding for additional agents has been appropriated for 2009.

A third major concern about the possible cross-border implications of Mexican drug violence is the specter of kidnapping and other diversified criminal activities. Despite recent U.S. media reports suggesting high rates of kidnapping in U.S. border states, notably Arizona, it is not clear that these kidnappings are a reflection of recent drug violence in Mexico. Rather, kidnappings in Arizona appear to be largely the work of immigrant smuggling organizations attempting to extort additional money from their undocumented clients, either by demanding cash payments or debt bondage. Incidentally, the use of coercion in this manner constitutes a form of human trafficking that is prohibited by the Trafficking Victims Protection Act of 2000 [See 22 U.S.C. 7101, Section 103(2)(A)]. In short, while transnational organized crime networks are highly diversified, recent kidnapping concerns appear to be more closely related to migrant smuggling operations than to drug trafficking, per se.

A fourth concern that is frequently cited is the effect of Mexican drug violence on U.S. first responders and medical facilities. In 2008, in Ciudad Juárez, adjacent to the U.S. border city of El Paso, drug-related violence resulted in greater pressure on U.S. service providers, who attended to several victims of shootings that occurred on the other side of the border. Treating victims of drug

violence potentially places hospital personnel in harm's way, as suggested by the experience of Mexican hospitals where drug hit men have occasionally tracked their victims to medical facilities in order to kill them. I want to emphasize that, thus far, these problems have been principally concentrated in the segments of the U.S. Southwest border that are most proximate to the highest levels of violence in Mexico; that is, in the El Paso-Ciudad Juárez region.

Finally, another major concern is the reduced integrity of U.S. border security agencies. For example, since its formation in 2002, heightened recruitment efforts at the Department of Homeland Security brought in greater numbers of inexperienced agents, while tighter scrutiny at the border created greater incentives for organized crime groups to infiltrate the agency and/or corrupt U.S. border security agents. According to one investigative report by *The New York Times*, in 2004, the office of internal affairs for the U.S. Customs and Immigration Service compiled 2,771 complaints against the agency's employees, including more than 550 that involved criminal allegations and more than 100 that involved allegations of bribery. From October 2003 to April 2008, there were numerous cases of alleged corruption identified along the border: 125 in California, 45 in Arizona, 14 in New Mexico, and 157 in Texas. While incidences were not exclusively the result of penetration by Mexican organized crime, they underscore the potential vulnerability of U.S. law enforcement agencies to corruption. For our own interest and to reassure our partners in Mexico, we need to make a serious commitment to addressing these concerns.

Developing Effective U.S. Responses to Mexican Drug War Violence

Because of Mexico's strategic importance to the United States, it is necessary to develop effective responses to the recent escalation of drug war violence. Mexico has worked very closely with the United States in recent years to enhance bi-national cooperation in law enforcement and security matters, facilitating the investigation and arrest of major organized crime figures and

dramatically increasing the number of criminals extradited to the United States. These efforts deserve our ample appreciation, support, and collaboration.

Unfortunately, I see only three possible scenarios for a dramatic reduction in drug violence in Mexico and the border region. The first is a pact between the major cartels that would re-establish an agreed-upon structuring of the rights to the "plazas" for which they are now competing. Such an arrangement is made less likely by virtue of the fact that Mexico's cartels are now fragmented, and there is no monopolistic, hierarchical organization of the power structure. Even if it were possible, a cartel pact would be an unacceptable option, not only because it implies the continued flow of illicit drugs into the United States, but also because it would likely also perpetuate the power of the cartels and the corruption of Mexican government officials. Moreover, it is contrary to the best interests of the United States and Mexico.

The second scenario is for a major policy change in the regulation of psychotropic drugs as a public health problem, rather than a strictly law enforcement problem. Thus far, as articulated, the main objectives of the war on drugs —reducing the supply and consumption of illicit drugs— have proved unattainable, despite consistently increasing law enforcement and military resources over the last forty years. Hence, there is a need to begin looking seriously at alternative policy approaches that can help reduce the harms associated with drug consumption. The first and best solution is to reduce overall drug consumption in the United States. For example, since habitual drug users account for a highly disproportionate share of total cocaine consumption, discouraging cocaine use through education and treatment would likely yield enormous gains. Yet, it is clear that increased education and treatment will not entirely eliminate the U.S. market for drugs. As suggested by a recent report authored by three former-Latin American presidents, consideration needs to be given to finding the "least harmful" ways to regulate that market.

Moving in this direction, several U.S. state governments have begun to promote

decriminalization —significantly reduced drug offender penalties for minor possession— and medicinal use of marijuana as alternative approaches. In Mexico, in October 2008, the executive branch introduced a proposal to decriminalize drugs by eliminating jail time for minor drug possession; soon after, representatives of the opposition Party of the Democratic Revolution (PRD) introduced a measure that would fully legalize the cultivation, distribution, sale, and consumption of the drug.

Unfortunately, these moves toward the decriminalization or legalization of marijuana are unlikely to significantly decrease the power of organized crime. Decriminalization is likely to increase the U.S. market for illicit consumption, while focusing only on marijuana ignores those substances that bring Mexican organized crime groups their greatest profits: drugs perceived to be highly addictive and dangerous, such as cocaine, heroin, and methamphetamine. Full scale legalization of these substances would therefore bring enormous costs for society, placing a severe burden on the health care system and creating a variety of public safety problems (e.g., D.U.I. violations, interpersonal violence, etc.). However, as Mexico's security situation grows bleaker, there is a stronger rationale to begin asking whether the attendant costs of regulated drug consumption would be lower than those costs we are paying now.

The final possibility would be for the successful completion of the Mexican government's current strategy of a full scale assault on Mexican organized crime. As I noted earlier, the end goal is the atomization of the cartels to a point that they no longer present a national security threat — that is, no longer capable of profusely infiltrating and directly challenging the state— and/or the expulsion of drug trafficking operations from Mexico. On the one hand, this would imply a costly, hard-fought battle against the cartels over the next few years that will undoubtedly require tens of billions of dollars and result in continued violence, including the lost lives of many more police, soldiers, government officials, and thousands of others. Moreover, the end result would not be an

end to organized crime and violence in Mexico, but a diminution of these problems to a level that would remain problematic the country's judicial system. On the other hand, this approach could also simply result in a "balloon effect," as major drug trafficking operations move outside of Mexican territory and develop new routes in the Caribbean or elsewhere.

Still, barring a major change in current drug policy, a continuation of the Mexican government's current approach seems to be the most viable politically option in the immediate future. If Mexico is to succeed in its efforts to combat transnational organized crime, U.S. collaboration will be essential. Here our approach must be directed toward depriving organized crime groups of the weapons that enable them to inflict violence, and the cash that ultimately drives their operations. While better legislation is needed to contain the spread and use of high-powered weapons, more resources should be directed toward the regulation of gun sales, the prevention of illegal arms smuggling, the tracking and seizure of drug profits, and support for the long-term development of rule of law reforms in Mexico.

Mr. MOLLOHAN. Thank you, Doctor.

Members of the Committee, in the first round we are going to certainly stick to five minutes of questioning and then we will see where we are in the second round.

PATTERNS OF DRUG-RELATED VIOLENCE

Doctor, let me go right to the question of violence and the potential for spill-over violence from the Mexican situation that you have described.

You have documented a steady northward move of cartel-related violence over the last three years from central Mexico to areas immediately adjacent to the U.S. border.

What explains this shift and should we expect that violence to continue creeping right on northward into the United States?

Mr. SHIRK. The patterns of drug violence that we have documented have basically followed feuds between the drug cartels. Those feuds have been partially driven by the disruption of the cartel leadership beginning back in about 2002, initially the disruption of the Arellano Felix cartel, but also other operations in the Gulf, the Gulf cartel, and more recently efforts to crack down on the Sinaloa cartel.

As the drug cartels have splintered and broken apart, partly because of in fighting, partly because of greater pressure from the government, we have seen the movement around the country of different clashes between the cartels and to a certain extent with the government.

It is not clear, however. That pattern has, although it has been in the last few years moving northward, it has also jumped around from state to state. We have recently seen a diminution, for example, in the border state of Baja California, but a surge in other states like Guerrero and Durango, which are further south from the border.

So it is not clear that this is a forward movement of the drug cartels into the United States.

Mr. MOLLOHAN. Well, you know, I was looking at your chart some time ago and it seemed pretty clear to me. Yes, Baja looked like violence had subsided there, but it looked like it was moving right up against the border.

Mr. SHIRK. The last year in 2008, the two leading states were the State of Chihuahua and the second state was Sinaloa. Chihuahua actually accounted for nearly a third of all drug-related killings in Mexico. So that is pressing right up against the U.S. border.

What I am not positive about is whether this is a movement into the United States or rather just a fight for control over these very lucrative routes into the U.S. for the movement of drugs.

I would be very surprised if drug cartels felt that they could operate with the same kind of impunity that they do in Mexico here in the United States.

Mr. MOLLOHAN. How are you measuring violence coming across the border?

Mr. SHIRK. Well, first of all, we have seen an increase in, for example, drug-related, well, drug-related violence in U.S. hospitals, for example. I mentioned the introduction of people into U.S. hospitals, particularly in El Paso, in the last year.

Mr. MOLLOHAN. Is there any agency that counts drug-related violence incidents?

Mr. SHIRK. Not to my knowledge, because I think it would be difficult to distinguish between regular gang-level violence, as you indicated in the introduction, and other forms of specifically cartel-related violence.

Mr. MOLLOHAN. From a rational perspective, you would think that cartels operating in Mexico would not want to get that violent north of the border, lest they incur the greater wrath of the United States authorities and the kind of resources that the United States could bring to bear. That would be additionally threatening to them.

Mr. SHIRK. I think the issue of rationality is very important to underscore. The cartels as they become broken down into sort of gang-level units have become somewhat less rational and more disorganized in their operations. So that I think is somewhat of a concern.

But I think that the thing that allows the cartels to operate the way they do in Mexico is the impunity with which they can act.

I mentioned in my testimony that about one in four crimes are reported in Mexico and of those, a much smaller fraction are even investigated.

And so the lack of rule of law in Mexico allows these cartels to operate with a very high degree of impunity. I do not think that is as much of a problem here in the United States and I think that is a testament to the integrity of our law enforcement institutions throughout the country.

And so that is why I am less concerned about raging gun battles in the streets of the United States or the corruption of high-level officials here in the United States.

Mr. MOLLOHAN. Thank you, Doctor.

Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

CONNECTIONS BETWEEN MEXICAN CARTELS AND OTHER ORGANIZED CRIME

Thank you for your testimony, Doctor. I have a whole series of questions. In the interest of the time, I will try to make them fast and if you can give me a yes or no.

Is there any connection with regard to the cartels down there and Al-Qaeda or any terrorist activity from around the country, around the world?

Mr. SHIRK. Not that I have any knowledge of. And I think that would be extremely irrational on the part of the cartels.

Mr. WOLF. Okay. Is there any connection with regard to the cartels and MS–13, which is very prevalent here in the U.S.?

Mr. SHIRK. That, I think there may be more of the possibility of a connection between trans-national organized gangs like MS–13 and the Mara Salvatrucha. I do think that that is something to be concerned about. The Mexican mafia, which is not technically a Mexican cartel organization but a U.S. based gang, does have connections to Mexico.

Mr. WOLF. Have we ever seen a trend like this before going back over a hundred years or fifty years? Is this something that hap-

pened in the 1930s or 1920s or is this just kind of a new phenomena that we are faced with?

Mr. SHIRK. I think organized crime is not a new——

Mr. WOLF. No, I know that. But, I mean, this.

Mr. SHIRK. Of this kind of gang-land violence?

Mr. WOLF. Yes.

Mr. SHIRK. Certainly in the 1920s, we saw this kind of thing in Chicago.

Mr. WOLF. No, I know that. But, I mean, coming——

Mr. SHIRK. In Mexico?

Mr. WOLF. Yeah.

Mr. SHIRK. In the 1990s, we started to see this kind of drug feud in Mexico. And, in fact, you saw higher rates of killing in, for example, the City of Tijuana in the mid 1990s than you do today.

But this scale and this breadth of violence in Mexico has not happened before because I do not think the Mexican State has taken the problem as seriously as it does today. They are really working hard to fight against these organizations.

Mr. WOLF. So the violence is more as a result of the fact that the Mexican government is doing everything they possibly can to crack down; therefore, the violence is coming up? Is that the reason?

Mr. SHIRK. I think that is correct.

COORDINATION BETWEEN AGENCIES

Mr. WOLF. How is the coordination on this side of the border with regard to like are all of the sheriff departments in Texas and all the sheriff departments and law enforcements in Arizona, do they all coordinate together? I know there are fusion centers along the border, but is there really in-depth coordination all along the border in the four states?

Mr. SHIRK. I think that there are varying degrees of cooperation here in the United States among law enforcement agencies. I think that what I have noticed is there are very different models at each major corridor along the border for U.S. cooperation and for U.S.-Mexico cooperation.

Mr. WOLF. And which model is working the best?

Mr. SHIRK. Well, I am partial to San Diego, I suppose. But what I have seen that has been very effective is the creation of liaison mechanism relationships in the San Diego corridor between international liaisons both from Mexican agencies and from U.S. agencies to try to cooperate and share information, develop partnerships and relationships across the border for even dealing with very small kinds of issues that agitate cross-border communities like abductions and stolen vehicles and the like, which in many cases form part of the activities of organized crime.

Mr. WOLF. I just saw, and tell me, Mr. Chairman, when my time is up, I just saw that the Justice Department announced a major effort and I think they gave the responsibility to the Deputy Attorney General Ogden.

Can you do this from Washington or do you need, and I do not want to use the word, but I will in the interest of time, a border czar, if you will, on the four states that are coordinating with regard to ATF, DHS, DEA, FBI, local police, Phoenix police, the sheriff departments? Do you need one person who has the responsibility

to coordinate down on the border rather than running this from Washington?

Mr. SHIRK. I think that the czar model has certain benefits and certain disadvantages.

Mr. WOLF. What are the disadvantages?

Mr. SHIRK. Disadvantages, in many cases, the czar is not sufficiently empowered to mandate agency action, but rather plays more of a coordinating role. But I think that the benefits of that coordinating role can be very important.

The last time we had a border czar under the Clinton Administration, Allen Burson, was able to make significant progress in achieving both coordination among agencies on this side and with his counterparts in Mexico.

Mr. WOLF. The last question. Given the responsibility that the czar would be given, that responsibility of the concerns you expressed, assuming that individual were given that authority, would it be your recommendation for a border czar, and I do not like to use the word czar, but for the border czar or not for one?

Mr. SHIRK. To avoid the use of the word czar, I think more coordination——

Mr. WOLF. Well, you can use—yeah.

Mr. SHIRK [continuing]. More coordination on the U.S. side of the agencies, a specific coordinator for those agencies, I think, could be a useful innovation in this Administration.

Mr. WOLF. Thank you.

Mr. MOLLOHAN. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

INVOLVEMENT OF THE MEXICAN MILITARY

Professor, everyone on this panel, regardless of how we think about different issues, agrees that this is a major problem that has to be dealt with immediately. But whenever you have a clamping down by any government, any law enforcement, there are many sides to that issue.

And I have had people visit me from Mexico saying that in some cases government officials may use this war on drugs and on the cartels as an opportunity to clamp down on political opposition. And it gets mixed in who they went after and whether that person was a drug dealer or a person who last week was involved in a political protest against the government.

I also note in your testimony some unease with the use of using the Mexican military.

So are we speaking about the same thing that these folks came to talk to me about and what is your unease with using the military in these cases?

Mr. SHIRK. The use of the military for domestic law enforcement operations is dangerous because the military is a very blunt instrument. It is not intended for community policing, for respecting due process and civil rights. They are not trained for that.

And I think that has been a major concern for human rights activists and other experts focused on this issue. There have been numerous complaints in the last year due to the military's involvement and alleged violation of human rights.

Also, the involvement of the military in the domestic-political arena is a dangerous game that has been played before in Latin America with very severe and dire consequences for democratic governance.

That is the source of my unease and I think it is the source of unease for many Mexican citizens as well.

Mr. SERRANO. Well, it is interesting your last comment because I am a student of some of the things that have happened historically in Latin America and I know that the military would look for any opportunity to move in and establish changes, including a total change in government.

Therefore, should the United States play a role in supporting the Mexican military in their fight or should part of our demand, if you will, as we in the future give aid and support, be that it be handled by local enforcement?

Mr. SHIRK. Well, the fact of the matter is that local law enforcement, state and even federal law enforcement in Mexico is not presently capable of managing the problems that we have.

The lack of institutional integrity in Mexico is very dire, high rates of corruption, lack of resources. Effectively the Mexican government has turned to the military as its last resort. I think we need to be very understanding of that fact and view the use of the military in Mexico as a short-term option.

I think we should be wary to make sure that we ensure that any U.S. funds are not used inappropriately, that there is a sincere and dedicated effort on the part of the Mexican government to protect human rights, and to prosecute human rights violations.

That said, I think Mexico is at the end of its rope and there is no alternative at this point that the Mexican government can come up with other than the military. If this effort fails, there is no other place that Mexico can turn. And that is very disconcerting.

Mr. SERRANO. Thank you, Professor.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you.

Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

STABILITY OF THE MEXICAN STATE

I share Mr. Serrano's concern about the involvement of the military and their history of unfortunately corruption both in the military and local officials.

And from what I am hearing, Chairman Serrano, there is indeed a lot of concern on the U.S. side that what we are seeing in the civil war in northern Mexico is in many ways rearranging the food chain and payback.

I think Mr. Serrano is exactly right. There is a lot of payback going on. And with the violence that we see and, in fact, Mr. Chairman, the testimony we are going to receive in a minute from the Drug Enforcement Agency from Special Agent Arabit from El Paso points out that the DEA, quote, assesses that a large percentage of the officials killed in both years were corrupt officials who either failed to do the bidding of their controlling cartel or who were targeted for assassination by a rival cartel.

It is a lot of payback, Mr. Serrano is exactly right, and rearranging the food chain which is one of the reasons I was so concerned about the Amerita Initiative and voted against it. I hope that if at least we are going to send them the vehicles, I hope we will lo jack the helicopters and lo jack some of those vehicles so we can see when they start using them, we hope they do not, for corrupt purposes.

But your testimony a moment ago, Professor, is that you said Mexico is at the end of their rope, but a minute ago in your testimony, you felt that it was overblown to be concerned about the stability of Mexico.

Yet, the testimony that this Committee has received that we have on homeland security, many members of this Committee are also on the Homeland Security Committee, are that Mexico and the U.S. military has ranked the Mexican government, the Pakistani government, and Afghan government as the three most unstable, potentially likely to collapse governments in the world.

And the level of violence we are seeing today in northern Mexico certainly has to be qualified as essentially a civil war. The level of violence is unprecedented. I mean, they are saying a spill-over.

The DEA, Mr. Chairman, is going to testify in a moment, I will get to a question, I guess, in a minute, but a lot of this is something I have paid, and is near and dear to my heart as a Texan, and worked closely on, but the DEA is going to point out in a minute, Mr. Chairman, that the U.S. law enforcement agencies do not consider it spill-over unless there is, where is that, it says in here deliberate, the DEA federal law enforcement does not consider it spill-over unless it is deliberate. Well, yeah, here it is on page six. As agreed to by the interagency community, spill-over violence entails deliberate, planned attacks by the cartels on U.S. assets or citizens.

Well, in Houston, Texas, in broad daylight, you had a machine gun fight at one of the biggest intersections in southwest Houston, at Bisnet and Belair in my district, a machine gun battle between two human smugglers. And they are trying to kill each other. That is not counted as spill-over because they are shooting each other and it is not a deliberate attack on U.S. civilians. But those bullets were not hitting each other. Bullets were flying everywhere.

So I have to say, Professor, my impression is you tend to be understating, I think, the level of the potential for the collapse of the Mexican government. You said yourself they are at the end of their rope. If Mexico collapses, we are going to see millions of people come over the border seeking asylum quite properly.

And so I wish you would talk to us in a little more realistic way. Talk to us about the stability of the Mexican government and what we are seeing, not just deliberate violence, but the incidental violence, the attacks in and between smugglers and the kidnappings that we are seeing.

In Houston, Texas, a Houston police officer shot in the face. We have had terrible murders in Houston.

Frank Wolf's district in northern Virginia, Frank has got MS–13 gang members all over northern Virginia.

Talk to us a little bit, if you could, my Chairman has been very gracious for the time, about the stability of the Mexican govern-

ment, number one, and the realistic spill-over that we are seeing here in the United States.

Mr. SHIRK. Thank you, Congressman.

I want to say again I do not think that Mexico is currently anywhere close to Pakistan or Colombia. When we saw the violence in Colombia in the late 1980s and through the 1990s really, you had insurgent groups controlling broad swaths of territory. You had rebel armies that were competing for control of the state. You had a murder rate of approximately 100 per 100,000.

In Mexico, the rates vary, but we are talking about maybe 10 to 15 per 100,000. Things would have to get ten times worse in Mexico in terms of the level of violence to equate what we have seen in Colombia, which I would categorize incidentally as a failed state, at least through much of the 1990s.

Mr. CULBERSON. But Mexico is more dangerous than Iraq. There are more deaths in northern Mexico than there have been in Iraq. I am already over my time. The Chairman is going to get the hook.

Thank you. You have been very kind, Mr. Chairman.

Mr. MOLLOHAN. Go ahead. You can respond.

Mr. SHIRK. May I respond to the Iraq comment?

Mr. MOLLOHAN. Yes.

Mr. SHIRK. The number of civilians killed in Iraq, I believe was about 7,000 in the previous year compared to about 6,000 in Mexico. So that I do not think is an accurate reflection. And, of course, it varies by how you do your count of civilian deaths, et cetera. But I do not think that is a fair characterization.

Mr. MOLLOHAN. Mr. Bonner.

Mr. BONNER. Thank you, Mr. Chairman.

POTENTIAL IMPACT OF LEGALIZATION

Professor, when I was running for Congress in 2002 and during the six and a half years that I have been in Congress, my personal position has always been against legalization of illegal drugs.

And I noted in your written testimony, and forgive me, I was out of the room for part of your oral testimony, but you actually cover part of this. And I would like to focus on that for just a minute.

Interestingly, a writer to the Mobile Press Register, the newspaper in my home of Mobile, Alabama, this Sunday actually opined that as prohibition proved to be a failure in the 1920s, we were not able to manage it and it was the right thing to do to leave it up to states and local option, that perhaps, he suggested, and since this is being telecast, if anyone is watching back home, I want to make sure that this is Michael Tomison's view, not Joe Bonner's view, but his suggestion was that if we legalized marijuana, that that would go a long way toward reducing the violence that is going on with the drug cartels in Mexico.

You touched on it a little bit in your written testimony. I thought I would give you a chance to elaborate on that and share us your views.

Mr. SHIRK. Thank you.

It is an extremely complex issue. And, unfortunately, we have not really been asking that question, what would happen if we legalized drugs in the United States. I think the answer is nowhere near as simple as anyone likes to believe. It would not be the end

of the world on the one hand, but it would involve serious problems and challenges.

I think one thing to talk about is, first of all, the phenomena of decriminalization. We have been reducing penalties on drug users here in the United States. In many different states, we have actually legalized medical use of marijuana, in about 13 states. And that actually effectively increases the available market for the illicit drug sales and partially state sanctioned drug sales in the United States.

I am not sure that is a very positive tendency if we are trying to fight the cartels and giving them more opportunities to make money.

On the other hand, legalization could involve some very serious consequences, public health consequences with higher rates of addiction and use, consequences for our law enforcement officers who would have to deal with a whole host of very serious problems.

The real question, though, is are those costs greater than the costs that we are currently paying in this war and that we have been paying for the last roughly 70 years of prohibiting the use of these substances.

I do not have an answer as to whether or not legalization would be a better alternative to what we are doing now, but I am disturbed by the fact that we have not really seriously been considering alternative approaches to try to deal with drug consumption as a public health problem. Whether or not we legalize drugs, we definitely need to try to reduce drug consumption. We need to reduce drug demand here in the United States. We need to combat addiction. And we could do a lot more of that than we have been.

Mr. BONNER. Just a quick follow-up. A couple years ago, I had the opportunity to travel on a Congressional Delegation down to Laredo, Texas and to spend a couple days with the Border Patrol agents there. And this was at the time when illegal immigration was the number one issue. It was not the economy. It was not even Iraq. It was the flow of illegals coming into this country through Mexico.

And one of the startling things that stuck out in my mind was we were with the Border Patrol. It was almost midnight. And two young ladies crossed over the Rio Grande River and one had an infant, just a few months old. And it just struck me about how people were literally willing to risk their lives to come into this country for not necessarily a promise of quick or easy fortune, but a bad day in America was better than a good day in their home country.

But when we were talking with the Border Patrol people the next day, they were talking about what the real challenge no one was really talking about then, I think we are now, was the illegal drugs coming in and just coming in by the truckload.

And I guess my question is, does it take a crisis like what we are seeing happening in Mexico now for us to put our proper attention on what the real problem is as opposed to what the mask of the problem is?

Mr. SHIRK. I do think that that is one positive side effect of some of the hyperbolistic rhetoric and coverage that we have had is that, yes, we are now focused on our number two export market. We are

now focused on the neighbor with which we share the closest ties culturally in terms of immigration, et cetera.

And I think that out of crisis, we should find opportunity here to work with Mexico and strengthen the bilateral relationship.

Mr. MOLLOHAN. Thank you, Mr. Bonner.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

SMUGGLING DETECTION

I was just curious, just an overview, talking about drug trafficking and crimes along the borders in a couple of states. Very quickly, can you tell us where the source of the drugs are and how it travels and the kind of interdiction that goes on along the border on the Mexican side and what kinds of help should we be looking at offering the Mexican side of the border for detection that go along with the drugs? Coming from the other side, what is the major traffic coming from the other side, from our side to the Mexican side? What is the major traffic there and what is its source?

Mr. SHIRK. The drug cartels in Mexico have control over an estimated 90 percent of the cocaine market moving from the Andean region into the United States.

Mr. HONDA. Uh-huh.

Mr. SHIRK. They control approximately, I think it is 40 percent or more of marijuana that is consumed in the United States. We are fairly self-sufficient. A significant proportion, we grow our own. We also import a fair amount from Canada.

But the cartels use virtually all manner of conveyance to move product into the United States. They use boats. They use clandestine entry points, including tunnels, anything to evade interdiction.

Our interdiction efforts at the border frequently result in major seizures. But, unfortunately, wherever we try to interdict, the Mexican cartels do try to find other ways of bringing product into the United States. And they are extremely creative.

Last year, for example, they found panels, a truck that actually had panels that were modified cocaine substance that was literally driven into the United States and looked like a car or looked like a vehicle. And the creativity, the ingenuity of these organizations is tremendous.

In terms of southbound, the cartels are heavily dependent——

Mr. HONDA. Could you talk about what are some of the techniques——

Mr. SHIRK. Detection techniques——

Mr. HONDA [continuing]. That we could——

Mr. SHIRK [continuing]. We use, very effective methods are the use of K–9 units, the use of X-ray detection technology. And there is a new X-ray technology that is being developed that is even more rapid and efficient in searching vehicles as they move across the border with very low levels of X-rays that you can do it on a fairly regular basis.

Those technologies are fairly expensive and not fully distributed all along the border. So the primary method of detection that is most important, I think, at our ports of entry is having trained, qualified personnel in our Customs, in the Department of Home-

land Security for detecting and interviewing individuals and commercial vehicles as they move across the border.

Unfortunately, I think that we do not have adequate either physical infrastructure or personnel to move our commercial vehicles and personal vehicles into the United States quickly enough because the inspection process is slow. Those slow down very significantly.

On the last point, in terms of southbound efforts, we inspect a very small percentage of flows going into Mexico and Mexico also inspects a very small percentage of the traffic that goes across into Mexico.

So one of the things that people have talked a lot more about is greater interdiction at our southbound ports of entry. That is concerning to me because currently our northbound efforts at interdiction slow down cross-border trade in the United States and Mexico to the point that we lose somewhere between six and ten billion dollars each year in cross-border trade just from the San Diego port of entry alone.

If we try to impose southbound interdiction at a rate equivalent to or similar to what we are doing for northbound traffic, that is going to have important economic effects not just for our border communities but for the rest of the United States and for all of the hundreds of billions of dollars in NAFTA trade that we have here.

But we do need to do more to try to prevent the flow of bulk cash and the flow of arms south of the border. I personally think that we should be doing more at the point of transaction. In other words, doing more investigations into the financial operations of the drug cartels and more effort to regulate the sale of guns here in the United States, enforcing existing laws, and perhaps considering new ways of regulating and restricting access to very high-powered weapons.

Mr. MOLLOHAN. Thank you, Mr. Honda.

Mr. Fattah.

Mr. FATTAH. Thank you.

ADEQUACY OF THE ADMINISTRATION'S BORDER SECURITY PLAN

President Obama has made some announcements today and they include hundreds of new FBI, DEA, ATF agents assisting in this effort on the border, some 700 million new dollars to Mexico to help bolster their efforts in terms of purchase of helicopters and the like.

This goes along with, what the Committee has already appropriated, over a billion four over the next couple of years towards the efforts of the Mexican government. There are a number of other pieces to the announcement today by the Administration.

Would you care to comment, if you know about the specifics, about what you think regarding these additional efforts which include 54 million for local law enforcement in the tribal and border states along the border?

Mr. SHIRK. I will not go into the specifics because I have not read the specific allocations that have been made, but I do think that there is definitely a need for more resources of the kind that have been mentioned so far, more resources for ATF, more resources for enhancing ports of entry and enhancing our capability in terms of inspection for arms and for bulk cash movements.

I do think that these are necessary and valuable efforts and, importantly, they signal to Mexico that we are serious about addressing the aspects of the problem that we are responsible for on our side of the border.

Mr. FATTAH. Now, the obvious challenge as we go forward is that there is still lots of money to be made if you want to sell drugs in the United States. It is a very wealthy country in comparison. And no matter what we do, borders, law enforcement, this financial incentive is going to continue.

One of the things that the President's appointee for the drug czar is talking about is our nation taking much more seriously the question of drug treatment, and how to lessen the demand. As you know, there are certain people in our country, no matter how much drugs might be available, are never going to utilize them. They are never going to purchase them. They are not going to use them.

We have a certain subset of our population that for a variety of reasons are susceptible to drug addiction or to drug use and there is a need to focus in on treatment really as a law enforcement mechanism, to the degree that we can lessen the demand, then people would not be willing to lose their lives to try to sell something they could not sell in our country.

If you would like to comment on that, that would be useful to the Committee.

Mr. SHIRK. I agree. I think that we need to do a lot more to try to address demand in the United States. The issue of treatment is very important when the small percentage of regular cocaine users account for approximately 80 percent of demand for cocaine. That means that if we could reduce consumption among those regular users, we could dramatically cut overall demand in the United States.

I could not agree more that we need to try to discourage the consumption of drugs in the United States.

Mr. FATTAH. All right. Well, thank you very much for your testimony.

Mr. SHIRK. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Fattah.

Mr. Ruppersberger.

SECURING OUR BORDER

Mr. RUPPERSBERGER. Getting back to the issue of the border, I know you have said that you do not feel that by Mexico putting troops on the border would do anything or would be a deterrent.

Could you explain that, please?

Mr. SHIRK. By Mexico putting troops on the border——

Mr. RUPPERSBERGER. Yes.

Mr. SHIRK [continuing]. Would be a deterrent to——

Mr. RUPPERSBERGER. To the drug war and the problems and escalation of violence that we have right now.

Mr. SHIRK. What I think is there has been no demonstrated effect other than to—in terms of reducing violence. The more the military has gotten involved in some ways, the more violence we have seen as the cartels become more fragmented, less predictable, and more violent as they sort of frenzy amongst each other trying

to compete to take up and take control over routes that have been disrupted.

So the question is whether there is an end in sight that the military can help to achieve. The best hope as I have described it so far appears to be making the cost of operating in Mexico so great that the drug cartels or some other drug cartels establish alternative routes into the United States that do not involve staying in Mexico.

In other words, the balloon effect of pushing those drug cartels out of Mexico and perhaps into the Caribbean and——

Mr. RUPPERSBERGER. Well, let me ask you this as it relates to immigration, as it relates to drugs, as it relates to gun running, whatever. The bottom line, we have not been able to secure our border, our southern border.

And if there is something really that every nation should have as a priority is to secure their borders for a lot of different reasons. I know you look a lot at history and you have studied this issue.

Have you looked at what has happened in Colombia with Uribe working with the United States, being able to deal with the issue of corruption, the resources that were needed, whether it is UAVs or the boat runners, those type things? Do you think that the plan that we have used and worked with Uribe would help on the border, at the border, the escalation of drugs, guns, and violence in Mexico?

Mr. SHIRK. I think that the government of Colombia has been very successful in disarming, for example, paramilitary groups. They have also been very successful in striking strategically to hurt insurgent groups like the ELN and the FARC.

Unfortunately, we have seen a similar pattern in Colombia of spiraling violence and the creation of smaller organizations that produce further chaos.

Right now Colombia is the number two country worldwide for refugees. There are 30,000 refugees who have been displaced because of the spiraling violence.

So if the Colombian——

Mr. RUPPERSBERGER. Well, that is the same issue at the Mexican border right now too.

Mr. SHIRK. Well, the difference is that, first of all, we do not have armed insurgent groups that are seriously challenging——

Mr. RUPPERSBERGER. Like the FARC?

Mr. SHIRK [continuing]. The Mexican state like the FARC. And we also have not seen the extremely high levels of—we are talking, you know, hundred per hundred thousand——

Mr. RUPPERSBERGER. Right.

Mr. SHIRK [continuing]. Homicides and the kind of displacement of the domestic population. So thankfully Mexico is very far away from that kind of a failed state scenario.

Mr. RUPPERSBERGER. Well, let me get to another. I do not know how much more time I have. But it seems to me that some of the most effective ways to deter whether it is terrorism, whether it is drugs, or whatever is kind of a strike force concept.

If you look at the JTTF, you are familiar with that, where you have the federal, state, and local, you have CIA, NSA coming together not only from an intelligence point of view but also from an

enforcement point of view, getting intelligence, analyzing the intelligence, and then operating.

There are fusion centers on the border now which are kind of like that, but do you have an opinion if we could use more resources, the same resources, just a small amount that we are using in Iraq and Afghanistan, where we have the components of the intelligence, we have the components of our special ops or we have our coming together whether it is Immigration, whether it is Customs, DEA, FBI, whatever, do you feel that that could help Mexico by us being stronger on the border?

I have not seen what the President came out with today, so I cannot analyze that. But do you have an opinion whether or not that type of concept would work on the border and the problems that we have right now?

Mr. SHIRK. I think that the approach you are suggesting, greater emphasis on intelligence, on fusion centers, on special tactical forces, interagency forces, I think that has proved successful in the United States and it can be a useful approach in the southwest.

I would go further than that and also suggest that as we see continued concerted efforts on the part of the Mexican government and the establishment of agencies that do have a high degree of integrity, we should engage in intelligence sharing and greater cooperation across the border of that nature.

Mr. MOLLOHAN. Thank you, Mr. Ruppersberger.

Because the members of the panel limited their questions to five minutes, we got through that with a lot of good questions. I would like to do a second round with our witness, who I think is providing very good testimony, and again limit our questions to five minutes.

ASSESSMENT OF MEXICAN RESPONSE CAPABILITIES

Doctor, getting at the question of Mexico's strengths and their weaknesses, how well they are doing? If you could critique their performance, where are they doing it right in Mexico? Where are they not? Give us insight into how we could best be of help to them.

Mr. SHIRK. Well, I think we have to think about the long-term solutions. And I know that in the long-term, we are all dead. But I think that we need to think about really investing heavily in rule of law reform.

One of the things the Mexican government has done well, for example, or has made a very positive effort in the last couple of years is in promoting reform of the judicial system, which will necessarily require an overhaul and reform of the police force.

In the United States, we did those kinds of reforms, especially in the 1960s. Congress approved millions of dollars of funding for the improvement of our criminal justice system partly in response to legal changes that happened here in the early 1960s, the introduction of Miranda rights, the introduction of a universal right to a public defender. Those kinds of things raised the bar for law enforcement and our criminal justice system and we responded by investing heavily in strengthening state and local police forces to improve their professionalism.

Mr. MOLLOHAN. This sounds long term.

Mr. SHIRK. Mexico needs to do more of that.

Mr. MOLLOHAN. That sounds long term.

Mr. SHIRK. That is long term.

Mr. MOLLOHAN. Short term, should we continue going with the military? Should we encourage Mexico to go with its police force and do something with them?

Mr. SHIRK. Short term, and this goes to Congressman Culberson's point, short term, I do not think that Mexico has an alternative but to involve the military. It is not that they are on the verge of collapse, but rather their strongest, most respected, most or least corrupted unit is the military. And that is their best hope for trying to address these problems at this time. It should, however, I think, be a short-term option.

Mr. MOLLOHAN. Okay. In my limited time, I would like to go to federal law enforcement programs.

You criticized U.S. border security efforts for being insufficiently targeted and too dependent on finding the needle in the haystack. That was the Border Patrol efforts as I understand it.

How would you apply this critique to federal law enforcement programs?

Mr. SHIRK. I think that there has been so much emphasis in the last few years on the border as the primary line of defense on many different security issues. And, unfortunately, I think that trans-national crime and terrorism are not problems that can be easily interdicted. If your first or last line of defense is your border, we have, I think, much to be concerned about.

We definitely need to see more efforts in terms of investigative efforts or investigations about how these cartels operate, hit them where it hurts the most in terms of their ability to move their profits back into Mexico and then launder them through their financial system. We also need to do a lot more to restrict their access to the weapons that they use to commit these murders.

Mr. MOLLOHAN. Thank you, Doctor.

Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

LEVELS OF SUCCESS ACHIEVED BY MEXICO

You have so many questions and the time. I guess the one that is troubling me the most, I wanted to ask you two questions and get a comment on one, where is it the least of the problem and where is the most successful? What four states are doing the best job and what area? And as they do a good job, does it shift to another area?

Mr. SHIRK. This is where I am not convinced that we have seen a consistent pattern. When the Mexican military was deployed to Michoacan at the end of 2006, we subsequently saw a dramatic reduction in drug cartel-related killings in that state. They dropped to about half and many people attributed that to the success of the military.

But in the neighboring state of Guerrero, also on the central Pacific Coast, we saw a dramatic increase, a doubling of drug-related killings practically despite the deployment of a similar number of Mexican troops. So there is not a consistent pattern in terms of reducing the violence.

My understanding is that in recent weeks, the deployment of I think another 6,000 troops to the State of Chihuahua or, I am sorry, 5,000 troops to the State of Chihuahua on the border has been followed by a reduction in violence.

How the cartels respond to the government presence has not been consistent or the military presence has not been consistent. And that is where my concern lies when I raised the point about will the military be effective as an instrument. I do not think that the military alone can be effective.

I think what is really needed to combat trans-national organized crime are greater efforts at trans-national collaboration between the United States and the kind of intelligence sharing, shutting down of their cash flow and shutting down of the flow of weapons moving south across the border.

Mr. WOLF. Last two. What is the total population or the number of the Mexican military? How many are in the Mexican military?

Mr. SHIRK. I do have data on this. I am not going to guess at the number. I think it is around 130, but I can pull that out if you need me to.

Mr. WOLF. So they must be stretched. They must be stretched.

Mr. SHIRK. The Mexican military, I think, is, the number of military personnel deployed by the Mexican government to combat the drug war is, according to the Mexican government, is 45,000 troops. About 9,000 of those last year were deployed to specific urban or metropolitan areas. And this year, they have deployed double that amount, about 18,000, to various major metropolitan areas in high drug trafficking states.

And in that sense, I do not think that the Mexican military is overly stretched, but they are making a very concerted effort.

LAW ENFORCEMENT CORRUPTION

Mr. WOLF. Okay. And the last question is on page eight, you say since its formation in 2002, heightened recruitment efforts at the Department of Homeland Security brought in greater numbers of inexperienced agents while tighter security at the border created greater incentives for organized crime groups to infiltrate the agency and corrupt U.S. border security agents.

And then you end by saying from October 2003 to April 2008, there were numerous cases of alleged corruption identified along the border and the potential vulnerability of U.S. law enforcement agencies to corruption.

I think we have the most honest law enforcement, I think, probably in the world. But I have never seen that in writing before. Would you comment a little bit about that.

Mr. SHIRK. That is a special report that was done by the New York Times and it drew on agency information about simply the number of cases subject to internal review within Customs and Immigration along the border. And the number of cases, 125 in California, 157 in Texas, double digits in Arizona and New Mexico, those are not all cases of drug-related corruption of our agencies and I do want to underscore that.

What I think is troubling is that we do have cases of corruption in our law enforcement agencies at low levels in the United States

and that those could be taken advantage of by drug trafficking organizations. I think we need to look more carefully at it.

Mr. WOLF. Really, though, then you are not saying this is a problem in the United States of corruption?

Mr. SHIRK. I think the severity of the problem is nowhere near the level of the problem that we see in Mexico. When you are talking about hundreds of cases, though, of agents corrupted along the US-Mexico border, I think that would be concerning to any U.S. citizen.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

CONTROL OF FIREARMS REACHING MEXICO

Professor, the question I want to ask you is probably somewhat better suited for the next panel, but your testimony has been so full of knowledge that I cannot pass it up.

One of the touchiest subjects that we have in this Congress and in this country is the issue of gun control, yet we know, according to the Mexican government, and I do not think we dispute it much, that 90 percent of the weapons being used in Mexico come from this country.

Without getting you in trouble, although I do not think you worry about that too much, under our present laws and what we allow in terms of the use, the sale, the bearing of arms in this country, can we really ever think that we could stop any of those weapons going into Mexico, because, as you know, the Mexican government and the Mexican community in general says we have a problem? We understand it is our problem. But there are two problems. The guns come from here and we are the drug consumers.

Mr. SHIRK. I feel the same way about trying to control Mexican demand for arms that I do about the demand for drugs in the United States. These are market problems that are not easy to solve.

There are public policy problems that you solve and there are public policy problems that you manage. I do not think we are going to solve gun trafficking as long as this very high level of demand is in Mexico, but we can certainly do more to try to regulate it and to manage the problem.

Are existing laws adequate for preventing the trafficking of high-powered weapons into Mexico? Evidently not. When you have thousands of weapons moving into Mexico, 90 percent of them coming from the United States, arguably existing laws are not currently effective and current enforcement efforts are not sufficient.

The increase in the number of ATF personnel and anti-weapon smuggling efforts in the southwest, I think, is a very good start, but I do think that we need to look more carefully at what existing regulations we have.

The number one place for entry of weapons into Mexico is the State of Tamaulipas, just south of east Texas. California has much lower flows of guns moving into Mexico, especially high-powered assault weapons, in part because there, I think, are more restrictive controls in the State of California for the sale and purchase of those kinds of weapons.

I know that that is a very controversial issue and I know that we need to respect the Constitution in the United States and the Supreme Court's interpretation of our right to bear arms.

But that said, I do think that there is certainly more that we can do. We just have to figure out what we are going to do.

Mr. SERRANO. Now, I may be wrong, I think I read this somewhere, maybe not in your testimony, about the fact that most of those weapons are coming basically from one percent of gun dealers in the country.

If that is so, if I read that correctly somewhere, then that should be easier to target; would you not agree? I mean, if it was widespread that people were selling to improper people illegally, okay, but if it is one percent of gun dealers in the country, you probably could target them and do a better job.

Mr. SHIRK. I think the statistic that I am recalling is the percentage of gun dealers who are regulated in the United States. It is a very small percentage. We throw around numbers a lot. And I think we could be doing more inspections of existing gun dealers.

There are some 6,700 gun dealers in the southwest border region and I think we need to do more to try to inspect and regulate those. And that is what a lot of those ATF agents and inspectors hopefully will be doing as they are brought into the region.

Mr. SERRANO. In closing, Mr. Chairman, but you do believe or have you stated that there may be a relationship or there is a relationship between California's behavior on guns and east Texas' behavior on guns as to why more flow one way and not the other way?

Mr. SHIRK. That could be the case. I think it would in fairness to alternative explanations, it could also be related to trade routes and other operations that the cartels have. So I do not think we can definitively state that, but we certainly should give it more of a look as to why we see that variation along the border.

Mr. MOLLOHAN. Thank you, Mr. Serrano.

Mr. SERRANO. Thank you.

Mr. MOLLOHAN. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

I know east Texas is a lot safer than parts of California where they have gun control and certainly a lot safer than D.C. Washington, D.C. has the toughest gun control laws in the country and it is one of the most dangerous parts of the city, parts of the country there is.

You know, the right to keep and bear arms is one of our most sacred rights. It is one that has served this country well.

And I co-authored the concealed carry law in Texas and I do not think there has even been a fistfight between concealed carry permit holders in Texas in the 12 or 15 years it has been on the books.

And they have stopped a lot of crime. They have saved a lot of police officers. They have saved a lot of fellow citizens.

And a law enforcement officer's best friend is a licensed concealed carrier permit holder who is trained in the law, trained to use the weapon, and is a law-abiding citizen who is there to be a support for law enforcement.

So I have to tell you I strenuously disagree with your—your testimony tends to tell me that you believe in gun control and I just do not see it as a good solution in this area.

In any event, I just appreciate your testimony. I do want to ask. I do not know much about the Trans-Border Institute. I tried to Google you in my mobile web browser and could not find out, but you are part of the University of San Diego?

Mr. SHIRK. That is correct.

Mr. CULBERSON. You are funded through the State of California, through federal grants or both?

Mr. SHIRK. No. We have been very fortunate to have funding from the William and Flora Hewlett Foundation as well as the Tinker Foundation. Our unit is also funded directly by the University of San Diego thanks to our past Provost, Sally Fury, who established a line within our university.

Mr. CULBERSON. And what are the goals of the Tinker Foundation and the Hewlett Foundation? Why are they funding you and what sort of positions do you advocate that is consistent with their philosophy?

Mr. SHIRK. The purpose of our effort through the Justice in Mexico Project which is funded by both of those agencies is consistent with Hewlett and Tinker's efforts to promote greater collaboration between the United States and Latin America, specifically their interest in our relationship with Mexico. Our primary goal in the Trans-Border Institute is to further cooperation with and understanding of Mexico. Our activities are consistent with theirs.

I will say that I do not have a definitive position on gun control, Congressman. I think that we are all concerned about the flow of weapons going south of the border and we need to think carefully about what are the best ways of trying to deal with that. I do not know. I have not seen a study that says that definitively an assault ban would deal with that.

Certainly our last assault ban here in the United States was not designed with southbound flows of weapons to Mexico in mind. So I do not think that we have any good evidence and I think it is something that we need to think very carefully about as you suggest.

Mr. CULBERSON. Certainly any problems we are having with the flow of guns or the flow of illegal substances with crime on the borders are lack of enforcement of existing law. We have got plenty of gun laws on the books. And the ones that are—the overwhelming majority of all the people out there that have permits to sell guns are honest, law-abiding people who do their best to comply with ATF regulations.

And I can tell you, and I know my five minutes is probably close to being up, but there is a great success story that I hope you will pay attention to in Texas on the border in Operation Streamline, a zero tolerance policy that the Border Patrol began in Del Rio at the initiative of Federal Judge Ali Alidlum, took it on herself to bring together the prosecutors, the Border Patrol, the Marshals, the sheriffs, all the law enforcement community in the Del Rio sector, and it is working beautifully, Mr. Chairman.

And we will hear, I am going to ask some of the witnesses, in particular, I understand we have got El Paso is here, and we will

talk, I would like to ask them about it, because this is a success story. It is a win-win supported by the local community which is 96 percent Hispanic. Dramatic drops in the crime rate and it has made the border sector in Del Rio and Laredo much safer as a result of enforcing the law. That is all we need to do, just enforce the law, and this problem will largely be solved.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

In that light, can you repeat for me the percentage of illegal guns that are found in Mexico because of drug running that comes from California, Arizona, New Mexico, and Texas?

Mr. SHIRK. An ATF trace in 2007 found that 90 percent of weapons seized in Mexico, that I think this was some 7,000 something weapons seized in Mexico, that 90 percent of those came from the United States. And of that 90 percent, 40 percent came from three U.S. border states, California, I believe it was Arizona, and Texas. Those are the statistics that I cited earlier.

Mr. HONDA. And of the three, where did the largest amount of guns come from?

Mr. SHIRK. That data, I do not have. I would have to look back at the report to figure out whether the majority came from Texas or came from California.

PROFESSIONALIZATION OF MEXICAN LAW ENFORCEMENT

Mr. HONDA. A quick question. It is probably a judgment statement on your part, but we seem to have a very strong central government in Mexico that wants to make the changes and put themselves out to do the battle.

From there to the border states of Mexico is a long distance. It seems to me that the centralized government has to look at infrastructure kinds of issues in order to create the same determination in the states that are along the border, Sonora, Chihuahua. What are the other ones?

Mr. SHIRK. The Mexican states along the border are Baja California——

Mr. HONDA. Right.

Mr. SHIRK [continuing]. Sonora, Chihuahua, Tamaulipas, and Nuevo Leon.

Mr. HONDA. And of these states, the government in those states, is it a fact that the folks who are in law enforcement could probably use more professional training, a better pay scale so that they are not susceptible to corruption and bribery and things like that?

But on top of that, it seems to me that every time a drug lord or a drug trafficker is thrown into jail in those states that sometimes the whole place just empties out and is left alone and open to being freed again.

Are there stories or incidents that you can share with us that reflect that and do you have a recommendation that we should be looking in to bolster that up?

Mr. SHIRK. Well, there are some 430,000 police, domestic police agents in Mexico at the federal, state, and local level, according to a study that we did a couple of years ago. Of those, about 75 percent are preventive police agents that until recently did not have

investigative capabilities. And of those, most tend to be local police forces.

And the thing that we have seen in our studies of police in Mexico, domestic police, is that there is a lot of room for professionalization.

We are doing a survey right now in central Mexico, in the State of Jalisco, of local police forces to try to determine, for example, the level of professional development, level of education, other aspects of those, of their professionalisms.

But the preliminary indications suggest that at least half of the police forces that we are talking about, these local police forces, lack a high school education and in many cases are paid extremely inconsequential salaries. That contributes to unfortunately a high level of susceptibility to corruption and a low level of actual professional capability to actually deal with some of the problems that we are talking about.

So I think Mexico needs to do more to address the deficiencies of its domestic police forces. I think we can be helpful in working with Mexico to address those deficiencies. It is tricky because we do not want to become responsible for training a domestic police force that becomes a menace to its own population.

That said, I do think that we can through some of the programs we actually have right here along the border which involved exchanges between police, liaison relationships between police, information sharing among police, we can help those agencies to become much more professional and effective.

And I expect that to happen over the next five to ten years. I expect to see major gains in Mexico's police force thanks to some of the investments that they are making, some of the pressure from Mexico's new justice reforms, and other changes that I think will advance the rule of law in Mexico.

Mr. MOLLOHAN. Thank you, Mr. Honda.

Mr. Ruppersberger.

REACH OF MEXICAN CARTEL IN THE UNITED STATES

Mr. RUPPERSBERGER. I want to get into the issue of how the violence might be spilling over into the United States.

The first thing, we all know that when we are dealing with the issue of gangs, if you put a lot of pressure in one area, a lot of times, the gang will move to another area, another jurisdiction, whatever.

I think what we see on the border and some of your testimony is that some of the cartels have been slowing down or whatever and you have more independent groups that are trying to take control. Then you have a lot of violence.

What do you see about the drug cartels moving into the United States and connecting with gangs along the border, but even beyond that to urban areas, say Baltimore, Washington, 95 corridor, that type thing?

Do you see this escalation going to the United States escalating that and what do you see the relationship between the United States gangs and then drug cartels and how do they communicate, how do they pay each other, how are they able to have the drugs transported?

Mr. SHIRK. I would say that since at least the 1970s, Mexican organized crime groups have had retail operations and connections to distributors, illegal distributors here in the United States. You cannot have trans-national organized crime without ties to local networks for distribution and in many cases even controlling to a certain degree those operations.

So I think that this is actually a longer-standing problem. What is obviously concerning to us is whether or not the feuds between cartels that are currently playing out in Mexico will be playing out in our streets.

I am less familiar with the experience of Texas and some of the other border states. I have seen, for example, and paid a fair amount of attention to the issue of kidnapping, for example, in the State of Arizona.

It is not clear to me from that information that I have seen that the kidnapping, the increased kidnapping we have seen in the Phoenix area, for example, and I know we will hear testimony on this, that that is necessarily a reflection of the drug cartels or rather immigrant smuggling groups which may be an entirely different animal from what we are talking about here.

But I think the main concern that we should have is whether or not the operational—the contest for operational control is spilling over into the United States. And I am not sure that we have a lot of good evidence of that. We certainly have some isolated incidents. And as I said, I am less familiar with some of the specific incidents in the Texas area, so I would be interested in hearing more about that.

But at this time, the scale of violence that we have seen in Mexico is not being replicated on the U.S. side of the border thankfully. Should we be concerned about these isolated incidents and try to empower local law enforcement along the border to better address those, absolutely.

Mr. RUPPERSBERGER. Well, let me give you an example. You have Mexico versus the United States. You have what I understand a police chief who is effective against the drug cartels, who is considered to be honest, and, yet, was told that if you do not resign because he was putting pressure on, we are going to kill a police officer every other day, so this police chief resigned. Probably one of the worst things he could do, but felt that he did not have the support from his government or whatever to protect his troops.

The United States of America and no matter whether it is a small town, a large area, whatever, would not tolerate that. We would do whatever we had to do to make sure that would not happen. And that is one of the big differences that we have now.

But my concern is the organized crime approach. And you have money. You have the ability. Still that we have not—it is amazing to me with a country like ourselves that is considered the most powerful country in the world, we have satellites, we have all sorts of technology, and, yet, we still cannot secure the border and can stop this.

So my question again is, do you see the gang connection, organized crime between the cartels escalating in the United States and more violence occurring in the United States beyond just the bor-

der, in urban areas? I mean, we are having the Mayor of Phoenix here and some of those different urban areas.

Mr. SHIRK. Definitely I do believe that the drug trafficking cartels have—their networks extend to other markets in the United States. They have to. That is where the highest profit margins are on the retail side of these drug trafficking organizations.

But you raise a very good example. When we talk about spill-over drug violence and the spill-over power of these cartels, we do not see the kind of thing that you are describing.

Drug cartels basically able to force the head of a local law enforcement agency in the United States to step down, that kind of impunity does not exist on this side of the border. We do see very localized violence. We see the same kinds of killings and intimidation between gang members and rival distributors that we have seen in this country for many years unfortunately.

But thankfully I do not——

Mr. RUPPERSBERGER. The term for that is turf battle.

Mr. SHIRK. Those are turf battles, local turf battles. The question is how badly are those being exacerbated by what is happening on the Mexican side. And I do not think we have a good answer for that.

Mr. RUPPERSBERGER. Okay.

Mr. MOLLOHAN. Thank you, Mr. Ruppersberger.

Dr. Shirk, thank you very much for your fine testimony here today. You have given us informed, excellent responses to our questions over a broad range and supplied the Committee with a lot of information, in and of itself, but also an excellent backdrop to our next panel.

Thank you very much for your testimony here today. And I know there are going to be members who would like to submit questions for the record. If you would be kind enough to respond to them in your good time, the Committee would certainly be appreciative.

Mr. SHIRK. Happy to do so. Thank you, Mr. Chairman and other members of the Committee, for having my testimony.

Mr. MOLLOHAN. Thank you. It has been tremendous for you to come all the way here today.

Our next panel is an equally informed one. If each of you would come to the table. Thank you.

Your written statements will be made a part of the record and we look forward to your oral testimony.

And let us begin with Mayor Gordon and then we will turn to Special Agent Newell and then to Special Agent Arabit.

Mayor Gordon, welcome.

OPENING STATEMENT OF MAYOR PHIL GORDON

Mr. GORDON. Thank you very much, Mr. Chairman Mollohan and also Ranking Member Wolf and distinguished members of the Subcommittee.

I am also proud to be joined by Chief Jack Harris behind me who is here to answer any technical or professional questions the Subcommittee may desire. He has been with the Phoenix Police Department for the past 36 years and has risen through the ranks.

Let me be blunt——

Mr. MOLLOHAN. Will the Chief raise his hand, so we know. Thank you, Chief.

Mr. GORDON. Let me be blunt, direct, and realistic. There is no doubt in my mind or the residents of Phoenix or our police department and other federal agencies in Phoenix that a crisis, a critical crisis exists at our border with Mexico.

The border itself which is vast and porous and may explain some of the reasons without a significant increase in the amount of agents on the ground and technology, it is ten thousands of square miles. It is the largest border at 2,000 miles with the significant population located several hundred miles away.

So there is miles and miles of open terrain, that even if you are next door in an adjoining canyon, you would not know that people are there smuggling drugs and people in.

I am a very, very concerned Mayor. Phoenix finds itself at the center of this perfect storm of what is going on. Yet, I also come with optimism and to give and suggest solutions to the wisdom of this Committee which are proven and successful in achieving and making Phoenix and the Valley one of the safest major cities in the country today despite its increase in population and proximity to the Valley.

All crimes are down in Phoenix for the last year, including homicides, which are down 24 percent. But the violence is spilling over and I will address that shortly.

We have a police department with 3,400 sworn officers. Our city is 540 square miles. That equates to about an officer per square mile. They arrest over 46,000 criminals a year, handle nearly 750,000 calls a year, and they are stretched like all police departments, federal and local, to its very limits.

Yet, due to the happenstance of the border and the associated increasing crimes that continue to go on, our police departments are doing much more at a significant cost both to residents financially and residents' potential safety-wise.

And they cannot do it alone and that is why for years we have been partners with the federal government in these creative partnerships, some of which have been referred to, that have proven success for in some cases decades.

Partnering with the DEA, the Border Patrol, FBI, ATF, the U.S. Attorney, the U.S. Postal Inspectors, and state and other local agencies, these law enforcement agents have disrupted and curtailed serious major felony criminal activity.

They have executed thousands of warrants, indicted thousands of felons, and arrested thousands of dangerous and violent people engaging in drug trafficking, gun smuggling, drug smuggling, human smuggling, and kidnapping, by the way, all related. There is no difference today in whether it is drug smuggling and people smuggling. It is all together. It is all about money.

And, in fact, on the human smuggling side, it is as profitable or more so with much less risk, but it is going on simultaneous with the same individuals.

We have kept millions of dollars from flowing. And the way we have done it is our Chief has said and the other federal agencies we are going after the worst of the worst, the syndicates, the king pins, and the tops of the snakes. That is how we can be most effec-

tive as a nation, a city, and a state, by allocating scarce resources where they have the greatest impact. And let me say that is by partnering with our federal partners. That has been going on for decades in Phoenix to effectively increase the resources available.

Again, the federal government, let me be clear, has been a tremendous partner in the Valley. We have accomplished important things together and helped keep our community one of the safest in our nation, also safe by disrupting these organizations, but they continue.

The Phoenix Police Department together with ICE is partnered in Phoenix, a unique program that has been very effective. We actually have ICE imbedded agents on a full-time basis in our police department. That is where their desks are.

They go out on the streets together. They provide the intelligence across agencies together. And they partner with us to take down violent criminals, which, by the way, in Phoenix is down six percent for the last year alone, again despite the growing population and the proximity to the border.

In addition to ICE, our Phoenix police are imbedded in the FBI. We have imbedded city prosecutors with the U.S. Attorney's Office, allowing us to bring and prosecute federal cases, most importantly those prohibited young cases of felons that are holding guns or ammunition.

Phoenix and its federal partners have established a task force to aggressively pursue kidnappers and those who invade homes that are plaguing our city, our community, and, by the way, directly related to the syndicates and the drug smuggling are these home invasions which are starting to spill over into the streets. And we share excellent results. Again grateful to our federal partners.

Let me just give a few short examples, if time permits, that again have been operating over years that have had profound results.

Operation Blank Check, a partnership with our local federal agencies that led to the felony indictment of hundreds of individuals, disrupted thousands of past crimes, solved thousands of past crimes. It was a year-long investigation that led directly to the arrest of hard-core gang leaders of 22 different gangs who traffic in drugs and fraudulent checking schemes to finance their operations, totaling more $3 million in one year. Again, cross border also.

Operation En Fuego, also in partnership with our local federal agencies, was responsible for the breakup of a major Phoenix-based smuggling organization and the indictment of almost four dozen individuals on felony charges related to the human smuggling of more than 10,000 individuals.

Operation Tumbleweed, again involving our local federal agencies, disrupted and stopped the illegal activity of 20 different organizations throughout the U.S. and Mexico by following the common money trail right back to all drug smuggling, human smuggling, money laundering, all disrupted and stopped.

Additionally, our federal partners in the City of Phoenix shut down two of the largest syndicates in the nation that dealt in the tragedy of human smuggling, as well as drugs. Just these two syndicates alone smuggled in over 15,000 people illegally into the United States through the Border and then through Mexico, on to

all parts of our country. And by the way, these two organizations brought in $30 million into Mexico that were tracked back, and they are out of business now.

Phoenix P.D. is a critical participant in a federal/state project called Impact, which includes ICE and DPS, again to disrupt, dismantle, and deter violent criminal organizations profiting from illegal immigration and drugs. A major member of the FBI Violent Street Gang Task Force, which resulted in more than 300 felony arrests in the past year alone, the majority related to border syndicates and smuggling of drugs and people.

So for us and for this country, partnerships are about everything and nobody does it better, in my personal opinion, than the federal partners, the City of Phoenix, other local jurisdictions, and the state police in Arizona, and are proven models that work and work well. So I am here to ask for and plead for your continued support and increased funding of these partnerships. That means besides the political support, which I know we have from you all, but also it means financial support.

The City of Phoenix, by the way, has reduced our budget by almost a third, $280 million. It has continued to put public safety as its number one priority. But unfortunately, because of the cost of these operations that require many, many officers, a long time of undercover that cannot just be replaced by other individuals, we have had to curtail at a significant cost to the City and the State and the nation some of these activities. And that, to me, is the most important focus I could leave you with, is this is what is working. These operations cost significant amount of time and money and equipment. New officers to replace those that are there and undercover, and the expertise developed over time, as well as the surveillance. And these dangerous, well armed—and by the way, many times with military grade weapons, are very sophisticated with significant intelligence and smuggling operations over tens of thousands of square miles of desert.

And a quick response is important. People are being tortured in our very city. Again, people are being kidnapped. People are being murdered in Phoenix. Traditionally, to this date, those innocent victims and bad guys on bad guys. But every night Phoenix police together with other federal agencies are called out from across the country, from across the world, and across the nation, that their relatives have been kidnapped. They were extorted to give more money. They cannot come up with it, and they only have hours to find their loved one, wife, husband, daughter, son, that would either be killed, raped, or in some cases never heard from again. That requires significant, intensive, and immediate responses. Most nights we have over sixty Phoenix police officers, some federal agents, rushing to rescue those on a reactive basis.

So again, I come to Washington today to thank you significantly from my heart, to ask you for your continued support. And, again, not only to continue funding but to increase it. If you have even one dollar to invest, and the last dollar, I would respectfully request that you put them into these task forces that have profound effects across the nation. Under the federal government, under local government, however you choose. It is there.

Thank you very, very much for your time and for the opportunity. And these are, this is one drug drop house of hundreds and hundreds discovered every year, thousands that the condition of what individuals are held in, the torturing.

[Testimony of Phoenix Mayor Phil Gordon follows:]

Testimony of Phoenix Mayor Phil Gordon

Before the House Subcommittee on Commerce, Justice and Science
March 24, 2009

Chairman Mollohon, Ranking Member Wolf, and distinguished Members of the Subcommittee, my name is Phil Gordon and I am the Mayor of Phoenix, Arizona – the fifth largest city in the country.

I am proud to be joined by our Public Safety Manager – Jack Harris – who has been with the Phoenix Police Department for 36 years. Chief Harris is the only major city Police Chief to have risen through the ranks and spend the entirety of his career with the same Department -- and he will be available to answer any technical or professional questions should the Subcommittee so desire.

There can be no doubt that a crisis exists at our border with Mexico. And for reasons ranging from an historically bad economy on the Mexican side of the border – to various degrees of inattention on our own side of the border – to the border itself which is vast and porous – Phoenix finds itself at the center of this Perfect Storm – a storm that is growing increasingly violent, threatening and resource-consuming. I am a very concerned Mayor. And I am here today to talk about the partnerships Phoenix has established with federal enforcement agencies – and to encourage the funding to them that will allow these effective and essential partnerships to continue.

I'll tell you something about my own City that just about any Mayor will tell you about their City: We have the finest police department in the nation. My own son serves proudly – and his dad is very proud of that. But the 3,000 dedicated men and women of the Phoenix Police Department – as good as they are – are being stretched very thin. In Phoenix, our Officers do what police officers do in every community. (crime, across the board, was down in Phoenix last year – including a 24 percent reduction in homicides over the previous year). But due to the happenstance of geography and circumstance, our officers have the additional burdens – and risks -- associated with border crimes.

They do an amazing job. But it's a job they cannot do alone – and shouldn't be expected to do alone. That's why we have been leaders in forming creative partnerships – and pioneering creative programs to fight these international criminals. And we've had some tremendous successes and significant results.

Partnering with DEA, the Border Patrol, FBI, ATF, the US Attorney, the US Postal Inspectors, and State and local agencies – we have disrupted serious criminal activity. We have executed thousands of warrants, won thousands of felony indictments and arrested thousands of dangerous and violent people engaging in Drug Trafficking, gun smuggling, drug smuggling, human smuggling and kidnapping. We have kept millions of dollars from flowing from the United States to Mexico – and we have kept our focus on what Public Safety Manager Harris calls "The Worst of the Worst".

That is how we can be most effective at keeping our community safe. By allocating our scarce resources where they have the greatest impact. And by partnering with others, to effectively increase the resources available to us.

Again, the federal government has been a tremendous partner. We have accomplished important things together to help keep my community – and our nation -- safe.

The Phoenix Police Department has pioneered a program that has been very effective for us. We have actually embedded ICE agents, on a full-time basis, inside our Police Department. That's where their desks are. And their presence and participation in key areas of enforcement has been invaluable. They provide intelligence. They have access to federal databases. They partner with us to go after violent criminals and reduce violent crime (which was DOWN by 6 percent last year in Phoenix) – and they are an important piece of what we do.

In addition to ICE, Phoenix has its own police officers embedded in FBI. We have embedded City Prosecutors with the US Attorney's Office, allowing us to bring and prosecute federal charges in many important cases – particularly cases involving guns.

Phoenix and its federal partners have established a task force to aggressively pursue kidnappers and those who invade homes. We

share expertise and intelligence – and we share in excellent results. Again, I am so grateful to our federal partners.

Let me give you just a few short examples of Joint Operations that have yielded profound results.

Operation Blank Check, a partnership with our local federal agencies, led to the felony indictments of 183 individuals. This year-long investigation led directly to the arrests of hardcore gang members from 22 different gangs who trafficked in drugs and fraudulent checking schemes – totaling more than 3 million dollars -- to fund their operations.

Operation En Fuego, also in partnership with our local federal agencies, was responsible for the break-up of a major Phoenix-based smuggling organization and the indictment of 35 individuals on felony charges related to the human smuggling of more than 10,000 individuals.

Operation Tumbleweed, again involving our local federal agencies, disrupted and stopped the illegal activities of 20 different organizations by following a common money trail right back to them all. Drug smuggling. Human smuggling. Money laundering. All disrupted or stopped.

Additionally, we shut down two of the largest syndicates we know of that deal in the tragedy of human smuggling. Each year, 15,000

people were brought into the United States, through Phoenix, illegally. And 30 million dollars went the other way. They're out of business now.

Phoenix PD participates in IIMPACT Arizona – which stands for Illegal Immigration Prevention and Apprehension Co-op Teams. It's a program that is managed by Arizona DPS – includes ICE -- and is designed to deter, disrupt and dismantle violent criminal organizations profiting from illegal immigration

And we're a member of The FBI Violent Street Gang Task Force – which has resulted in more than 300 felony arrests in the past year.

So for us, and for this country, partnerships are everything. And nobody does them better – or values them more, than Phoenix.

Obviously, we need federal help to secure our borders. But we need your continuing help battling the violent crime that results from a border not yet secure. In spite of – and for that matter, because of -- our current economic struggles – I am here to ask for – to plea for – your continued support of our partnerships.

That means political support – but it also means financial support. Because of the current economic crisis we've had to cut back on our city budgets -- as has everyone has.

The City of Phoenix has just reduced our 2010 budget by $280 million. That's about a third of our total budget. Those are serious

reductions. I'd like to tell you Public Safety was spared from these reductions, but that is not the case.

Last year, I talked about the cost of law enforcement for a border state to a national gathering of The Police Foundation. As you might suspect, the cost of border-related crime is staggering – and far beyond what most municipalities in this country are required to bear. It's the cost of intelligence. The cost of equipment. The cost of hiring new officers. The cost of overtime. The cost of undercover operations. The cost of surveillance planes.

Fighting these dangerous, well-armed criminals is not like rounding up day laborers or chasing nickel bags. They are expensive and sophisticated operations that require an expensive and sophisticated response.

And, a quick response. People are being tortured. People are being kidnapped. Almost every night, Phoenix Police will get one or more calls with variations of the same story – "My wife is being held in a Phoenix drop house and they say they will torture and kill her if we don't pay them thousands of dollars". The response to that kind of call is incredibly "labor intensive". For each one of those calls, Phoenix will divert significant resources on the spot – as many as 60 officers -- to find, rescue and protect these kidnap victims. Again, these intensive operations happen routinely. The overtime hours are staggering; the personnel resources diverted from preventing or solving other crimes are massive.

So again, I come to Washington today, to thank you for your partnership – and to ask your continued help in fighting the good fight – against bad guys.

As Mayor, I respectively urge this Subcommittee to support not just continuing – but increasing -- funding to our federal partners in Arizona – so we can continue the partnerships we have used smartly and effectively – and so we can continue doing our part – and then some – to protect Americans. If you have even one dollar to invest – this is where it will have an immediate impact. Homeland Security includes Home *Town* Security. And that's especially true for border communities like mine.

Thank you all for allowing me to appear before you today. I am here, as is Chief Harris, to answer any questions you might have.

Mr. MOLLOHAN. I am sure we will have questions on those, Mayor.

Mr. GORDON. Thank you very much.

Mr. MOLLOHAN. Thank you very much for that excellent statement. Special Agent Newell.

OPENING STATEMENT OF SPECIAL AGENT BILL NEWELL

Mr. NEWELL. Thank you, Chairman. Chairman Mollohan, Ranking Member Wolf, and distinguished members of the Subcommittee, as the ATF Special Agent in Charge of the Phoenix Field Division I am responsible for ATF operations in both Arizona and New Mexico, which constitutes about 552 miles of the U.S.-Mexico Border. I am honored to appear before you today regarding ATF's ongoing role of preventing firearms from being illegally trafficked from the United States and working to reduce the associated violence along the Border.

On behalf of the men and women of ATF I would like to begin by thanking you for the generous support you have shown ATF over the years in providing the resources our agency needs to undertake our mission. We are appreciative of the support the Subcommittee provided ATF in both the fiscal year 2009 appropriations and the American Recovery and Reinvestment Act, also known as the stimulus bill. In a moment I will discuss how we intend to use these funds to stem the illegal flow of firearms into Mexico.

For over thirty years ATF has been protecting our citizens and communities from violent criminals and criminal organizations by safeguarding them from the illegal use of firearms and explosives. We are responsible for to both regulating the firearms and explosives industries and enforcing criminal laws relating to those commodities. ATF has the unique experience, expertise, tools, and commitment to investigate and disrupt groups and individuals who obtain guns in the U.S. and illegally traffick them into Mexico in facilitation of the drug trade.

The combination of ATF's crime fighting expertise, specific statutory and regulatory authority, and our local capability in strategic partnerships just as the Mayor mentioned, is used to combat firearms trafficking both along the U.S. borders and throughout the nation. For instance, from fiscal year 2004 through February 17th of this year Project Gunrunner, ATF's strategy for disrupting the flow of firearms to Mexico, has referred for prosecution 795 cases involving 1,658 defendants. Those cases include 382 firearms trafficking cases involving 1,035 defendants and an estimated 12,835 firearms.

While the greatest proportion of firearms trafficked in Mexico originate out of the U.S. states along the Southwest Border, ATF trace data has established that traffickers are also acquiring firearms from other states as far east as Florida and as far north and west as Washington State. A case from April 2008 involving a violent shootout in Mexico that resulted in thirteen deaths illustrates this very point. ATF assisted Mexican authorities to trace sixty firearms recovered at a crime scene in Tijuana. As a result, leads have been forwarded to ATF field divisions in Denver, Houston, Los Angeles, Philadelphia, Phoenix, San Francisco, and Seattle to

interview the first known purchasers of those firearms. These investigations are ongoing.

As the sole agency that represents 107,000 FFLs, federal firearms licensees, nationwide, of which roughly 6,700 are along the Southwest Border, ATF has the statutory authority to inspect and examine the records and inventory of licensees for firearms trafficking trends and patterns, and revoke the licenses of those who are complicit in firearms trafficking. For instance, ATF used regulatory authority to review the records of an FFL in El Paso, Texas to identify firearms traffickers who purchased seventy-five firearms that were trafficked in Mexico. Our investigation led to the arrest of eight individuals who later received sentences ranging from two to three years.

An essential component of ATF strategy to curtail firearms trafficking into Mexico is the tracking of firearms seized in both countries. Using this information ATF can establish the identity of the first retail purchaser of the firearm and possibly learn pertinent information, such as how the gun came to be used in furtherance of a crime, or how it came to be seized in Mexico. Furthermore, analysis of aggregate trace data can reveal trafficking trends and networks, showing where the guns are being purchased, who is purchasing them, and how they flow across the Border.

Let me share an example with you of how trace data can identify our firearms trafficker. ATF's analysis of trace data linked a man living in a U.S. Border city to four crime guns recovered in four different crime scenes in Mexico. Further investigation uncovered that he had purchased 111 AR–15 type receivers and seven additional firearms within a short time span using nine different FFL wholesale distributors as sources for his guns. In April of 2008 ATF seized eighty firearms from the suspect and learned that he was manufacturing guns in his home. He sold over 100 guns alone to an individual who is suspected of being linked to a Mexican cartel. Investigative leads are being pursued and charges are pending.

Additionally, drug traffickers are known to supplement their firearms caches with explosives. Our expertise with explosives has proven to be another valuable tool to use in the fight against drug cartels and the violence. In fact, in the past six months we have noted a troubling increase in the number of grenades seized from and used by drug traffickers in Mexico. And we are concerned about the possibility of firearms related violence spilling into U.S. Border towns. We have had at least one such incident in San Juan, Texas when a hand grenade was thrown into a bar with a crowd of twenty patrons. ATF was able to quickly identify the grenade and believes it is linked to a drug cartel. Moreover, we believe these grenades were from the same source as those used during an attack on the U.S. Consulate in Monterrey, Mexico. Last week the individual who we believe directed the attack on the U.S. Consulate was arrested by the Mexican government. ATF is continuing to assist the United States agencies as well as Mexican officials with this investigation.

We are aware that there is a growing concern amongst many Americans regarding spillover violence from the Border area. As the Mayor mentioned, Phoenix has experienced a marked increase in the number of kidnappings and other violent acts, such as home

invasion. To address this violence, in September of 2008 ATF partnered with the Phoenix Police Department to create the Home Invasion and Kidnapping Enforcement, or HIKE, Task Force. ATF is contributing its expertise in reducing violent crime, as well as our investigative and intelligence capabilities to this partnership.

ATF's Project Gunrunner includes approximately 146 special agents dedicated to investigating firearms trafficking to Mexico on a full time basis, of which thirty-two are located in my field division. Project Gunrunner also includes fifty-nine industry operations investigator responsible for conducting regulatory inspections of FFLs along the Southwest Border, including thirteen that are assigned to the Phoenix Field Division.

The funding that this Subcommittee has provided in the stimulus and the fiscal year 2009 budget will allow ATF to create five new Project Gunrunner teams focused solely on firearms trafficking between the United States and Mexico. This funding will allow the hiring of sixty-five special agents and other personnel, as well as the purchase of equipment needed to operate along the Border. It will also fund four special agent positions which will be assigned to areas of Mexico where currently ATF does not have a presence. The funds in these two bills are providing critical resources for ATF to expand our capabilities along the Southwest Border and we look forward to discussing with you the resources needed to continue that expansion.

Chairman Mollohan, Ranking Member Wolf, and distinguished members of the Subcommittee, on behalf of the men and women of ATF, and on behalf of the men and women of the Phoenix Field Division, I want to thank you and your staff for your critical work. And with the backing of the Subcommittee ATF can continue to build upon our accomplishments in making our nation safer. Thank you very much, sir.

[Testimony of Special Agent Bill Newell follows:]

Statement of William Newell, Special Agent in Charge
Phoenix Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
Before the United States House of Representatives
Committee on Appropriations
Subcommittee on Commerce, Justice, Science and Related Agencies
March 24, 2009

Chairman Mollohan, Representative Wolf and distinguished Members of the Subcommittee, I am William Newell of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). As Special Agent in Charge of the Bureau's Phoenix field division, I oversee all ATF operations in the States of Arizona and New Mexico, which includes 552 miles of the U.S.-Mexico border. I am honored to appear before you today to discuss ATF's ongoing role in preventing firearms from being illegally trafficked from the United States (U.S.) into Mexico, and working to reduce the associated violence along the border.

That violence, which is fueled by Mexico's drug cartels, poses a serious challenge for U.S. and Mexican law enforcement and threatens the safety of innocent citizens on both sides of the border. Reports indicate that the drug war has left as many as 6,200 dead last year and 1,000 dead, so far, this year. The U.S Department of State has cautioned U.S. citizens who work and travel in Mexico to be wary of the ongoing danger. Mexican President Calderon and Mexican Attorney General Medina Mora have identified cartel-related violence as a top priority and proclaimed the illegal trafficking of U.S.-source firearms the "number one" crime problem affecting the security of Mexico.

Not a day goes by without the media reporting on murders, kidnappings and home invasions along the border. For instance, an Associated Press article appearing in the Washington Post on March 5th reported that American professionals living along the border, including doctors, lawyers and factory owners, feel so threatened by the murders and kidnappings that they are having armor plating and bullet-proof glass installed in their cars and pickup trucks. According to the Post, one San Antonio company specializing in bulletproofing cars says that it expects a 50% increase in business this year. Clearly we need to take action now to protect our citizens and their property from harm.

ATF Expertise

For over 30 years ATF has been protecting our citizens and communities from violent criminals and criminal organizations by safeguarding them from the illegal use of firearms and explosives. We are responsible for both regulating the firearms and explosives industries and enforcing criminal laws relating to those commodities. ATF has the experience, expertise, tools, and commitment to investigate and disrupt groups and individuals who obtain guns in the U.S. and illegally traffic them into Mexico in facilitation of the drug trade.

The synergy of ATF's crime-fighting expertise, regulatory authority, analytical capability, and strategic partnerships is used to combat firearms trafficking both along the U.S. borders and throughout the nation. For instance, from Fiscal Year 2004 through February 17th of this year, Project Gunrunner—ATF's strategy for disrupting the flow of firearms to Mexico—has referred for prosecution 795 cases involving 1,658 defendants; those cases include 382 firearms trafficking cases involving 1,035 defendants and an estimated 12,835 guns.

Defining the Problem

The southwest border is the principal arrival zone for most illicit drugs trafficked into the U.S., as well as the predominant staging area for the subsequent distribution of these drugs throughout the U.S. Illegally trafficked firearms are an integral part of these criminal enterprises; they are the "tools of the trade". Drug traffickers routinely use firearms against each other as well as against the Mexican military, law enforcement officials, and civilians. Because firearms are not readily available in Mexico, drug traffickers have aggressively turned to the U.S. as their primary source. Firearms are now routinely being transported from the U.S. into Mexico in violation of both U.S. and Mexican law. In fact, 90% of the firearms recovered in Mexico, and which are then successfully traced, were determined to have originated from various sources within the continental U.S.

The rising incidences of trafficking U.S.-sourced firearms into Mexico is influenced by a number of factors, including increased demand for firearms by drug trafficking organizations, and the strictly regulated and generally prohibited possession and manufacturing of firearms in Mexico. Drug traffickers are able to obtain firearms and ammunition more easily in the U.S., including sources in the secondary market such as gun shows and flea markets. Depending on State law, the private sale of firearms at those venues often does not require record keeping or background checks prior to the sale.

In addition, drug traffickers frequently resort to using "straw purchasers" to obtain firearms from federally licensed gun dealers in the U.S.; these dealers are often unwitting participants in these schemes. Straw purchases refer to instances wherein an individual purchases a firearm for someone who is either prohibited by law from possessing one, such as a convicted felon, or who does not want his or her name associated with the transaction. In other words, a straw purchase takes place when a "straw" falsely poses as the buyer of a firearm to help the true purchaser circumvent the law and create an inaccurate paper trail. These illegal purchases, a key source and supply of firearms for drug traffickers and criminals in the U.S., corrupt the ATF firearms tracing process by creating false leads for agents trying to determine the actual purchaser of firearms recovered at crime scenes. In addition, straw purchasers may be difficult to identify because they may make numerous purchases of one to two firearms that are separated by place and time. As an example, a single ATF investigation of straw purchases of firearms shipped to Mexico involved a network of twenty-two individuals who trafficked

at least 328 firearms valued at over $350,000. These firearms were sold to the Gulf Cartel in Mexico and were traced by ATF following their use in assassinations of Mexican police officials, citizens, and others. This type of case shows the sophistication of the firearms trafficking networks, using the same methods to traffic firearms south that they use to traffic narcotics north.

A comprehensive analysis of firearms trace data over the past three years indicates that Texas, Arizona and California are the three largest source States, respectively, for firearms illegally trafficked to Mexico. In FY 2008 alone, 2,514 firearms seized in Mexico were traced to sources in Texas, Arizona and California. The remaining 47 States accounted for 1,053 traces in FY 2007.

Although the greatest proportion of firearms trafficked to Mexico originate out of the U.S. States along the southwest border the problem is national. ATF trace data has established that drug traffickers are also acquiring firearms from other States as far east as Florida and as far north and west as Washington State. A case from April 2008 involving the Arellano Felix Organization illustrates this point. A violent dispute between elements of this drug trafficking organization left 13 members dead and 5 wounded. ATF assisted Mexican authorities trace 60 firearms recovered at the crime scene in Tijuana. As a result, leads have been forwarded to ATF field divisions in Denver, Houston, Los Angeles, Philadelphia, Phoenix, San Francisco and Seattle to interview the first known purchasers of the firearms. These investigations are ongoing.

Chairman Mollohan, I brought with me today an ATF diagram, based on trace data, which goes into more detail on this issue and, with your permission, I would like to submit it for the Record. This chart illustrates that guns are obtained from all across the U.S. and then transported into Mexico along three major trafficking corridors: from Illinois, Georgia, Florida and Texas into eastern Mexico; from Washington State, Oregon and California down into western Mexico; and from Colorado and Arizona into central Mexico.

Until recently drug traffickers' "weapon of choice" had been .38 caliber handguns. However, they now have developed a preference for more powerful weapons, such as the .233 semi-automatic rifle, the AK-47 variant rifle, 5.57 caliber pistols, and .50 caliber rifles; ATF has seized each of these types of weapons as those weapons en route to Mexico. ATF also has seized large quantities of ammunition for use in these high-caliber weapons. An April 2006 joint ATF, FBI and Tucson Police Department investigation illustrates efforts by Mexican drug trafficking organization's to obtain high-power weaponry.. The Tucson investigation led to the arrest and conviction of three members of the Arellano Felix Organization who attempted to purchase machineguns and hand grenades from undercover agents. One of the defendants, a Mexican citizen, was sentenced to 70 months in Federal prison while the other two, both U.S. citizens, were sentenced to 87 months.

The Tuscon investigation case also demonstrates that drug traffickers are supplementing their firearms caches with explosives and the need for ATF's expertise

with explosives in the fight against drug cartels. For the past 18 months ATF has been working closely with Mexican law enforcement and military personnel by quickly responding to grenade seizures in Mexico in order to positively identify and trace a variety of these explosives. Unfortunately, in the past six months we have noted a troubling increase in the number of grenades seized from or used by drug traffickers, and we are concerned about the possibility of explosives-related violence spilling into U.S. border towns.

We appear to have had at least one such incident. In late January, a fragmentation hand grenade was thrown into a crowd of 20 patrons at a club in San Juan, Texas. Fortunately, although the grenade was a live device, it did not detonate and no one was injured. Investigation to date indicates this incident is linked to a Mexican drug cartel. ATF has identified the source of the grenade and believes that grenades from the same source were used during an attack on the U.S. Consulate in Monterrey, Mexico.

ATF's Strategy

Through its experience with combating violent crime along the southwest border, ATF has learned that merely seizing firearms through interdiction will not, by itself, stop firearms trafficking to Mexico. We must identify, investigate and eliminate the sources of these illicitly trafficked firearms, and networks that transport them to Mexico. Thus, ATF has developed and implemented Project Gunrunner, a comprehensive strategy to combat firearms-related violence perpetrated by warring drug traffickers in border cities such as Laredo, Texas, and Nuevo Laredo, Mexico. It includes approximately 148 special agents dedicated full-time to investigating firearms trafficking along the Southwest border and 59 industry operations investigators (IOIs) responsible for conducting regulatory inspections of federally licensed gun dealers in this region. .

As the sole agency that regulates federally licensed gun dealers (known as Federal Firearms Licensees or FFLs), ATF has the statutory authority to inspect the records of licensees, examine those records for firearms trafficking trends and patterns, and revoke the licenses of those who are complicit in firearm trafficking. Roughly 6,700 FFLs are located along the Southwest border. As part of Project Gunrunner, IOIs work to identify and prioritize for inspection those FFLs with a history of noncompliance that represents a risk to public safety. They also focus on those primary retailers and pawnbrokers who sell the weapons of choice that are the preferred firearms being trafficked in this region. Moreover, utilizing ATF trace data analyses, IOIs prioritize for inspection those FFLs with numerous unsuccessful traces and a large volume of firearms recoveries in the targeted high-crime areas. This focused inspection effort assists in the identification and investigation of straw purchasers and the traffickers who employ them. In FY 2007 ATF inspected 1,775 of FFLs along the border and in FY 2008 we inspected 1,884.

In addition to inspections, the IOIs work to improve relations with firearms industry members, enhance voluntary compliance, and promote licensees' assistance in preventing firearms diversion by conducting training and outreach activities with FFLs in

the targeted areas. One such outreach effort is the "Don't Lie for the Other Guy" program, a joint endeavor between ATF and the National Shooting Sports Foundation (NSSF), the trade association for the shooting, hunting and firearms industry. The program was developed in 2000 to aid firearm retailers in recognizing potential illegal firearm purchases in order to deter those purchases, and has since expanded to include a public-awareness component regarding the serious nature and illegality of straw purchases of firearms.

An example of ATF utilizing its regulatory authority to review FFL records to identify firearms traffickers occurred in El Paso, Texas. The case led to the arrest of 12 individuals in November 2007. The subjects purchased 75 firearms that were sold to corrupt local, federal and military officials in Mexico. Sentences for these defendants range from 36 months to two years.

While on the subject of FFLs, I would like to note that the vast majority of gun dealers are in compliance with firearms regulations and are genuinely interested in keeping guns out of the hands of criminals. For example, in 2007, a tip from an FFL involving a firearms trafficker purchasing two .50 caliber rifles, as well as other firearms recovered in Mexico, prompted an undercover ATF operation. That investigation led to the arrest of the leader and his two coconspirators for attempting to purchase several handguns and a fully automatic M-60 machine gun. In September 2008, the leader was sentenced to 30 months incarceration and 84 months of supervised release.

An essential component of ATF's strategy to curtail firearms trafficking to Mexico is the tracing of firearms seized in both countries. When a firearm is traced, specific identifying information—including the make, model and serial number—is entered in the ATF Firearms Tracing System. Using this information, ATF can establish the identity of the first retail purchaser of the firearm and possibly learn pertinent information, such as how the gun came to be used in the facilitation of crime or how it came to be located in Mexico. Furthermore, analyses of aggregate trace data can reveal trafficking trends and networks, showing where the guns are being purchased, who is purchasing them, and how they flow across the border. Accordingly, ATF is working with Mexican officials to increase their current usage of ATF's tracing system by means of eTrace, a web based application for accessing ATF's Firearms Tracing System. Our goal is to deploy eTrace to all thirty-one states within the Republic of Mexico. We can report that our efforts are paying off. Mexico has increased the number of firearms it has submitted for tracing from 3,312 in FY 2007, to 7,743 in FY 2008, and over 7,500 to date this fiscal year.

ATF also has increased its presence at the El Paso Intelligence Center (EPIC), which is the central repository and clearinghouse for all weapons-related intelligence collected and developed not only by ATF's field and Mexico offices and attaches, but also by all other Federal, State and local law enforcement entities involved in narcotics interdiction and investigation along the U.S.-Mexico border. Our increased staffing levels at EPIC allow ATF to expand our intelligence activities with our law enforcement partners stationed there, including the Federal Bureau of Investigation (FBI), the Drug

Enforcement Administration (DEA), Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP) and the Texas and Arizona Departments of Public Safety. ATF also works closely with these agencies' taskforces that operate along the southwest border, sharing intelligence and conducting joint investigations.

Further, ATF participates in the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, a multi-agency intelligence center that provides operational intelligence in drug investigations. Through the Fusion Center, ATF shares information with other federal law enforcement agencies involved in drug enforcement, and helps to build large-scale operations targeting these violent Mexican drug trafficking organizations.

Internationally, ATF enjoys a strong collaborative relationship with Mexican law enforcement and other government agencies within Mexico. Over the last 15 years, ATF has had special agents permanently assigned to the U.S. Embassy in Mexico City. These agents engage in full-time intelligence sharing with the Mexican government to gather real time information on significant seizures of firearms that originated from within the U.S. Moreover, through bilateral forums, such as the annual Senior Law Enforcement Plenary sessions with Mexico, ATF and the Mexican Government jointly develop operational strategies and policies to minimize the firearms-related violence afflicting communities on both sides of the border. ATF would not have achieved the success it's had, particularly with regard to tracing, had it not been for the remarkable support of the Mexican government.

Recommendation

As noted, ATF's Project Gunrunner has experienced numerous successes, referring for prosecution 795 cases since October 1st, 2003, involving 1,685 defendants, including 1,035 defendants who trafficked an estimated 12,835 guns. Still, there is obviously much work to be done. Accordingly, Congress recently provided ATF with funding to continue and expand our efforts along the southwest border.

The American Recovery and Reinvestment Act, commonly referred to as the stimulus bill (P.L.111-5), provides ATF with $10 million for Project Gunrunner. Those funds will allow ATF to establish new firearms trafficking teams in McAllen, Texas, El Centro, California and Las Cruces, New Mexico. The funds also will allow ATF to assign personnel to U.S. Consulates in Mexico where they can share intelligence, assist in investigations and train Mexican authorities on how to conduct firearms traces. Specifically, the funds are providing 37 total positions which include 21 agents in domestic offices, four agents in Mexican offices, six IOIs, three intelligence research specialists (IRSs) and three investigative analysts (IAs).

In addition, the FY 2009 Omnibus Appropriations Act provides ATF with an additional $5 million for Project Gunrunner. The FY 2009 appropriation includes funding for two additional firearms trafficking teams, including 21 agents, four IOIs and two IAs.

While ATF has achieved numerous successes in recent years with its limited resources, additional assets and personnel will undoubtedly produce even greater results. Increased funding for Project Gunrunner, as provided by the stimulus bill is an important investment in the security of our nation and protection of our citizens.

Conclusion

Chairman Mollohan, Representative Wolf, distinguished Members of the Subcommittee, on behalf of the men and women of ATF, I thank you and your staffs for your support of our crucial work. We recognize and are grateful for your commitment and contributions to the law enforcement community. With the backing of this Subcommittee, ATF can continue to build on our accomplishments, making our nation even more secure. We look forward to working with you in pursuit of our shared goals.

Mr. MOLLOHAN. Thank you, Special Agent Newell. Special Agent Arabit.

OPENING STATEMENT OF SPECIAL AGENT JOSEPH ARABIT

Mr. ARABIT. Yes, sir. Chairman Mollohan, Ranking Member Wolf, and distinguished members of the Subcommittee. On behalf of the Drug Enforcement Administration Acting Administrator Michele Leonhart, I appreciate your invitation to testify today regarding violence along the Southwest Border.

DEA thanks the Committee for its support of DEA's Drug Flow Attack Strategy, DFAS. The resources provided in fiscal year 2009 will allow DEA to build upon its successes, like the $2.9 billion in revenue that it denied drug traffickers in fiscal year 2008. DFAS acts as a forward defense of the United States by interdicting the flow of illegal drugs and the traffickers who smuggle them northward before they reach Mexico or the Southwest Border. Stopping the drugs before they reach Mexico and the Southwest Border impacts the U.S. drug supply, weakens the Mexican cartels, and helps reduce border violence.

I come here today as the Special Agent in Charge of DEA's El Paso Field Division, one of DEA's five Southwest Border divisions. Prior to becoming Special Agent in Charge in El Paso I was stationed in a few cities in Texas, including Houston and San Antonio. I also spent approximately five years working undercover for DEA in Mexico. I spent two and a half years in Mexico City and two and a half years in Mazatlan, Sinaloa, allowing me to offer a unique perspective here today.

The Southwest Border and the security threat posed by drug trafficking along the Border is not a new issue for DEA. As the lead law enforcement agency responsible for enforcing the drug laws of the United States, DEA special agents have been on the front lines of both sides of the Southwest Border for decades, gathering intelligence and conducting enforcement operations to dismantle the most powerful and ruthless drug trafficking organizations. The operations of these organizations have destabilizing effects, not only in the Border region but throughout Mexico. The Southwest Border is a principal arrival zone for most illicit drugs smuggled into the United States, as well as being the predominant staging area for the drugs' subsequent distribution throughout the country. This area is particularly vulnerable to drug smuggling because of the enormous volume of people and legitimate goods crossing the Border between the two countries each day. Disrupted supply routes along the Southwest Border translate into intense competition manifested in violence between the drug trafficking organizations. The drug trade in Mexico has been rife with violence for decades. Incidents of violence and murder, much of which is drug related, have remained at elevated levels in Mexico for three years since the Calderon Administration initiated a comprehensive program to break the power and impunity of the drug cartels.

The violence in Mexico can be organized into three broad categories. They are: intra-cartel violence that occurs among and between members of the same criminal syndicate; intercartel violence among and between rival cartels; and cartel versus government violence. It is significant to note that intra and intercartel violence

have always been associated with the Mexican drug trade. Cities like Ciudad Juarez and Tijuana in particular have witnessed escalating violence since 2006. In 2007, the number of drug related killings in Mexico doubled from the previous year. Of the estimated 2,471 drug related murders, approximately 10 percent were Mexican military and law enforcement officials.

In 2008, estimates increased to approximately 6,263 drug related killings, with 8 percent of those being Mexican military and law enforcement. DEA estimates that approximately 95 percent of the officials killed in both 2007 and 2008 were corrupt officials who either failed to do the bidding for their controlling cartel, or who were targeted for assassination by a competing cartel. Around 1,000 people have died this year in Mexico, about 10 percent of whom are public officials.

In the past year, U.S. intelligence and law enforcement agencies have worked diligently to reach a consensus view on spillover violence and on U.S. vulnerability to Mexican cartels' violent tactics. The interagency has defined spillover violence to entail deliberate, planned attacks by the cartels on U.S. assets, including civilian, military, or law enforcement officials, innocent U.S. citizens, or physical institutions such as government buildings, consulates, or businesses. We assess with medium confidence that in the short term there will be no significant increase in spillover violence as Mexican drug trafficking organizations understand that intentional targeting of U.S. persons or interests unrelated to the drug trade would likely undermine their own business interests.

In response, the DEA continues to work vigorously in cooperation with its federal, state, local, and foreign counterparts to address the violence through the sharing of intelligence and joint investigations. DEA has the largest U.S. drug law enforcement presence in Mexico and is primed to mount an attack on these drug trafficking organizations at all levels with the Calderon administration. The disruption and dismantlement of these organizations, the denial of proceeds, and the seizure of assets significantly impacts the drug trafficking organizations' ability to exercise influence to further destabilize the region. Project Reckoning and Operation Xcellerator are recent examples of this U.S.-Mexico collaboration. While these collaborative operations are intended to break the power and impunity of the cartels, in the short term they also exacerbate the violence in Mexico.

In short, guided by intelligence, DEA is working diligently on both sides of the Border to stem the flow of illicit drugs and assist our Mexican counterparts in curbing violence associated with the drug trade. DEA recognizes that interagency and international collaboration and coordination is fundamental to our success. DEA will continue to closely monitor the security situation in Mexico and ensure that the rampant violence does not spill over our Border by continuing to lend assistance and support to the Calderon administration.

Chairman Mollohan, Ranking Member Wolf, members of the Committee, I thank you again for the opportunity to testify, and I will be happy to address any questions you may have.

[Testimony of Special Agent Joseph Arabit follows:]

Statement of

Joseph M. Arabit
Special Agent in Charge
El Paso Division
Drug Enforcement Administration

Regarding

"Violence Along the Southwest Border"

Before the

House Appropriations Committee
Subcommittee on Commerce, Justice, Science and Related Agencies



March 24, 2009 at 2:00 p.m.
Capitol Building, Room Rayburn 2359

INTRODUCTION

Chairman Mollohan, Ranking Member Wolf, and distinguished Members of the Committee, on behalf of Drug Enforcement Administration (DEA) Acting Administrator Michele Leonhart, I appreciate your invitation to testify today regarding violence in Mexico along the United States southwest border. The DEA has outstanding relationships with law enforcement agencies on both sides of the border. With the assistance of our counterparts, the DEA strives to coordinate investigative activity and develop intelligence in order to efficiently and effectively manage law enforcement efforts with the goal of identifying, infiltrating, and destroying rogue drug trafficking organizations. These organizations are directly responsible for the violence in Mexico. On behalf of Acting Administrator Michele Leonhart and the more than 9,000 men and women of the DEA, I am honored to have the opportunity to share these perspectives with you today.

OVERVIEW

Almost immediately following his inauguration as President of Mexico in December 2006, Felipe Calderon – of his own volition – initiated a comprehensive program to break the power and impunity of the drug cartels. As a direct consequence of this effort, there has been a sharp spike in murders and violent crimes in Mexico, generating significant concern by some that Mexico is on the verge of becoming a "failed state" and that this violence would spill over our Southwest border at increased levels with adverse consequences to U.S. interests.

The increased level of violence that currently plagues Mexico represents, in large measure, a desperate attempt by drug traffickers to resist the sustained efforts of a very determined Mexican Administration; it is not an indication of imminent failure. Since the Calderon Administration assumed power, the Government of Mexico has made record seizures of drugs, clandestine laboratories, weapons and cash. They have arrested large numbers of defendants, including high level representatives of all of the major Mexican Cartels and, in unprecedented fashion, extradited more than 190 of these defendants to face prosecution in the U.S. They have also begun the more difficult process of reforming their institutions, transitioning from a written inquisitorial to an oral adversarial system of justice, vetting and training police, prosecutors and jailers, establishing a new organized crime tribunal and addressing corruption as never before.

DEA believes the Government of Mexico has demonstrated remarkable commitment and resolve. As a result of Mexico's efforts, together with efforts undertaken by DEA and the interagency domestically and by our partners throughout the region, Mexican drug trafficking organizations have been placed under unprecedented stress. We are mindful, however, that success against these powerful criminal adversaries is far from certain and the consequences of transnational criminals prevailing in their bloody conflict with the Calderon Administration would pose devastating consequences for the safety and security of citizens on both sides of our Southwest border. The U.S. has seized this historic opportunity to collaborate with Mexico. Through the Merida Initiative and the

funding provided by the U.S. Congress our Mexican counterparts have additional resources to protect the safety and security of citizens on both sides of our border.

THE SOUTHWEST BORDER

The Southwest Border (SWB) of the United States is the principal arrival zone for most illicit drugs smuggled into the United States, as well as the predominant staging area for the drugs' subsequent distribution throughout the country. According to El Paso Intelligence Center (EPIC) drug seizure data, most of the cocaine, foreign source marijuana and methamphetamine, and Mexican-source heroin available in the United States is smuggled into the country across the SWB from Mexico. The SWB is particularly vulnerable to drug smuggling because of the enormous volume of people and goods legitimately crossing the border between the two countries every day. Moreover, large sections of the nearly 2,000 mile land border between Mexico and the United States are both vast and remote, and this provides additional smuggling opportunities for Mexican drug trafficking organizations (DTOs). Once at the border, Mexican traffickers use every method imaginable to smuggle drugs into this country including aircraft, backpackers, couriers, horses and mules, maritime vessels, rail, tunnels, and vehicles.

In response, the DEA, in cooperation with its federal, state, local and foreign counterparts, is attacking these organizations at all levels. The disruption and dismantlement of these organizations, the denial of proceeds, and the seizure of assets significantly impacts the DTOs ability to exercise influence and to further destabilize the region. Key to DEA's operations and success is collection and sharing of intelligence, which is made possible and enhanced through the El Paso Intelligence Center, DEA's Special Operations Division, the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, DEA's participation Intelligence Community, and daily law enforcement interaction with DEA offices along the border. In short, guided by intelligence, DEA is working diligently on both sides of the border to stem the flow of illicit drugs and assist the Government of Mexico in breaking the power and impunity of the drug cartels.

THE SCOPE OF DRUG TRAFFICKING ON THE SOUTHWEST BORDER

Prior to addressing Mexico's security situation, it is important to have a clear picture of the illicit drug-trafficking industry within Mexico as it relates to the United States. No other country in the world has a greater impact on the drug situation in the United States than does Mexico. The influence of Mexico on the U.S. drug trade is truly unmatched: the result of a shared border; Mexico's strategic location between drug-producing and drug-consuming countries; a long history of cross-border smuggling; and the existence of diversified, poly-drug, profit-minded DTO's. Each of the four major drugs of abuse – marijuana, cocaine, heroin, and methamphetamine – are either produced in, or are transshipped through, Mexico before reaching the United States. On our side of the border an appetite for these drugs sends billions of U.S. dollars and an unknown number of weapons back to Mexico annually. Many of the smuggled weapons are used against the Mexican security forces. The single objective of those who ply the drug trade is

profit: for Mexican traffickers, that profit is estimated by NDIC at $8-$24 billion per year. For all of these reasons, the U.S. and Mexican governments share the responsibility to defeat the threat of drug-trafficking.

Heroin - Mexico is an opium poppy-cultivating/heroin-producing country. While Mexico accounts for only about six percent of the world's opium poppy cultivation and heroin production, it is a major supplier of heroin to abusers in the United States, particularly in regions west of the Mississippi River. It has been alarming to note that Mexican black tar and brown heroin has appeared increasingly in eastern-U.S. drug markets over the past several years. We assess with high confidence that Mexican cartels are seeking to maximize revenues from an industry that they control from production through distribution.

Marijuana - Mexico is the number one foreign supplier of marijuana abused in the United States. In fact, according to a 2008 inter-agency report, marijuana is the top revenue generator for Mexican drug trafficking organizations —a cash crop that finances corruption and the carnage of violence year after year. The profits derived from marijuana trafficking – an industry with minimal overhead costs, controlled entirely by the traffickers – are used not only to finance other drug enterprises by Mexico's poly-drug cartels, but also to pay recurring "business" expenses, purchase weapons, and bribe corrupt officials. Though the Government of Mexico has a robust eradication program, many of the military personnel traditionally assigned to eradicate marijuana and opium poppy have recently been diverted to the offensive against the cartels.

Methamphetamine -Mexico is also the number one foreign supplier of methamphetamine to the United States. Although the Mexican government has made enormous strides in controlling – even banning – the importation of the methamphetamine precursor chemicals ephedrine and pseudoephedrine, Mexican methamphetamine-producing and trafficking organizations are proving to be extremely resourceful in circumventing the strict regulatory measures put in place by the Calderon Administration.

Cocaine - Mexico's importance in the cocaine trade cannot be overstated. Since the 1980s, Mexico has served as a primary transportation corridor for cocaine destined for the United States. While Mexico is not a coca-producing country and therefore cannot control the trade from beginning to end, traffickers in Mexico have managed nonetheless to exert increasing control over the trade in exchange for shouldering the greater risk inherent in transporting the cocaine and ensuring its distribution in the United States. In recent years, Mexican trafficking organizations have extended their reach deep into South America to augment – or personally facilitate – cooperation with Colombian sources of supply, or to develop relationships with alternate sources of supply in other cocaine-producing countries, particularly Peru. Demonstrating an even further reach into global cocaine markets, Mexican drug traffickers have evolved into intermediate sources of supply for cocaine in Europe, Australia, Asia, and the Middle East. More important, for our discussion today, Mexican drug trafficking organizations dominate the retail distribution of cocaine and other drugs of abuse throughout the U.S.

Current estimates suggest that approximately 90 percent of the cocaine leaving South America for the United States moves through Mexico. In just the past year, however, more cocaine – about 47 percent of the 90 percent, according to inter-agency estimates – stops first in a Central American country, before onward shipment to Mexico, than at any time since the inter-agency began tracking cocaine movements. This trend suggests that the Calderon administration's initiatives, particularly those related to port security and the tracking of suspicious aircraft, are having an impact on how the cartels do business, requiring them to take the extra – and ostensibly more costly – step of arranging multi-stage transportation systems.

Changes in cocaine movement patterns are not the only measurable trend. Beginning in January of 2007 – immediately after the Calderon government was installed – the price per gram of cocaine in the United States began to rise, with a correlative drop in cocaine purity. We are now in a 24 month sustained period of declining purity and increasing price in nearly every major cocaine market in the United States. During this period we have seen price more than double (up 104%) and purity fall by almost 35%.

VIOLENCE IN MEXICO: STATISTICS AND CAUSES

While it may seem counterintuitive, the extraordinary level of violence in Mexico is another signpost of successful law-and-order campaigns by military and law enforcement officials in Mexico. The violence in Mexico can be organized into three broad categories: intra-cartel violence that occurs among and between members of the same criminal syndicate, inter-cartel violence among and between rival cartels, and cartel versus government violence. It is significant to note that intra- and inter-cartel violence have always been associated with the Mexican drug trade. DEA assesses that the current surge in violence is driven in large measure by the Government of Mexico's proactive actions against the traffickers, along with other variables.

The drug trade in Mexico has been rife with violence for decades. Without minimizing the severity of the problems we are confronted with today, it is nonetheless critical to understand the background of the "culture of violence" associated with Mexican DTOs and the cyclical nature of the "violence epidemics" with which Mexico is periodically beset. Though no previous "epidemic" has exacted as grisly a toll as 2008, we do not have to go very far back in history to recall the cross-border killing spree engaged in by Gulf Cartel Zeta operatives in the Laredo-Nuevo Laredo area during 2004-2005. But one thing must remain clear in any discussion of violence in Mexico, or violence practiced by Mexican traffickers operating in the United States: drug gangs are inherently violent, and nowhere is this more true than in Mexico, where Wild West-style shootouts between the criminals and the cops, and/or elements of opposing trafficking groups is far to common.

We cringe at news stories detailing the arrest of a "pozolero" (stew-maker), a killer who disposes of his victims' body parts in barrels of acid, or the discovery of a mass grave containing the remains of countless victims decomposing under a layer of lime.

But these and other gruesome tactics are not new. What is both new and disturbing are the sustained efforts of Mexican drug trafficking organizations to use violence as a tool to undermine public support for the government's counter-drug efforts. Traffickers have made a concerted effort to send a public message through their bloody campaign of violence. They now often resort to leaving the beheaded and mutilated bodies of their tortured victims out for public display with the intent of terrorizing government officials and the public alike. Further, DTOs have also communicated that they are not deterred from pursuing their victims in the United States, posing a real risk to our communities on the Southwest Border.

In 2007, the number of drug-related killings in Mexico doubled from the previous year. Of the 2,471 drug-related homicides committed in that year (source: Attorney General's Office (PGR), law enforcement and intelligence sources estimate that around 10 percent were killings of law enforcement or military personnel. In 2008, estimates are that approximately 8 percent of the 6,263 drug-related killings were of law enforcement or military officials. Since January 2009, approximately 1,000 people have been murdered in Mexico, about 10 percent of whom have been public officials. While we have no precise measurements, we assess that a large percentage of the officials killed in both years were corrupt officials, who either failed to do the bidding of their controlling cartel, or who were targeted for assassination by a rival cartel. We do not mean to suggest, however, that Mexico has not lost a number of honest and courageous public servants in its contest with the cartels.

Particularly worrisome are those tactics intended to intimidate police and public officials, and law abiding citizens. In some cases these tactics have caused defections from police organizations – often with former police officials seeking asylum and protection in the United States. As disturbing as these tactics are, they do not appear to be having any impact on staffing of the federal police or military that are the primary tools in the Calderon Administration's offensive. Although Calderon currently enjoys a high level of public support, as does his crack down against the traffickers, DEA assesses that the Calderon Administration is not only fighting a formidable adversary in the traffickers, it is also fighting the clock as public support for this often bloody offensive cannot remain high indefinitely. Unfortunately, we have no basis to assess how much violence the Mexican public will tolerate before it opts to negotiate with the cartels. In the case of President Calderon's government, the evidence suggests that they will not be cowed even in the face of the most horrific acts of violence.

Murder is not merely a coercive strategy on the part of the cartels. The murders are acts of desperation. Operational successes by the military and law enforcement, and massive reforms being undertaken by the judiciary, have provided the catalyst for much of the violence. The deployment of tens of thousands of military troops – mobilized specifically to confront drug trafficking organizations in "hot spots" throughout the country (most recently, an additional 5,000 to Ciudad Juarez in February 2009 to supplement the 2,500 troops already in place in that city), along with concerted law enforcement operations targeting specific cartel members or specific import/export hubs, have disrupted supply routes both into and out of Mexico, and have shattered alliances.

Entry ports for large maritime shipments of cocaine from South America, previously wholly controlled by the cartels through corruption, intimidation, and force, are instead patrolled and inspected by vetted members of Mexico's armed forces. The lucrative transportation corridors within Mexico and into the United States, once incontestably held by cartel "gatekeepers" and "plaza bosses," are now riddled with military checkpoints and monitored by Mexican law enforcement.

Disrupted supply routes translate to intense competition between the drug trafficking organizations who control still-viable routes, and those who want to control them. These stressors are further compounded with shifting alliances, long-standing feuds, and record-breaking seizures by the Government of Mexico. Challenging the status quo and holding the traffickers accountable demonstrates the resolve of President Calderon's government. Successfully transforming the situation from one that represents a serious threat to the national security of both Mexico and the U.S. to a problem that can effectively be dealt with as a traditional criminal justice problem will require considerably more work, particularly with regard to institutional reform and anti-corruption efforts. Fortunately, President Calderon has already committed to these reforms, both in rhetoric and in action.

SPILLOVER VIOLENCE

Excessive violence by the cartels is a national security problem for Mexico, and – as our close neighbor and political ally – present high stakes for the United States. In the past year, U.S. intelligence and law enforcement agencies have worked diligently to reach a consensus view on "spillover" violence and on U.S. vulnerability to the Mexican cartels' violent tactics. These discussions required the interagency to define "spillover" in practical terms. As agreed to by the interagency community, spillover violence entails deliberate, planned attacks by the cartels on U.S. assets, including civilian, military, or law enforcement officials, innocent U.S. citizens, or physical institutions such as government buildings, consulates, or businesses. This definition does not include trafficker on trafficker violence, whether perpetrated in Mexico or the U.S. Spillover violence is a complicated issue. We are all tempted to paint the problem with a very broad brush and react emotionally to violent incidents inside the United States involving Mexican drug traffickers and their victims. But it is crucial, in order to address the problem with the appropriate programs, resources, and operations, that we understand the difference between "terrorist" acts – the murder of a U.S. law enforcement agent, or the bombing of a U.S. government building, for example – and actions that are characteristic of violent drug culture, such as the killing of an individual who owes a drug debt to the organization. Certain isolated incidents in the United States, such as the torture by a Mexican trafficker of a Dominican drug customer in Atlanta, are frightening, but do not represent a dramatic departure from the violence that has always been associated with the drug trade.

Recent news reports concerning drug-related kidnappings in Phoenix also rarely, if ever, qualify as "spillover" incidents as defined by the interagency. A Phoenix Police Department/FBI task force was established in September 2008 to address the spate of kidnappings in that city. Although this task-force has not yet reached a final

determination on how many of last year's 357 kidnappings were wholly drug-related, we do know that a large percentage of these kidnappings are extortion-type crimes. Example include the relative of a drug debtor being held until the debt is paid, or – most commonly – illegal aliens held en masse in "safe houses" until U.S.-based families pay an additional transportation fee.

We are by no means trying to downplay our concern. DEA and our U.S. government partners are closely monitoring the border and other U.S. cities with a concentrated presence of Mexican drug trafficking organizations like Atlanta, Chicago, Seattle, St. Louis, and Charlotte, for even minute changes in crime trends. In addition, the inter-agency has established "red lines" (or tipping points) that might suggest a change in the modus operandi of the trafficking organizations, such as unsanctioned violent actions by young, rogue elements of the cartels that go unpunished by cartel principals, or wholesale disregard for the loss of innocent life in concerted actions by the traffickers against the Mexican government. However, we assess with medium confidence that in the short term there will be no significant increase in spill over violence, as Mexican trafficking organizations understand that intentional targeting of U.S. persons or interests unrelated to the drug trade would likely undermine their own business interests.

GOVERNMENT OF MEXICO INITIATIVES

In the two years since Felipe Calderon assumed his post as President of Mexico, he and his administration have acted with unprecedented vigor and resolve against organized crime and its primary purveyors, the drug cartels. With sustained efforts in attacking the insidious problems of drug-related corruption and violence on every front, the Calderon Administration must be credited at least partially with the sustained reduction in the availability of cocaine in the United States.

Having deployed the military to replace state and local police in the most violence-plagued areas of the country, President Calderon attacked the very core of cartel power: the corruption of public officials. With narco-corruption cases increasingly pointing to high-ranking federal officials in the Mexican government, President Calderon launched Operation Limpieza (Clean Sweep). Designed to improve operational integrity within several Mexican government agencies, including the Attorney General's Office (PGR), the Secretariat of Public Security, and the military, Operation Limpieza has already resulted in the arrests of dozens of corrupt public officials, and the drafting of a joint Government of Mexico-U.S. Department of Justice proposal on police and judicial reforms. Benchmark reforms include improvements in internal security processes (such as background investigations, internal affairs/disciplinary actions, ethics training), information security processes (such as evidence handling and case file management), and physical security processes (such as structural improvements and access limitations).

In addition, the Government of Mexico created the Special Organized Crime Court (SOCC), which has jurisdiction over organized crime investigations throughout the Republic of Mexico, and has three primary functions: 1) to authorize the provisional detention of organized crime suspects; 2) to authorize search warrants; and 3) to

authorize the interception of communications for evidentiary purposes. The SOCC has nationwide jurisdiction, which not only eliminates the administrative inefficiencies of the previous system, but should also resolve intimidation and corruption-related issues associated with the previous requirement that prosecutors go to local judges in close proximity to the suspected criminal activity.

In June 2008, President Calderon approved the Constitutional amendment permitting the Government of Mexico's transition from a written inquisitorial (confession-based) justice system, to an oral adversarial (investigations-based) criminal justice system. This transition is a significant step toward improving transparency in legal proceedings in Mexico and helps assure the integrity of the judicial process.

The following notable events evidence the Government of Mexico's sustained attack on the cartels:

- In October 2007, the GOM seized over 35 metric tons of cocaine. This includes the seizure of 11.7 metric tons of cocaine from a warehouse in Tampico, Veracruz and a world record 23.5 metric ton cocaine seizure in Manzanillo, Colima, based in part on information provided by DEA offices in Mexico.
- In July 2007, the GOM affected a record-breaking money seizure in Mexico City, based in part on information provided by DEA. $207 million was seized from Zhenli Ye Gon, a pharmaceutical company CEO who facilitated the importation of metric-ton quantities of ephedrine for the Sinaloa cartel's methamphetamine-manufacturing operations.
- In September 2008, the Government of Mexico seized over $26 million from a high-level member of the Sinaloa Cartel. This individual was subsequently killed on January 21, 2009, by the Mexican military in a confrontation after being detained at a checkpoint near Culiacan, Sinaloa.
- In January 2008, a weapons training facility was seized by the Mexican federal police in Tijuana. The facility housed an armory, repair shop, and shooting range, and was hidden underground, accessible by lifting a sink in a small bathroom of the residence.
- On October 15, 2008, based on investigative assistance provided by DEA, Mexican police seized a warehouse associated with Los Zetas which contained not only five tons of marijuana, but also weaponry and grenades associated with the intimidation attack on the U.S. consulate in Monterrey in early October 2008.
- In November 2008, DEA worked closely with the GOM in their largest-ever weapons seizure in Mexico. The Mexican military in Reynosa, Tamaulipas seized hundreds of assault rifles, pistols, grenades, grenade and rocket launchers, and explosives, along with a half-million rounds of ammunition
- In November 2008, DEA provided information to the GOM that contributed to the arrest of Jaime "Hummer" Gonzalez-Duran, a lieutenant for Gulf Cartel principal Eduardo Costilla-Sanchez and Zeta leader Heriberto Lazcano. The arrest of Hummer represented a significant blow to the command and control structure of the Gulf Cartel's operations in northeast Mexico. Other Gulf Cartel-Zeta arrests – such as that of Daniel Perez-Rojas in Guatemala in early 2008, and

Antonio Galarza only days before the arrest of Hummer and Octavio Almanza Morales, alias El Gori on February 9, 2009 – demonstrate that the Government of Mexico is exerting sustained pressure on the notoriously violent Los Zetas arm of the Gulf Cartel.

- In February 2009, Hummer's replacement, Hector Sauceda-Gamboa, was killed in a Reynosa firefight.

Furthermore, active indictments – mostly in south Texas – against other high-level as yet un-captured members of the Gulf Cartel/Zetas make them fugitives from justice in the United States. The United States is engaged in bilateral operations with Mexican law enforcement to capture these dangerous criminals.

The quantifiable impact of huge drug, weapons, and money seizures presents an incomplete picture. While more difficult to measure, the enormous psychological impact of high-level arrests and record numbers of extraditions completes the picture. No other action by the Government of Mexico strikes quite so deeply at cartel vulnerabilities than an arrest and extradition. Beginning only weeks after his inauguration, President Calderon began extraditing high-profile criminals to the United States. On January 19, 2007, the same day the Mexican Supreme Court ruled that international treaties would supersede domestic law in the matter of extraditions, President Calderon took the politically courageous step of extraditing 15 individuals to stand trial in the United States, including notorious Gulf Cartel head, Osiel Cardenas-Guillen. Since that day, the Government of Mexico has extradited more than 190 criminals to the United States, including 10 in December 2008 associated with some of the most notorious Mexican drug trafficking organizations – the Gulf Cartel, the Arellano Felix Organization and the Sinaloa Cartel – and most recently, on February 25, 2009, Miguel Angel Caro-Quintero, who assumed control of the family organization after the arrest of his brother Rafael Caro-Quintero, who was complicit in the kidnapping, torture, and murder of DEA Special Agent Enrique Camarena. To date, in this calendar year, with 24 extraditions accomplished, President Calderon's administration is on pace to exceed last year's record numbers.

The Gulf Cartel and Zetas are not the only cartel targeted by the Calderon administration. The nearly-decimated Arellano-Felix organization (aka the Tijuana Cartel) experienced its last "nails in the coffin" in 2008: In March 2008, powerful cartel lieutenant Gustavo Rivera was arrested in Baja California Sur, and in November 2008, the last remaining Arellano-Felix brother and original cartel member, Eduardo Arellano-Felix, was arrested after a protracted gun battle with Tijuana SIU agents. The Tijuana Cartel is now badly fractured, and undergoing a violent internal struggle for power between Arellano-Felix relatives (a sister and a nephew) and the Sinaloa Cartel-supported leader-in-fact, Teodoro Garcia-Simental.

The arrest of Alfredo Beltran-Leyva (brother of Kingpin Arturo Beltran-Leyva) in January 2008 was a huge blow to the Sinaloa Cartel. The residual impact of Alfredo's arrest not only undermined long-term Sinaloa alliances, but resurrected animosities between rival cartel leaders Joaquin "Chapo" Guzman-Loera and Arturo's new allies –

the Vicente Carillo-Fuentes organization (Juarez Cartel) and provided the catalyst behind the bloodshed in Mexico's most-violent city: Ciudad Juarez. Arturo Beltran-Leyva, and those loyalists who departed the Sinaloa Cartel with him, have also allied with Los Zetas, causing an escalation of conflict in strongholds shared uneasily by "old" Sinaloa leaders such as Chapo Guzman. Other big-impact arrests include the October 2008 capture of Jesus Reynaldo Zambada-Garcia (brother of Sinaloa "godfather" and principal, Ismael Zambada-Garcia), Jesus Zambada-Reyes (son of Jesus Reynaldo, and nephew of Ismael), their attorney, and 13 other members of the organization.

All these high-impact actions – seizures, arrests and extraditions serve to make one important point: drug traffickers are inherently violent, but desperate, vulnerable drug traffickers operating under unprecedented stress are exceedingly violent.

DEA AND INTERAGENCY INITIATIVES ALONG THE SWB

DEA is an agency with global reach and continues to work vigorously with our law enforcement counterparts in both the United States and Mexico to address the violence through the sharing of intelligence and joint investigations. DEA routinely collects and shares intelligence pertaining to those violent drug trafficking organizations and armed groups operating in and around the Laredo and El Paso/Ciudad Juarez border areas, as well as other "hot spots" along the Southwest Border. Additionally, DEA has the largest U.S. drug law enforcement presence in Mexico with offices in Mexico City, Tijuana, Hermosillo, Ciudad Juarez, Guadalajara, Mazatlan, Merida, and Monterrey, Matamoros, Nuevo Laredo, and Nogales (scheduled to open in July 2009). At the end of FY 2008, DEA had 1,203 authorized Special Agent positions working in domestic offices with responsibilities for the SWB, representing approximately 23 percent of DEA's total authorized Special Agent workforce.

As the lead U.S. law enforcement agency responsible for enforcing the drug laws of the United States, DEA has been at the forefront of U.S. efforts to work with foreign law enforcement counterparts in confronting the organizations that profit from the global drug trade. DEA's remarkable success is due, at least in part, to its single-mission focus. DEA is well positioned to mount a sustained attack on the command and control elements of drug trafficking organizations; however, DEA does not operate in a vacuum. DEA grants Title 21 authority to other federal agents, including Department of Homeland Security's Immigration and Customs Enforcement agents, and state and local law enforcement officers under 21 USC 873 and 878. All deputized officers and cross-designated agents are under the supervision of DEA while involved in Title 21 activities. Title 21 cross-designation and deputization enhances DEA's ability to conduct investigations by allowing the administration to utilize a force multiplier. At the same time, DEA makes certain that clear lines of authority are maintained to ensure effective investigations and agent safety.

Other initiatives that contribute to DEA's effort along the SWB are detailed below:

- The SWB Initiative is a multi-agency, federal law enforcement operation that attacks Mexico-based DTOs operating along the SWB by targeting the communication systems of their command and control centers. The SWB Initiative has been in operation since 1994. As part of a cooperative effort, DEA, the Federal Bureau of Investigation (FBI), U.S. Customs and Border Protection (CBP), and U.S. Attorneys' offices around the country conduct wiretaps that ultimately identify all levels of Mexico or Colombia-based DTOs. This strategy allows tracking of the drugs as they flow from Colombia or Mexico to the streets of the United States.

- *Operation Black Flag (OBF)* is a DEA Special Field Intelligence Program (SFIP) initiated in April 2008 due to the escalation of drug-related violence among major Mexican cartels along the U.S. and Mexico border. The main goal of the program is to track and report actionable intelligence regarding the capability and likelihood of these Mexican drug cartels to execute violent acts over the SWB into the United States. OBF intelligence is collected from United States and Mexican law enforcement agencies through the use of confidential sources, ongoing investigative reporting, and active T-III intercepts. The program gathers intelligence according to Priority Intelligence Requirements (PIRs) approved by the El Paso, Houston, San Diego, and Phoenix Field Divisions.

- Organized Crime Drug Enforcement Task Force – The OCDETF program was initiated in 1982 to combine federal, state, and local law enforcement efforts into a comprehensive attack against organized crime and drug traffickers. DEA is an active component of the OCDETF program, including OCDETF Strike Forces. OCDETF Strike Forces collaborate with the Southwest Border High Intensity Drug Trafficking Area (HIDTA) regional task forces in Arizona, California, New Mexico, West Texas and South Texas. Southwest Border HIDTA Task Forces represent Federal/State/and local partnerships that target Mexican drug cartels and their smuggling and transportation networks, which spawn cartel violence along the Border. HIDTA Task Forces have had enormous success dismantling major Mexican drug trafficking organizations linked to Mexico-based cartels.

- DEA is a member of the Border Enforcement Security Task Force (BEST), an Immigration and Customs Enforcement (ICE)-led initiative designed to increase the flow of information between participating agencies regarding violent criminal organizations and gangs operating in and around Laredo, Texas. In addition, BEST targets human and violent drug smuggling organizations that fuel violence in that area. BEST commenced in July 2005; DEA's participation began on May 3, 2006. Other participants include the U.S. Customs and Border Protection (CBP), Alcohol Tobacco and Firearms (ATF), U.S. Marshal Service (USMS), U.S. Attorney's Office, Laredo, Texas Police Department, Texas Department of Public Safety (DPS), and Mexico's Federal Preventive Police (PFP).

- DEA's Drug Flow Attack Strategy (DFAS) is an innovative, multi-agency strategy, designed to disrupt significantly the flow of drugs, money, and chemicals between the

source zones and the United States by attacking vulnerabilities in the supply chains, transportation systems, and financial infrastructure of major drug trafficking organizations. DFAS calls for aggressive, well-planned and coordinated enforcement operations in cooperation with host-nation counterparts in global source and transit zones. Operation All-inclusive (OAI) is the primary DFAS enforcement operation in the source and transit zones. Iterations of OAI have been staged annually since 2005.

- Operation Doble Via, the domestic component of OAI, was conducted between April and September 2007 to disrupt the flow of drugs, chemicals, and money across the SWB. Operation Doble Via took place on both sides of the border and the main participants were DEA, U.S. Customs and Border Protection (CBP), the Texas Department of Safety (DPS), and several Mexican agencies including the Federal Investigative Agency (AFI), the Federal Preventive Police (PFP), the military, and the Deputy Attorney General's Office of Special Investigations in Organized Crime (SIEDO).

- EPIC is a national tactical intelligence center that focuses its efforts on supporting law enforcement efforts in the Western Hemisphere, with a significant emphasis on the Southwest Border. Through its 24-hour Watch function, EPIC provides immediate access to participating agencies' databases to law enforcement agents, investigators, and analysts. This function is critical in the dissemination of relevant information in support of tactical and investigative activities, deconfliction, and officer safety. EPIC also provides significant, direct tactical intelligence support to state and local law enforcement agencies, especially in the areas of clandestine laboratory investigations and highway interdiction efforts.

    - EPIC's *Gatekeeper Project* is a comprehensive, multi-source assessment of trafficking organizations involved in and controlling movement of illegal contraband through "entry corridors" along the SWB. The analysis of Gatekeeper organizations not only provides a better understanding of command and control, organizational structure, and methods of operations, but also serves as a guide for policymakers to initiate enforcement operations and prioritize operations by U.S. anti-drug elements. Numerous Gatekeepers have direct links to Priority Target Organizations (PTO) and/or Consolidated Priority Organization Targets (CPOT).

    - Implementation of License Plate Readers (LPR) along the SWB has provided a surveillance method that uses optical character recognition on images that read vehicle license plates. The purpose of the LPR Initiative is to combine existing DEA and other law enforcement database capabilities with new technology to identify and interdict conveyances being utilized to transport bulk cash, drugs, weapons, as well as other illegal contraband. Almost 100 percent of the effort and cost associated with monitoring southbound traffic is directed at the identification, seizure, and forfeiture of bulk cash and weapons, while the effort and cost

of monitoring northbound traffic is both enforcement and forfeiture-related, in that suspect conveyances can be identified for later southbound monitoring. All of DEA can query and input alerts on license plates via an existing DEA database, and other law enforcement agencies can do the same via the EPIC.

- DEA's Special Operations Division's (SOD) mission is to establish seamless law enforcement strategies and operations aimed at dismantling national and international trafficking organizations by attacking their command and control communications. SOD is able to facilitate coordination and communication among DEA divisions with overlapping investigations and ensure tactical and strategic intelligence is shared between DEA and SOD's participating agencies.

    - Project Reckoning and Operation Xcellerator are recent examples of this U.S.-Mexico collaboration. Project Reckoning was a 15-month operation targeting the Gulf Cartel and remains one of the largest, most successful joint law enforcement efforts ever undertaken between the United States and Mexico. Because of intelligence and evidence derived from Project Reckoning, during 2008 the United States was able to secure indictments against the Gulf Cartel "triumvirate" of Ezekiel Antonio Cardenas-Guillen (brother of extradited Kingpin Osiel Cardenas-Guillen), Eduardo Costilla-Sanchez, and Heriberto Lazcano-Lazcano, head of Los Zetas. Project Reckoning resulted in over 600 arrests in the U.S. and Mexico, including 175 active Gulf Cartel/Los Zetas members, thousands of pounds of methamphetamine, tens of thousands of pounds of marijuana, nearly 20,000 kilograms of cocaine, hundreds of weapons, and $71 million in seized currency . Operation Xcellerator began in May 2007 from an investigation in Imperial County, California and targeted the Sinaloa Cartel. Operation Xcellerator was recently concluded and resulted in over 750 arrests, drug seizures running to the tens of thousands of pounds, aircraft and maritime vessel seizures, and over $59 million in seized currency. While these operations are intended to break the power and impunity of the cartels, in the short term they also exacerbate the violence in Mexico.

- OCDETF Fusion Center (OFC) primarily provides investigative/operational intelligence support to OCDETF investigations through the development of organizational target profiles and the development of specific investigative leads. These leads and intelligence products are disseminated to the appropriate field elements of the OCDETF agencies through SOD. Intelligence and leads relating to other criminal activities, including terrorism, are disseminated through SOD to the appropriate agencies.

CONCLUSION

The daily challenges posed by drug trafficking organizations in the United States and Mexico are significant, but are overshadowed of late by a very specific set of challenges: ensuring that the rampant violence in Mexico does not spill over our border; closely

monitoring the security situation in Mexico; and, perhaps most importantly, lending our assistance and support to the Calderon Administration to ensure its continued success against the ruthless and powerful cartels. The Government of Mexico has realized enormous gains in re-establishing the rule of law in Mexico, and in breaking the power and impunity of the drug trafficking organizations who threaten their own, and our, national security. The Calderon administration's gains translate to an unparalleled positive impact on the U.S. drug market as well: from January 2007 through December 2008, the price per gram of cocaine increased 104.5% from $97.62 to $199.60 while the purity decreased 34.8% from 67% to 44%. These statistics paint a clear picture of restricted drug flow into the United States and decreased availability. While spikes – upward or downward – in price and purity have been observed in the past, these indicators typically normalized within a few months. Unlike in the past, we are now in the midst of a sustained, two-year period of escalating prices and decreasing purity. Anecdotal evidence from around the country and closer to home here in the District of Columbia, including intercepted communications of the traffickers themselves, corroborates the fact that President Calderon's efforts are making it more difficult for traffickers to supply the U.S. market with illicit drugs.

The DEA recognizes that interagency and international collaboration and coordination is fundamental to our success. It is imperative that we sustain the positive momentum by supporting President Calderon's heroic efforts against organized crime. We must also manage expectations, as we anticipate that the gruesome violence in Mexico may get worse before it gets better. We must recognize that we are witnessing acts of true desperation: the actions of wounded, vulnerable and dangerous criminal organizations. We remain committed to working with our U.S. law enforcement and intelligence partners as well, to stem the flow of bulk cash and weapons south, while also working to sustain the disruption of drug transportation routes northward. Bringing to the criminal and civil justice system of the United States, or any other competent jurisdiction, those organizations and principal members of organizations involved in the cultivation, manufacture, and distribution of controlled substances appearing in or destined for illicit trafficking in the United States remains the core of our focus.

Thank you for the opportunity to appear before you today to discuss this important issue. I will be happy to answer any questions that you may have.

Mr. MOLLOHAN. Thank you, Special Agent Arabit. Mayor Gordon, these displays over here—would you quickly, for the record and for the Committee, describe for us what they are, what they represent?

Mr. GORDON. Yes. The one on the floor is about an individual, an immigrant, that was tortured. You can see it on his fingers. The second one immediately to the left of me is a neighborhood, an upper middle class, brand new neighborhood, probably with a maximum of two years. So these homes are being rented throughout Phoenix. It is not just low income homes, but solid middle class neighborhoods. Twenty, thirty, forty, in some cases hundreds of individuals are warehoused in there. They have "paid their money" to get to Phoenix, which is they pay money. They get to the Border, they pay money to come across the desert, and then they pay money to get to Phoenix to then be shipped throughout the United States. That you will notice the barred up windows, which creates a significant danger both for police, fire, and the individuals inside since there is no way out but the front door. There is armed individuals, usually.

As the police came into this one, the individual on top was one of the individuals, and the Chief can answer specifically as to how he was kept, probably as a result of his family not paying more money. All of these individuals were being held while their families throughout the U.S. or the world were extorted for additional monies.

Mr. MOLLOHAN. The person in the upper picture with the hands tied—is that person expired?

Mr. GORDON. No, sir. That is the condition that the police found him.

Mr. MOLLOHAN. Identify yourself, Chief, please?

Chief HARRISON. My name is Jack Harrison, the police chief in Phoenix. And the individual on the top was kidnapped. His wife was called and they asked for $500,000 ransom to release him. As they were trying to get the money she called the police, and we were able to locate the individual. There is another photograph that shows his fingers had been smashed with a brick. It is very common to be tortured. This particular individual we found out was a cocaine dealer and it was related to the drug trade.

Mr. MOLLOHAN. Thank you, Chief. Mayor, listening to your testimony it sounded like you have a big problem that you are being very aggressive about dealing with and successfully so. And you are extremely complimentary of the partnership relationships you have with the federal government. Am I characterizing your testimony accurately?

Mr. GORDON. Absolutely, Mr. Chairman.

Mr. MOLLOHAN. Let me ask you, because it sounded really good and satisfactory in most regards, in what ways could these partnerships be strengthened? Where would you suggest that we start? And what is the issue? More dollars? More resources?

Mr. GORDON. Mr. Chairman, thank you very much. And again, the Chief or the agents that are here can correct me if I am wrong. But number one, these operations engage a lot of intelligence and sharing information, a lot of officers directly assigned. And due to

the economic constraints on local governments, and in particularly Phoenix which represents about 50 percent of the sworn agents in the state, 60 percent of the sworn officers in the valley, we are not able to continue to provide those officers at the rates that the federal agencies would like.

Mr. MOLLOHAN. You as the City of Phoenix are not able to partner adequately with your federal counterparts because you do not have enough agents?

Mr. GORDON. Mr. Chairman, I would never say that, we do not have enough agents, which we do not. There is always crime, unfortunately, because of the economic budget.

Mr. MOLLOHAN. Right.

Mr. GORDON. We will provide the agents, but we need the financial ability so that we can hire the other offices to keep the streets safe.

Mr. MOLLOHAN. So it is a city resource issue——

Mr. GORDON. It is a city resource——

Mr. MOLLOHAN [continuing]. From your standpoint.

Mr. GORDON [continuing]. Primarily. Also, it is the, for the federal government and the city, it is the sophistication of the intelligence. If one could picture, and there was a question raised with the helicopters and the planes, with the desert being so large you can have a plant—sorry, Mr. Chairman.

Mr. MOLLOHAN. No, no, no. Go ahead, please.

Mr. GORDON. You can have an airplane there spotting. What is happening now is, because of the desert, if you can picture those auto trucks that have ramps where you drive the new cars up? Well, the smuggling cars and the drugs go up to any part of the Border. If there is even a fence, drive it up, drive it down, unload it, and are gone before there is any possibility of agents being there.

Mr. MOLLOHAN. Before my time runs out, may I ask the Chief that same question? Chief, from the federal government's side, what programs do you like best and what programs would you like to see increased?

Chief HARRISON. Yes, sir. There are a number of things that we would ask for. The HIKE unit that we had to put together takes ten officers and a supervisor out of patrol to be able to go after these kidnappers as they are happening. So increase in personnel.

Mr. MOLLOHAN. Now, that is for you?

Chief HARRISON. For our Department.

Mr. MOLLOHAN. Yes, but I am asking a different question. I am asking, what would you like to see the federal government do more of? You like what they are doing. And maybe they are doing enough. I mean the answer might be——

Chief HARRISON. We like the partnerships with the agencies, such as ATF and with ICE. Being able to add personnel to those units. Prosecutors through the U.S. Attorney's Office that are specifically utilized to target weapons violations and those types of operations is what we would like to see. An increase in funding, personnel, and equipment. The surveillance equipment, the computer equipment, it is very, very involved and it is very, very expensive.

Mr. MOLLOHAN. I will follow up in the second round. I want to stay within my time. Thank you. Thank you, Chief. Mr. Wolf.

INTEGRITY OF FEDERAL LAW ENFORCEMENT

Mr. WOLF. Thank you, Mr. Chairman. Mr. Mayor, I appreciate your testimony and both of the special agents. And I think it is the obligation of government to provide public safety. I mean, that becomes more important than almost anything. That is an act of domestic terrorism.

I wanted to ask the two special agents, I believe our law enforcement people are some of the most honest people. Do you believe that there is a problem with regard to corruption in federal law enforcement down on the Border? U.S. side.

Mr. NEWELL. On the U.S. side?

Mr. WOLF. Yes, sir. Correct.

Mr. NEWELL. Well——

Mr. WOLF. United States government law enforcement people.

Mr. NEWELL. Yes, sir. I understand your question. Well, Ranking Member Wolf, having worked twenty years on the Border I know for a fact that we do not have the level of corruption on this side, on this side, you know, as compared to Mexico. You know, huge amounts of money changing hands always are enticing. But we, if there is an instance ever of an allegation of any corruption on any, you know, launched against or made against any of our people we aggressively address that. So the answer to your question is, I do not, I know for a fact, at least speaking for ATF, that it is not even close to comparison. It is just because of the amount of money involved on the Mexican side.

Mr. WOLF. How about DEA?

Mr. ARABIT. Congressman Wolf, thank you for the question. I agree with Mr. Newell's assessment. We see isolated incidents of corruption. But it is not something that you see every day, or every week, or even every month. So the incidents are very isolated.

INTEGRATION OF FEDERAL, STATE AND LOCAL AGENCIES

Mr. WOLF. We have had a serious problem in our region of MS–13. And what we did is, we put together a coordinated effort where there is one location whereby we have every law enforcement in the entire region, from Arlington, Alexandria, Fairfax, Manassas, Manassas Park. And FBI and DEA, ATF and Marshal Service all meet together. Is there that type of coordination that you have? I mean, we have one location for this entire region, which is probably larger than the geographic size of Phoenix. Do you do this same type of coordination there that we would do here for MS–13? Yes, whoever. Yes, Mr. Mayor.

Mr. GORDON. Mr. Wolf, as a mayor that is not part of the federal organization, I have traveled the U.S. for years, both in the private sector and now fifteen years public. There is not an area in this country that is so integrated for so long where you have FBI using Phoenix police for cold cases, Phoenix police using ATF for its, it is brothers and sisters that have literally grown up together. The answer is yes.

Mr. WOLF. And what about as you leave Phoenix and go in other parts, is it the same?

Mr. GORDON. Yes, sir. The valley represents 60 percent of the entire state, and probably nearly 80 percent of the private property

in the State of Arizona. If there is any type of incident it is really the valley. And with your permission, Mr. Wolf and Mr. Chairman, I think because of the integration of the criminals across the Border and within the urban, within the United States, it becomes more and more dependent now that the local police agencies and the federal agencies work together, sharing their expertise in both areas. And that is where I think we are all trying to say, is continuing to fund those ongoing operations that we see it as something that is standard for years, that integration. And every special agent that I have ever talked to in any agency I think will tell you that our area is the model. And I am not speaking for Phoenix. I am talking about the federal/local partnerships.

CARTEL INVOLVEMENT IN U.S. CITIES

Mr. WOLF. Two questions. Connected, how involved are other gangs? MS–13, for instance, in this and connectivity into Mexican gangs? And secondly, I was driving in my car about two weeks ago and there was a hearing. I think it could have been Homeland Security. There was a member questioning DHS. And the comment by the member was that these gangs have now infiltrated the United States. Are in I think it was over 200 cities. And then it kind of ended, the news report went on. One, connectivity to MS–13, Los Zetas, and different gangs. Secondly, how active are they in Buffalo, Kansas City, wherever, far, far away from the Border? What is the impact inside the United States as well as directly on the Border? Maybe both of you could take that?

Mr. ARABIT. Thanks for the question, Congressman Wolf. With respect specifically to the MS–13, we do not see any connection between the MS–13 and cartel leadership. It is quite possible that the MS–13 has connections to street level dealers or mid-level distributors. But we do not know of a connection between MS–13 and cartel leadership.

Mr. WOLF. And what about involvement in having people for these gangs, or in other cities in the United States well inland from the Border?

Mr. ARABIT. There have been——

Mr. WOLF. How active are they in Kansas City, in Buffalo, Toledo, New York City, Washington, D.C.?

Mr. ARABIT. Congressman Wolf, there have been isolated reports of gang involvement. For example, Los Zetas being involved in the interior of Texas. But they are just isolated, uncorroborated reports. We do not have any definitive information to indicate that Los Zetas are involved in any activity in Texas.

Mr. NEWELL. I agree with that assessment, Mr. Wolf. One of the issues, though, is regarding firearms trafficking to Mexico. It is a national issue. And we see throughout the United States, in certain areas, it is a national issue. The same way that gangs acquire firearms in the United States using straw purchasers is a very, very common way that the drug cartels are getting guns through the use of straw purchasers. So there are some similarities there in how they are doing it.

Mr. WOLF. But the question is that I wanted to ask is, though, is these gangs that are involved in what the Mayor and the Police Chief said, and they are active, the cartels in Mexico, do they have

operations in cities throughout the United States? In Wheeling, West Virginia? In Washington, D.C.? In Charlotte, North Carolina? Or is the activity in those areas totally different that what is taking place, connectivity to the cartels?

Mr. NEWELL. I would assess it, Mr. Wolf, this way. That there is a loose affiliation between the local gangs in these areas with the cartels. Cartels are separate from a gang in the sense that a cartel is almost like a virus, if you will. They go in and they are intending to take over an entire area. Where a gang is really kind of looking at taking care of their own area, in a smaller gang in a city. But there are loose affiliations. But like Mr. Arabit said, we have not seen that direct connectivity between the drug cartels and those gangs that you are referring to.

Mr. MOLLOHAN. Thank you, Mr. Wolf. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman. Would it not be true, though, the cartels are certainly in smuggling the gang members into the United States? Gang members are paying cash, the cartels will take any cash paying customer?

Mr. NEWELL. Sure. I mean, it is all about the money.

FEDERAL PROSECUTIONS IN ARIZONA

Mr. CULBERSON. To that extent, certainly, they are smuggling them in. And first of all, I want to thank you gentlemen for the terrific work you do. You know, God bless you, you are in the front lines of a real war. And that is just not known, I think, widely known to a lot of people how serious and dangerous the Southwest Border is. And I wanted to, in the brief time that I have got, talk a little bit about the scope of the problem, to illustrate for the Chairman and my Ranking Member Mr. Wolf, and the Committee, the scope of the problem, number one, and then talk about a solution that really is working very, very well along the Texas Border.

And in particular talking about in Phoenix, you are in the Tucson sector, and I have had the chance to go out and visit Tucson, talk to Chief Gilbert of the Border Patrol who is your sector chief down there. And am frankly astonished and appalled to discover that the U.S. Attorney in the Tucson Sector will not prosecute. Apparently, ATF, DEA cases brought to her by the, now she is gone, the old U.S. Attorney. But the Tucson Sector, it is a fact that if you were, and these are numbers from the Border Patrol, Mr. Chairman, that if you were arrested in the Tucson Sector carrying less than 500 pounds of dope you had a 99.6 percent chance of never being prosecuted and being home in time for dinner. You would be out for about two and a half hours. And I would like to, you all are aware of the low, of the near zero prosecution rate in the Tucson Sector, Mr. Mayor and Chief? By the U.S. Prosecutor? You are familiar with this problem?

Mr. GORDON. Mr. Chairman, Congressman, actually just from my perspective, you know, and not parochial, Tucson is 120 miles from, south of Phoenix. I will leave it to the experts on Tucson. But the City of Phoenix, actually, as we testified, puts two city attorneys at our expense. We are asking for funding to continue that, and that is another program to prosecute strictly Phoenix federal prohibited gun cases and drug cases.

Mr. CULBERSON. You are up to your ears in alligators in Phoenix, you are not really familiar, I guess, with what, is what you are telling me.

Mr. GORDON. I——

Mr. CULBERSON. Which basically is the problem, you are up to here. You have got so much on your own plate right there. That is a huge source of the problem, Mr. Chairman, I can tell you. Is going down to the Border and seeing the Border Patrol agents are, of course, intensely frustrated that 99.6 percent of every arrest they make, 99.6 percent of the people they arrest, are gone. They are going to be released and not prosecuted. They have had cases, they showed us, Mr. Chairman, of a video taken from a surveillance airplane of, did they have vehicles in that train? Was it vehicles and people? People, they had whole, like army ants coming over the Border with thousands pounds they found on them? About a thousand pounds. And Border Patrol agents went out there, intercepted them at 2:00 in the morning, snakes, cactus, these guys are armed to the teeth. Pitch black, DEA was involved in this, I think, you guys went out there in the middle of the night. This was an arrest in the Tucson Sector near the Fort Huachuca. And the U.S. Attorney turned them all loose. So there is a, it is essentially the wild west.

One of Phoenix's big problems, Mr. Chairman, is that the U.S. Attorney in that sector is not doing their job, and that is something I want to make sure we zero in on. This, in fact, Mr. Chairman, the Committee was very generous last year. With your help, Mr. Chairman, and with the help of Ranking Member Frelinghuysen, and Frank was a big part of this when Frank was our Chairman and Ranking Member. But in last year's bill, Mr. Chairman, this Committee provided enough money to hire twenty-five new federal prosecutors in Arizona. Yet the U.S. Attorney out there refused to hire them. She only hired, filled nine of the positions. And they are still turning loose 99.6 percent of all the people arrested. So it is a huge part of your problem because they are coming over the Border in Tucson.

In fact, Mr. Chairman, I was able to establish in my Homeland Security Committee, and also in testimony before this Committee, but the Border Patrol Chief Aguilar confirmed what I had been saying for years, and that there are actually manned observation posts in Arizona. The smugglers are so brazen that they actually have, and Mayor's nodding his head. You are familiar with this. They have got on hilltops on U.S. soil observation posts manned by these smugglers with the best satellite phone technology, scrambled satellite phones, high powered weapons, food. They even bring them female companionship. These guys have got all they need. And they are out there watching our law enforcement officers go out and attempt to make these arrests. The DEA and ATF, you are probably familiar with this. In El Paso, have you heard about the observation posts in Arizona? It is wide open, wild west in Tucson, Mr. Chairman.

So number one, we want to make sure, I want to work with the Committee in making sure we get those prosecutor positions filled. And finally, Mr. Chairman, one other point I want to make, and also for your sake, Mr. Mayor, and Chief Harrison, that the U.S.

Attorney's Office, because you know how relentless I am, I bird dogged this on the Operation Streamline. And I was able to establish with certainty that the U.S. Justice Department told us last year that if this Committee fully funded President Bush's request, and in fact you even beefed it up a little bit, Mr. Chairman, the U.S. Attorney's Office, they promised us that they would be able to implement Operation Streamline, the zero tolerance policy, from Brownsville to San Diego. That they would have the resources to do this in Arizona.

So I want you to know help is on the way, Mr. Mayor. The Chairman, I may be about to run out of my time on the five minutes. I wanted you to know, help is on the way. It is a partnership. It is really important that the U.S. Attorney there who is based in Phoenix, who covers the entire Tucson Sector, do her or his job in handling these prosecutions.

And then finally, Mr. Chairman, can I just ask very quickly, the Chief, there was a story in the press about five or six months ago about a paramilitary band dressed in black that assaulted a house in Phoenix. And the reports I got on the news wires was that this was some kind of a paramilitary strike force. The drug cartels going in to take out or execute a hit in Phoenix. Number one, tell us more about that story and how common is that? These guys have penetrated into Phoenix. They can operate at will anywhere in the United States, can they not?

Chief HARRISON. That was reported, that it was some type of a military operation. But that was not accurate. These were drug dealers. They were heavily armed. They had come into a West Phoenix neighborhood and invaded a house going after money and drugs. They fired over a hundred rounds from assault weapons into the house, and our officers happened to come upon them as the gunshots were being fired. And we were able to capture some of those people.

Mr. CULBERSON. That was not the Zetas?

Chief HARRISON. But it was falsely reported that it was a military operation out of Mexico.

Mr. CULBERSON. Paramilitary. It was not the Zetas?

Chief HARRISON. It was drug dealers.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mr. MOLLOHAN. I am going to give the witnesses a chance to respond to Mr. Culberson's concerns. And can we start with Mayor Gordon?

Mr. GORDON. Thank you very much. I think my only response, request would be the filling of a permanent U.S. Attorney, particularly in Arizona and the Border states would be greatly appreciated by everyone. Right now it is interim, as everyone is aware of, and it really was almost an interim position as the previous, prior U.S. Attorney was let go. And so it has been, I believe personally, something that should be a priority to put on the, I guess, all the Borders given the changeover, that we get a U.S. Attorney. And that I know about and understand. I think, again, we need to have a U.S. Attorney assigned to Arizona.

Mr. NEWELL. Mr. Culberson, it boils down for us in ATF, to a resources issue. I mean, of the twelve agents that I have at my dis-

posal to address Gunrunner and the firearms trafficking issues in Metro Phoenix, the fifth largest city in the country, I have got two dedicated full time for the HIKE, the Home Invasion Kidnapping Enforcement Task Force, and one of the my three intel analysts over there full time. So I have taken two of twelve and one of three resources to dedicated, because it is a very important issue.

In Tucson, for instance, the Violent Crime Impact Team that Ranking Member Wolf is familiar with, the Violent Crime Impact Team Initiative, I have three in my division. I have one in Mesa, Arizona, one in Tucson, and one in Albuquerque. Because Tucson is starting to see an uptick in home invasions. And the same issues that Phoenix, unfortunately, is afflicted with right now. I have retooled the VCIT mission. The VCIT mission is violent crime, addressing firearms related violent crime. Well, these home invasions, these kidnappings, as the Mayor and the Chief have said, involve firearms related violent crime. So the VCIT in Tucson is addressing firearms related violent crime in Tucson, in the city limits of Tucson, working in close partnership with Tucson P.D.

But again, it is resource driven. I have got agents, and this is almost like a plea on my part. I have got agents that have not had a day off in months, because they are seriously, seriously dedicated to this. I have to balance the personal needs of my employees with the mission needs of ATF. And I routinely have to tell supervisors, "Send that person home. They have a family." Because we are that dedicated to this issue.

I fought very hard a year ago and finally have a PGR, I have a member of the Mexican PGR fully vetted in my office. It is the first time we have done it. We are hoping to expand it. Because one of the key things, it is not just partnerships on this side of the Border but partnerships with our Mexican counterparts. If we can find those key people in Mexico to partner with, to share information. Not just talk about sharing information but actually doing it, I think that is going to be how we really get to the next level here.

And, you know, the Border is not a barrier to criminals. We need to eliminate the Border as a barrier for us and how we do business.

Mr. MOLLOHAN. I want to get to that relationship with the Mexican agents in just a moment, but I want to give Special Agent Arabit an opportunity to respond to Mr. Culberson.

Mr. ARABIT. Thank you, Mr. Chairman. Mr. Culberson, obviously, more prosecutors facilitate what we do. Along the entire Southwest Border region, we have task forces, we have OCDETF strike forces which include federal, state, and local agencies that are working very hard on this important issue. We also have High Intensity Drug Trafficking Area Task Forces that are working very hard on this issue. And obviously, the additional prosecutors would help facilitate the good work that those folks do.

RESOURCE NEEDS IN THE FIELD

Mr. MOLLOHAN. Now, let us talk about resource needs a little bit, Special Agent Arabit. Talk about the territory you are covering, the resources in terms of manpower and equipment that you have to cover that territory, and its adequacy or inadequacy for the record, please.

Mr. ARABIT. Sir, I cover the El Paso Field Division, and that is comprised of five different offices. We have an office in El Paso; an office in Alpine, Texas; an office in Las Cruces, New Mexico; an office in Albuquerque, New Mexico; and an office in Midland, Texas. We have 124 special agents and we have approximately fifty-five task force officers. These are officers from state and local agencies who are deputized to work on our task forces. They are deputized as federal agents.

Just in the last couple of days I learned that we are going to assign a Mobile Enforcement Team to the El Paso Field Division to work on methamphetamine related cases and also on border violence. In fact, there are four Mobile Enforcement Teams that will be assigned along the Southwest Border. Well, actually two along the Southwest Border, one in Phoenix, one in El Paso, and then one in Chicago and one in Atlanta based on the fact that, you know, that the Mexican drug cartels have an influence in those cities.

There are also an additional sixteen positions that are under consideration for various offices, or the five, rather, offices along the Southwest Border.

Mr. MOLLOHAN. So, you are the expert. Tell us your opinion. Adequate? Not adequate? You know, you just described additional initiatives as a result of the omnibus funding that we just passed. $10 million in the omnibus for the Mexican Meth Trafficking Program. You are obviously getting some of that money. You just indicated that. $21 million in the omnibus and the GWOT for DFAS programs. Adequate? Inadequate?

Mr. ARABIT. Well the first thing——

Mr. MOLLOHAN. What do you need?

Mr. ARABIT. Thank you for the question, Congressman. The first thing that I will say is that 29 percent of our domestic agent work force is located along the Border. To address the threat we realigned resources in 2002. I think for the moment it is adequate, but obviously in the 2010 budget we will be asking for more positions for the Southwest Border. But I think for right now it is adequate.

Mr. MOLLOHAN. Now, I want you to answer this question as an agent out there in the field. How many more agents would you like having working out there with you?

Mr. ARABIT. Well sir——

Mr. MOLLOHAN. Would you like to have any more?

Mr. ARABIT. Yes, sir. Absolutely.

Mr. MOLLOHAN. How many more would you like to have?

Mr. ARABIT. Obviously additional enhancements would help us to more effectively and efficiently do our job.

Mr. MOLLOHAN. How many teams? Give us some sense of scale.

Mr. ARABIT. Well sir, the Mobile Enforcement Team that is being assigned to the El Paso Field Division is going to be a tremendous help to us. You know, a few additional teams like that would be beneficial.

Mr. MOLLOHAN. Special Agent Newell? If you——

Mr. NEWELL. Same question, sir?

Mr. MOLLOHAN. Same question.

Mr. NEWELL. Yes, sir.

Mr. MOLLOHAN. And then I will follow up.

Mr. NEWELL. Well, obviously sir, you know, twenty years in ATF. When I came on the job twenty years ago I think we had roughly 1,800 agents and we currently have roughly 2,500 agents now. So I hope I have my numbers right. That is approximately right. So yes, sir, I can always say we desperately need more resources. You know, one of the issues, and I said that to Congressman Culberson, is I have routinely conversations with my supervisors about, "You send that agent home for a few days." Because we have taken this, everything we have done in the last, really, since we started Project Gunrunner has been with the existing resources. We redeployed resources, existing resources around the country, to the Border. And with the generous support, with the stimulus package, with the $10 million we started El Centro, California, a field office in El Centro, California, Las Cruces, New Mexico, and McAllen. And with five, and four additional positions in Mexico. With the $5 million in the fiscal year 2009 we created, we are getting an office in Houston and another office in Phoenix. So——

Mr. MOLLOHAN. They are shorting you $1 million. I think it is $6 million.

Mr. NEWELL. $5 million is it, I believe.

Mr. MOLLOHAN. Oh no, go get that other million. It is there.

Mr. NEWELL. But, yes sir, to answer your question, obviously, yes sir, I mean I could always use additional resources.

COORDINATION WITH MEXICAN COUNTERPARTS

Mr. MOLLOHAN. Describe your relationships with your counterparts in Mexico, what it is now, what it should be, and what we should be doing with your counterparts that we are not doing?

Mr. NEWELL. Well like Mr. Arabit, I spent four years in Bogota, Colombia during the early nineties, during an interesting time in Colombia. And I will tell you, the only way we can make tremendous firearms trafficking cases is training and vetting key law enforcement officials, in this instance in Mexico, that can work in partnership with us to ensure that we get in a timely fashion the firearms tracing information so we can trace it and identify, you know, the sources of those firearms.

So to answer your question, sir, about a year ago, with ATF's support, we started a pilot project of getting a PGR representative, the Mexican version of DOJ. And we have that person in my office in Phoenix. It has already paid dividends. Because that person not only is a PGR prosecutor and attorney, he also works under the umbrella of the Consul General's Office in Phoenix. So he kind of has a dual hat. And, you know, done the right way and fully vetted, of course, these individuals give us the portal, if you will, into a system that has been almost at the Border stopped. And now it is not. And we are, you know, DEA has many vetted units in Mexico and I will let Mr. Arabit speak about that. But it is key. Partnerships with our foreign law enforcement counterparts is key in this.

Mr. MOLLOHAN. Now, what we want to understand is scale, here. To what extent would that have to be scaled up to be adequate?

Mr. NEWELL. As far as our partnerships?

Mr. MOLLOHAN. Yes.

Mr. NEWELL. Well, something similar to, you know, DEA has a tremendous program in Mexico with their vetted units. Something very similar with us in Mexico, as well.

Mr. MOLLOHAN. How far away are you from being there?

Mr. NEWELL. It is a resource issue, sir.

Mr. MOLLOHAN. No, I know what it is. I know it is a resource issue.

Mr. NEWELL. Yes, sir.

Mr. MOLLOHAN. I am asking how many more agents? How long would it take to train and to implement and to create the partnerships? And how many people are we talking about?

Mr. NEWELL. Just in my Field Division, sir, I could easily use another group in Phoenix and another group in Tucson, and the major cities. And, you know, you are talking about a year process to hire them on, get them through the academies——

Mr. MOLLOHAN. How many agents are in a group?

Mr. NEWELL. Usually it is a ten, one, and one model, sir. Ten agents, one supervisor, and one support staff. So, but again, it is like the money that we have gotten in the stimulus as well as the 2009. It is about a year process, to get them hired, get them through the process, you know, get them background cleared, get them through the academies. The individuals that we are getting from the stimulus, in for instance Las Cruces, is probably going to be October, November just because of the time frames that are involved with it.

Mr. MOLLOHAN. Okay. What I am trying to understand is your relationship with your counterparts in Mexico. What more do we need to do there? And how do we need to help Mexico?

Mr. NEWELL. Well sir, I think deploying additional ATF assets in Mexico and having the vetted units in——

Mr. MOLLOHAN. That needs to happen?

Mr. NEWELL. Yes, sir.

Mr. MOLLOHAN. Special Agent Arabit.

Mr. ARABIT. Yes, sir. DEA has eleven offices in Mexico. We have had agents on the ground in Mexico for decades. We have 100 employees——

Mr. MOLLOHAN. Sounds like you are further ahead than ATF is in these relationships.

Mr. ARABIT. We have been in Mexico for many, many years, sir. As I mentioned, we have 105 employees in Mexico, sixty-two of those employees are special agents who are involved in the intricate details of the work with the Mexican government. We do everything from, you know, from sharing sensitive intelligence from wiretap information on the U.S. side with the Mexicans to helping them establish wiretap cases and wiretap programs. We share informants. We, you know, we have access to Mexico's witnesses, Mexico's evidence. We have had the opportunity to build so many cases on the U.S. side as a direct result of that collaboration. So we have been working with the Mexican government for a long time.

Mr. MOLLOHAN. What part of that is adequate and what part of it is inadequate?

Mr. ARABIT. Well, I think the part that is inadequate, sir, is just the part that is being addressed by the Merida Initiative. And that

is the institution building. I think the, you know, the Mexican government under President Calderon's administration is doing just a tremendous, tremendous job rebuilding their institutions. And I think that we have to be there to support them with Plan Merida.

As Mr. Newell pointed out, we work a lot with vetted units. These vetted units are comprised of personnel that have been trained by DEA, and in some instances polygraphed by DEA. These are the people we work with on a daily basis. But there are only a couple of hundred of these people. And so Plan Merida addresses that specific issue in that, you know, it affords for the training of these individuals which is a very important component in our collaborative relationship.

The only other thing I would like to point out is just two recent examples of our extensive collaboration with Mexico. Operation Xcellerator, where thousands of pounds of drugs were seized, over $59 million in currency was seized, and more than 750 individuals were arrested. That operation would not have been anywhere near as successful as it was without the extensive collaboration of the Mexican government.

The second operation I would mention is Project Reckoning. And that was the operation that targeted the Gulf Cartel. You know, the Zetas and company. And in that particular instance the Mexican government collaborated with us extensively. In fact, we used some of their information to secure some of the indictments in that case. And so I say that to say that the collaboration with the Mexican government is good.

The final point I would like to make, sir, is our El Paso Intelligence Center also has some Mexican police representatives involved. And so we are collaborating with them on a daily basis. I specifically, and my Field Division in El Paso, specifically collaborate with our office in Ciudad Juarez. And we have a real time exchange of information with the Mexican government.

Mr. MOLLOHAN. Thank you, Special Agent Arabit. Mr. Wolf.

MILITARY ON THE BORDER

Mr. WOLF. Thank you, Mr. Chairman. Just a thought before I ask a question. It appears that the problem is too that we have really lost control of our Border. And, you know, my dad was a policeman, a police officer, and I am very sympathetic to police officers. And I was thinking as we were listening to your testimony, the two Border Patrol people who were put in jail and allowed to be in jail for the longest period of time. I do not know how many years they were in jail. A couple of years. That the disincentive and the message, you know, that that would send to a law enforcement person, to have two people who were attempting to do their jobs. I do not know all of the case. And then you were talking about the U.S. Attorney. The U.S. Attorney prosecuted them. And I watched part of that hearing. And he could not really answer a lot of the questions. So I sort of started to think of that. What does that mean? What kind of message? And did that set us back?

The two questions I have is, one, and then you can just answer me and I will shut the microphone off. We hear a lot of people talking about military on the Border, our military down on the Southwest Border. There have been some governors that have asked.

Secondly, what ever happened, you lost an Agent Camarena, if I recall, twelve, fifteen years ago. Do you recall that case?

Mr. ARABIT. Yes, sir, I do.

Mr. WOLF. Whatever happened to the people that killed him? Were they ever tracked down? Were they ever prosecuted? So one, and Mr. Mayor before, you know, anything we can do to help you. Because I think public safety, the people that live there, that is the number one thing they deserve. To make sure they live in safe neighborhoods. So anything we can do to help I think we should. But if you can answer, troops on the Board, U.S. troops on the Border, and secondly whatever happened to the people that killed Agent Camarena? Were they prosecuted?

Mr. ARABIT. Thank you for the question, Congressman Wolf. With respect to the individuals who tortured and murdered Special Agent Ricky Camarena in February of 1985, they were captured and they do currently sit in jail.

Mr. WOLF. In a U.S. jail, or in a jail in Mexico?

Mr. ARABIT. There are a couple in jail in Mexico and a few in a U.S. jail.

Mr. WOLF. Okay. And I guess since, I do not want to put them in a tough spot, your thoughts about U.S. troops on the Border?

Mr. GORDON. Mr. Chairman and Mr. Wolf, I will answer that directly. I would also like to point out that just over a year ago, almost exactly a year ago, Officer Erfle, a Phoenix police officer, was killed by a violent gang member that was undocumented and was able to come across illegally at the Border on several occasions. He also happened to be a partner at one time with my son, who is a Phoenix police officer, and watched his two little children cry. And so this is an important issue for me on a personal level, that we need to secure that Border.

With respect, and probably the only thing I will differ with these brave individuals in that they represent to the left of me, not politically, but to the left of me. Is that, you know, there could not be enough agents on the Border and in the urban core cities. Even what was announced today, which is a great first step by the administration, it is a drop in the bucket in terms of what is needed. And I realize it is resources. But these are the most effective results.

I personally support the National Guard on the Border. And assuming the Constitution is followed and allowed any resources that the federal government can give, particularly in the intelligence area, and the tracking area. This to me is about the U.S. sovereignty protection. I think that the Border needs to be secured to protect those innocent immigrants that are being brought across. And on the other hand, our security, the more we can do, and if I could squeeze this in. If I was asked the question about how many more agents, and maybe again the model of what could occur if this is what the federal government agents and that this Subcommittee would want is Phoenix, again, it is that year to get an agent under the federal system hired, trained, polygraphed. Phoenix, and I just checked with the Chief, is willing to increase our participation in that interim gap under and by in charge of the federal agencies to help in that interim period. If you could fund that part we can hire patrol officers, and we are hiring patrol officers.

The expertise that these experienced officers have are hard to develop, even new agents. And anything we can do in that area would help this entire nation.

So I think certainly the more presence on the Border the more important it is. And with respect to Mexico, those brave officers and government officials are the targets of the killings and the assassinations. And the more we can do to help them. I think the Chief has told me your, the DEA, that over 200 chiefs of police and sheriffs were assassinated over the last two years. That sends the message, unfortunately, to those brave individuals also. So getting the support in whatever manner it takes, I would be there publicly to support that.

Mr. MOLLOHAN. Thank you, Mr. Wolf. Mr. Culberson.

OPERATION STREAMLINE

Mr. CULBERSON. Thank you, Mr. Chairman. I want to document for the Committee, Mr. Chairman, in detail to show what is working and what we can do to help support that effort in expanding Operation Streamline, the zero tolerance policy. And I wanted to ask the witnesses first of all, particularly Special Agent Newell and Special Agent Arabit if, I want to characterize Operation Streamline because time is brief. And the success we have seen in the Del Rio Sector as opposed to what is going on in Tucson.

And it is, securing the Border is no different than securing a neighborhood or a city. If the law is enforced, uniformly, fairly, with a sense of equal justice for everybody, if people know with certainty that the law is being enforced, and there is a prosecutor standing behind these officers, and a jail cell waiting for a criminal with a certainty of prosecution, the streets are going to be quiet. And it is working in Del Rio. And I would like to ask you, Special Agent Newell and Special Agent Arabit to confirm that what we have seen firsthand in Texas in the Del Rio Sector and the Laredo Sector with Operation Streamline is, we have seen about a 70 percent drop in the crime rate, Mr. Chairman, in the Del Rio Sector, about a 60 percent drop in the Laredo Sector. We have seen dramatic, we are talking about a 50 percent drop in illegal apprehensions in the Laredo Sector. An even bigger drop in illegal apprehensions, I think it is 70 percent or 80 percent in Del Rio. Simply by enforcing existing law.

There is an existing statute that says that six months in jail if you cross the border illegally. The judge, Judge Ludlum literally sat the prosecutors down, and the U.S. Attorneys, and the magistrates and said, "You are going to put in the time." She brought in all the law enforcement, federal, state, local, we are all going to work together. It is a team effort, Mr. Mayor, you are exactly right. Judge Ludlum, God bless her, she initiated this then I found out about it and was able to help with this great Committee. With the help of earmarks, which are so badly abused but are so important. In fact 80 percent of my earmarks went outside of my district, Port of Houston or the Border, in particular.

But I was able to target money to this program with great success, with your help, Mr. Chairman, and the help of Chairman Price. And as a result, the, all that is happening in Del Rio and Laredo is the law is being enforced, that is six months in jail. Ev-

eryone is being arrested. Obviously with the exception of women and children, the offices are using their own good judgment. If you are arrested by the Border Patrol in Del Rio or Laredo you will be prosecuted for, and you will be thrown in jail for a short period of time, up to six months. A couple of days, a couple of weeks, six months, and then deported. And they do not get any repeat customers. Mr. Chairman, there is actually a surge in demand for bed space but there are actually vacancies. Are there still vacancies in the Val Verde County Jail? They have vacancies as we sit here today in the Val Verde County Jail because the word got out.

And you can actually see the edge of the sector, Mr. Chairman, of the Del Rio Sector. The trash picks up. Because they are all going around it. And they know that if they cross in Tucson it is the wild west. They have a 99.6 percent chance of never being prosecuted if they carry less than 500 pounds of dope. And as a result all the loads, when I hope we go to Tucson, you will see the evidence room. All the loads are under 500 pounds. And they all go free. But if they cross at Del Rio they go to jail. So it is working in Del Rio and in the Laredo Sector.

Would you agree that enforcing the law, using Operation Streamline, if we were to expand Operation Streamline, and the U.S. Attorney has already told us, the Department of Justice, Mr. Chairman, that they have the resources to implement Streamline from Brownsville to San Diego using last year's since we approved last year's omnibus. Would you agree, Agent Newell and Agent Arabit that if we were to expand Operation Streamline from Brownsville to San Diego the border would largely be as quiet and secure up and down the entire border as it is in Del Rio and Laredo? And that you agree it is a successful program?

Mr. NEWELL. Well, Congressman Culberson, I know Chief Gilbert and Chief Beeson well. They are friends of mine and they are outstanding law enforcement professionals. And, you know, our concern in ATF, is of course of firearms related violent crime, as it is with them. I meet with Chief Gilbert and Chief Beeson on a regular basis. And their concern just like mine is the safety of the Border Patrol agents on the Border.

Mr. CULBERSON. And he is the Chief of the Tucson Sector, Mr. Chairman.

Mr. NEWELL. Yes, sir. Chief Gilbert is Tucson and Chief Beeson is Yuma.

Mr. CULBERSON. Right. And his agents are assaulted regularly because the illegals have no respect for law enforcement because they are not going to jail.

Mr. NEWELL. Right. And our concern——

Mr. CULBERSON. Is that correct?

Mr. NEWELL. Our concern, of course, is the firearms violence.

Mr. CULBERSON. Yes, sir.

Mr. NEWELL. And so we, you know, I regularly work with the Border Patrol and meet with them. And any cases that we can take regarding obviously, you know——

Mr. CULBERSON. Right. Firearms. But——

Mr. NEWELL. Yes, sir.

Mr. CULBERSON. My time is so limited. Forgive me.

Mr. NEWELL. Yes, sir.

Mr. CULBERSON. Can I ask Agent Arabit? Is it, tell us about Operation Streamline and your impression. Is it working and a successful program that we should expand to the El Paso Sector and Lordsburg?

Mr. ARABIT. Sir, the limited knowledge that I have on Operation Streamline has more to do with the high prosecution rate. And my opinion as far as the high prosecution rate is that if, you know, if the bad guys know they are going to get prosecuted then they are not going to cross there.

Mr. CULBERSON. It works?

Mr. ARABIT. It works, yes.

PARALLELS WITH COLOMBIA

Mr. CULBERSON. Okay.

There is no question about it. Thank you, and you have been very generous with the time, Mr. Chairman. If I could ask one question that I hope will be helpful in illuminating the purpose of this hearing in conclusion, because Agent Newell, you have got experience in Colombia. Could you talk to us about the parallels between what we see today, the level of violence in Northern Mexico, with what you saw in Colombia? And what historical parallel is there to help the Chairman of the Subcommittee get a handle on what we are seeing today in Northern Mexico?

Mr. NEWELL. Well I think what we are seeing, sir, from my personal experience is the efforts that President Uribe took in Colombia are very similar to the efforts President Calderon has taken. You know, he is taking the battle to the drug cartels. And they are responding with the only way they know how, which is rampant violence. And that violence is being perpetrated by guns that they are illegally purchasing and illegally trafficking, in large part out of this country. So the parallels are that the government of Mexico, in my opinion, is taking just a phenomenal, taking on a phenomenal task and doing the best they can, considering the daunting task.

But to address something, if I may, Mr. Congressman, is in the interim of that one-year period to hire people we have detailed and are detailing to the Border to fill that gap. So there will not be a one-year lull, if you will, until the time that, you know, those agents are coming on. We are detailing to Texas a significant amount of personnel to deal with a bunch of investigative leads we have in Texas on firearms trafficking issues.

Mr. MOLLOHAN. What percent of your agents are on the Southwest Border?

Mr. NEWELL. Sir, I think currently we have dedicated to Project Gunrunner we have roughly about 146 special agents. There is thirty-two in Phoenix Field Division, which of course is Arizona and New Mexico. Because we also obviously enforce the arson laws, explosives laws, and other things that we are statutorily mandated to.

Mr. MOLLOHAN. But of all the agents you have in the Bureau of Alcohol, Tobacco, and Firearms, what percentage of them are stationed in the Southwest Border?

[The information follows:]

What percentage of ATF agents are stationed in the Southwest Border?

Answer. As of April 11, 2009, ATF has a total of 2,569 agents. ATF has 419 agents working on the Southwest Border, as defined by ATF's four field divisions (Houston, Dallas, Phoenix, and Los Angeles), which constitutes 16% out of ATF's total agent population. Of the 419 Southwest Border agents, ATF has 155 agents working firearms trafficking cases.

Mr. NEWELL. Sir, I do not have, I can get you that information. I am sorry, sir.

Mr. MOLLOHAN. Okay.

Mr. CULBERSON. Mr. Chairman, may I have one very narrow follow up?

Mr. MOLLOHAN. Do you want Special Agent Arabit to answer that same question about Colombia?

Mr. CULBERSON. Yes. I would be very interested in the analogy. And do you think, either one of you, that the government of Mexico is in danger of collapsing? The U.S. military has said that Mexico, Pakistan, and I think Afghanistan are three of the most unstable governments in the world and most likely to collapse. I wanted to ask you about that. And then one very narrow follow up for ATF. Yes, thank you. Thank you, sir.

Mr. ARABIT. Thank you, sir, for the question. I do not believe that the government of Mexico is going to collapse. I think the difference between, one of the big differences, the distinct difference between Mexico and Colombia, is that you do not have an active insurgency in Mexico as you did in Colombia, and maybe still do in Colombia to some degree with the FARC. And I think that is an important thing to note. The government of Mexico is working on unprecedented levels to break the power and the impunity of the cartels. I have personally seen it.

I was in Juarez last Thursday. And what I saw just amazed me. I saw the military and the SSP, which is one of the police agencies in Mexico, working in a task force environment. And I saw them in the streets of Ciudad Juarez working in convoys, and setting up checkpoints. And the reason for that, I know there was a concern raised earlier about the military being involved. The reason for that, as was explained to me by the general who is in charge of security for Ciudad Juarez, was that if the military encountered a police situation, they would contain the situation and pass the defendants, the bad guys, over to the police for further processing. And in my entire time working with Mexico, and even in Mexico, I have never seen that sort of cooperation among the military and police entities in Mexico.

And so the will to resolve this problem is certainly there. I just think that we need to manage our expectations in terms of how quickly the problem will be resolved. Because they are taking, they are trying to take a crisis situation in Mexico and transform it into a traditional police problem that will eventually be dealt with by the police force, once the police force is trained and up to speed and staffed. So I do not believe that Mexico is anywhere near the verge of collapse.

Mr. CULBERSON. May I ask one very narrow follow up of ATF? Yeah. Do you, if I could, Special Agent Newell, I wanted to ask you specifically, of those federally, the FFLs, the federal firearm license holders in the United States. What percentage of those FFLs are deliberately involved in criminal activity? It has got to be less than 1 percent.

[The information follows:]

What percentage of federal firearm license holders in the U.S. are deliberately involved in criminal activity?

Answer. To date, over the ten-year period from FY 1999 to FY 2009 (as of 4/1/09), 245 cases involving 262 defendants (federal firearms licensees) have resulted in a determination of guilt in judicial proceedings. During this time period there have been at least 104,000 active federal firearms licensees in business each year. Thus over the 10 year period in aggregate, approximately ¼th of 1 percent of FFLs have been found guilty of criminal activity in federal court.

Mr. NEWELL. It is a very small percentage.

Mr. CULBERSON. Less than half of a percent?

Mr. NEWELL. I do not have the exact percentage off the top of my head, sir, but it is a very small percentage?

Mr. CULBERSON. Probably less than one-half of 1 percent?

Mr. NEWELL. Again, sir, I do not have that. But——

Mr. CULBERSON. Certainly less than 1, and I am delighted to hear it. The next time that comes up in one of our hearings I am glad to have that little piece of statistical ammunition. Thank you, sir.

Mr. NEWELL. Yes, sir.

Mr. MOLLOHAN. Thank you, Mr. Culberson. Some wrap up questions. Mr. Culberson is a real advocate for doing additional things on the Southwest Border to improve the situation. I know he has appreciated these hearings for that reason, and he frequently communicates with the Chairman and Ranking Member of this Subcommittee and the Homeland Security Subcommittee about this. So we commend him for that.

COMMUNICATIONS CAPABILITIES

In dealing with these issues, we have heard more than once that the cartels have better communications equipment than the United States federal agents or the local police have. Is that true? And if so, how is it true and to what extent?

Mr. ARABIT. Thank you for the question, sir. The cartels are well equipped. I will just leave it at that.

Mr. MOLLOHAN. No, I do not want you to leave it at that. I want you to explain to the Committee what you mean and give us some detail.

Mr. ARABIT. Sir, I would like to explain that to you in private.

Mr. MOLLOHAN. Oh. Sure. Of course.

Mr. ARABIT. But they are well equipped.

Mr. MOLLOHAN. Do we have an issue here? Okay. Well, we will leave that at that then. Mayor? Chief? If you are comfortable with answering that.

Chief HARRISON. I would only say that only additional funding that is available for interoperability for local agencies, that that is extremely important on a daily basis as well as in an emergency like 9/11. Because when you travel from one side of the valley in Phoenix to the other you travel through ten of fifteen different police agencies. And if they are all on different radios and they are unable to communicate with each other, that creates a real officers safety hazard because officers are traveling back and forth across the valley following suspects. We have had shoot outs in Phoenix involving officers from other agencies. We did not even know it was happening until they were able to call. So just from the commu-

nications standpoint anything that is dedicated to true interoperability for local agencies is very valuable for police and fire.

Mr. MOLLOHAN. Well, thank you. Mayor, you probably know this, but for the record, there is $1 billion in the stimulus bill for the COPS hiring program, Community Oriented Police. That is really a reactivation of that program in a fairly big way. The whole purpose was to address the concerns that you expressed here at the beginning of the hearing and that the Chief echoed about needing additional personnel to meet this challenge. So I wanted to make sure you knew about that. I am sure you did. But I want to encourage you to apply for it.

What an excellent panel. Both panels were excellent and we very much appreciate your testimony here today. As you can see, there was a lot of interest from members of the Committee. We know the administration just today came out with an initiative. We want to support that and already have in a number of ways. This testimony today will help us identify areas where we can be more robust in our funding, more targeted, and help you all do the tremendous and dangerous job that you do every day. And you have made that clear here today, that you greatly appreciate the kind of work ethic and sacrifice that your people are making. We recognize it and appreciate it as well, and we appreciate your good work and the good work of those who are over you.

So thank you for your testimony and for your coming these long distances. And Godspeed.

Commerce, Justice, Science, And Related Agencies

Appropriations for 2010

Federal Law Enforcement Response To US-Mexico Border Violence

Tuesday, March 24, 2009

Questions Submitted By Mr. Mollohan

EXPECTATATIONS

QUESTION: Barring a major change in budget or policy, what can you realistically expect to achieve over the next year? Do you think this is a case where we need to manage our expectations?

ANSWER

Because all the variables needed to successfully predict the behaviors of the drug trafficking organizations and cartels are not fully known, managing expectations is prudent. Nonetheless, ATF is aggressively working to keep weapons out of the hands of the cartels and other dangerous criminals in Mexico by adding additional special agents, investigators and other personnel to disrupt firearms trafficking networks, increasing ATF oversight of the Federal firearms licensees along the border, and improving the coordination of firearms trafficking information among Federal, State, and local law enforcement agencies located along the border.

ATF will do the following:

· Identify firearm trafficking suspects and organizations that are affecting the Southwest Border and pursue criminal investigations.

· Seek the criminal prosecutions of firearm trafficking cases and defendants and administrative adverse actions against Federal firearms licensees for Gun Control Act violations.

· Identify all firearms and other assets subject to forfeiture in firearms trafficking cases.

· Increase industry and public awareness through media and educational activities related to firearm trafficking.

· Inspect licensees to detect diversion, promote voluntary compliance, and partner with the industry to devise voluntary internal controls and best practices aimed at preventing diversion.

MERIDA INITIATIVE

QUESTION: Although the Merida Initiative was billed as enabling and expanding bilateral law enforcement coordination between the United States and Mexico, very little of the associated funding is directed to US law enforcement agencies. Do you feel that the Merida Initiative's funding mechanism is too narrowly conceived? Should ATF be a larger part of the Merida funding stream?

ANSWER

ATF offers two programs that, if offered continued support through the Department of State, could benefit from expanding the Merida Initiative: 1) increasing the utilization and development of ATF's Spanish eTrace system through Central America and Mexico; and 2) expanding and modernizing ATF's ballistic imaging system, the National Integrated Ballistics Imaging Network (NIBIN).

Spanish eTrace. Firearms tracing is the systematic tracking of a firearm from its manufacturer or importer through the chain of distribution of wholesalers and retailers to the first retail purchaser. About 90 percent of the firearms trace requests from Mexico are sent to ATF via a web-based system called eTrace that provides approved law enforcement agencies the ability to send trace requests, receive trace results, and perform analysis of the consolidated results securely via the Internet. Although Mexico currently uses eTrace, they are unable to realize the full benefits of the system because it is in English and the data structures do not allow for name and address conventions common in Hispanic cultures and countries. ATF is currently developing a Spanish language version of eTrace that is scheduled for full deployment at the end of 2009. Expanding the utilization of Spanish eTrace through the region will allow law enforcement to effectively determine sources of firearms to better target firearms trafficking interdiction efforts. This will subsequently help reduce violent crime by decreasing the availability of illegal secondary market firearms and identifying those who illegally supply firearms to criminal organizations.

Expanding NIBIN. As with fingerprints, every firearm has unique identifying characteristics that can be linked through the distinct markings that it leaves on an expelled cartridge case. Equipment deployed through ATF's NIBIN Program allows firearms technicians to acquire digital images of the markings made by a firearm on bullets and cartridge casings, for use in comparing and matching ballistic evidence recovered at crime scenes. In the U.S., ATF's NIBIN Program integrates ballistic imaging systems among Federal, State and local law enforcement agencies, providing an effective investigative tool that makes it possible to share intelligence across jurisdictional boundaries and to identify links between firearms evidence. If resources are allocated, ATF would be able to modernize its NIBIN program and integrate our data with ballistics information systems currently deployed in Mexico. An integrated and more robust system would enable U.S. and Mexican law enforcement to discover links between crimes more quickly, including links that would have been lost without this technology.

BORDER VIOLENCE POLICY

QUESTION: The Administration recently released a comprehensive border violence policy, which included a proposal to redirect 100 ATF agents to the border region. Where will these 100 agents come from, and how long will they be on temporary duty to the border? What will happen to your capabilities when those temporary duty assignments end?

ANSWER

In order to have an immediate and significant impact on the escalating violence related to the trafficking of firearms from the U.S. into Mexico, ATF will temporarily deploy approximately 100 personnel to the Houston Field division as part of a new ATF intelligence-driven effort, known as Gunrunner Impact Teams (GRITs). ATF personnel will be deployed from non Southwest Border field divisions nationwide and consist of special agents, industry operations investigators, and support personnel. Details will commence no later than April 27, 2009, and may last up to 120 days. ATF expects this deployment to cost approximately $3.5 million, which will be funded using base resources. This deployment will allow ATF to work through existing leads and provide immediate support to personnel within the affected areas. When the temporary duty assignments are completed, ATF plans to deploy new hires and permanent reassignments to the Southwest Border areas.

INSPECTING FIREARMS DEALERS

QUESTION: ATF was criticized in a hearing before the Homeland Security Subcommittee a few weeks ago for having an inadequate capacity to inspect firearms dealers located in the border region. How do you respond to that criticism?

ANSWER

ATF is aware of the comments made regarding ATF's inspection capabilities along the Southwest Border, but is unaware of the source of information that led to the criticism. ATF currently has 107 non-supervisory industry operations investigators assigned to inspect the Federal firearms licensees along the Southwest Border. Since 2006, ATF has conducted over 5,600 compliance inspections of the approximately 6,700 dealer and pawnbroker firearms license holders along the Southwest Border. In addition to the compliance inspections, every new FFL was inspected prior to going into business to ensure they were eligible for a license, are aware of the regulatory requirements, and understand the voluntary controls that can be employed to prevent diversion. ATF will continue this level of inspection in FY 2009, using both base resources and resources

provided in the American Recovery and Reinvestment Act and the FY 2009 Appropriation.

TRACING FIREARMS

QUESTION: You have said that most firearms traced from Mexico originated in 3 US Border States but that traffickers are increasingly going farther afield to purchase and move weapons. Are enforcement improvements in your office and other border states responsible for driving traffickers further away from the border to get their weapons?

ANSWER

It is likely that the increased enforcement efforts along the Southwest Border have caused the drug trafficking organizations to venture farther into the United States to acquire weapons. In 2008, ATF successfully traced firearms recovered in Mexico back to an original retail purchaser in 44 states and Puerto Rico. These investigations not only impact the four border field divisions of Phoenix, Los Angeles, Dallas and Houston, but Southwest Border investigative leads are being identified in most of ATF's field divisions.

ATF has identified several major firearms trafficking corridors which lead directly back to the drug cartels in Mexico. These routes are 1) along the I-10 corridor in the southeastern United States; 2) south from Chicago, Illinois through Dallas, Texas; 3) along the Pacific Coast from the State of Washington down through Baja California and 4) Denver, Colorado through New Mexico, and along the central Mexican border. Most of the states along these routes and all of the destination states have been identified as one of the top 10 source states for firearms recovered and traced in Mexico for calendar years 2006-2008.

TRACING DATA

QUESTION: As Mexico continues to increase its use of firearms tracing as a law enforcement tool, ATF is handling more and more trace data each year. How would you assess your capability to follow up on leads generated by that tracing data? Do you have sufficient investigators to pursue each of these trace-generated leads?

ANSWER

While ATF is dedicating additional resources to the Southwest Border, the trace data is generating leads for ATF that are taxing our ability to investigate them in a timely manner. ATF is responding to the increased workload in a number of ways: First, in a number of field divisions, ATF prioritizes leads generated by the trace data to ensure

the most significant leads are followed. Additionally, ATF is temporarily reallocating resources from other Field Divisions to the Southwest Border through the recently announced Gunrunner Impact Teams (GRITs), which will consist of 100 ATF agents, investigators and support personnel.

EXPLOSIVE DEVICES

QUESTION: Where did the grenades and other explosive devices turning up in Mexico come from? Are these also being trafficked from the US?

ANSWER

There is currently no evidence of grenades or other explosives being trafficked from the U.S. to Mexico. More than half of the grenades recently recovered in Mexico and inspected by ATF explosives enforcement officers appear to have originated from U.S. foreign military sales to Central American countries (believed to be El Salvador, Guatemala, Belize, Honduras and/or Panama). Other grenades recovered in Mexico and inspected by ATF explosives enforcement officers are of foreign manufacture, particularly from South Korea, Argentina, and the former Soviet Union. Grenades from Austria and South Africa have recently been recovered in Mexico as well. The grenade thrown into the LeBooty Lounge in San Juan, Texas, on January 31, 2009, has been positively identified as a South Korean K75 hand grenade and is of the same lot number as those South Korean K75 hand grenades recovered in Monterey, Mexico, in October 2008. This particular hand grenade did not detonate because a secondary safety was not removed.

RISE IN DRUG PRICES

QUESTION: DEA has tracked a rise in drug prices in the U.S. since enforcement efforts against the cartels have increased. Is there any evidence, even anecdotally, of a similar changes in the prices the cartels are paying for firearms and other weapons being trafficked across the border?

ANSWER

Yes. There is evidence to indicate that the cartels are paying higher prices for firearms. However, an increase in enforcement efforts by both U.S. and Mexican officials against the cartels is a contributing--but not the only factor--in the price change. ATF is in the process of gathering and evaluating all relevant intelligence related to this issue to delineate all of the relevant factors.

JURISDICTIONAL BATTLES WITH DHS

QUESTION: The Wall Street Journal recently reported on the potential for inter-agency turf wars to impede progress in the government's anti-cartel efforts. The article singled out ATF for refusing to cooperate with DHS BEST teams along large sections of the border. What is your response to this article? How will you ensure that jurisdictional battles with DHS don't distract from the achievement of the government's larger border violence goals?

ANSWER

ATF has a long-standing history of assisting other Federal, State and local law enforcement agencies in enforcement efforts. ATF has a good working relationship with DHS. ATF has established a Gun Desk in the El Paso Intelligence Center. The ATF Gun Desk within EPIC serves as a central repository for firearms and explosives related intelligence along the Southwest Border. All participating agencies, to include components of DHS (Customs and Border Patrol and Immigration and Customs Enforcement) share their firearms and explosives data with the EPIC ATF Gun Desk. This information is appropriately de-conflicted and coordinated with the relevant Federal, State and local law-enforcement agencies as well as other foreign governments (Mexico). Additionally, ATF cooperates with all other agencies to address areas of mutual concern.

QUESTIONS SUBMITTED BY MR. RUPPERSBERGER

Ruppersberger - 1

CELL PHONE JAMMING ON STATE LEVEL

QUESTION: My research indicates that back in 2006, the Cellular Telecommunications & Internet Association was working with the U.S. Department of Homeland Security to develop a protocol that will retain Federal authority for determining when and how jamming equipment will be used, while allowing for a Federal directive that allows a specific use of jamming equipment by local police. Nothing must have come of this. Mr. Attorney General, can you please have your staff contact the US Department of Homeland Security to determine the outcome of these efforts?

ANSWER

Yes. The Department will contact the Department of Homeland Security to determine the outcome of the 2006 Cellular Telecommunications and Internet Association protocol initiatives.

Ruppersberger - 2

CELL PHONE JAMMING ON STATE LEVEL

QUESTION: Has your agency or this new Administration considered this issue and what efforts are you making to investigate this technology?

ANSWER

The BOP is not using cell phone jamming equipment because current laws and regulations prohibit such use. The BOP provided comments in support of the Safe Prisons Communications Act of 2009 (S. 251), which would allow prisons to petition for and receive waivers in order to install cell phone jamming equipment. In lieu of legal authority to jam, the BOP continues its efforts to locate contraband cell phones in its facilities through searches, intelligence gathering (including forensic evaluations of captured cell phones), and by evaluating technologies and methods to detect cell phones. The detection technologies/methods the BOP has evaluated include hand-held detection units, installed detection systems, and canines. Installed detection systems have shown some promise.

Ruppersberger - 3

CELL PHONE JAMMING ON STATE LEVEL

QUESTION: Is the Department of Justice prepared to advocate for law enforcement in this area? Can it coordinate demonstrations? Expedite a review of current FCC regulations? Give exemptions? Open the dialogue? Our prisons, jails and local law enforcement are looking for your leadership in this area.

ANSWER

The Department of Justice believes that current legislation (the Federal Communications Act of 1934 and 47 USC Sec. 902) does not authorize cell phone jamming. As indicated in the previous response, we are in support of the Safe Prisons Communications Act of 2009 which would authorize cell phone jamming in prisons. Additional legislative authority would be required, however, to clarify not only the FCC's role in authorizing jamming but the National Telecommunications and Information Administration's (NTIA) role in coordinating executive branch policy and standards regarding spectrum use, security and interoperability.

Commerce, Justice, Science, And Related Agencies

Appropriations for 2010

Federal Law Enforcement Response To US-Mexico Border Violence

Tuesday, March 24, 2009

Questions Submitted By Mr. Wolf

PROJECT GUNRUNNER

QUESTION: With the $15 million increase ATF received this year in the Stimulus and Omnibus bills how many Project Gunrunner "teams" will you be adding, and in what locations?

ANSWER
As part of the American Recovery and Reinvestment Act, ATF received $10 million for Project Gunrunner efforts. These funds will allow ATF to establish new firearms trafficking teams in McAllen, Texas; El Centro, California and Las Cruces, New Mexico (with a satellite office in Roswell, New Mexico). The funds will also allow ATF to assign personnel to U.S. Consulates in Tijuana and Ciudad Juarez. Specifically, the funds are providing 37 total positions which include 21 special agents in domestic offices, four special agents in Mexican offices, six industry operations investigators, three intelligence research specialists and three investigative assistants. In addition, the FY 2009 Omnibus Appropriations Act provides ATF with an additional $5 million for Project Gunrunner. The FY 2009 appropriation includes funding for two additional firearms trafficking teams in Phoenix, Arizona and Houston, Texas, consisting of 21 special agents, four industry operations investigators and two investigative assistants.

PROJECT GUNRUNNER

QUESTION: Can you explain what a Project Gunrunner "team" is? What specific activities they will be engaged in, and what results should we hope to see from these increases in personnel?

ANSWER
Project Gunrunner, the operational component of ATF's Southwest Border Strategy, makes use of all appropriate and necessary agency capabilities and expertise. Project Gunrunner is designed to work collaboratively with domestic and international partners and is implemented primarily through ATF field components in California, Arizona, New Mexico, Texas and ATF's Mexico country attaché office. A Project Gunrunner "Team" is a unique firearms trafficking unit comprised of special agents, industry

operations investigators, investigative research specialists and administrative personnel. The primary goal of these teams is the reduction of firearms (and explosives) related violent crime associated with Mexican drug trafficking organizations operating in Mexico and along the U.S.-Mexico border by preventing the acquisition of firearms (and explosives) by Mexican drug trafficking organizations and their surrogates. Operations are intelligence driven and are primarily designed to target and disrupt the organizations responsible for trafficking firearms to Mexico. Investigations also target straw purchasers; gangs; drug trafficking organizations; prohibited persons; violent offenders and the sources of trafficked firearms. Investigations increasingly involve the acquisition of firearms from sources away from the border region and the acquisition and use of explosive devices.

GUN DESK AT EPIC

QUESTION: The ATF is also using the increased funding to add staff to the Gun Desk at EPIC in El Paso. Can you describe the work that is done there, and how it adds value to what you are doing in the field divisions related to controlling illegal arms trafficking into Mexico?

ANSWER
ATF has been a participating agency at the El Paso Intelligence Center (EPIC) since 1975. EPIC serves as the regional intelligence center that collects and disseminates information related to drug, alien, and weapons in support of the field enforcement entities throughout the region. The ATF mission at EPIC is to identify and analyze all firearms and explosive related data acquired from open and government sources as well as from Federal, State and local law enforcement partners. The information is evaluated to determine if violations of Federal firearms or explosive laws have occurred and to generate referrals for field investigation in coordination with the agency that brought the information to the attention of EPIC. In calendar year 2008, ATF analysts and intelligence officers processed over 900 weapons seizure events from Mexico, averaging 18 seizure events per week

PROJECT GUNRUNNER

QUESTION: Are you using any of the increased resources under Project Gunrunner for technology investments? If so, what are the top priorities?

ANSWER
ATF is currently increasing our technological ability in several areas, to include communications, investigative equipment, firearm tracing capabilities and ballistic imaging. These advancements, however, are not being funded with the additional resources provided in the Stimulus Act and the 2009 Omnibus Appropriations Act under Project Gunrunner.

ILLEGAL ARMS TRAFFICKING

QUESTION: In addition to increased resources, are there any no-cost changes that would make it easier for you to stop illegal arms trafficking to Mexico? Are there organizational, interagency, policy or legal changes you would recommend?

ANSWER
There are a number of changes, both legislatively and regulatory, that ATF is reviewing, to judge whether or not the changes could help assist our efforts in reducing the flow of firearms to Mexico. These include establishing a firearms trafficking statute, closing the gun show loophole, and other related changes. These proposals, however, have not been finalized and are still part of the ongoing deliberative process within the Administration. Once finalized, ATF would be more than willing to discuss with you the changes that could do the most to assist ATF in its efforts to reduce the flow of firearms to Mexico.

STAFF RESOURCES

QUESTION: As we provide ATF with more staff resources, you are referring more cases. But are those cases being accepted by Federal or by local prosecutors who must prioritize their caseload? What are the statistics? Do you expect a higher acceptance rate in this fiscal year?

ANSWER
As expected, ATF has seen some build up of pending cases in the Southwest Border judicial districts. Of note, and likely directly related to the volume of cases being submitted, ATF is seeing a notable, but not alarming, number of pending cases in Arizona; Northern, Western and Southern Districts of Texas, and the Central District of California. While there is an increase in the number of pending 2009 cases, this is not at all surprising but rather an expected result of normal processing time. ATF is not aware of any significant reluctance to prosecute these cases or if the affected United States Attorney's Offices are facing resource constraints. In light of recent meetings with DOJ and other officials in Mexico and the increased emphasis on the Southwest Border, ATF fully expects that prosecutions will increase in FY 2009.

Referral FY								
Data		2004	2005	2006	2007	2008	2009 YTD 4/1/09	Grand Total
Total All Dfdts Recommended for Prosecution	62	103	285	440	525	322	1,737	
Total Dfdts Pending Prosecutorial Decision	3	12	14	72	96	111	308	17.73%
Total Dfdts Accepted For Prosecution	52	79	216	306	370	190	1213	69.83%
Total Dfdts Not Accepted For Prosecution	7	12	55	62	59	21	216	12.44%

E-TRACE

QUESTION: Another way that ATF is addressing this issue is through a presence at US diplomatic posts in Mexico, and making the ATF's database accessible to Mexican law enforcement. Can you describe the value of having ATF personnel in Mexico, and the effort to make E-Trace available in Spanish to Mexican law enforcement?

ANSWER
Firearms tracing is the systematic tracking of a firearm from its manufacturer or importer through the chain of distribution of wholesalers and retailers to the first retail purchaser. About 90 percent of the firearms trace requests from Mexico are sent to ATF via a web-based system called eTrace that provides approved law enforcement agencies the ability to send trace requests, receive trace results, and perform analysis of the consolidated results securely via the Internet.

In 2008, ATF deployed eTrace technology to the nine U.S. consulates in Mexico. Although Mexico currently uses eTrace, they are unable to realize the full benefits of the system because it is in English and the data structures do not allow for name and address conventions common in Hispanic cultures and countries. ATF is currently developing a Spanish language version of eTrace that is scheduled for full deployment at the end of 2009. ATF and the government of Mexico have discussed (and continue to discuss) decentralizing the firearms tracing process in order to deploy Spanish-language eTrace to other Mexican law enforcement agencies with the goal of deploying eTrace to all thirty-one states within the Republic of Mexico. Expanding the utilization of Spanish eTrace through the region will allow law enforcement to effectively determine sources of firearms to better target firearms trafficking interdiction efforts. This will help reduce violent crime by decreasing the availability of illegal secondary market firearms and identifying those who illegally supply firearms to criminals.

GUNS RECOVERED

QUESTION: Some media reports have quoted Mexican sources that 90% of the guns recovered from crimes in Mexico originated in the U.S. Are you able to verify that statistic with the data available to ATF? What other sources have been identified?

ANSWER
ATF has limited information relative to the total number of firearms recovered by government authorities in Mexico. ATF can only provide statistics pertaining to firearms trace requests submitted by Mexican authorities; U.S. law enforcement agencies operating in Mexico and along the U.S.-Mexico border and those obtained from open sources. U.S. sourced firearms can be described as those that were manufactured in the U.S. or imported at some time into the U.S.

Care should be taken in analyzing trends in the firearms that are recovered and traced in Mexico. There are several variables that must be kept in mind when looking at the statistics. Mexico is not currently tracing all recovered firearms, and therefore, ATF trace statistics do not represent the total of all crime guns recovered in Mexico for any given period.

It should also be noted that a limited number of firearms that ATF has traced for Mexican authorities were legally transferred from the U.S. to Mexico. Factors such as this must be considered when reviewing information on firearms traced to the U.S. from Mexico.

The ATF National Tracing Center looked at firearms trace requests for firearms recovered in Mexico to report the percentage of firearms manufactured in the U.S., percentage of firearms made in another country, but imported into the U.S., and percentage of firearms traces closed because the firearm was not made in the U.S. and no importer was provided with the firearms description:

Firearms trace requests from Mexico	FY 2004		FY 2005		FY 2006		FY 2007		FY 2008	
US manufactured firearms	2986	69.9%	4207	65.48%	1534	75.2%	2388	74.3%	4577	63.52%
Firearms imported into U.S.	103	2.41%	1052	16.37%	411	20.2%	673	20.9%	2127	29.52%
Foreign source firearms not imported into U.S.	1184	27.7%	1166	18.15%	94	4.61%	155	4.82%	502	6.97%

In FY 2008 Mexico submitted a total of 7,743 trace requests; of those 537 were duplicate submissions. Of the 7,206 non-duplicate traces, 502 traces were closed because the firearm was not made in the U.S. and no importer was provided in the firearms description. Of the 6,704 remaining traces, 145 were traced to legitimate firearms dealers in Mexico, government or law enforcement in Mexico. Therefore, the 6,559 remaining traces are assumed to have entered Mexico illegally (91%).

In FY 2007 Mexico submitted a total of 3,312 trace requests; of those 96 were duplicate submissions. Of the 3,216 non-duplicate traces, 155 traces were closed because the firearm was not made in the U.S. and no importer was provided in the firearms description. Of the 3,061 remaining traces, 61 were traced to legitimate firearms dealers, government or law enforcement in Mexico. Therefore, the 3,000 remaining traces are assumed to have entered Mexico illegally (93.2%).

In FY 2006 Mexico submitted a total of 2,094 trace requests; of those 55 were duplicate submissions. Of the 2,039 non-duplicate traces, 94 traces were closed because the firearm was not made in the U.S. and no importer was provided in the firearms description. Of the 1,945 remaining traces, 45 were traced to legitimate firearms dealers, government or law enforcement in Mexico. Therefore, the 1,900 remaining traces are assumed to have entered Mexico illegally (93.1%).

In FY 2005 Mexico submitted a total of 7,299 trace requests; of those 874 were duplicate submissions. Of the 6,425 non-duplicate traces, 1,166 traces were closed because the firearm was not made in the U.S. and no importer was provided in the firearms description. Of the remaining 5,259 traces, 152 were traced to legitimate firearms dealers, government or law enforcement in Mexico. Therefore, the 5,107 remaining traces are assumed to have entered Mexico illegally (79.4%).

In FY 2004 Mexico submitted a total of 5,167 trace requests; of those 894 were duplicate requests. Of the 4,273 non-duplicate traces, 1,184 traces were closed because the firearm was not made in the U.S. and no importer was provided in the firearms description. Of the remaining 3,089 traces, 152 were traced to legitimate firearms dealers, government or law enforcement in Mexico. Therefore, the 2,937 remaining traces are assumed to have entered Mexico illegally or (68.7%).

Therefore, given these figures, it is likely that less than 5 percent of the U.S.-sourced firearms recovered in Mexico and traced since FY-2004 have been legally exported/transferred to Mexico from the U.S.

GANGS AND GANG VIOLENCE

QUESTION: Besides firearms, another area of ATF expertise is gangs and gang violence. What is the relationship between arms trafficking to Mexico and violent transnational gangs? Are gangs in U.S. cities working with Mexican drug cartels? And if so, does that imply a greater risk of seeing violent competition among gangs in U.S. communities?

ANSWER

The acquisition and trafficking of firearms by each Mexican Drug Trafficking Organization (DTO) is conducted covertly and strictly controlled by each individual organization. Each organization has a leader(s) that is responsible for procuring firearms, equipment and any other weapons. Currently, DTO's prefer to use their own operatives to facilitate their firearms acquisition and transportation. ATF vigilantly scrutinizes DTO firearms acquisition cells for any participation or association on the part of a gang member. Based upon our current cases it appears that DTO's do not rely on transnational gangs in the acquisition and transportation of firearms because it has the potential to compromise their covert operations. Frequently gang members are prohibited persons that can not legally acquire and possess a firearm, which renders them useless in the purchasing of firearms and an extra risk in the transportation. Transnational gangs are frequently retail distributors of narcotics supplied by an affiliated DTO. The DTO's are very selective in employing the services of transnational gangs. DTO's have utilized transnational prison gangs that operate along both sides of the border. Occasionally, they are called upon to supplement defensive and enforcement actions for that DTO, primarily in Mexico. However, it is possible that with the continued aggressive recovery of firearms by Mexican authorities and vigorous enforcement actions in the U.S. combating the illegal acquisition, the DTO's traditional acquisition methods will become further strained and they may turn to their

affiliated gangs. These gangs could supplement the DTO's by recruiting and supervising straw purchasers in areas they dominate throughout the U.S.

There is reporting that DTO and independent camps in Central America are providing instruction in military assault and assassination techniques. ATF has been monitoring these reports to ascertain if or to what extent transnational gang members are being trained by the DTO's and recruited into the organization or trained in independent camps to perform assassinations or other contract duties for the DTO's. ATF has not received any information indicating that any individuals trained at these facilities will be deployed to the United States. As a business practice, Mexican DTO's do not want to be associated with competitive street level violence in the U.S. marketplace. Because of the violent nature of the transnational gangs, the DTO's limit their dealings with them.

Commerce, Justice, Science, And Related Agencies

House Appropriations for 2010

Tuesday, March 24, 2009

SW Border Violence (ATF/DEA)

QUESTIONS SUBMITTED BY MR. ADERHOLT

Aderholt - 1

STRAW MEN

QUESTION: When you discuss straw men, who many times "unknowingly" as you say purchase guns that are then put into the illegal trade, the example you give is the bust where 328 guns were confiscated and traced back to purchases by 22 individual purchasers.

ANSWER

"Straw men" purchases are unlawful. Persons who engage in such transactions generally understand that their conduct is unlawful. In fact, the Firearms Transaction Record (ATF F 4473) prepared by the firearms buyer specifically asks the buyer if the firearm is in fact being purchased for him/her and warns that the purchase for someone else (except under limited circumstances) is unlawful. As you know, "straw men" are persons who are eligible to purchase firearms from federally licensed firearms dealers because they lack disqualifying criminal records or other records that would make them ineligible to purchase firearms. Straw purchasers are generally compensated for their services by persons who are ineligible to purchase firearms and or by persons who seek to conceal their identity during the purchase transaction. Those who utilize straw purchases generally do so because they intend to use the acquired firearm(s) for an unlawful purpose, including firearms trafficking. Under the Southwest Border initiative, between FY 2006 to (mid) FY 2009, ATF referred 52 cases involving 149 defendants (charged with 287 counts) of making false statements to licensed gun dealers, the primary charge used to prosecute a straw purchaser.

Aderholt

RECOVERY OF ILLEGAL FIREARMS

QUESTION: The other way you mentioned that guns get into the pipeline is at gun shows where background checks and registration are not required. Exactly, what percentage of the illegal firearms recovered in Mexico come from gun shows in the U.S?

ANSWER

It is difficult to evaluate the number or percentage of firearms purchased at gun shows that are trafficked to or recovered in Mexico. This is principally because many of the sales transactions conducted are private sales/transactions that do not involve licensed gun dealers. To address gun show sales carried out by licensed gun dealers, in June 2008 ATF began a new program wherein licensed gun dealers are asked (during the trace process) if the sales transaction was conducted at a gun show.

Aderholt

EXPLOSIVES AND RIFLES

QUESTION: You mentioned there are explosives and high powered rifles, such as the .50 caliber rifle are being trafficked across the border.

ANSWER

Information available to ATF indicates that Mexican drug trafficking organizations obtain their explosives and grenades from thefts or the diversion of munitions that were part of foreign military sales. Details cannot be provided in this document due to the law enforcement sensitivity of the information. However, we can tell you that many of the grenades recovered in Mexico from the DTO's appear to have been part of foreign military sales involving third party countries. The only known instances of grenades that were intended for Mexico (that would have crossed the U.S. border illegally) were improvised devices recovered in the United States. Regarding .50 caliber rifles, all indications are that the rifles are utilized by the Mexican DTO's as both anti-personnel and limited anti-armor purposes. Semi-automatic .50 caliber rifles can be acquired in the United States from licensed gun dealers and/or through private transactions. Currently, no additional restrictions are placed on the sale or possession of such rifles. During the last four years ATF has traced fewer than ten .50 caliber rifles that had been seized in Mexico.

Aderholt

OFFICERS KILLED BY DRUG VIOLENCE

QUESTION: You mentioned in 2007 you estimated that 247 Mexican police and military personnel were murdered in relation to drug violence, and in 2008 those numbers jumped to 626 Mexican police and military officers killed by drug violence. Do you have,

for the sake of contrast, numbers of U.S. law enforcement and military personnel killed due to violence related to the Mexican drug trade?

ANSWER

According to the National Law Enforcement Officers Memorial there were a total of 133 law enforcement offices killed in the line of duty in the United States in 2008 from all causes. Of these 14 were killed in Texas; 13 in California; 4 in Arizona and 1 in New Mexico. Only one death (in Texas) was related to a drug incident. We do not know if this death occurred in proximity of the U.S.-Mexico border or was in any way related to Mexican drug cartel operations.

QUESTIONS FOR THE RECORD, from Mr. Aderholt, Hearing date: March 24, 2:00pm

Hearing: Southern Border Violence

Witness: **Phil Gordon, Mayor of Phoenix**

Question 1: I represent a very rural district made up o 14 counties where my largest city is about 37,000 people. Likewise, it is roughly 700 miles from the Mexican border to my district. So, in a lot of ways you would rightly expect that that your and my immigration problems would be vastly different. But actually a lot of the difficulties you talk about facing because of the porous border are the same problems some of my constituents are facing in their much smaller towns in Northern Alabama. Are there any solutions that you have found for Phoenix's problems that you think would be applicable in smaller communities as well, perhaps things you have seen in the surrounding smaller towns in Arizona?

Any solution to the problem of combating border violence (kidnappings, drug trafficking, human trafficking) must include a partnership between local, state and federal agencies.

Speaking on behalf of the City of Phoenix, the men and women of the Phoenix Police Department under the leadership of Jack Harris have demonstrated success in this approach. What is important to recognize is that law enforcement agencies (regardless of number of employees or area serviced) are often only one component when addressing society's concerns. Other partnerships must be established with social services, not-for-profits and city services when solving a myriad of community safety topics.

For example, Phoenix is the 5th largest city in the U.S. and has demonstrated success in taskforce development when they outreach to local/neighboring police departments and state/federal associates. These efforts result in increased cooperation through information and resource sharing.

THURSDAY, MARCH 26, 2009.

DRUG ENFORCEMENT ADMINISTRATION

WITNESS

MICHELE M. LEONHART, ACTING ADMINISTRATOR, DEA

OPENING STATEMENT BY CHAIRMAN MOLLOHAN

Mr. MOLLOHAN. The hearing will come to order.

Well, good morning. I would like to once again welcome Michele Leonhart, Acting Administrator of the Drug Enforcement Administration, to discuss drug enforcement priorities and strategies, both domestically and abroad.

Because we will not be receiving the detailed President's budget request until next month, Ms. Leonhart, this hearing will be a little different from DEA hearings of previous years.

We will have less questioning about line item changes in your budget and more about your overarching programs and activities. However, to the extent that you are able to share details about your budget request, we are happy for you to do so.

Our discussions today will range across a wide variety of topics. Of course, we are interested in your major enforcement activities targeting the trafficking of illicit narcotics.

We actually began our discussion of enforcement activities two days ago when a representative of DEA's El Paso field office joined other witnesses and provided excellent testimony on the trafficking of narcotics from Mexico into the United States as part of our hearing on cartel-related violence in the border region.

We hope to expand on that discussion today to include your programs in other major source and transit countries around the world, including Afghanistan, Bolivia, and Colombia.

At the same time, I want to make sure that we pay sufficient attention to the abuse of licit controlled substances.

Much of your work in this area is regulatory as opposed to enforcement oriented and as a consequence, it can be overshadowed by DEA's other programs. Its importance, however, is highlighted by discouraging data on prescription drug abuse, which has been increasing across many age categories for the past few years.

We are anxious to hear how DEA is continuing to address this problem while still ensuring unimpeded medical access to legal controlled substances.

In a moment, I will ask you to proceed with your oral testimony. Your written statement, of course, will be made a part of the record. But first I would like to call on our Ranking Member, Mr. Wolf, for any comments he may like to make.

Mr. WOLF. Thank you, Mr. Chairman.

I have no comments. I just want to welcome you and look forward to your testimony.

And I yield back.
Mr. MOLLOHAN. Thank you, Mr. Wolf.
Ms. Leonhart, once again, welcome, and you may proceed.
Ms. LEONHART. Thank you, Mr. Chairman.

OPENING STATEMENT OF ACTING ADMINISTRATOR MICHELE LEONHART

Chairman Mollohan, Ranking Member Wolf, members of the Subcommittee, it is my pleasure to appear before you to discuss DEA's programs and recent accomplishments.

I want to thank you for your support. You enable us to do our jobs and you deserve much of the credit for our successes.

I would like to highlight several areas of importance violence in Mexico and the Southwest Border, increasing methamphetamine production in small toxic labs, growing abuse of prescription drugs, and combating terrorists where there is a nexus with drug trafficking.

Mexico and the Southwest Border. The violence we are seeing in Mexico is unprecedented, but it is not surprising. It is a symptom of the pressures DEA and the Mexican government are inflicting on the Mexican drug cartels.

For many years, drug traffickers operated in Mexico with impunity, but under the Calderon Administration, which works closely with DEA, things have changed. As a result, the traffickers are fighting back like caged animals. And our response must be to stay the course, keep up the pressure, and never give in.

My optimism about Mexico is supported by two recent successful DEA-led operations against Mexican cartels: Operation Xcellerator, which targeted the Sinaloa cartel, and Project Reckoning, which targeted the Gulf cartel. These cartels bring multi-ton quantities of cocaine and marijuana and large quantities of methamphetamine into the United States and are responsible for much of the violence in Mexico.

To date, these two operations alone have resulted in arrests of more than 1,400 individuals; the seizure of more than $132 million in cash; the seizure of 29 tons of cocaine; the removal of a weapons arsenal in Mexico that included hundreds of assault rifles, explosives, an anti-tank rocket, and other weapons; and, most importantly, the indictment of the top tier of the Gulf cartel.

I am happy to report that just last week, Mexican special forces arrested Vicente Zambada. Mr. Zambada was a major Mexican trafficker in charge of importing tons of cocaine for the Sinaloa cartel.

Our enforcement successes are actually changing the dynamics of the cocaine market. We are reducing the availability of cocaine in America. Cocaine prices continue going up and purity continues going down. And over a two-year period, the price of cocaine has increased by more than 100 percent and purity has decreased by 35 percent. This was accomplished through DEA's hard work and that of our federal, state, and local partners and our Colombian and Mexican counterparts.

Methamphetamine. Methamphetamine is a drug of major concern to DEA and this Subcommittee. Thanks to law enforcement efforts, changes in state laws and the 2006 "Combat Meth Epidemic

Act," the number of small labs in the United States decreased dramatically in 2006 and 2007.

Unfortunately, traffickers learned how to circumvent the CMEA through the illegal practice of smurfing and now the number of small toxic labs is rising again in some locations. Smurfing is difficult to stop as the CMEA does not require electronic or interconnected log books.

Prescription drugs. Prescription drug abuse is one of our greatest areas of concern and the internet is a major source of these diverted pharmaceuticals. To combat this problem, DEA reprogrammed 108 diversion investigator positions into special agents and added intelligence analysts and state and local task force personnel to form what we call tactical diversion squads all across the country. As these resources come online, they will help us bring diversion under control.

Afghanistan and narco-terrorism. The last area I want to mention is DEA's contribution to combating terrorism. DEA plays an integral role in the United States' overall Afghanistan strategy. Drug trafficking fuels terrorism and it destabilizes governments. DEA is working closely with the Afghan government to create institutions capable of enforcing the rule of law.

Thanks to the funding we received in the 2008 GWOT supplemental, we are significantly expanding our presence in Afghanistan and this will lead to more successful operations like DEA's Operation Albatross and the arrest of more Afghan drug lords.

In Operation Albatross, DEA's FAST teams worked with our Afghan counterparts to dismantle a super-lab complex and drug bunkers in a Taliban-controlled area in Kandahar Province. We seized 238 tons of hashish, the largest seizure of hashish in history, valued at approximately $600 million.

And recent DEA investigations also led to the arrest of two major international arms traffickers, Victor Bout, known as the "Merchant of Death", and Monzer Al Kassar, leader of an international arms trafficking organization.

Al Kassar was sentenced last month to 30 years in prison for conspiring to sell millions of dollars worth of weapons that were to be used to kill Americans in Colombia. And we are pursuing the extradition of Mr. Bout from Thailand.

In conclusion, drug traffickers are in business to make money and DEA is in business to stop them. Between 2005 and 2008, DEA stripped traffickers of more than $9 billion in revenue, including $2.6 billion in hard cash.

These enforcement successes are not the only signs that we are on the right track. There are roughly 900,000 fewer teens using illicit drugs now than there were eight years ago. In the same time frame, current teen meth use has plummeted 50 percent and cocaine use in the American workforce decreased nearly 40 percent in the past three years.

Our efforts are paying off, but we must do more. We continue to face many challenges, but I am confident the DEA will have many more successes to report to you in the year ahead.

Thank you for the opportunity to speak to you, and I look forward to your questions.

[Written statement by the Honorable Michele Leonhart, Acting Administrator, Drug Enforcement Administration follows:]

STATEMENT OF
THE HONORABLE MICHELE LEONHART, ACTING ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION
BEFORE THE
UNITED STATES HOUSE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE
AND RELATED AGENCIES

March 26, 2009

Mr. Chairman and Members of the Subcommittee:

Good afternoon, and thank you for inviting me to testify on behalf of the President's Fiscal Year (FY) 2010 Budget request for the Drug Enforcement Administration (DEA). I welcome this opportunity to represent DEA and I look forward to working closely with you over the coming months. DEA greatly appreciates the support you have shown for our agency in prior budget years, and we look forward to continuing that relationship as we work together in the future.

DEA is the world's leading drug enforcement agency with more than 9,000 employees working in 227 domestic offices and 63 foreign countries. As the only single-mission federal agency dedicated to drug law enforcement, DEA is an organization of individuals who are committed to this nation's fight against drug trafficking, money laundering, and narcoterrorism. The President has proposed a FY 2010 budget request that will provide the critical resources necessary to reduce the availability of illegal drugs and the diversion of licit drugs and precursor chemicals in America.

DEA's enforcement efforts extend from beginning to end – from the time and place the illegal drugs are cultivated or manufactured, through their transportation routes, and on to their final distribution in our nation's communities. Drug crimes are far reaching – the battle extends well beyond our borders into foreign lands, and even into cyberspace. And the work is dangerous – drug traffickers can be ruthless, as demonstrated by the shocking display of drug-related violence in Mexico and narco-trafficking in Afghanistan. But DEA is making great strides against these criminals and by doing so we are also supporting the war against global terrorism.

I will discuss some of our major accomplishments from the past year – operational successes that are the result of hard work and dedication. I will also talk about our strong domestic and international partnerships that bring us great pride, briefly discuss the Southwest Border, and highlight some performance statistics that demonstrate our impact. I will conclude with a summary of the road that lies ahead for DEA.

Operational Successes

DEA's mission is to enforce the controlled substances laws and regulations of the United States. To this end, DEA Special Agents, Intelligence Analysts, and Diversion Investigators build cases that target the individuals and organizations involved in growing, manufacturing, and distributing controlled substances appearing in or destined for illicit traffic in the United States. DEA's accomplishments over the past year are many. For the sake of time, I will highlight just a few of them.

DEA achieved several major victories against the Mexican drug cartels this year. For example, in February 2009, DEA concluded ***Operation Xcellerator***, a 21-month multi-agency investigation targeting the Sinaloa Cartel. The Sinaloa Cartel dominates much of the drug smuggling on the Southwest Border and is responsible for bringing multi-ton quantities of cocaine and marijuana from Mexico into the United States through an enterprise of distribution cells in the United States and Canada. Furthermore, the Sinaloa Cartel is responsible for laundering hundreds of millions of dollars in criminal proceeds from illegal drug trafficking activities. As of February 25, 2009, *Operation Xcellerator* has led to the arrest of 781 individuals and the seizure of approximately $61 million in U.S. currency and $10 million in drug related assets. Additional seizures include more than 12.5 metric tons of cocaine, more than 8 metric tons of marijuana, more than 1,200 pounds of methamphetamine, approximately 1.5 million pills of Ecstasy, and 191 weapons. As DEA's most focused attack against the Sinaloa Cartel to date, *Operation Xcellerator* demonstrates DEA's relentless efforts to disrupt and dismantle major drug cartels.

Project Reckoning is an ongoing multi-operational initiative targeting the Gulf Cartel. The Gulf Cartel and its former enforcement arm, known as the Zetas, are responsible for a large proportion of the drug-related violence in Mexico and, like the rival Sinaloa Cartel, are responsible for bringing multi-ton quantities of cocaine and marijuana from Mexico into the United States. To date, Project Reckoning has led to the arrest of 632 individuals, the indictment of the entire upper echelon of the Gulf Cartel, including Jaime Gonzalez Duran, aka "Hummer", and the seizure of over $71.8 million in U.S. currency, with an additional $17 million in other assets seized. Drug seizures include more than 17 metric tons of cocaine, more than 64,000 pounds of marijuana, more than 1,300 pounds of methamphetamine and 19 kilograms of heroin. Two hundred and twenty-five weapons were also seized, which included explosive devices and weapons capable of fully automatic fire. Additionally, approximately two days prior to his arrest, a personal weapons cache belonging to Duran was seized in Mexico in November 2008. The cache consisted of 540 assault rifles, more than 500,000 rounds of ammunition, 150 grenades, 14 cartridges of dynamite, 98 fragmentation grenades, 67 bulletproof vests, seven Barrett .50-caliber sniper rifles, and a Light Anti-Tank rocket.

The **Drug Flow Attack Strategy** (DFAS) is a multifaceted initiative that has contributed to the DEA's international success. This innovative, multi-agency strategy is designed to significantly disrupt the flow of drugs, money, and precursor chemicals between the source zones and the United States. DFAS attacks vulnerabilities in the

supply chains, transportation systems, and financial infrastructure of major drug trafficking organizations. The strategy also calls for aggressive and thoroughly coordinated enforcement operations with host-nation counterparts in source and transit zones around the world.

Operation All Inclusive (*OAI*) is the primary DFAS enforcement operation in the Western Hemisphere transit zones. *OAI* is a combination of sequential and simultaneous land, air, maritime, and financial attacks, guided by intelligence and synchronized with other agencies to disrupt the illicit trafficking patterns and the drug trafficking organizations themselves. Iterations of OAI have been staged annually since 2005, and the results have been significant.

OAI 2008 ran from January 15 to October 20, 2008, and involved DEA, the Joint Interagency Task Force-South, Customs and Border Protection, the U.S. Coast Guard, the Defense Intelligence Agency, the Central Intelligence Agency's Crime and Narcotics Center, the National Geospatial Intelligence Agency, the National Security Agency, the Office of Naval Intelligence, and a number of host nation counterparts. *OAI 2008* focused on disrupting the flow of drugs, chemicals and money from the source zone in South America, through the transit zone of Mexico, Central America, and the Caribbean, and into the United States. This iteration of *OAI* expanded the geographical coverage to include portions of the Southwest Border and the Andean Region, including Peru, Brazil and Bolivia.

The overwhelming success of *OAI 2008* can be measured by the seizure of 100 metric tons of cocaine; the seizure of more than $92 million in U.S. currency/assets; and the arrest of Consolidated Priority Organization Targets Jorge Mario Paredes-Cordova and Eduardo Arellano-Felix, and Priority Targets Luis Urbina-Amaya, Lester Marina-Pastor, and Juan Rivera-Perez. Additional highlights include the seizure of an underground weapons training facility in Tijuana, Mexico controlled by the Arellano-Felix drug trafficking organization; a single seizure of almost $12 million in U.S. currency from a containerized cargo shipment seized at the Port of Manzanillo, Colima, Mexico; and the first-ever seizure by the Mexican Navy of a self-propelled semi-submersible smuggling vessel off the Pacific Coast of Mexico. From this vessel, a total of 5.8 metric tons of cocaine was seized and four Colombian nationals were arrested.

As mentioned previously, DEA's enforcement initiatives support and augment U.S. efforts against terrorism by denying drug trafficking and money laundering routes to foreign terrorist organizations, and by preventing the barter of drugs for munitions destined to support terrorism. DEA's global alliances and broad intelligence network also put us in a unique position to share valuable law enforcement information with members of the Intelligence Community. Let me cite just a few recent examples in which DEA investigations led to the arrest of major **narco-terrorists** and **international arms traffickers**:

- Khan Mohammed was captured for drug trafficking in October 2006 by the National Interdiction Unit of the Counter Narcotics Police – Afghanistan and

DEA's Foreign-deployed Advisory and Support Team (FAST) in Nangarhar Province. On May 15, 2008, Khan Mohammed was convicted on charges in violation of 21 USC 959 and 960a. Mohammed was sentenced to two life sentences. This represented the first instance in which a defendant was convicted in U.S. federal district court of narco-terrorism since the statute was enacted in 2005.

- On October 23, 2008, Haji Juma Khan (HJK) was arrested in Indonesia based on an international arrest warrant stemming from a narco-terrorism (21 USC 960a) indictment in the Southern District of New York. HJK was placed into DEA custody and transported to New York where he awaits trial. HJK is one of the world's most significant heroin and opium traffickers, who provided direct support to the Taliban from his drug trafficking revenue.

- Since the early 1970s, Monzer Al Kassar has supplied weapons and military equipment to armed factions engaged in violent conflicts in Nicaragua, Brazil, Cyprus, Bosnia, Croatia, Somalia, Iran, and Iraq. Some of these factions have included known terrorist organizations, such as the Palestinian Liberation Front. In June 2007, based on a multinational DEA investigation coordinated by DEA's Special Operations Division, Al Kassar was arrested in Madrid, Spain on U.S. charges of conspiring to sell millions of dollars worth of weapons to the Revolutionary Armed Forces of Columbia (FARC). Al Kassar was extradited from Spain to the U.S. in June 2008 and his November 2008 trial concluded with his conviction on all counts. Of note, Al Kassar financed and supplied the weapons that were used in the 1985 Achille Lauro cruise ship high-jacking. These weapons were used to shoot wheelchair bound U.S. citizen, Leon Klinghoffer, in the head. His body was then dumped overboard. Until Al Kassar's conviction on November 2008, none of the terrorists involved in Mr. Klinghoffer's murder had been brought to justice in the United States. On February 24, 2009, Al Kassar was sentenced to 30 years in prison. Furthermore, Al Kassar was ordered to forfeit all foreign and domestic assets, including his mansion in Marbella, Spain.

- Viktor Bout first became known in the 1990s as a major weapons trafficker to a number of wars and armed conflicts in Africa. More recently, he was suspected of supplying weapons to the Taliban and Al Qaeda. In March 2008, Bout, also known as the "Merchant of Death", met with DEA cooperating sources in Bangkok, Thailand and agreed to a multi-million dollar deal that involved the sale of weapons to the Colombian narco-terrorist group, the FARC. Thai authorities, in cooperation with DEA, arrested Bout without incident. DEA's nine-month investigation into Bout spanned multiple countries, including Curacao, Copenhagen, Romania, Russia, and Thailand, and led to his May 2008 indictment in the Southern District of New York on charges of conspiracy to kill U.S. nationals and U.S. officers or employees, to acquire and use an anti-aircraft missile, and to provide material support or resources to a designated foreign

terrorist organization. The United States is actively pursuing Bout's extradition from Thailand.

DEA's presence in Afghanistan is also making a major contribution to our country's efforts to stabilize that nascent democracy. In May and June 2008, DEA directed a two-phase investigation that involved DEA's FAST personnel working in coordination with the Government of the Islamic Republic of Afghanistan. ***Operation Albatross*** was also supported by the North Atlantic Treaty Organization International Security Assistance Force (NATO-ISAF), the U.S. Department of Defense, and the U.S. Department of State. On June 9, 2008, search warrants were executed on five narcotics super-labs and numerous underground drug-bunkers in Spin Boldak, a Taliban-controlled area located in Kandahar Province. The operation resulted in the dismantlement of a super-lab complex and numerous drug bunkers, and the seizure of 238 tons of hashish. This is the largest hashish seizure the world has ever seen and was valued at approximately $600 million. Twelve suspects were also arrested as a result of *Operation Albatross*. In September 2008, six individuals involved in the case were convicted on narcotics charges in Afghanistan and sentenced to ten years imprisonment.

International and Domestic Partnerships

None of our operational successes would be possible without the valuable partnerships that DEA has cultivated with our foreign and domestic counterparts. The following are just a few examples of the ways in which the United States benefits from DEA's strong working relationships with countries around the world and agencies across the country:

In FY 2008, DEA expanded its international presence in **Southwest Asia** to better attack drug trafficking and narcoterrorism by creating DEA's eighth foreign region. This new region, which covers Afghanistan and Pakistan, will enhance our ability to target and investigate the most significant and notorious drug trafficking organizations operating in that part of the world. DEA operations in Afghanistan serve a dual purpose: preventing the country from once again becoming a major supplier of heroin to the United States, as it was in the 1970s and 1980s, and helping stabilize the Afghanistan government as it battles the powerful drug warlords for control of portions of the country.

DEA's presence in Afghanistan reduces the amount of illicit drugs that are trafficked from the country, helps develop the capacity of the Afghans to conduct counterdrug operations themselves and supports and augments U.S. efforts against insurgents and terrorism, all of which aid in the long-term stabilization of the country and the region.

Fear of **extradition** to the U.S. is a powerful tool in combating international drug traffickers. Our country has excellent extradition relationships with many nations, and DEA makes use of these arrangements whenever possible. As examples, Colombia continues to remain the number one extradition partner of the United States, and Mexico is now extraditing drug criminals at record rates:

- Since December 17, 1997, when the Colombian Constitution was amended to allow extradition of Colombian nationals, through December 2008, the Government of Colombia has extradited 815 fugitives to the United States.

- Colombian President Alvaro Uribe Velez has taken on the FARC and the Autodefensas Unidas de Colombia (AUC) at unprecedented levels, expelling AUC leaders, and taking the fight to the FARC. In particular, Colombia extradited 14 alleged members the AUC, a former paramilitary and drug-trafficking group, to the U.S. on May 13, 2008.

- Mexican President Felipe Calderon has taken on corruption and drug trafficking at every level, and has ordered the extradition of unprecedented numbers of drug criminals to the United States from each of the four major cartels, including the leader of the notorious Gulf Cartel, Osiel Cardenas-Guillen. Since taking office in December of 2006, President Calderon has extradited more than 190 criminal defendants to the U.S. In 2008, Mexican authorities extradited 95 individuals to the United States, a record number for the seventh consecutive year.

- In February 2009, Mexico extradited Miguel Caro-Quintero, a high-level leader of the Sonora cartel and younger brother and associate of Rafael Caro-Quintero, the mastermind behind the kidnapping and murder of DEA Special Agent Enrique Camarena in March 1985.

The United States' Southwest Border is the primary arrival zone for most illicit drugs smuggled into our country and it is a region where violence from the warring Mexican drug cartels is rampant. For these reasons, DEA has identified the Southwest Border as a major focus area and also because the possibility exists for terrorist organizations to use established drug smuggling routes to transport dangerous individuals or weapons of mass destruction into the United States. Given this triple threat of illegal drugs, violence, and terrorism, DEA's efforts along the Southwest Border are now more critical than ever to maintaining national security.

The **El Paso Intelligence Center** (EPIC) is a national tactical intelligence center that supports law enforcement efforts throughout the Western Hemisphere and it is DEA's long-standing and most important intelligence sharing organization focusing on the Southwest Border. Much of EPIC's success can be attributed to the strong partnerships forged among the more than 20 agencies represented at the Center, including representatives from foreign police organizations in Mexico and Colombia. DEA also has information sharing agreements with police agencies in all 50 states. Through its 24-hour Watch function, EPIC provides immediate access to participating agencies' databases to law enforcement agents, investigators, and analysts at all levels of government, throughout the United States and with some foreign nations.

DEA further leverages **interagency partnerships** with agencies such as the Department of Homeland Security, by participating in several joint initiatives including the Organized Crime Drug Enforcement Task Forces (OCDETF), Border Enforcement

Security Task Force and the Tunnel Task Force. These task forces target human smuggling and violent drug trafficking organizations that fuel the violence along the Southwest Border. Participating in these initiatives also increases the flow of information between participating agencies regarding violent criminal organizations and gangs operating on both sides of the border. In addition, DEA participates in the OCDETF Fusion Center, a multi-agency intelligence center that provides operational intelligence in drug investigations. Through the Fusion Center, DEA shares information with other federal law enforcement agencies involved in drug enforcement, and helps to build large-scale operations targeting these violent Mexican drug trafficking organizations.

DEA also continues to build strong partnerships with **state, local, and tribal law enforcement agencies** in conjunction with OCDETF and the High Intensity Drug Trafficking Area (HIDTA Program). DEA currently operates 220 task forces consisting of 1,763 DEA Special Agents and 2,181 state and local task force officers. Our agents work hand-in-hand with these state and local officers, conducting highly effective investigations that prove beneficial to all participants. DEA is able to draw on the expertise and local knowledge of the state and local law enforcement officers and the officers are able to extend their jurisdiction and investigative possibilities as a result of being deputized federal drug agents. Such task force partnerships allow us to focus on the domestic cells of the Mexican cartels, such as in Operation Xcellerator and Operation Reckoning, which allow for strategic and surgical multi-jurisdictional enforcement operations to do the most damage to the cartels. Thanks to these partnerships, DEA is able to share investigative and other resources with state and local officers and provide them with drug law enforcement training. State and local participating agencies are also eligible to receive an equitable share of forfeited drug proceeds. In FY 2008, DEA shared $346 million in seized assets with state and local law enforcement, a 6.1 percent increase over the $326 million we shared in FY 2007.

DEA's commitment to assisting and partnering with state, local, and tribal law enforcement agencies is clearly demonstrated in our successful **Mobile Enforcement Team (MET) Program**. The MET program attacks violent drug trafficking organizations through long-term MET deployments (averaging 6 months per deployment) to assist state, local, and tribal law enforcement in disrupting or dismantling violent drug trafficking organizations and gangs. In FY 2008, there were 11 MET deployments in 10 DEA divisions resulting in the arrest of 310 criminal street gang members and violent criminals and the disruption and dismantlement of 11 drug trafficking organizations. I would like to take the opportunity now to thank the Committee for providing DEA with a $10 million enhancement in our FY 2009 appropriation for the MET Program. We truly appreciate your support of this very important program. With this enhancement, we will be able to reinstitute four additional MET teams and ensure that all the teams have sufficient funding for the necessary deployments to those communities most in need of assistance.

At this time, I would also like to thank the Committee for approving DEA's reprogramming request last year to convert 108 Diversion Investigator positions to Special Agent positions. This reprogramming has made it possible for DEA to realign

certain Office of Diversion Control field components to more efficiently and effectively carry-out the regulatory control and enforcement functions of the **Diversion Control Program** (DCP). Through a redeployment of Diversion Investigators and the infusion of Special Agents, Intelligence Analysts, and Task Force personnel, this realignment will ensure that the proper attention is given to both the regulatory control and the enforcement mission of DEA.

DEA will establish groups dedicated to performing the regulatory and compliance aspects of the DCP. The goal is to increase the frequency of scheduled investigations/audits of registrants and improve our regulatory oversight to include previously excluded registrant groups. This renewed focus on regulatory control will help the regulated industry (pharmaceutical controlled substance and chemical registrants) better comply with the Controlled Substances Act (CSA) and its implementing regulations and identify those that continue to violate these laws. The DEA groups are primarily responsible for the prevention of diversion through regulatory compliance and controls which may include administrative, civil or criminal action against a registrant.

Between FY 2006 and FY 2009, DEA has added 161 Special Agent positions (including 108 in last year's reprogramming) to the DCP to provide additional law enforcement support during diversion investigations. DEA is using these Special Agent positions to create new **Tactical Diversion Squads**. In addition to the 5 TDS groups currently operational, DEA will deploy approximately 32 of these groups over the next 3 years under this realignment plan. These TDS groups allow for the unification of separate and sometimes disparate Federal, State, and local investigations, authorities, and enforcement programs. They work as a force-multiplier, combining Special Agents and Diversion Investigators with state and local law enforcement and regulatory counterparts to investigate controlled substance and chemical diversion in a particular jurisdiction.

Southwest Border Violence

I am aware that just a couple of days ago this Subcommittee held a hearing concerning the violence along the Southwest Border and your panel of witnesses included Mr. Joseph Arabit, DEA's Special Agent in Charge of the El Paso Field Division. I have read Mr. Arabit's testimony and believe that it captures very well the underlying causes of the violence and offers a road map to success.

I will not attempt to summarize what Mr. Arabit presented so well in his testimony but I do wish to restate DEA's commitment to continue doing what we have been doing for so many years: working with our counterparts -- on both sides of the border -- to inflict the most damage possible on the drug cartels responsible for this violence. Under the leadership of President Calderon, we have at last a very willing partner nation with whom we can work closely. And our joint efforts are paying off. The Cartels are feeling the pinch and they are reacting as you expect them to: they are fighting back. Our response must be to stay the course, to keep up the pressure and never give in. As every child learns, if you give in to a bully, it only gets worse. The transformation that we have seen

in Colombia is possible in Mexico if we give them the sustained support they need. DEA's largest international presence is in Mexico. We will be there with them, standing shoulder to shoulder in this critical fight. We will never give up.

Demonstrated Results

DEA's operational successes and strong partnerships are resulting in measurable impacts on the domestic illicit drug market and quantifiable results in terms of revenue denied and asset seizures.

According to DEA's analysis of cocaine seizures, the **price** of cocaine in the United States has risen significantly over the past two years, while **purity** of the drug has decreased. From January 2007 to December 2008, the price per pure gram of cocaine has increased 104.5 percent, from $97.62 to $199.60, while purity decreased 34.8 percent, from 67.2 to 43.9 percent purity. Factors contributing to these favorable results include, but are not limited to:

- DEA's Drug Flow Attack Strategy
- DEA-led operations such as *Operation All Inclusive*
- Extraditions from Mexico and Colombia
- Building coalitions with host nation counterparts
- More than $9 billion of revenue denied to drug traffickers from FY 2005 though FY 2008
- Combined efforts of DEA and its Federal, State, and local law enforcement partners.

The results for methamphetamine price and purity, while not as impressive as they were a year ago, are still favorable. From January 2007 to December 2008, the price per pure gram of methamphetamine increased 20.4 percent, from $148.03 to $178.30 while the purity increased slightly from 56.9 percent to 59.9 percent purity. However, at the end of 2007, the price per pure gram of methamphetamine was $267.74 while the purity was 40.9 percent. Much of the methamphetamine trend that was observed at this time last year could be attributed to the success of our enforcement efforts, state legislation and the Combat Methamphetamine Epidemic Act (CMEA), which made it difficult for producers of domestic methamphetamine to obtain the needed precursor chemicals. The partial reversal of this trend in the past 12 months is a result of drug traffickers adapting to the CMEA and changing their production and trafficking patterns. Small toxic lab seizures in the U.S. are beginning to rise again as the traffickers adapt to various forms of legislation. Domestic production is now being fueled by varying forms of "smurfing", numerous individuals going from store to store purchasing the maximum limit at each store and then pooling their purchases. Additionally, Mexican drug trafficking organizations are producing and distributing much of the methamphetamine consumed in our country. DEA is adapting to this production shift as we focus on methamphetamine produced in Mexico and transported across the Southwest Border.

DEA will continue to perform additional assessments and monitor these price and purity indicators. We are also analyzing other positive law enforcement outputs to identify additional, meaningful trends to measure our impact on the drug market.

In FY 2005, DEA established a five-year plan with annual milestones through FY 2009 with the goal of denying traffickers $10 billion in **drug and asset seizures**. I'm pleased to report that the men and women of DEA have exceeded our expectations. In the first four years of the plan, DEA surpassed its goal for each fiscal year. More than $9 billion in revenue has already been stripped from drug trafficking organizations, including $2.6 billion in bulk cash seizures. That is $2.6 billion in hard currency that would have gone back to the traffickers, fueling their ability to produce and transport more drugs to the U.S. In FY 2008 alone, DEA seized $740 million in bulk cash and denied drug traffickers $2.9 billion in overall revenue, exceeding its goal of $2.5 billion for the year. As part of this effort, DEA has increased asset seizures by 152 percent, from $857.1 million in FY 2004 to $2.16 billion in FY 2008.

Switching briefly to a discussion of drug use in America, I am happy to report that **illicit drug use** by American teens continues to decline. According to the 2008 Monitoring the Future Survey, current illicit drug use among 8th, 10th, and 12th graders declined by 25 percent from 2001 to 2008, meaning there were approximately 900,000 fewer teens using drugs in 2008 than in 2001. Most notably, methamphetamine use among high school seniors dropped from 2.5 percent in 2005 to 1.2 percent in 2008 and cocaine use among high school seniors decreased from 5.1 percent in 2005 to 4.4 percent in 2008. In addition, drug use among workers is at its lowest level in 19 years. Since 1988, positive workplace drug tests have fallen by 72 percent, from 13.6 percent in 1988 to 3.8 percent in 2007. DEA is proud to be a key partner in reducing drug abuse in America by reducing the supply of drugs that are available. Effective drug prevention and treatment programs are less likely to succeed if Americans are surrounded by cheap and plentiful drugs.

The Road Ahead

The road ahead for DEA is full of complex challenges; however, with your continued support, I am certain we can turn these obstacles into opportunities. While building on the successes of years past and learning important lessons from the present, DEA is well positioned to address the future. We are proud of all that we have accomplished in the past year, and we believe even greater victories will be ours in the year ahead:

- To further attack the flow of drugs, chemicals and money, DEA will expand the Drug Flow Attack Strategy to the Bahamas and the Eastern Caribbean; the Far East Region (including Thailand, Singapore, the Philippines, Malaysia, and Australia); and the Middle East region.

- We will continue to indict, arrest, and extradite Consolidated Priority Organization Targets, the Department of Justice's "most wanted" drug trafficking organizations.

- DEA will target cartels and continue to disrupt and dismantle drug trafficking organizations around the globe, from Mexico and Colombia to Afghanistan.

- DEA has opened a new office in Accra, Ghana and will soon open a new office in Nairobi, Kenya. These new offices will enable us to extend our reach into new areas of the world that are engaging in transnational crime and terrorism and assist our partner nations as they struggle against the challenges of ungoverned spaces.

- DEA will work hard in FY 2009 to reach or exceed our $3 billion goal for revenue denied. After denying $2.9 billion in FY 2008 when our goal was $2.5 billion, prospects are very good that we will surpass our annual goal yet again.

- DEA looks forward to continue expanding its work with and support to the Intelligence Community.

- And finally, DEA will continue to look for ways to reduce the demand for illegal drugs through demand reduction efforts, including the promotion of websites like www.GetSmartAboutDrugs.com and www.JustThinkTwice.com.

Mr. Chairman, this concludes my formal remarks. I would be pleased to answer any questions you may have.

Mr. MOLLOHAN. Thank you, Ms. Leonhart.

A couple days ago, this Subcommittee held an afternoon of hearings with regard to drug trafficking on our southwestern border and the violence associated with it on both sides of the border.

I would like to give you an opportunity to speak to that issue as well here first thing today. As I ask that question, I would note that Secretary of State Clinton made what I understand are some informal comments that were reported in the press to the effect that, by some indices, U.S. drug policies could be talked about in terms of being a failure. I think that assessment is at odds with the testimony that we heard the other day.

What is your assessment and perhaps even your reaction to her comments? I want to stress that I think they were informal and perhaps not well thought through, but we look forward to your comments on that.

Ms. LEONHART. Thank you, Mr. Chairman.

First, I would say the failure is that we still have drug use and abuse in this country. But in terms of Mexico, that is nothing but a pure success. That is a sign post that what we are doing and what we have been doing over many, many years is finally working.

And I say that as a veteran DEA agent for 28 years. Having worked in San Diego on the border and other places in the country, I know our efforts with our Mexican counterparts, and I have to include our Colombian counterparts, working together, our three countries have strategized over the last several years on how to take down both the Colombian cartels and the Mexican cartels.

Our strategies over the last two years have been to do as much damage to the Mexican cartels as possible in an attempt to disrupt them and dismantle them and to have a change in the cocaine and meth markets in this country. And we have done that.

So I could not label that failure. If you talk to experts in drug enforcement around the country, if you talk to the General of the Colombian National Police and if you talk to the Attorney General of Mexico, Eduardo Medina Mora, and I have talked to all of them, they will tell you that this is a success.

And what we are hoping to do is as long as the valiant and courageous President Calderon and Eduardo Medina Mora and Mr. Garcia Luna stay the course, we see great things for Mexico. We see great things for the drug market in our country. We see a Mexico that can become like Colombia which, being a drug agent and seeing Colombia in the 1990s, is nothing like what Colombia is today.

And those are our hopes for Mexico.

Mr. MOLLOHAN. So you are analogizing your success in Colombia, which was a process, not an event—it took a long time for that success to demonstrate itself—to Mexico today. You are suggesting that the strategies and tactics that you are employing in Mexico are bearing success and you predict, as you look to the future, will be increasingly successful and result in the kind of trends that we are now getting in Colombia; is that correct?

Ms. LEONHART. That is correct. Those results like Colombia and also a continued change in the drug market in the United States.

Mr. MOLLOHAN. Well, you can understand why folks who are maybe taking a snapshot of the situation might have concerns because there is a lot of increasing violence that was evident in our hearing. It is all over the newspapers and perhaps in a sensationalized way to some extent.

What indices should we be looking at to be able to share the optimism that you just expressed?

Ms. LEONHART. I think the first thing that we do is we listen to President Calderon and we listen to the Attorney General and law enforcement officials in Mexico. They are very optimistic about what they are doing, and they do have a plan. They are optimistic that what they are doing is making a difference.

And what we know about cartel leaders, and especially Mexican drug cartels, is they are on the run. They are fighting each other for the trafficking routes and the corridors to move product into the United States. They are fighting within their own cartels for leadership because the Mexican government and DEA have really done damage to these cartels.

We have had, for instance, the leader of the Gulf cartel extradited to the United States two years ago, and we have had many extraditions since of major drug traffickers. So they are in disarray. And one of the things we can do is look and see what we are learning from the other drug traffickers.

We conduct our investigations, and I can tell you that when we are intercepting traffickers during these investigations, we hear utter frustration on their part; because of different law enforcement operations that we have going on in the transit zone, operations that we have been conducting with the Mexican officials in Mexico now for two years. They are frustrated and they are changing the routes. They are changing their methods and they are making mistakes and we have been capitalizing on that.

I think other things that you can look to is that there is still the majority of people within Mexico, you will hear from 51 percent to 58 percent, that still back President Calderon, with all the violence still back President Calderon, and are looking to see a change in their country. And the perfect example is to look at Colombia.

Mr. MOLLOHAN. Are there any measurements of success? A decrease? We are talking about an increase in violence. You are suggesting that is cartel-on-cartel violence, competition for territory, competition for the business, and that in some way, that is a positive sign. That is an interpretation of it.

Is there anything, and perhaps there is not, that we can look to that is obvious or that we can benchmark today and look to tomorrow as trends of success?

Ms. LEONHART. Yes. There are a couple of things.

What I needed to mention is a third dynamic there. It is not just the fighting within the cartel for leadership and money and power. It is fighting each other and it is for the first time in history, they are actually fighting the government. So that is a third factor that makes this different and why we see it as successful.

But we can look to our own country for some dynamics that are happening here in the drug market and that will tell the story.

And that really is the poster that I have here today. And if I can walk you through that and explain it, I think you will understand it a little bit more.

We looked over 24 months, December 31, 2006 to December, well, all of 2007 and all of 2008, we looked. And when I was here last year, I was saying that we are in the perfect storm. Our enforcement operations, the operations we are doing in Mexico, all the money we are taking from the cartels, all the pressure we are putting on them, has changed the cocaine market.

And I reported to you that in a 12-month period with sustained pressure on the cartels that we had increased the price of cocaine by 21 percent. At the same time, we had decreased the purity 10 percent.

And I reported to you that at that time, 38 markets around the country simultaneously were reporting shortages of cocaine and we could verify skyrocketing prices.

One more year of that sustained pressure, we take a look at it today and I can tell you that the price of cocaine, the average price of a pure gram of cocaine on the streets of America right now is up 104 percent, and the purity has dropped again to 35 percent.

At the same time, that is a change in price and purity for cocaine, but when we look at drug use, we see major changes as well. A year ago, I reported great success because we saw that twelfth graders' prior-year use of cocaine was down nine percent. It is continuing to go down and today it is down 23 percent.

I also talked about workplace drug testing and said we had never seen anything like this. And these are the biggest drops in 19 years and the drop was 19 percent. It now has dropped 34 percent in the workplace for cocaine positives.

So not only has the cocaine market changed, but we have seen a change in teen and adult usage in this country. So that is why we call it the perfect storm. We have never seen it lined up like this.

We were very cautious, very cautious and that is why we waited that year to even come to you and say we think something is happening, but now when we have 24 months of this and all the successes taking billions of dollars, that we stripped the cartels of billions of dollars over the last few years, this is putting pressure on them and it is affecting us.

Mr. MOLLOHAN. Well, we know that those results come about by the hard work of you and your agents working in very dangerous circumstances, so we compliment you for those results. And we will have other questions.

Mr. Wolf.

VICTOR BOUT ARREST

Mr. WOLF. Thank you, Mr. Chairman.

And welcome. And I have a lot of questions that just your testimony has raised.

But before I get into that, I want to thank your people for the Victor Bout arrest. When I would be in Africa, in the Congo and in Sierra Leone, they would say their Victor Bout plane is on the runway. And what he did with regard to Charles Taylor and the cutting off of arms and the Congo and the death is unbelievable.

And I do not believe that your people have gotten enough credit and I do not know that people quite understand that this fellow is a merchant of death.

There is another issue which we will not get into. I think it is very troubling. There have been reports that other agencies of our government have used him. And under no circumstances would that ever be justified.

So I want to thank you. And I think the public ought to know that what your people have done is almost incredible because he would be with impunity. He would just move wherever. And some day, I would love your people to just come up and tell me how you actually happened to do that.

Now, the question is, how successful will we be to extradite him and bring him back to the United States because I would say on behalf of the people that I would see, and I would go into villages where they would talk about short sleeve or long sleeve and their arm was cut off and all of the things? And I think with Charles Taylor's trial now in Hague, this guy has got to be part of it.

So how hopeful are you and is the Administration doing everything it can to bring this guy back and convict him here in the United States? Can you tell us, and, one, thank you and your people who were involved in that, can you tell us a little bit more about it?

Ms. LEONHART. I can tell you that we are very optimistic that he will be extradited to the United States. Both in the prior Administration and the current Administration, both Administrations saw what a spectacular case it was and how important it is to bring him to justice here in the United States to stand for those crimes. Nobody else could catch him for all these years.

We know that from our law enforcement partners in Thailand that they will do whatever they can. We know that the courts are doing what they can. There are procedures that have to go on and I think there is possibly one more hearing. It was supposed to be a couple of weeks ago. I think they have put it off due to witness problems on his part. But we expect to have word after that hearing.

Mr. WOLF. Could you tell the Committee and for the record just how extensive and his involvement in some of the things that he has been involved in over the years?

Ms. LEONHART. Well, we did note, you know, he was involved in drug trafficking and money laundering, but, more important than that, just all the conflicts he has been involved in and all the weapons he has supplied.

And this is a man that is all about greed, and when he saw the chance to sell arms to the FARC in Colombia to kill Americans, he took advantage of that and it was just dramatically done. It could be a movie some day, moving from one place to another.

Mr. WOLF. Well, there was a movie.

Ms. LEONHART. Yes.

Mr. WOLF. How accurate is that movie?

Ms. LEONHART. I have watched the movie and I can only imagine like most movies that it is probably a bit dramatic, but the events that they are covering pretty much parallel what we know his life to be.

Mr. WOLF. Is the indictment for the sale of arms to FARC? Is that what the——

Ms. LEONHART. Yes. We did traditional drug enforcement work. We had an undercover operation where our undercovers posed as the FARC in Colombia. And he was very interested in a transaction for arms where he would sell arms and went to the meeting to negotiate that. And we were able to have our counterparts in Thailand arrest him.

Mr. WOLF. Are there any other indictments for him around in other countries of the world, any African countries or anything at the Hague or anything like that?

Ms. LEONHART. I do not believe so. I believe that there may have been former charges in other countries brought against him and dropped. We felt that this was the chance to stop what he was doing and that this is where he would be brought for justice.

Mr. WOLF. At his pinnacle, how many airplanes did he have?

Ms. LEONHART. I am not sure, sir. We could get you that information. In fact, we would like to come and give you a briefing.

[The information follows:]

How many airplanes did he [Victor Bout] have?

Answer. On April 22, 2009 Acting Administrator Michele M. Leonhart and other senior DEA staff briefed Congressman Wolf on the Victor Bout case. The briefing included information regarding Bout's airplanes.

Mr. WOLF. Sure. I would like that.

The last question is, so you are saying the Administration, the Obama Administration is committed to this and are our people out there in Thailand, in our embassy working aggressively to make sure that this happens?

Ms. LEONHART. This is a major, major priority for DEA. And I know that the Attorney General, Mr. Holder, sees it as a priority and is doing what he can to make sure that justice is done and that we get Mr. Bout extradited out of Thailand.

Mr. WOLF. I think the Committee should know and something should be put in the record that he was responsible for the death of so many people. In Africa, he was the merchant of death. He had literally furnished, I believe, most of the weapons to Charles Taylor. Much of his weapons have gone into the Congo.

And I just think what the DEA has done on this has been incredible and, yet, there has been very little notoriety about it, I think because people do not know, you know, who he is and, therefore, they just think perhaps he is just some guy.

I hope that the Administration will stay firm and not allow any of his friends in other countries to intercede.

DEA'S EXPULSION FROM BOLIVIA

One other question, too, a little bit off of what your testimony is. In January, President Morales ordered the DEA to leave Bolivia and we understand you have relocated your staff to the southern countries.

Can you explain how you have reconfigured your overseas staffing? And what impact, because I know that is a terrific problem down in Bolivia, what impact has this had and how do you see this thing working out? And is there anything on the horizon whereby he may allow our people back in?

And, lastly, was DEA the only one that was expelled? Was——

Ms. LEONHART. No, sir.

Mr. WOLF [continuing]. ATF or AID or anybody else?

Ms. LEONHART. Well, actually, the Ambassador was expelled first.

Mr. WOLF. Oh, he went to the Ambassador too?

Ms. LEONHART. Yes.

Mr. WOLF. So what do we have, DCM there?

Ms. LEONHART. We have INL, I believe is left there with maybe a couple of other officials, but he expelled the Ambassador first, then expelled our people who were working out in Beni, expelled them from that location and then later expelled us.

Mr. WOLF. What were his reasons, because there is a drug problem in Cochabamba, there is a drug problem with young Bolivian children, there is a drug problem? Why would he do that?

Ms. LEONHART. His support for counter-narcotics programs is diminished and he does not want DEA in his country.

Mr. WOLF. Is there a reason or is there something that he wanted to do privately? Is there a reason why or is it just that——

Ms. LEONHART. He believes that he does not need DEA in the country to attack the drug problem.

Mr. WOLF. Do they have an effective drug program, Bolivia?

Ms. LEONHART. I would say that their successes were because DEA and the Bolivians worked together for many years, 35 years in Bolivia. I would not say that they are successful today and I would not say that they will be successful in the future.

Mr. WOLF. Last question and I can ask others in the second round, but is there any prospects or is there any effort being made to allow the DEA or others to come back in or is that just kind of pretty much on hold?

Ms. LEONHART. Well, President Morales said himself that DEA will not return to Bolivia during his term as President. And at this point in time, he is expected— well, he is going up for reelection in December of 2009. That would give him five more years if he wins that election.

Mr. WOLF. Do the people support him on this? Is it a popular position in Bolivia or is it——

Ms. LEONHART. That, I do not know.

Mr. WOLF. And is there a drug problem? I mean, I have talked to people down through areas and they maintain that they do have a drug problem within their own country in addition to outside. Is there a drug problem in the cities of Bolivia among Bolivian children and——

Ms. LEONHART. They have their own drug use and drug abuse problem and they have their own problem in that they are a supplier of coca.

Mr. WOLF. Okay. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

My last question of the day was going to be on the subject that Mr. Wolf touched, so I will touch that subject first.

First of all, thank you for your testimony and for your service, although I must say that your testimony left out at least an allega-

tion with little truth to it. The allegation by President Morales was that DEA was involved in espionage in his country and that was the reason that he got rid of them.

Now, there is a major drug issue in Latin America. And I fall traditionally, and the Chairman and the Ranking Member know this, I fall on the side of those unfortunately few Americans who want less American interference in Latin America.

But at the same time, I want a very strong fight against drugs in cooperation with those governments. And I think many of those governments want to participate with us in that war on drugs.

But there is, whether we like to admit it or not, it might be that DEA is caught up in what we hate to admit has been an ongoing belief in Latin America that there has been a lot of political interference.

You know, we have a record in Chile with Allende where the CIA played a major role. We played at least a role of indifference in an attempted coup on President Chavez. We have had hostile behavior, whether warranted or not, towards Cuba. We hold a couple of colonies in that area, including one where I was born. So it has not been a pretty picture on either side.

And what I think we are seeing, Mr. Chairman and Ranking Member, is that a lot of that hostility now is playing out in areas where it should not play out because whether you are on the left or on the right on this issue, everyone should be for fighting the war on drugs.

But there is still a spillover from a time gone or still around where many of those leaders felt that our government was interfering too much. And so you have us accusing Chavez of something and he accusing us and Morales kicking out the Ambassador and we have no Venezuelan Ambassador here.

The only salvation here is that the Secretary of State has said and the President has said that he would like to review our whole policy in Latin America. That has always been the forgotten area.

And I think if you change some of our behavior, if we change some of our behavior or at least begin to give the feeling that we are there to support anybody who is democratically elected regardless of their rhetoric towards us, that then we can open the door to these other things that have to be done.

And I would agree with you that, you know, every time I have had a chance to speak to anybody near the Bolivian government or in the Bolivian government, I say this is a mistake. We have to fight this war.

I mean, there is a record in Latin America of using agencies other than the obvious agencies to disrupt government and I am not making that up. That is historically true. That is the problem that we have to deal with.

Having said that, let me just move on to one of my questions. As we do more, do more—well, let me ask you a question before I leave the subject.

Did you know, had you heard that one of his main reasons for asking DEA to leave was that he accused DEA of espionage?

Ms. LEONHART. I did hear those accusations and they are untrue. They are preposterous. DEA is in that country to conduct joint drug operations and has for 35 years with great success. So our

role was going after drug traffickers, solely going after drug traffickers.

DRUG TRADE IN THE CARIBBEAN

Mr. SERRANO. All right. Thank you.

As we do more and more and more on the Mexican border, is there any fear that in the Caribbean, the drug trade will ramp up in a way that we are not keeping an eye on it? I am specifically speaking about the Virgin Islands and Puerto Rico and places like that. As we concentrate on one area, does something else happen in the other area?

Ms. LEONHART. We think alike. And I made a trip to the Dominican Republic last year, just about this time last year, because as we saw this happening and we saw the pressure we were putting on the Mexican drug cartels, we knew that pressure would probably cause a change in routes and that route would then affect the Caribbean.

I went and met with officials there and we had jointly done a few operations in 2007. And we were able to continue some of those operations and we put more focus on both Haiti and the Dominican Republic over the last year and a half. And we have very good relationships with them and we have some things in place to give us an indication if there is a change.

Right now 90 percent of the cocaine destined for the United States goes, you know, through Central America and Mexico and 10 percent through the Caribbean, but we have been watching that. We have been watching air tracks from Venezuela into Haiti and the Dominican Republic. And it is a priority for us. We have to be vigilant about that area.

Mr. SERRANO. And I hope it remains a priority because, you know, you guys do good work and you have got a huge task, an ongoing task ahead of you, and it is not going to get any easier. And so I hope you pay attention there.

Let me finalize this round by just saying something else. Both Mr. Wolf and Mr. Mollohan remember that a few years ago, Puerto Rican communities throughout the United States and in Puerto Rico fought this battle which they won after 62, 64 years of getting the Navy to stop bombing the Island of Vieques. This beautiful island that could be built up was used as a bombing range. The Navy left.

Someone last week suggested in the Senate that the military look at Vieques again as a way of fighting the war on drugs. So needless to say, throughout the 50 states and in Puerto Rico, everybody is having a heart attack because the idea of the military returning to Vieques, even if it is to plant tomatoes or mangos, nobody is happy about.

So I would hope, and just to show you that I support DEA notwithstanding the question I asked you about espionage and other things, I would hope when folks from DEA sit around the Administration, if the idea of bringing the military to fight that war using Vieques, that you guys would simply look across the table and say we can handle that, you know, and we are going to have more support from the people, good will, because it is not the military that left after 62 years.

Ms. LEONHART. And I can respond that I have never heard that and I will remember our conversation if I do hear that.

Mr. SERRANO. It was in Senate testimony. A member of the, what is it, the South Command, said that they would look at Vieques again as a base, but this time, they said not for military training. They said to fight the war on drugs. And folks just do not want the military to return in that way. There are plenty of other places they could practice in Puerto Rico and they do practice, you know, military training.

Ms. LEONHART. Thank you.

Mr. SERRANO. Thank you, Mr. Chairman.

SOUTHWEST BORDER POLICIES

Mr. MOLLOHAN. Well, just a final question on our southwest border policies. The President recently came out with an initiative. Would you please give us your description of that initiative, what you think it entails and what you intend to accomplish under it.

Ms. LEONHART. Well, I believe with President Calderon's unprecedented level of support and commitment to make radical reform, he does need our help. He is going to stay the course and we stand behind him in his fight. And we need to do whatever we can to help him.

And the Merida Initiative, as it is called, provides him a package that will help do some of the things that are badly needed in that country, that at the end of the day will not only help drug enforcement, but will also help with the violence and help stabilize Mexico so that they can return the cartel problem back to a law enforcement problem and he will no longer need troops to patrol his streets.

So we stand behind that. We support that. And there are things that Mexico is in dire need of and Merida funding will help them get that.

AFGHANISTAN

Mr. MOLLOHAN. Thank you.

What percentage of drugs produced in Afghanistan end up in our domestic market?

Ms. LEONHART. When I was here last year, I told you it was less than ten percent. We have taken a look at some numbers and it is even lower than that. We think it is probably four or five percent of Afghan heroin or opium making its way to the United States.

Mr. MOLLOHAN. What triggers DEA's involvement in other countries, in producing areas outside the United States?

Ms. LEONHART. I am sorry. Can you——

Mr. MOLLOHAN. What triggers your interest? How do you prioritize your resources across the world? Part of it, I suppose, is the percentage of illicit drugs that come from that area. I am just wondering is four percent a lot? Does that trigger your interest in an area, or does it take a larger percentage of drugs consumed in this country coming from that area for you to really want to get involved overseas in those production areas?

Ms. LEONHART. The trigger for us is really about what happened in history because at one time, most of the heroin in our country came from Afghanistan. And if we do not put measures in place to

contain them, [1] and we actually have an operation called Operation Containment that is made up of 19 countries that are making sure that we can do what we can to keep drugs from coming out and keep chemicals from going in [1], we could return to our history not too long ago where our streets were flooded with Afghan heroin. So that is one thing.

But then you also have to look at we have got U.S. troops and coalition forces in that country. And we know that the Taliban earns between $50 million and $70 million annually just from taxing opium. So we know that drug trafficking is funding the insurgency in Afghanistan. And we feel a responsibility because we have our troops over there. And we have a wonderful set of informants and measures in place there to help our military and to help our coalition forces.

Since December of 2005, on at least nineteen occasions, and it is probably now twenty-one or twenty-two, DEA doing drug work in Afghanistan with informants was able to get information from these informants, turn it around, get it to the special forces. And on those nineteen occasions that I am aware of DEA was able to move personnel out of the way and move officials out of buildings. And there were rockets that were launched. So we play a role not only to make sure that they do not return as the primary source for heroin in this country, but also to help stabilize the Afghan government. You cannot stabilize Afghanistan without doing something about the drug trade.

Mr. MOLLOHAN. What is our mission in Afghanistan? How would you define success?

Ms. LEONHART. We define success the way we define it in Mexico, and the way we define it in Colombia, and other countries. It is our role in Afghanistan to go after the kingpins and to go after the biggest and the baddest. Our mission there is to develop the Afghan National Police. Develop them so that they can become experts in drug law enforcement and become the future DEA of Afghanistan so we no longer have to be there. So it is building their capacity and helping with the rule of law in Afghanistan, and we do that with a five-year plan on how to stand up, technically, the DEA of Afghanistan.

Mr. MOLLOHAN. Is that your main mission in Afghanistan? To teach the Afghans how to fight drug production and the misuse of drugs? Is that your main mission in Afghanistan?

Ms. LEONHART. Our main mission is to go after the high value targets, the kingpins, and the drug lords controlling heroin and opium in that country. And in doing that, we are developing the Afghan National Police, specifically the National Interdiction Unit, to be able to work jointly on those operations. And they are to the point now where they are doing their own search warrants, they are bringing cases to the narcotics tribunal. Just a few years ago there was no mechanism to do that. So it is really on the drug part, it is really a success story to see how far they have come.

Now, there is still a lot to do with them. But at the same time we are doing that we have taken out some major drug lords in that country. And they have been extradited to the United States. A couple have been convicted. There are some in New York awaiting

trial. And we are very excited about that in the same way we were excited about Viktor Bout.

Mr. MOLLOHAN. Give us a brief overview of your capabilities in Afghanistan.

Ms. LEONHART. Well after September 11th, we had no one in that country. We had been in Afghanistan years ago and then had not been there for twelve or thirteen years. So we started slow with sending three agents over originally. We have built up now to the point where we have thirteen authorized positions in country. We have three pilots in country. And we have developed a program called the FAST team, Foreign-deployed Advisory Support Teams. And at any one time we have one of our teams in Afghanistan.

So we are becoming more and more self-sufficient. It is dangerous in a war zone conducting drug operations. But we have developed relationships with the U.S. military and with NATO forces. And we are now at the point, where by the end of the year, we are going to be increasing our presence in Afghanistan by fifty-five positions. And that will allow us to bring the NIU and bring the Afghan National Police out to those provinces, out to those regional command——

Mr. MOLLOHAN. So you very much are involved in enhancing the capability of the Afghans themselves to fight illicit drugs?

Ms. LEONHART. That is correct.

2010 BUDGET

Mr. MOLLOHAN. In your 2010 budget request how will those capabilities increase?

Ms. LEONHART. I am not allowed to talk about the 2010.

Mr. MOLLOHAN. Well, do not give us numbers. Can you talk to us about——

Ms. LEONHART. Well, I can tell you that we have——

Mr. MOLLOHAN [continuing]. Increases in personnel? Increases in equipment?

Ms. LEONHART. We have in the 2008–2009 GWOT, I guess in the 2008 GWOT that we will be using in 2009, we have the money for those fifty-five positions. And they should be in place by September 30th. Beyond that, we will need money in the 2010, or some other funding source, to keep them there. But right now we do have the money to deploy.

Mr. MOLLOHAN. So you are going to at least have a request to increase funding to support an increase of fifty-five personnel, is that correct?

Ms. LEONHART. We would need money to sustain our fifty-five people in country beyond September 30th.

Mr. MOLLOHAN. Okay. Now, we have heard that the Administration is thinking about consolidating the non-military Afghan funding within the State Department, who would then distribute those funds out to various agencies that are operating in Afghanistan. That raises a lot of questions, including control questions and funding questions. What can you tell us about this proposal?

Ms. LEONHART. I do not know that any decisions have been made for the 2010 budget. I believe that is all still being worked out.

Mr. MOLLOHAN. Have you heard about it? The State Department managing the funding for the agencies in Afghanistan, including DEA?

Ms. LEONHART. I am not able to talk about the 2010 budget. And what I do know about the 2010 budget would be so minimal. I would be glad, once we know something, to talk to you about it.

Mr. MOLLOHAN. Okay. Well, we will look forward to that. Mr. Wolf.

CHALLENGES IN AFGHANISTAN

Mr. WOLF. Thank you, Mr. Chairman. I had a lot of questions I wanted to ask you about this, but the Chairman's questions raised some other questions. I was the first member, with Congressmen Hall and Pitts, to go to Afghanistan shortly after the fighting broke out, and went back. And now the conditions are much worse. I mean, your people must be having a difficult time moving around the country. Can you tell us how difficult? I mean, do they move without military support?

Ms. LEONHART. I can tell you that that has been a challenge. It has gotten better. And it has gotten better because of the partnerships we have developed. There were times when we were not sure that we were going to be able to get a U.S. military lift to go out on an operation. We did not have our own mechanisms. But now we do have the capacity to move our people around. Again, everything we do is coordinated with the U.S. military. We have developed a very good relationship with INL. And INL, where they can help us they do. We have developed relationships with the Germans, the Dutch, the British.

Mr. WOLF. Well since most of this, that was the next question, since most of this does not go to the U.S., it goes to Europe and places like that, if we are going to have fifty-five how many people do the Dutch, the Brits, the Germans have? I mean, going to have. I mean, they should be carrying the overwhelming burden on this. I mean, this should not be the United States government. We are carrying most of the burden with regard to the military. And since most of the drugs are going to Europe and places like that it would appear to me that from a responsibility point of view they should be carrying the overwhelming burden. So one, is it accurate that most of this is going to, say, Great Britain and Germany, and places like that? Is that fair to say?

Ms. LEONHART. The trafficking patterns for the opium and heroin out of Afghanistan have changed a little bit. But it is primarily——

Mr. WOLF. And go to what three countries?

Ms. LEONHART. It is primarily Europe, Russia, and now we see it going to Iran, Central Asia, and more recently China.

Mr. WOLF. So how many supporters do we have in the drug enforcement area from, I am sure China does not have anybody there. They may, but that would shock me if they did. But how many non-American, Western Europeans, whatever, are actively working in the drug area compared to our, if we get to fifty-five? We are thirteen now, we get to fifty-five, what will the Europeans have?

Ms. LEONHART. The other countries that we are working with, they are there in a military status.

Mr. WOLF. Well, but should they not be there on, should the British, and I do not know how Britain fights drugs. But should not the British DEA be there? Should not the French DEA be there? Should not the Spanish DEA be there? Should not the German DEA, and if there is such a corresponding, should they not be there? And should not our administration be asking them? Since they are not participating as aggressively in the military area, and they are not going out in some of the combat areas? Some of them are. But some are not. Is that not a fair burden? That we should say, "This is your responsibility." I am not suggesting that we withdraw from this area. But the overwhelming burden be carried by them?

Ms. LEONHART. We would welcome any partners in the drug mission.

Mr. WOLF. But are we asking? Do you know? Are we asking them?

Ms. LEONHART. I know that we have on occasion been asked to brief on what we are doing in country. DEA is the only drug law enforcement there. Everybody else is military, or contractors.

Mr. WOLF. But are there military involved with your DEA people? Are the German military involved with your DEA people?

Ms. LEONHART. Yes. To get out of Kabul and to get into the provinces, and to get to the regional commands, that is when we are working with the Germans, and we are working with the British, and we are working with the Dutch.

Mr. WOLF. Do those three countries have a problem with things coming from Afghanistan?

Ms. LEONHART. Europe has a problem with heroin.

Mr. WOLF. Well then, should we then not ask them? Should the State Department, or the Justice Department, not be asking them to take a heavier lift here?

Ms. LEONHART. I would assume that the State Department has asked for assistance.

Mr. WOLF. Could you let us know if they have? And we can then check.

Ms. LEONHART. Yes.

[Has the State Department asked the United Kingdom, Netherlands, and Germany] for a heavier lift here [Afghanistan]? Could you [DEA] let us know if they have?

ANSWER

European Union countries, as part of NATO, the United Nations Office on Drug Control (UNODC) and International Security Assistance Force (ISAF), have a role in counternarcotics programs throughout Afghanistan. Counternarcotics are an ISAF Key Support Task. Under this task, ISAF European partners must:

1. Share counternarcotics information;
2. Support counternarcotics information campaigns;
3. Help train Afghan national security forces;
4. Provide enabling/logistical support;
5. Support Afghan counternarcotics operations.

Many European countries, including the United Kingdom, France, Germany, Italy, the Netherlands and Norway, provide Counternarcotics Liaison Officers to work bi-lateral investigations within the Afghanistan judicial system. ISAF partners commonly provide basic force protection when needed for counternarcotics operations in the partners' area of responsibility. As of April 2009, the ISAF had approximately 58,000 troops, with 55 percent of the troops from coalition nations besides the United States.

Listed below by European partner are some of the mission objectives performed by European countries:

United Kingdom – The United Kingdom has a significant role in the counternarcotics efforts in Afghanistan. They created the Afghan Special Narcotics Force (ASNF). DEA's FAST teams have participated in numerous lab raids/surge operations with the UK and ASNF. The United Kingdom also sponsors mobile detection teams, which include drug-certified canines that are utilized in airport and highway interdiction operations. They also provide mentors for the Counter Narcotics Police – Afghanistan (CNP-A).

France - France has contributed funds of about $1 million in support of CNP-A programs. This funding was utilized to provide vehicles and protective gear for officers of the CNP-A. France has also sent trainers from the Police Judiciaire to conduct training for the CNP-A. Forensic chemists have been provided by France to train and staff forensic laboratories in Kabul.

Germany - Germany has a primary role in the training of the Afghanistan National Police. They participate in the Mentor Program at the Afghanistan Ministry of Interior and have also funded the building of the Counternarcotics Training Unit at the Afghan National Police Academy. Germany also has Forward Operating Bases (FOBs) located in close proximity to some U.S. facilities and provides support to various U.S. operations and missions.

Norway - Norway has provided numerous staff for the Mentor Program at the Afghan Ministry of Interior. Norway has also provided substantial force protection assistance for counternarcotics operations involving DEA FAST team personnel.

Netherlands – The Netherlands has provided funding to UNODC to build 9 provincial CNP-A offices in high drug trafficking provinces of Balkh, Konduz, Badakshan, Nangahar, Khost, Kandahar, Helmand, Nimroz and Herat.

The State Department and the Department of Justice are in constant negotiation with ISAF partners to increase involvement in counternarcotics operations.

TALIBAN INVOLVEMENT IN DRUG BUSINESS

Mr. WOLF. Is the Taliban directly involved in the drug business in Afghanistan? And does the money help furnish the Taliban?

Ms. LEONHART. Without a doubt, they are involved. And when we first arrived in about 2003 in Afghanistan, there was a question about, you know, what is the Taliban doing? What is their role? What is the role of narcotics in funding terrorism? Those questions have all been answered. And the UNODC estimates that the Taliban makes about $50 million to $70 million just by taxing the opium, the poppy farmers, and another $200 million to $400 million from the processing and trafficking of opiates. So they are very involved at all levels. They are making a lot of money. And they are assisting in funding the insurgency in Afghanistan.

Mr. WOLF. Are they the dominant participants in the drug trade, the Taliban?

Ms. LEONHART. They are associated and have working relationships with the drug lords that we have been targeting. And they will, for instance, work together on protecting labs and protecting crops, and they have a working relationship that benefits each other. That is primarily their involvement.

Mr. WOLF. Do you coordinate everything, and talk to General Petraeus and the people who are involved in fashioning any of our policy in Afghanistan?

Ms. LEONHART. We have very good access to the U.S. military commanders in Afghanistan. For instance, General McKiernan has actually met with us and been out on an operation. We have briefed the commanders that were there prior to him. We at one point worked with General Eikenberry when he had Afghanistan. And it is a very good relationship, and we are learning a lot from them, and they are learning a lot from us.

Mr. WOLF. Well, but as I leave it I want to ask you about the drug issue. But my own sense is, and this is my own feeling, is that, and this is not meant as criticism of the Obama administration because they are just coming in. But I think we have taken our eye off of the ball. And Afghanistan is more difficult. If you look at the history of Afghanistan, from back from the British, and it is a very difficult place. And I know that last, was it Tuesday night? At the press conference, not one question dealt with international affairs, and not one question dealt with the issue of Afghanistan or Iraq. And yet we have many American men and women who are sacrificing tremendously, and their families are sacrificing tremendously. And I have had people from my district who were killed in Afghanistan. And we see the death total going up there. And yet, there was not one question. And I just think there needs to be a greater attention. There is not a lot of interest here in the Congress on this issue, either. I do not hear the word Afghanistan come up very, very much.

And so one question with regard to the charts. They are very impressive numbers. But my question was, in comparison to what, though? I mean, if drug use is raging and it drops 35 percent, and it is at the all time high it has ever been here, compared to 1912, I am making this up, 1938, there was almost no drug use. So everything is, these numbers are impressive, and in comparison to

what though? Are they compared to the fifties they are great? The sixties they are great? The seventies they are great? The eighties they are great? The nineties? You follow the question? I mean, they are good based on where we are. But is this still at an all time high? Or is it really that we are kind of coming down into our low period for the country in modern times?

Ms. LEONHART. Well, I can tell you the methodology and the way we are doing it. We could only go back to April of 2005 as a starting point. But when you look at, having been a drug agent for twenty-eight years, and to know that we are back to a $24,000 to $43,000 a kilo in New York, which we had not seen since I was a baby agent, that tells you something. When for many years when I was undercover the price of cocaine in L.A. was $12,000 to $13,000 for years. And to know that it is up to about $26,000 or $27,000 a kilo. It has been over a long period of time. I just do not have the data to tell you exactly when the last time the price would have been, where that is.

Mr. WOLF. Well, I do not know what Secretary Clinton said yesterday. I just saw the headlines. And I think the concern is, and I think we ought to have greater emphasis on drug rehabilitation and treatment. And diminishing the use. Because, again, I just read the headline. I left early. But I thought what she may have been saying was that the fact that there is use in the United States, that has created the market. And I did not read the whole story, so maybe the Chairman did because he had a lot of questions based on that. But I think anything we can do here in the United States to diminish the use, both in rehabilitation, and also in the initial use. I remember reading the story that they gunned down the bishop in Tijuana, Archbishop, when was the Archbishop killed in Tijuana?

Ms. LEONHART. I believe that was in the late nineties.

Mr. WOLF. Yes, late nineties. I thought it was early 2000. But anyway, whenever it was, in essence, and I do not know if Secretary Clinton was saying this, the fact that there is a market here in the United States is creating the difficulty down in Mexico. So every time there is any flourishing here, we are somewhat responsible, in a sense. So the great effort we make in prohibiting, stopping the use of the drug, and also aggressively involved in rehabilitation. We had the hearings the other day, there are people in the federal prisons who do not have access to drug rehabilitation. There are many people in the state and local prisons who are there for drug use who do not have the ability. So while I have great respect for the law enforcement, my dad was a policeman and I have always been very sympathetic, I think it has to be aggressively on reducing the demand as well as the supply. And if we just stress the supply then I think we create, you know, a problem.

So I hope there is coordination in the administration in both rehabilitation and reducing the demand in the United States so that people are not using drugs. You know, in high schools, and colleges, and wherever the case may be. That we move to be a drug free nation, if you will. So that is a thought. And if you have any comments about that I would like to hear them. And as you do comment, and I hope you will comment, if you could sort of give me a parallel from your experiences. How do you think drug use is in

the United States, what those figures are, compared to how it was in the sixties? When we would have, you remember that Frank Sinatra movie, The Man with the Golden Arm, or whatever it was. How do we compare now and what are your comments about rehabilitation and education in addition to the law enforcement aspect of it?

Ms. LEONHART. Let me comment first, sir, on prevention and treatment. Law enforcement officers, especially narcotics agents, have always felt that if we could have a comprehensive approach, with the prevention, the treatment, and enforcement, that that is the perfect solution to make sure that all three areas are looked at. And I, with a bit of optimism, I know there has been a nomination for the new drug czar. And I have worked with him. And I know that he is very interested in treatment and prevention. And I look forward, if he is confirmed, to talking to him about those issues.

We in the DEA feel very strongly about this. Because we know if there is supply, then demand goes up. And we feel we have our place. We have our place because half the people in treatment are in treatment because of enforcement. And so there has got to be a way that everybody doing their job, us doing our job, that there are ways to look at getting more treatment, better treatment. I just had a presentation on, it is called Operation Hope, in Hawaii. And it was amazing. It was how to get people on probation, how to have measured sanctions if they screwed up. And it is amazing, it is like a pilot, but it has got amazing results. So looking at those, and I am a fan of the drug courts. I have been to graduations. I have met with people who have graduated. And I am all for that. And I think you cannot have one without the other. And it is everybody staying in their lane, and everybody doing what they need to do. So that if prevention does not work, you have enforcement that then gets people into treatment. And we hope for the day that we do not need that.

But we have got, still, a number of drug users in the country. But it is also very promising to see our progress, especially with our teens. 900,000 fewer teens are using illegal drugs now. That is the population of Detroit. That is a major step. You asked about the sixties. Well, I graduated from high school in the seventies. And I can tell you that was the highest amount of drug usage our country has ever had, in the seventies. So we are nowhere close to that drug usage. And we continue to make inroads in drug usage, and we are hoping that now these teens will move into adult life and be non-drug users.

Mr. MOLLOHAN. Thank you, Mr. Wolf. Mr. Serrano.

Mr. SERRANO. You were doing very well until you reminded all three panel members how much younger than us you are, by graduating in the seventies.

Mr. MOLLOHAN. I let that pass.

Mr. SERRANO. You did? But I noticed you quickly grabbed for the gavel.

Mr. MOLLOHAN. Yeah, I flinched.

Mr. SERRANO. He usually does not gavel witnesses out of order, but I kind of saw that. Once again, our colleague, Mr. Chairman, Mr. Wolf shows his courage. It is very easy to say that folks are sending us drugs and we should do everything we can to stop them. But it takes a lot of courage to admit that we are the number one consumers of those drugs. And it has to be a two-pronged attack. One is to stop the drug from coming in, and the other to stop the market from being here. And that is an age old fight.

And he did mention, to my joy, The Man with the Golden Arm. Otto Preminger, and a great performance by Arnold Stang. And it was a groundbreaking movie because it touched on going cold turkey for drug addiction, which was totally a taboo subject. And the character's name was Dealer, not because he was a drug dealer but because he dealt cards at illicit poker games. But anyway, that is the other side of me.

Members of Congress get a lot of information from federal agencies. And most of us, a lot of us, and I am guilty more than anyone else, do not delve into, "Well, how does this really happen?" We just know that you have agents all over the world, but we do not know how that really happens. So without, obviously, getting into areas that you cannot get into, not that you would even attempt to get into them, given the information that we do not need to have in public, how does DEA approach a country? Pick a country in, you know, Latin America and say, "We know you have a problem and we want to work with you." Or is that at the State Department level, at that level? Once that happens, usually where do these agents go? Do they work under local law enforcement supervision? Or do they kind of run their own shop? You know, I am not asking you to tell me where they are housed. But is it military housing? Is it separate, civilian housing? Are they all undercover, or do many of them operate with the jackets, you know, that say DEA on the back and so on?

Ms. LEONHART. Well, let us take Africa. Because Africa worries us very deeply right now. There are very few law enforcement partners to work with in Africa. So what we have done is we have opened a new office in Accra, Ghana. We have another office opening by the end of the year in Nairobi. And we were able to open those offices because we were able to build partnerships, and we do this a lot with the State Department, with INL, and with other agencies. We saw what is happening to Africa——

Mr. SERRANO. But who initiated this desire to go into that area? You did?

Ms. LEONHART. We do. We see that it is being used as a transshipment point. And we know that the same organizations in Colombia who are shipping cocaine to Europe are using Africa. And there are no, it is like Afghanistan was. There are no law enforcement partners. There is no end game. There is no one to interdict anything. It is just a void. So what we did, a couple of years ago when we saw this happening, we sponsored with our partners a chemical conference. Just so we could find out who are the law enforcement officials in Africa. Who could we start developing rela-

tionships with? And in a two-year period, I am telling you, we actually have people to work with now.

And we have done that in a number of countries. Afghanistan is the perfect example. You go in and you educate on what the problem is, educate them on why it is important that there is action taken. We bring in training and we train them. A lot of times some of these small countries, that is all they need. They want to help. They just do not have the capacity to help. So we, with the State Department and others——

Mr. SERRANO. And are they under local jurisdiction? Are they under that? Or do they work with the local law enforcement and take their orders from them, so to speak? I mean, who is in charge?

Ms. LEONHART. Well, in country, the people from that country are in charge. We are there to partner with them. And, you know, if there are arrests to be made, and there is action to be taken, it will be them that takes it. But we really are there to enlighten them on trends that are headed their way. And to develop those relationships and provide them training and equipment. And similar to how the Colombians right now have gone to Africa to meet with the law enforcement officials, because they see what is happening. The Colombians are——

Mr. SERRANO. The Colombian government?

Ms. LEONHART. The Colombian National Police——

Mr. SERRANO. Okay.

Ms. LEONHART [continuing]. Has gone to help. In the same way that the Colombian National Police and DEA came in to meet with Mexico to offer, you know, "Here is what happened in Colombia. Maybe that can be replicated in Mexico." So we feel as the Drug Enforcement Administration, which is the only single mission agency, and we are in over sixty-two countries, that we——

Mr. SERRANO. Sixty-two countries? And do we know how many agents we have outside of the U.S. and its territories?

Ms. LEONHART. I can tell you that 9 percent of our special agent workforce is overseas.

Mr. SERRANO. Okay.

Ms. LEONHART. And we are careful on talking about how many——

Mr. SERRANO. Of course.

Ms. LEONHART [continuing]. How many actual people are in certain countries. But we do that capacity building with them. And that has been DEA's history for thirty-five years. That is why today we are in sixty-three countries. Why we have over eighty offices. Why we can go and stand up two new offices in Africa. And that is how we cover the world.

Mr. SERRANO. A somewhat improper question. But do these officers, agents get special pay as our military does when they are in certain dangerous zones, and so on?

Ms. LEONHART. There are certain benefits. There is danger pay. There are different incentives, like cost of living increases, that differ from country to country. But there are benefits for them because it is quite difficult, especially in those countries where they bring their families.

Mr. SERRANO. Right. And last question, of course some of them are undercover and some are not?

Ms. LEONHART. All have the potential to be undercover. It will depend on what country they go to and what the need is. We still call it the old-fashioned way. Undercover is still a very good way to take down traffickers. Mr. Bout, Mr. Al Kassar, were taken down by undercover operatives. So we do that. But a lot of it is you are undercover one day, and you may be training your law enforcement partners the next day.

Mr. SERRANO. Thank you so much. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Dangerous work.

Ms. LEONHART. It is.

DRUG ENFORCEMENT AUTHORITY

Mr. MOLLOHAN. There are a number of agencies in the federal government who have drug enforcement authority, either directly or delegated by DEA. Is that correct?

Ms. LEONHART. Are you talking about the Title 21 authorities?

Mr. MOLLOHAN. Yes, I am getting to that.

Ms. LEONHART. Okay.

Mr. MOLLOHAN. Do you believe it makes good policy sense for drug enforcement authorities to be spread widely at the federal level?

Ms. LEONHART. I think it depends on what the authorities are, what the crimes are or the activities that the authorities are in charge of. Some crimes, like drug enforcement, require coordination and deconfliction. I gave a set of photos that you have. These cases are tremendous. These cases, these two, take more than fifty or sixty different cases going on all around the country. Some with other agencies, some with task forces. And there has got to be this deconfliction and coordination to make sure we are not stepping on each other, we are not going after the same traffickers, we are not, we call it blue on blue. We are not reversing or going undercover with another law enforcement person.

So in drug enforcement, to be the most effective, when they stood up DEA they really had it right. Because they wanted in 1973 to have an agency that would be the single focus, single mission, and single point of contact overseas, which is very important, and why we have the largest law enforcement presence overseas. So that they could ensure that there was always this coordination and deconfliction, and systematic intelligence sharing. And all the buzzwords you hear today were really thought about in 1973 when they stood up DEA.

And we have a lot of partners. We run a lot of task forces. We do a lot of things with every agency imaginable. And without them, we could not do our job sufficiently in the cases. Our rule is do what is best for the case. Turf does not matter, forget about turf. Do what is best for the case. And to do that, we respect other's turf, for instance, with weapons. We seize weapons all the time on a drug case. We respect ATF. We respect the local police. We get them involved. We bring them in so that they can do that case. We share the intelligence so they can use their authorities and their expertise to do their case. Is that what you were asking me about? I feel very strongly——

Mr. MOLLOHAN. Well ICE, for example, is what I was asking you about. ICE has drug enforcement authority to the extent it is delegated by DEA; is that correct?

Ms. LEONHART. Not quite. There are a lot of misunderstandings there.

I heard from some testimony the other day, ICE can make drug arrests on the border. They were given that authority when they stood up the DEA, they were given that authority so they can seize drugs, they can make arrests, they have the Title 21 authority at the border to do what they need to do to get their job done.

It is moving off the border and developing these investigations like Operation Xcelerator and Project Reckoning and doing these other investigations that are away from the border where it is very important that we all coordinate and deconflict. And that is why it was set up that through the Attorney General who delegates it to DEA, to ensure that everybody is playing by the same rules and that everything is coordinated. And there is a way for DEA to then give other agencies Title 21 authority, which we do.

Mr. MOLLOHAN. On a case by case basis? On a subject matter basis?

Ms. LEONHART. We have the flexibility to give it on a case by case basis. Maybe you are working an operation together for two weeks. But we also have it with our task forces where we have people who have had Title 21 authority working. They were Customs and now ICE and they have worked with DEA on task forces for 20 years.

Mr. MOLLOHAN. Okay. Well, we understand ICE is trying to get this title 21 authority independent of DEA, and that the Department of Justice, strongly opposes this.

Do you have concerns with ICE exercising independent drug enforcement authorities, and what is your opinion about their attempt to get it?

Ms. LEONHART. Well again, they have the authority to make arrests at the border and seize drugs.

Mr. MOLLOHAN. Are they attempting to expand the scope of their authorities under Title 21?

Ms. LEONHART. When they ask for independent Title 21——

Mr. MOLLOHAN. All right.

Ms. LEONHART [continuing]. What they are asking for is the authority to go do it on their own.

Mr. MOLLOHAN. Okay. That is my question.

Ms. LEONHART. And that is not good drug enforcement.

Mr. MOLLOHAN. Okay.

Ms. LEONHART. So DEA, since 2003, has proposed and been very flexible on ways to expand what ICE wants to do, expand it, yet still have coordination and deconfliction.

And years back, an agreement between Customs and DEA set a cap—a particular cap and ICE has never come up to that cap.

Mr. MOLLOHAN. What does that mean, a cap? You set a certain cap, and ICE has never come up to that cap—what does that mean?

Ms. LEONHART. Between the agencies, way back, they set a cap, right now it is at 1,400 and something, I think. 1,460 something—1,475 and right now——

Mr. MOLLOHAN. That is a cap on what, Ms. Leonhart?

Ms. LEONHART. The agencies agreed——

Mr. MOLLOHAN. Cap on the number of agents?

Ms. LEONHART [continuing]. To cap the number of Customs, now ICE agents, that would get Title 21.

Mr. MOLLOHAN. I see.

Ms. LEONHART. It was a cap for years. So we threw on the table not too long ago, 2003/2004, why does there need to be a cap if we are coordinating and deconflicting? And why, for agents at the Border, agents that are going to be working drug cases with us, why have a cap? And we offered that. And we even have a draft agreement that has no cap.

So this is really about deconfliction and coordination, and about doing synchronized drug enforcement so we are not stepping on each other. And this is respecting each other's authorities and using the best of each other's talents and abilities.

DEA comes across weapons traffickers and human smugglers, and we aren't asking for those kinds of authorities, because we know that we have the authorities to do something—crimes that take place in front of a federal agent, you have authorities to do what you have to do. And we know that it makes a better case, it is better for the country, it is a better use of resources to do it together and do it coordinated.

Mr. MOLLOHAN. Okay. Well, we are in a new administration, a period of transition, that always makes possible shuffling of responsibilities, reconsideration of missions, roles. So this would seem to be a period where these issues might be more prevalently debated.

In that process, we just encourage you to be instructive about your role and what it should be and to participate in this process aggressively.

It sounds like you have a really good handle on how those relationships are, have been and should be defined.

I want to go back to this question of jurisdiction as it relates to control and funding, because there are proposals out there—or at least we are hearing that there are—to have control and management of some of your activities outside the Justice Department.

So instead of speaking specifically to those proposals, I would like for you to talk about your experience with that in other situations.

Does that occur? Where you are either being managed by other agencies or funded by other agencies? How is that successful, and what are the problems associated with it?

Ms. LEONHART. We have people detailed to other agencies, we have people who go on other people's task forces. Over the years, agencies have shared personnel, depending on what the mission of the task force or what the trafficking situation was.

So we have had people who have—for instance we have people assigned to ICE's BEST teams, and they operate under the rules of the leader of that task force. And we have ICE agents who are in our task forces. And the same goes for ATF and IRS and everybody else. So that is not a problem.

And in fact, we are looking forward to new leadership at ICE so we can sit down and we can talk about some of the things we could do to better coordinate and deconflict together.

PRESCRIPTION DRUG ABUSE

Mr. MOLLOHAN. Okay. Prescription drug abuse.

The 2006 National Synthetic Drug Control Strategy set a goal to reduce the abuse of prescription drugs by 15 percent over three years, with 2005 serving as the base year. Do you have an assessment of our progress in meeting that goal?

Ms. LEONHART. I don't specifically for that goal.

I can tell you that our challenge is prescription drugs for teen use. When every other drug category has been going down, it is prescription drug use that has gone up. In fact, use went up, I believe, a 13 percent increase since 2004.

Mr. MOLLOHAN. What is the major source of illegal prescription drugs?

Ms. LEONHART. Several, and it really depends on the age of the teen versus adult. But illegal prescribing, prescription forgery, doctor shopping, and more recently, and what worries us, is the Internet.

Mr. MOLLOHAN. How are you addressing those challenges?

Ms. LEONHART. We address all of them, with thanks to this Committee for a reprogramming a couple years ago, with 108 diversion investigators that were reprogrammed as special agents. We believe the task force concept is the best way to address the pharmaceutical problem.

For too many years we thought that the answer was to kind of stovepipe it within our agency and have diversion investigators do regulatory cases and do criminal cases.

And what we found works best, especially with the new Internet cases and how some of these illegal prescribers, or these practitioners that are selling scripts for money, they need to be investigated and they need to be worked just like a drug dealer.

Mr. MOLLOHAN. Well, how are we doing with regard to illicit prescription drugs?

Ms. LEONHART. Use is up by teens. Use is up by adults. But what we are able to do is take down rogue pharmacies, we have been taking down the doctor shopper prescription mills.

Mr. MOLLOHAN. Okay.

Ms. LEONHART. We have a lot of successes——

Mr. MOLLOHAN. Excuse me, go ahead, Ms. Leonhart.

Ms. LEONHART. We have set some records for these type of cases.

And most notably, we have not only gone after the drug dealer who is selling pharmaceuticals, the doctors who are illegally selling pharmaceuticals, but we have also gone after the wholesalers who are selling to these rogue pharmacies.

Mr. MOLLOHAN. Okay. I am sure you are going after all of them.

Can you give us some statistics to give us a handle on the trend lines where we are having problems, and how successfully we are addressing them?

[The information follows:]

Can you give us some statistics to give us a handle on the trend lines where we are having problems, and how successful we are addressing them? As much as your chart here is a positive report with this cocaine availability and use- what about prescription drugs, do you have a similar statistic?

ANSWER

DEA is making progress with the regulated industry and conveying to them the important role they play in ensuring that adequate measures are in place to detect and prevent diversion. The following statistical information demonstrates the significant problems the United States is facing with prescription drug abuse.

Various studies indicate that teens, young adults, and, at times, parents, do not understand the dangers associated with prescription drugs. The Partnership For a Drug Free America concluded in their 2005 Partnership Attitude Tracking Study on Teen Drug Abuse that, "two in five teens (40 percent, or 9.4 million) agree that Rx medicines, even if they are not prescribed by a doctor, are much safer to use than illegal drugs." And, "nearly three out of 10 teens (29 percent or 6.8 million) believe prescription pain relievers – even if not prescribed by a doctor – are not addictive." In their 2008 study, they reported: "1 in 10 teens (10 percent) or 2.5 million teens, report having abused a prescription pain reliever in the past year" and "61 percent of teens report prescription drugs are easier to get than illegal drugs, up significantly from 56 percent in 2005."

Prescription Drug Abuse – Perceived Availability

Agree Strongly or Somewhat	2005	2007	2008
Prescription drugs are easier to get than illegal drugs	56%	57%	61%

Source: Partnership Availability Study

The 2007 National Survey on Drug Use and Health (NSDUH) estimates that there were 6.9 million (2.8 percent) persons aged 12 or older who used prescription-type psychotherapeutic drugs non-medically in the past month, which is a 13 percent increase from the6.1 million recorded in the 2004 survey. The following table shows the percentage of persons aged 12 or older that abused psychotherapeutic drugs.

Non-medical Use of Types of Psychotherapeutic Drugs
Percent of Persons Aged 12 or Older Using in the Past Month

Drug Type	2002	2003	2004	2005	2006	2007
Pain Relievers	1.9	2.0	1.8	1.9	2.1	2.1
Tranquilizers	0.8	0.8	0.7	0.7	0.7	0.7
Stimulants	0.6	0.6	0.5	0.5	0.6	0.4
Sedatives	0.2	0.1	0.1	0.1	0.2	0.1

Source: NSDUH

As a class of drugs, the non-medical use of prescription drugs continues to have more past year initiates than any other class. According to the NSDUH, in 2007, there were 2.5 million past year initiates of this class of drug compared to 2.1 million initiates of marijuana, the next most initiated drug in 2007. The proportion of all individuals classified with the abuse or dependence by pain relievers was 25 percent in 2007, compared to 19 percent in 2004.

Past Year Initiates for Specific Illicit Drugs
Among Persons Aged 12 or Older in 2007

Drug Type	Thousands
Pain Relievers	2,147
Marijuana	2,090
Tranquilizers	1,232
Cocaine	906
MDMA	781
Inhalants	775
Stimulants	642
LSD	270
Sedatives	198
Heroin	106
PCP	58

Source: NSDUH

The following statistics are from the Monitoring the Future Study, which focuses on teen drug abuse.

Non-medical Past Year Use of Prescription Drugs
by 8th, 10th, and 12th Graders

Category	2004	2005	2006	2007	2008
Amphetamines					
8th Grade	4.9	4.9	4.7	4.2	4.5
10th Grade	8.5	7.8	7.9	8	6.4
12th Grade	10	8.6	8.1	7.5	6.8
OxyContin					
8th Grade	1.7	1.8	2.6	1.8	2.1
10th Grade	3.5	3.2	3.8	3.9	3.6
12th Grade	5	5.5	4.3	5.2	4.7
Ritalin					
8th Grade	2.5	2.4	2.6	2.1	1.6
10th Grade	3.4	3.4	3.6	2.8	2.9
12th Grade	5.1	4.4	4.4	3.8	3.4
Sedatives					
8th Grade	NA	NA	NA	NA	NA

10th Grade	NA	NA	NA	NA	NA
12th Grade	6.5	7.2	6.6	6.2	5.8
Tranquilizers					
8th Grade	2.5	2.8	2.6	2.4	2.4
10th Grade	5.1	4.8	5.2	5.3	4.6
12th Grade	7.3	6.8	6.6	6.2	6.2
Vicodin					
8th Grade	2.5	2.6	3	2.7	2.9
10th Grade	6.2	5.9	7	7.2	6.7
12th Grade	9.3	9.5	9.7	9.6	9.7
Narcotics other than Heroin					
8th Grade	NA	NA	NA	NA	NA
10th Grade	NA	NA	NA	NA	NA
12th Grade	9.5	9	9	9.2	9.1

Source: Monitoring the Future

The following statistics are from the Drug Abuse Warning Network (DAWN), which records drug and alchohol related emergency department visits.

Emergency Department Visits for Non-medical Use of Controlled Substance Prescription Drugs

Category	2004	2005	2006
Benzodiazepines	**143,546**	**189,704**	**195,625**
Alprazolam	46,526	57,419	65,236
Clonazepam	28,178	30,648	33,557
Diazepam	15,619	18,433	19,936
Lorazepam	17,674	23,210	23,720
Stimulants	**9,801**	**10,965**	**13,892**
Amphetamine-dextroamphetamine	2,303	2,669	5,027
Methylphenidate	2,446	2,519	2,192
Narcotic Analgesics	**144,644**	**168,376**	**201,280**
Codeine/combinations	7,171	6,180	6,928
Fentanyl/combinations	9,823	11,211	16,012
Hydrocodone/combinations	39,844	47,192	57,550
Hydromorphone/combinations	3,385	4,714	6,780
Meperidine/combinations	782	383	1,440
Methadone	36,806	42,684	45,130

Morphine/combinations	13,966	15,762	20,416
Oxycodone/combinations	41,701	52,943	64,888
Propoxyphene/combinations	6,774	7,648	6,220

Source: DAWN

Mr. MOLLOHAN. Your chart here, is a very positive report on cocaine availability and use. What about prescription drugs, do you have a similar statistic?

Ms. LEONHART. There are 6.9 million users, past month users of prescription drugs for non-medical reasons. That is a 13 percent increase from 2004.

Painkillers now, this worries me, for the first time we have seen this, painkillers for brand new drug users is at the same rate that marijuana is. So in other words, a first——

Mr. MOLLOHAN. You mean new users?

Ms. LEONHART. A first time drug user is just as often going to pick painkillers or pharmaceutical drugs as they are marijuana as their first drug to try. So that does worry us.

One of the things we are trying to do is educate the public. And I am sure everybody has seen the ads over the last couple of years, just to make parents aware of, you know, what do you have in your medicine cabinet? That has been effective in getting people to understand that they are going to have to secure the drugs that they have in their own home. We——

Mr. MOLLOHAN. Go ahead.

Ms. LEONHART. Because the Internet now is playing a role, it is like having a drug dealer in your kid's bedroom.

And we have done a number of things, like worked with Google and Yahoo and AOL to come up with banners so that when people go online to try to go into a rogue pharmacy that they will have a banner that will warn them and send them to other web sites to learn about prescription drugs.

Mr. MOLLOHAN. This is a growing problem.

Ms. LEONHART. Growing problem and our challenge for the future.

Mr. MOLLOHAN. How are you addressing it in terms of manpower, resources, and strategy?

Ms. LEONHART. The strategy is to make task forces.

Our state and local officers are raising this as a problem now. Not only are they making the cocaine seizures, but with the cocaine seizures they are now finding pills.

So we have taken our resources, we converted the 108 diversion investigators into agents, and now we have teams, about 30—I think we are going to have 36 or 37 of them—all over the country that are diversion investigators, special agents, and intelligence analysts so that the same kind of cases that we work on the illegal side can be worked towards the pharmaceuticals. And we have got five of those set up now with about 30 more to go.

Mr. MOLLOHAN. Are we making progress?

Ms. LEONHART. We are making progress.

Mr. MOLLOHAN. Do you measure that?

Ms. LEONHART. In different ways. Again, the drug use statistics are not promising right now with teens, and that is why we spent a lot of time on the education part. We set up a web site. It is called Just Think Twice and it is a teen web site. And last month I announced another web site which is the bookend of that and that is for parents.

Mr. MOLLOHAN. Okay.

Ms. LEONHART. And a lot of it is about pharmaceutical drugs and what to look for and how to get help. So we are looking at that education piece.

We have gone out, like I said, with Google, Yahoo, AOL helping us on the Internet with banners. We have gone out to the wholesalers and—we are educating them about making sure that they know that they are actually supplying a brick and mortar store.

Mr. MOLLOHAN. I am looking for some sort of statistics, which maybe I should ask for you to submit for the record. I know it is always a balance between being oppressive with regard to the medical community, and we have heard complaints about that, and trying to identify those who are abusing authority. Why don't you submit for the record the number of arrests you've made in the medical community.

Ms. LEONHART. We will do that.

[The information follows:]

How many arrests of the medical community—I don't know what kind of a measurement this is, but I am looking for some sort of statistics which maybe I should ask for you to submit for the record.

Answer. The total number of doctors arrested by DEA in an average year amounts to less than one-tenth of one percent of all registered doctors. Annually, there are more than one million DEA registered medical doctors and doctors of osteopathy. Of those registered, DEA arrested the following number per calendar year: 2006—72; 2007—85; and 2008—80.

DEA does not initiate any investigations based on a specific category of the registrant population. Our investigations are often initiated based upon information received from the state medical board, state pharmacy board, state and local law enforcement, an employee of the registrant, or a patient. DEA maintains a list of actions taken against doctors on its website.

Mr. MOLLOHAN. We are going to try to keep the hearing going, but we have a lot of five minutes votes here, so we may end up being in recess during that period.

I will go down and vote. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman. Thank you.

A couple questions, and maybe there will be faster answers.

Is drug use a problem in Afghanistan among the Afghans?

Ms. LEONHART. It is, yes. They have got their own heroin problem.

[The information follows:]

Has it [drug use] always been a problem [in Afghanistan], or is it just now a problem?

ANSWER

It is hard to know with precision how drug abuse has changed in Afghanistan over time since the country's first nationwide survey on drug use was conducted in 2005.However, the Government of Afghanistan acknowledges a growing domestic drug abuse problem, particularly opium, and increasingly heroin (*International Narcotics Control Strategy Report, Volume I Drug and Chemical Control*, March 2008, U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs).

In April 2008, the United Nations Office on Drugs and Crime released the report, *Illicit Drug Trends in Afghanistan*, which discusses drug abuse in Afghanistan, including the following Afghanistan drug use statistics. According to Afghanistan's 2005 Drug Use Survey, conducted jointly by the United Nations Office on Drugs and Crime and the Afghanistan Ministry of Counter-Narcotics, the number of drug users in Afghanistan is estimated at 920,000, with a few areas in the country where drug use does not occur. The nearly one million estimated drug users represent 4 percent of the total population, or 8 percent of the adult population. In comparison, the 2007 National Survey on Drug Use and Health estimated that 19.9 million Americans aged 12 or older were current (past month) illicit drug users, meaning they had used an illicit drug during the month prior to the survey interview. This estimate represents 8 percent of the U.S. population aged 12 or older.
An estimated 200,000 Afghans are regular users of opiates in the form of either opium (150,000 users) or heroin (50,000 users). Of these Afghan drug users, there is a significant gender difference: 87 percent of all opium users and 93 percent of all heroin users are men. Also, an estimated 14 percent of heroin users, and a small fraction of opium users, are believed to be intravenous users (7,000 users). The practice of sharing needles and other injection paraphernalia is believed to be widespread in Afghanistan, creating the potential for the spread of HIV and hepatitis.

Hashish is the most commonly used drug in Afghanistan with an estimated 520,000 users. As with other drugs, patterns of hashish use vary significantly with gender: the estimated prevalence of hashish use among adult men is equal to 8 percent, while estimated prevalence of hashish use among adult women is 0.1 percent.
Of primary concern with regard to synthetic drugs in Afghanistan is the abuse of widely available, dubious-quality pharmaceuticals. Due to the lack of strong government control and a weak licit control framework, a wide variety of pharmaceuticals are easily available without a prescription in pharmacies, other retail outlets, and even roadside stalls. Other drugs most commonly reported in the 2005 Drug Use Survey were cough medicines, solvents such as petrol and glues which are inhaled and/or consumed, various preparations derived from the cannabis plant and opium poppy capsules, and a variety of locally sourced drugs, including preparations made from dried scorpions, snakes and wasps.

Due to Afghanistan's current level of development and lack of healthcare services, drug treatment services and facilities cannot meet demand. In 2005, there were less than 100 places available in residential treatment facilities in the entire country, and many areas identified as having a large number of drug users had no treatment facilities at all. This has left many families without assistance when attempting to care for and treat addicted relatives.

Mr. WOLF. Has it always been a problem, or is it now just a problem?

Ms. LEONHART. I don't know that.

Mr. WOLF. Okay.

Ms. LEONHART. Because we were not in the country until recently, I can't say that.

MORALE AT THE DEA

Mr. WOLF. Tell me, how significant and what was the impact on morale, both of DEA and others, when the U.S. attorney in Texas prosecuted the border agents? That seemed to be an abuse to the point that if you were in law enforcement you would say, my goodness.

Not knowing the full details of the case, but that person coming across the border had drugs, and it seemed the U.S. attorney down there was almost geared against the border—our border patrol people. Did that have any impact?

And from my own perspective, almost regardless of what you say, I would think it would. It just seems to me that if you are in law enforcement and you see those two agents going to jail—one got beat up in jail I think—but has that had any impact on the morale of the people?

Or second, you know, just don't step out so quick, be a little careful because you know, I don't want to go to jail?

Ms. LEONHART. I don't know that that has had an impact on morale, and I don't believe that that has caused our agents to second guess or think twice about taking action.

I have talked to a number of our agents about this situation, and I think they are actually a little mixed about how they see the issue. But I don't think it has affected morale. I think if anything, they feel sorry for the families.

MS–13 AND GANGS

Mr. WOLF. Yeah.

Thirdly, is MS–13 connected—MS–13 that operators here in the United States connected growing impact involvement with drugs? What are you seeing with regard to MS–13?

Ms. LEONHART. MS–13 we have kept an eye on, because you would almost expect that we would see them taking a bigger role in drug trafficking. But actually we don't see it as much as we would expect——

Mr. WOLF. Okay.

Ms. LEONHART [continuing]. At a lower level.

But that being said, we in 2009, we have opened 32 cases around the country on MS–13. Fourteen are actively being pursued now. So there is some activity out there because those are called priority target cases. So we must have cases on a higher echelon or the higher level of MS–13.

Having worked in Los Angeles, I know that they had probably a larger role in street dealing in Los Angeles than maybe they do in some other places, but it differs around the country.

Mr. WOLF. Okay.

I have two last questions. One is on the question of Oxy. It was incredible that company just operated. They were convicted I think in a civil case. I know your people did a lot of work and everything else.

But the Chairman was asking about convictions in other areas. That was amazing that they were able to kind of allow Oxycontin to spread the way it did.

How is Oxycontin now? Has their conviction made a difference? And have there been any successes on rehabilitation and treatment of people involved in Oxycontin?

Ms. LEONHART. Well, I won't say that there have been rehabilitation successes.

Mr. WOLF. Right.

Ms. LEONHART. I would say that people have maybe changed the drugs that they are using. Because where a few years back Oxy, Oxy looked like it was going to be the prescription drug of choice. It is no longer.

Mr. WOLF. Did the conviction have a bearing on that or was that before the conviction?

Ms. LEONHART. It started to change before the conviction, and I think it changed, because now the most popular legal drug is Hydrocodone, which is Vicodin. About 30 percent of the prescriptions written are controlled substance prescriptions for Hydrocodone. And what worries me—where we had a number of Oxycodone users years back—now it is estimated that one in ten high school seniors has abused Hydrocodone, which is Vicodin.

Mr. WOLF. And where does that come from?

Ms. LEONHART. The statistic?

Mr. WOLF. No, the drug. Does it come from a legitimate manufactured company? And is there a parallel developing in this area that there was when that company that just, they pretty much promoted this to a certain extent. But tell me where it comes from and is there a parallel?

Ms. LEONHART. I don't think it is a parallel. I think it is just heavily prescribed.

Mr. WOLF. By?

Ms. LEONHART. By doctors. It is a painkiller.

Mr. WOLF. And do the doctors know that this is an increasing problem with regard to one and ten young people?

Ms. LEONHART. I think that there has been a lot of education out there for doctors to—I believe they are aware.

Mr. WOLF. And what company manufactures it?

Ms. LEONHART. I don't know who has Hydrocodone. I believe that there are a lot of companies that produce Hydrocodone.

Mr. WOLF. And where——

Ms. LEONHART. By different brands.

Mr. WOLF. Where are the kids getting it from?

Ms. LEONHART. Primarily prescription forgery, doctor shopping, the Internet and——

Mr. WOLF. So it is almost like Oxycontin, I mean it is just shifted from Oxycontin to this?

Ms. LEONHART. There was more street dealing with Oxy. This, it is in their parent's medicine cabinet. When they go babysit. It is a very, very widely prescribed drug. More prescriptions are written for Hydrocodone than blood pressure medicine.

Mr. WOLF. Wow. And you have a major program with regard to this now? I haven't seen anything in the paper about it, maybe I have missed it, but I——

Ms. LEONHART. We——

Mr. WOLF. Are you putting conferences on? Are you——

Ms. LEONHART. We have had those ongoing for quite some time, and we really believe that it needs to be looked at, and we are hoping with new leadership at HHS——

Mr. WOLF. Do you feel any pressure from the drug companies?

Ms. LEONHART. No.

Mr. WOLF. I mean, they hired some pretty big lobbyists the last time on the Oxycontin thing.

Ms. LEONHART. No. We want them to look at this. DEA believes that that drug should be considered for Schedule 2.

Mr. WOLF. Okay.

The last question because we have done a second vote and I know the Chairman may have.

Will you just put a statement in the record or tell me. I am opposed to legalization, but I want to hear what you think about legalization on drugs. I am opposed so the record shows, but tell me what you think what that would mean to us. And if you want to just say it in five sentences and submit a detailed response I would like to see it.

[The information follows:]

Will you just put a statement in the record or tell me. I am opposed to legalization but I want to hear what you think that would mean to us.

ANSWER

Each year, the Office of National Drug Control Policy drafts and publishes the *National Drug Control Strategy*, which outlines the Administration's drug policy priorities. Part of the process of drafting the strategy is soliciting input from those agencies, such as the Drug Enforcement Administration (DEA), with an expertise in the issues surrounding drug policy. DEA fully supports the *National Drug Control Strategy*, which opposes drug legalization and calls for a comprehensive approach combining prevention, law enforcement, treatment, international cooperation, and research in determining the best policies regarding drugs.

DEA's primary role in our drug control system is to administer and enforce the Controlled Substances Act (CSA). The CSA employs a scheduling system based upon a substance's medical use, potential for abuse, and safety or dependence liability. This is an effective framework that allows access to dangerous substances that, when used under a doctor's supervision, can provide an important medical benefit. The CSA contains enough flexibility to allow new substances to be added, or substances to be moved from one schedule to another should new information about the substance become available. While not a policy in and of itself, the CSA reflects the careful balance that an effective drug policy must maintain between protecting the public from dangerous substances and making sure there is adequate access to potential medical treatments.

Lowering or eliminating the legal restrictions that limit the availability of dangerous substances scheduled by the CSA through any kind of legalization initiative will result in increased availability, increased use, and increased consequences in terms of higher healthcare costs and other costs to society. These expected consequences are not speculative, but have been seen when other nations have taken steps towards legalization.

- When the Netherlands liberalized their drug laws allowing the public sale of marijuana, they saw marijuana consumption among 18-25 years olds almost triple, from 15 percent to 44 percent. They have since reversed this trend, and have begun implementing tighter drug controls. Indeed, today over 70 percent of Dutch towns have a local zero-tolerance policy against cannabis.
- When Switzerland decided to permit drug use and sales in an area of Zurich known as Paltzpitz, it quickly became dubbed, "Needle Park." By 1992, the number of regular drug users at the park swelled from a few hundred at the outset in 1987 to over 20,000. The area surrounding the park saw tremendous increases in burglary, assaults, sexual assaults, and other crimes, causing the Swiss to reverse their legalization experiment.
- When the United Kingdom relaxed its drug laws to allow physicians to prescribe heroin to certain classes of addicts, they saw an entirely new class of youthful users emerge. The British Government's experiment with controlled heroin distribution resulted in a minimum30-fold increase in the number of addicts in 10 years.

Similar consequences have been seen here in the United States.

- For example, in 1975, when the Alaska Supreme Court ruled that the State could not interfere with an adult's possession of marijuana for personal consumption in the home. Although the ruling was limited to persons 19 and over, an increase in teen marijuana use followed. According to a 1988 University of Alaska study, the state's 12 to 17-year-olds used marijuana at more than twice the national average for their age group. Alaska's residents voted in 1990 to re-criminalize possession of marijuana.

The health and social costs generated by addiction are borne not just by the drug user, but by everyone in society. I believe that the purpose of an effective drug policy should be to lessen the harm that illegal drugs do to our society. While our current policies do not come without some cost, I believe that lowering or eliminating the current legal restrictions that limit the availability of controlled substances would not be an effective policy option.

Additionally, legalization of controlled substances would contravene the United States' obligations under international drug control treaties, including the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971. Under the Constitution, treaties made under the authority of the United States are "the supreme Law of the Land."

DEA supports the *National Drug Control Strategy*, which calls for a balanced approach to addressing the drug issue. Currently, the Department of Justice has undertaken a review of existing policies and priorities; we need to make sure the penalties associated with breaking the law are fair and just. DEA supports this review, and is fully cooperating with the Department as this review takes place.

This is not to say that law enforcement is the sole answer. While there must be consequences for those who choose to break society's laws, our current *National Drug Control Strategy* also emphasizes the importance of having an active and aggressive prevention and education campaign aimed at discouraging drug use. We must also have effective treatment programs, designed to provide the help and guidance needed to move those who have chosen to use drugs to again become productive members of society.

Ms. LEONHART. I would be glad to submit a detailed response, but for the record right now that is just a losing, losing solution, especially when you saw the rates here of illegal drug use drop. Twenty-five percent drop since 2001.

Mr. WOLF. Well, if you could put that in writing that we could have for the record here, but I could also have, because I have been getting mail, and I make it very, very clear that I am opposed to it, but I think it would be helpful to put some authoritative comments in more than just my own opinions.

Ms. LEONHART. Absolutely. We will respond.

Mr. WOLF. Okay, thank you.

Thank you, Mr. Chairman.

TARGETING DOCTORS

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Some patients and advocacy groups claim that DEA's attempts to reduce prescription drug abuse are unfairly targeting doctors, especially those who specialize in pain management. They argue this targeting makes doctors reluctant to prescribe controlled substances when needed.

Is there any substance to that argument? Is DEA targeting doctors in any way?

Ms. LEONHART. DEA does not target doctors, and we don't initiate investigations based on what kind of doctor they are.

We have done a lot of work with the medical community over the last couple of years, and I don't see as many complaints or questions.

We put up a web site, and we now list the doctors and situations that we take action on. And I think that helped the medical community understand that first of all, we arrest less than one-tenth of one percent of the practitioners every year. It is very low. And when they look at the web site and see the types of doctors that we have arrested, these doctors are selling prescriptions for money, for sex, for drugs. They are egregious violations, and I think that that has helped.

We have a very good working relationship with the medical community. We have helped teach at some of their association seminars, and I think people now also understand that we are concerned about those rising numbers of kids and young adults using prescription drugs. And I think they are more committed to helping us and partnering with us to do something about the problem.

Mr. MOLLOHAN. Okay.

I am going to go vote, and I am going to keep you here a little longer. There are a couple other questions I would like to get on the record.

Thank you.

Ms. LEONHART. Uh-huh.

SMURFING

Mr. WOLF. One final question, Mr. Chairman.

Would you describe for me and also for the record, what is smurfing exactly? And I think the staff just told me what they thought it was.

And then how would you recommend that it be dealt with?

Ms. LEONHART. Picture number seven, this is a smurfing operation. It is where these meth dealers hire a number of people to go out all day long and buy pseudo ephedrine. They will go into like 20 or 30 stores and buy Pseudoephedrine, the cold tablets, and they will sign the logbook, but they will just go from store to store to store, and then an hour later someone else will go in and buy Pseudoephedrine.

So you get to the point where meth dealers, it is more time consuming than when they used to buy the bulk Pseudoephedrine, but they will pay these smurfers to go and get the tablets and then it will come back to a lab site and then that is how they are making methamphetamine, and that takes a lot of tabs.

So most of these, these are not necessarily going to be your super labs, but this is how—this is why we are having lab increases around the country.

There is another reason why we are having it though, that if you are interested in smurfing you may want to hear about.

Mr. WOLF. Well maybe when you come by.

I am going to go down to vote.

Mr. Chairman, thank you for the hearing. It is a very good hearing. And I will come back, but it will be before I leave.

Thank you and your people for the job you do.

Mr. MOLLOHAN. Well why don't you just go ahead and tell us, we are interested in smurfing. What else?

METH USERS

Ms. LEONHART. This is new to me, but one of the things—one of the reasons why we might be seeing the lab numbers go up is that the meth user, it is not the most efficient method, but there is something now called the one pot method.

And what you do is you take a two liter Coke bottle and you wrap it with masking tape. You put ammonium nitrate that you get from the ice packs, if you hurt your back or your neck, they take the ammonium nitrate out of that, throw it into the Coke bottle, throw the Ephedrine that they have smurfed, throw the Ephedrine in there—Pseudoephedrine in there, and then they take lithium strips from batteries, put it in there, shake it up—oh and lye—shake it up, and about every ten minutes vent it. And after an hour they have a substance, that although it only is making about a gram of methamphetamine, they pour it out and they synthesize it, and they have got their fix. And we are seeing more and more of that.

And those are, even though it is just in this one two liter Coke bottle, those are still dangerous. They have to vent it because they can blow up. After it is discarded kids might be playing with it and touching it, so it is a new problem.

I have just learned about it. And I think it is been around probably a couple, maybe four or five months, but more and more now they are starting to see those. And that is primarily the meth user, not necessarily the meth distributor. But that is how desperate they are to get their meth.

Mr. MOLLOHAN. Where does something like this start?

Ms. LEONHART. Well there used to be something called the Nazi method that started in the Midwest, and I would suspect that this

probably started there as well. I think it is in the Midwest and towards the Southeast.

Mr. MOLLOHAN. Clever.

I would like for you to talk a little bit about your role versus the roles of INL or DODCN's programs.

How does DEA's overseas role compare to the roles filled by INL, DODCN or other participating agencies?

Ms. LEONHART. Well we have different missions. Ours is an enforcement mission, and INL is more of an assistance and training mission.

So actually we work very well with INL in the different countries we are in. We depend on them. We depend on NAS funding sometimes for equipment for our in-country partners.

Mr. MOLLOHAN. What kind of activities are they willing to fund for you?

Ms. LEONHART. It is not so much funding for us, it is funding to make sure that our partners get things.

INL will, if there are things that will help the in-country team, INL can fund it. But I believe most of the time the funding is going directly to the in-country police organization.

INL has flown missions for us. INL has done training for us. INL has bought computers and equipment for our in-country partners. That is usually the relationship.

And like in Bolivia, they are still there. We are gone, they are there. They will be probably the only narcotics—U.S. government narcotics people there, so they may take on a bigger role there. More training, more advising. But it kind of differs from office to office.

TECHNOLOGY

Mr. MOLLOHAN. Let me ask you some questions about technologies, and technologies that drug dealers have compared to technology you have.

Most of DEA's biggest, highest impact investigations hinge on your ability to effectively intercept and exploit communications between traffickers. We had a little bit of that testimony the other day.

The pace of change in the telecommunications field, however, is extraordinary, and technologies that you may have successfully exploited in the past are not effective or might even be obsolete today.

What kind of changes have you noticed over time in the trafficker's choice of communication technologies? How do you adjust to that? Where are you in relative terms from a technology standpoint with the people that you are investigating?

Ms. LEONHART. I will have to be careful here, because if the traffickers know what troubles us, they would all go to that, so I will be careful.

But I will say that our bread and butter, and the only way that we can do some of these cases where we have got the major seizures and can do the most damage to the organizations, are by way of our Title Three intercepts, our wiretaps. DEA has perfected it.

Mr. MOLLOHAN. I don't want to go into anything that might even touch on anything that would be sensitive or could impact your in-

vestigations, but what are your technology needs? Maybe your interoperable technology needs. To the extent you can talk about that, please help the Committee understand it.

Ms. LEONHART. Well, I believe you actually have helped us on that. We have had radio problems. On average our radios are 14 years old and we have 28 percent of them that are more than 18 years old. But I believe in the '09 omnibus there is money that will be going to DOJ that will come to us and we can start replacing those radios.

A year ago that was a major issue for us. Now we see light at the end of the tunnel. It is not going to be 100 percent. There won't be enough to complete it, but it is enough for us to get started. And we are the only agency still on UHF, so we need to move quickly and get off that.

I believe about $9.5 million is going to DEA to start to address our radio issues.

AFGHANISTAN FUNDING

Mr. MOLLOHAN. Okay. I think Mr. Wolf is going to be coming back, and if he has anymore questions we will proceed. Until he does return, let me go back to this Afghanistan and this proposal relating to the State Department to see if you can answer it this way.

What would you consider be the pros and cons of receiving your Afghanistan funds through the State Department? Just what are the pros and what are the cons.

Ms. LEONHART. Well, I think any time that you can control your own budget there are better efficiencies. You can plan better. You know more of what you have in your account and how best to spend it. If you have your own money then you are most likely doing your own procuring as well and getting the actual equipment that you need, not that someone else has determined that you might need.

Mr. MOLLOHAN. You know, a lot of the concern, particularly the early days in Iraq, was the lack of coordination of the various entities that are operating there. There was a lot of freelancing.

So wouldn't there be an argument that if you had one agency that was providing coordination that it would enhance efficiency and effectiveness?

This is just for purposes of getting you to answer the question. Wouldn't State Department managing the coordination, and perhaps even the funds, create that better efficiency and perhaps give us better results?

Ms. LEONHART. I, as an agency head, would always say it is better if the agency gets funding. However, the State Department does coordinate a number of things.

I just wanted to continue that if we have the expertise in that area then of course we would want the money to be coming to us and there would be more efficiencies with that.

Mr. WOLF. Well, I cut in at the end of the Chairman's question, but I think the point he was trying to make and I am sympathetic to a certain degree.

The coordination, you used a word I had never heard before in government, deconflicting, and of course you can have an adminis-

tration for deconflicting an agency, because there is confliction all over the government. I worked at Interior, and on coastal zone management this agency wanted it, Interior wanted it, CEQ wanted it, NOWA wanted it, and the only deconflictor was the secretary, who eventually went over to the White House, and so I think you are going to have those things.

I think there is some merit for not robbing people's authority, because you certainly know more than anybody else in your area. But in anything, the more coordination you have, and in Iraq there was not a lot of coordination. I think part of the problem that we had in Iraq that Congress was sort of absent too. I mean the Congress, there was not that much oversight and you almost had operations going that no one knew about.

And so I think when there is one person or one—not to use the word czar—but one place that coordinates to make sure that everything fits in with everything else that is going on, I think it, you know, it makes a lot of sense.

But I think that is what he was referring to when he actually left. I don't know if you have any comments about that.

Who was the deconflictor? Is it Eric Holder or is it President Obama who is to deconflict?

Ms. LEONHART. I am sorry, because I didn't know exactly what he——

Mr. WOLF. Well maybe I am wrong in what he meant, but I think that is what he meant.

Ms. LEONHART. I think he was talking about funding and controlling money, is what I took it as.

Mr. WOLF. Okay. Well maybe I didn't really connect on it.

Coordination has always been a very important point.

We had the whole situation with regard to 9/11. For a period of time certain agencies were not talking to each other. There are some people who believe that had all the agencies been talking to each other that maybe 9/11 may not have taken place. I mean, so I think that is part of what I would be concerned about.

Ms. LEONHART. If that was what he was talking about, actually DEA and the interagency when it comes to narcotics is a success story.

We have a mechanism, and would love you to visit the Special Operations Division.

Mr. WOLF. Is that out in my area?

Ms. LEONHART. Yes.

Mr. WOLF. I was out there once. Well maybe some time I will do that.

Let me just say. The Chairman's here, I am going to turn it back.

There are some other questions, some I wouldn't want to ask you on the record in public, so when you come to tell me about Victor Bout or whoever is going to come by, we can just cover those.

Thank you, Mr. Chairman.

Ms. LEONHART. Okay.

Mr. MOLLOHAN. Mr. Wolf, I plan to end the hearing. Have you finished all your questions?

Ms. Leonhart, thank you very much for appearing today. You have worn us out running up and down the steps, so we are going

to submit the rest of the questions for the record. We are getting in good shape though.

Thank you very much for being here. And let me repeat the sentiment everybody on the Subcommittee shares, that we very much appreciate the nature of your work and the danger that the agents are exposed to as they are working it. It's an incredible job you do for the nation, and we are very cognizant of that and appreciative of it.

Thank you personally for your good service to the agency these past months. It is very appreciated and we thank you for the cooperation you have had with this Committee. We look forward to working with you and trying to empower DEA as best we can with the resources necessary to perform its mission.

Thank you for your appearance here today.

Ms. LEONHART. Thank you very much.

Commerce, Justice Science, And Related Agencies

Appropriations for 2010

Drug Enforcement Administration

Thursday, March 26, 2009

Questions Submitted By Mr. Mollohan

DRUG FLOW ATTACK STRATEGY PROGRAM

QUESTION: The fiscal year 2009 omnibus bill provided DEA with resources to significantly expand its Drug Flow Attack Strategy program. How will the additional resources you received in fiscal year 2009 impact the number and length of DFAS deployments you are able to implement?

ANSWER

The expansion of two additional FAST teams will enhance the capabilities of the current three teams and enable FAST to be utilized globally. The two new teams will assist DEA's host nation counterparts in Central America and the Caribbean, where drugs flow to the United States from the source countries. A continuous FAST presence in the transit zone will greatly enhance the capabilities of the DEA Country Offices in the Western Hemisphere and the host nation counterparts to have a measurable effect on curtailing drug shipments to the United States in accordance with DEA's sequential and prioritized targeting, the Drug Flow Attack Strategy. These teams will provide the expertise, equipment, and personnel to augment DEA Country Offices targeting the most significant violators, High-Value Targets (HVTs), Priority Target Organizations (PTOs), and Consolidated Priority Organization Targets (CPOTs). FAST will support Country Offices' efforts to advise, assist, train, and mentor their host country counterparts and Sensitive Investigative Units (SIUs). In addition, this expansion will allow DEA to conduct long-term HVT bilateral investigations against emerging heroin, cocaine, and synthetic drug threats and the diversion of precursor chemicals.

The additional FY 2009 operational funding will assist Operation All Inclusive and increase the number of FAST deployments. With the addition of two new FAST teams and additional funding, FAST will expand from deploying one team every six months to creating a presence in the region all year. To start, the two Western Hemisphere FAST teams will rotate into Honduras and Guatemala to support the Central America region. FAST may also be deployed to Haiti or the Dominican Republic to conduct operations in the Caribbean region. While deployed, FAST will: utilize Customs and Border Protection, DEA or Department of Defense Joint Task Force Bravo helicopter assets; train with the interagency; and coordinate and respond to air and maritime tracks provided by intelligence-driven targeting and tracking aircraft. These deployments will last 30-90 days as needed. DFAS and FAST funding for Western Hemisphere

deployments will be utilized for travel, fuel, equipment, operational expenses, the expansion of Confidential Source networks, and for training host nation counterparts.

DEA's FY 2009enacted appropriation includes $13.6 million in program enhancements (direct and fee-funded) for DEA's Drug Flow Attack Strategy (DFAS), including the following:

- **Foreign-deployed Advisory and Support Team (FAST) Expansion**: 20 positions (18 Special Agents and 2 Intelligence Analysts) and $7,000,000, including $3,121,000 in non-personnel funding, to establish two additional teams for the Western Hemisphere and other locations, and funding to deploy them for up to six months annually.

- **Strategic Drug Flow Enforcement Operations**: $2,000,000 in non-personnel funding to support Operation All Inclusive deployments. This provides operational funding for travel, aviation support, intelligence collection, host nation support, and other Operation All Inclusive expenses.

- **Tactical Aircraft Section**: 3 Special Agent Pilots and $1,397,000, including $630,000 in non-personnel funding, to support interdiction operations in the transit zone, including FAST deployments, and address air, maritime, and land drug trafficking threats. This will allow DEA to operate the Bell-412 helicopter provided in the FY 2008 Supplemental Appropriations Act.

- **Southwest Border**: The South West Border is a critical front in our Nation's defense against both illegal drug trafficking and terrorism. The FY09 Omnibus request also includes appropriate technical and administrative positions needed to support the investigative activities of the requested Special Agents.

- **Open Source Analysis**: One Intelligence Analyst position and $150,000 to improve DEA's open source intelligence capabilities. This position will manage open source intelligence requirements and handle liaison with other agencies to determine how open source information should be exploited and integrated into shared intelligence for the Intelligence Community. This position will also evaluate how open source information can be better utilized to support DEA investigations and other information requirements.

- Guatemala Diversion Investigator: $498,000 to place 1 Diversion Investigator position in Guatemala to focus on the flow of pharmaceutical controlled substances and precursor chemicals between the source zones and the United States.

DFAS DEPLOYMENTS

QUESTION: How do you decide where to execute DFAS deployments? How do you prioritize between deployments in the Caribbean versus Central American or the US southwest border?

ANSWER
DFAS deployments are all intelligence driven. Decisions on where and how to deploy assets are made based on a pre-operational "Threat Assessment" which is part of every DFAS operation. The Threat Assessments are done jointly, with the inter-agency, and are based on all available intelligence. Deployments in the Caribbean are done in conjunction with deployments in Central America as they complement each other. Operations are tailored to leverage each other. Operations on the Southwest Border are handled individually and are planned under a subcomponent of Operation All Inclusive, which is called Operation Doble Via.

ONLINE PHARMACY POPULATION

QUESTION: The internet is an increasingly common source of illegal prescription drugs, which can be acquired with relative ease from rogue online pharmacies. What do you know about the demographics of the rogue online pharmacy population? How many do you believe are located overseas versus being here in the United States?

ANSWER
We do not know how many illegal online pharmacies are in operation at any given time. These rogue sites can be taken down and replaced with other sites in relatively short order. Many sites observed on the Internet are merely pass-through sites and are not actual anchor sites where purchases can be consummated. Historically, there have been relatively few foreign sources of controlled substance pharmaceuticals offered for sale via the Internet, with the exception of steroids. DEA has identified foreign-based operations and/or foreign-based websites that offer controlled substance pharmaceuticals, but more often than not the ultimate source of supply for these types of controlled substances has been a U.S.-based, DEA-registered, pharmacy. Based upon our investigations of the past few years, the vast majority of the rogue Internet pharmacies are U.S.-based, DEA-registered pharmacies. Though these illegal pharmacies are based in only one state, they typically distribute to individuals in numerous states. DEA is using industry-based Internet search and analysis solutions to identify the largest Internet pharmaceutical trafficking groups. Some of these targets have a foreign nexus. When leads are developed, they are disseminated to DEA field offices for appropriate investigative action.

ONLINE PHARMACIES

QUESTION: For those online pharmacies that are located overseas, what kind of enforcement tools do you have at your disposal to limit their operations or to bring them to justice?

ANSWER

DEA is uniquely positioned with its global presence in more than 60 countries and its well-established relationships with host countries to identify and dismantle foreign-based drug trafficking organizations. DEA also participates in the United Nations-

sponsored Commission on Narcotic Drugs and the Organization of American States-sponsored Inter-American Drug Abuse Control Commission (CICAD). Both of these organizations bring together global partners to identify new and emerging trends and determine how best to attack them.

Working in conjunction with the Department of State, DEA continues to focus efforts on improving the resources and training of foreign law enforcement officials to detect and dismantle illegal pharmacies or criminal enterprises. DEA also works with its foreign counterparts utilizing traditional investigative methods and border interdiction, improving or enhancing foreign regulatory oversight, and partnering with international law enforcement to raise awareness about the public health dangers associated with rogue pharmacies and by sharing investigative strategies and intelligence. Although most DEA investigations involving rogue Internet pharmacies have involved domestic trafficking organizations, a nexus to foreign-based sources and traffickers may be implicated. In such cases, coordination with the national competent authority is initiated for intelligence sharing and enforcement activity.

DEA also utilizes its Special Operations Division (SOD) to conduct and coordinate large-scale national and international investigations, including investigations involving rogue on-line pharmacies. This DEA-led, multi-agency center is designed to identify and exploit the communications apparatus used by the command and control levels of both domestic and foreign-based drug trafficking organizations. SOD support consists of coordinating overlapping investigations and ensuring that tactical and strategic intelligence is shared between law enforcement agencies. SOD utilizes sophisticated technology and investigative intelligence resources of the DEA, and participating law enforcement and intelligence agencies, to accomplish its mission.

It should be noted that when conducting international investigations involving foreign-based sources of supply for controlled substance pharmaceuticals, the extraterritorial jurisdiction provided under 21 U.S.C. 959 can only be used for investigations involving schedule II controlled substance pharmaceuticals. Section 959 does not provide extraterritorial jurisdiction for cases involving Controlled Substances in schedules III – V, the drugs most commonly distributed by rogue on-line pharmacies.

DEA also participates in Organization of American States-CICAD conferences. In its August 2005 Final Report of the Group of Experts on Pharmaceutical Products, CICAD noted that the illicit sale of pharmaceutical controlled substances over the Internet is a growing international problem. In response to this growing problem, the CICAD Group of Experts published a model guidance entitled "Drugs in Cyberspace: Understanding & Investigating Diversion & Distribution of Controlled Substances via the Internet," which was adopted by CICAD at its plenary session in 2006.

Since 1996, the International Narcotics Control Board (INCB) has devoted increasing attention to the problem of pharmacies illicitly selling pharmaceutical controlled substances over the Internet. The INCB made frequent calls at the 44th, 45th, and 46th sessions of the United Nations Commission on Narcotic Drugs (CND) for measures to be taken to prevent the misuse of the Internet for the illegal offer, sale and distribution of internationally controlled licit drugs. The INCB consistently identifies the role of the Internet in the diversion of not only narcotic and psychotropic drugs, but also counterfeit drugs. The INCB posits that the use of the Internet to prescribe and sell

medicines has health risks as the source, quality, safety and efficacy of such medicines cannot be guaranteed, and in particular, when such Internet activities are unregulated and unlicensed. An INCB guidance document entitled "Guidelines on Preventing the Illegal Sale of Internationally Controlled Substances through the Internet" was introduced at the CND in March 2009. The U.S. fully supports the INCB model guidance. Similar to the CICAD guidance document on diversion via the Internet, these guidelines are intended to provide assistance in formulating national legislation and policies for prescribers, pharmacists, law enforcement authorities, regulatory authorities and the public with regard to the use of the Internet to dispense, purchase, export and import internationally controlled substances.

DEA also participates in the annual International Drug Enforcement Conference (IDEC). IDEC was established in 1983 to bring together drug law enforcement officials from the Western Hemisphere. Since its inception, IDEC has grown to be a global conference. Ninety-three countries were represented by high-level law enforcement officials during the 2008 conference, which illustrates the growing understanding that drug trafficking cannot be controlled at a national, or even regional level, but requires an international strategy that transcends political or historical differences between countries. DEA utilizes this forum to address global drug enforcement issues that include cybercrimes committed across international boundaries.

ONLINE PHARMACIES

QUESTION: Do many of the rogue online pharmacies operate in concert with doctors and pharmaceutical distributors, or do they work independently?

ANSWER
More often than not, rogue on-line pharmacies operate in concert with doctors and pharmacists. DEA targets domestic online pharmacy sales involving Internet Facilitation Centers (also called Affiliate Programs) that allow doctors and pharmacies to hide behind a third-party, who is not a DEA registrant, and allow prescriptions to be written and filled without a legitimate doctor-patient relationship. The Ryan Haight Online Pharmacy Consumer Protection Act (Ryan Haight Act) was enacted in October 2008. The Act became effective on April 13, 2009 and makes it illegal to "deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by [the Controlled Substances Act]," or to aid or abet such activity. The illegal Internet websites that the Ryan Haight Act seeks to eliminate take on a variety of appearances and use a variety of methods. One common factor is that these websites are marketed toward drug seekers who are willing to pay a premium to obtain pharmaceutical controlled substances without having a legitimate medical need for them. DEA is optimistic that the Ryan Haight Act will address many of the problems of online prescription drug trafficking and availability.

CONTROLLED SUBSTANCES

QUESTION: Does DEA remain committed to establishing an e-prescribing system for controlled substances?

ANSWER
DEA is absolutely committed to establishing regulations in support of safe and secure e-prescribing systems for controlled substances. DEA supports the use of technology to reduce medical errors, streamline the medical process, and increase efficiency. DEA also remains committed to establishing regulations for the electronic prescription of controlled substances. DEA has been working closely with the Department of Health and Human Services to collaborate on all aspects of designing a comprehensive rule that will address the need to protect the health and safety of the public from diversion, while ensuring that any system can be effectively utilized by the medical and pharmaceutical community. The proposed electronic prescribing system is intended to establish standards that will meet these goals.

E-PRESCRIPTIONS

QUESTION: When you testified last year, DEA was in the early stages of preparing a notice of proposed rulemaking on e-prescriptions. Can you provide an update on the status of that rule?

ANSWER
On June 27, 2008, DEA published a Notice of Proposed Rulemaking (NPRM) to establish a system to permit electronic prescriptions for controlled substances in schedules II-V. The electronic prescriptions would be in addition to the current system of prescribing for controlled substances. The comment period for this NPRM closed on September 25, 2008. DEA received more than 230 comments from a variety of sources, including industry, professional associations, and regulatory boards were received. DEA is working with the Department of Health and Human Services to finalize provisions of the NPRM. DEA hopes to have a final rule published by the end of 2009.

E-PRESCRIBING RULE

QUESTION: How would you characterize the comments DEA received on the proposed e-prescribing rule—mostly positive, mostly negative, or evenly mixed? Did you receive comments from other federal agencies, like HHS, in addition to private groups?

ANSWER
DEA received comments on its proposed rule concerning electronic prescriptions for controlled substances from a variety of sources, including 21 practitioner organizations, 24 pharmacy organizations, 18 states, and 19 application providers. Several states supported the rule as proposed, expressing concern about the security of electronic prescriptions. Advocacy groups concerned with drug use similarly supported the proposed rule, as did a few other commenters. A number of comments generally supported electronic prescriptions without specifically addressing the proposed rule. Some commenters expressed concern that the proposed requirements would prove burdensome and create a barrier to the adoption of electronic prescribing. Several commenters pointed out that technology continues to evolve and requested that DEA

provide greater flexibility to adjust to advancements as they occur. Other Federal agencies, including the Office of Management and Budget, and HHS, reviewed the proposed rule and provided input during the inter-agency review prior to its publication. DEA has been, and continues to be, actively engaged with HHS as we promulgate the final rule.

E-PRESCRIBING PROPOSAL

QUESTION: What is your process for incorporating comments and concerns raised by the medical and pharmaceutical communities with respect to your e-prescribing proposal? Will you meet with some of the groups who had these concerns and work with them to integrate changes, or is the revision process mostly internal?

ANSWER
DEA is required under the Administrative Procedure Act to review and consider all comments. DEA is working to draft a rule that will allow for the electronic prescribing of controlled substances as quickly as possible. DEA is working with other interested Federal agencies on this effort, and has held numerous meetings with personnel from the Department of Health and Human Services to ensure that the standards DEA develops address HHS concerns. However, as DEA is in the deliberative process of rulemaking, DEA does not believe it appropriate to work with outside organizations in the formulation of this rule. DEA is carefully considering all comments received, including those from outside organizations, and is working to respond to those comments in a manner that provides greater flexibility for the regulated industry, while continuing to ensure that DEA meets its obligations under the Controlled Substances Act to protect the public health and safety against diversion.

SMURFING

QUESTION: Your testimony referenced an increasing problem with the practice of "smurfing", or buyers going from store to store purchasing the maximum limit of pseudoephedrine at each location and then pooling their purchases. How can DEA address the problem of smurfing to prevent the resurgence of small toxic labs in the US? Is a new system to link the log books that are maintained independently at these stores necessary to identify patterns of purchases that would indicate smurfing?

ANSWER
Much of the domestic upturn in small toxic labs is attributable to "smurfing." The Combat Methamphetamine Epidemic Act (CMEA) requires retail sellers of products containing pseudoephedrine and ephedrine to maintain logbooks of their sales. However, since there is no interconnectivity between these logbooks, smurfing rings are able to circumvent the intent of the CMEA. Implementing an interconnected system would help in identifying patterns and individuals or groups involved in illegally purchasing precursors destined for clandestine methamphetamine laboratories through out the United States. Several state and local law enforcement agencies have been attempting to monitor the logbooks in order to identify and dismantle smurfing rings.

For example, the Tennessee Bureau of Investigation maintains a database of retail sales of ephedrine and pseudoephedrine products. In 2008, more than 18 percent of these sales were attributed to smurfing operations.

Commerce, Justice, Science And Related Agencies

Appropriations for 2010

Drug Enforcement Administration

Thursday, March 26, 2009

Questions Submitted by Mr. Wolf

DRUG FLOW ATTACK STRATEGY

QUESTION: The Committee provided funding you requested for FY09 for the Drug Flow Attack Strategy, including two new FAST teams and a helicopter for Western Hemisphere deployments. When will you be able to stand up those capabilities, and will you be seeking funding for additional FAST teams in FY 2010?

ANSWER
We expect to stand up the additional teams and receive delivery of the helicopter by September 30, 2009. The details of the President's budget for 2010 have not yet been released. Once they have, I would be happy to discuss DEA's requests.

DRUG FLOW ATTACK STRATEGY

QUESTION: The Department's budget request for FY 2010 shows an increase related to border issues. What is the DEA's share of this increase and for what activities?

ANSWER
The details of the President's budget for 2010 have not yet been released. Once they have, I would be happy to discuss DEA's requests.

MEXICO

QUESTION: The Washington Times reported on March 27, 2009 that Hezbollah is using the same trafficking routes into the U.S. as the Mexican drug cartels for drug and human trafficking? Please describe for the Committee the known activities of Hezbollah in human and drug trafficking into the U.S., and any known relationships between Hezbollah and Mexican drug trafficking organizations?

ANSWER

According to DEA investigations into Lebanese and other Middle East-based groups as part of its Drug Flow Attack Strategy, Arabian Drug Trafficking Organizations (DTOs) are some of several non-Latin American organizations that export cocaine from South America to markets in Europe and the Middle East. Undoubtedly, some profits from these drug-trafficking activities end up in the bank accounts of Islamic radical groups like Hezbollah and Hamas. Interaction between top-level Lebanese (or other Middle Eastern) traffickers and Mexican cartels or DTOs is limited to transactions between Lebanese exchange houses and Mexican "casas de cambio" - judged by the interagency intelligence community to be contacts for personal profit. There is no evidence that Hezbollah-affiliated groups exert any command and control over smuggling routes into the U.S. from Mexico, or that they have any ability to direct the activities of Mexican human smugglers. The National Counterterrorism Center (NCTC) is leading an interagency effort to create the Intelligence Community baseline assessment of Lebanese Hezbollah involvement in the global drug trade.

AFGHANISTAN

QUESTION: The Committee provided about $30m to DEA in the FY 2008 Supplemental. Much of that was to fund a growing DEA presence in Afghanistan. Can you describe your current Afghanistan presence and capabilities, and how DEA fits in to the current planning to expand counternarcotics activities there?

ANSWER

DEA's Kabul Country Office has a permanent authorized staff of 13 positions, including one Country Attaché (CA), one Assistant Country Attaché, one Inter-Agency Operations Coordination Center (IOCC) Deputy Director, five Special Agents, three Intelligence Research Specialists, one Administrative Support Specialist, and one Secretary. In addition to these permanent positions, the Kabul Country Office is augmented by the Foreign-deployed Advisory and Support Teams (FAST), which provide intensive operational support. Typically, a team of 9 Special Agents and 1 Intelligence Analyst is deployed to Afghanistan for 120 days. DEA also has three TDY Special Agent Pilots.

In support of the U.S. Strategic Plan for Afghanistan, DEA is deploying 55 existing positions to Afghanistan by the end of FY 2009. DEA's initial deployment costs will be funded by the FY 2008 Global War on Terror (GWOT) supplemental appropriation. DEA's Afghanistan expansion will focus on the support of major investigations directed at High Value Targets (HVTs), including members of the Taliban involved in the drug trade, and those traffickers supporting the Taliban and other insurgents.

DEA works with the U.S. military and coalition forces in Afghanistan. U.S. Military Command in Afghanistan acknowledges the need for DEA's presence in Afghanistan and views DEA as a force multiplier in attacking the drug and insurgency nexus. DEA's FAST teams regularly conduct criminal investigative operational missions along with U.S military and their Afghan host country counterparts. DEA Special Agents in Afghanistan serve multiple purposes, including: preventing Afghanistan from

becoming a major supplier of heroin to the United States as it was in the 1970s; and helping stabilize the Afghan government as it battles the powerful drug warlords for control of portions of the country.

In August 2008, the National Security Council (NSC) recommended the formation of the Afghan Threat Finance Cell (ATFC) to identify and disrupt the financial infrastructure supporting insurgent and terrorist organizations operating in Afghanistan and throughout the region. Due to the large DEA presence in Afghanistan and throughout the region, coupled with the significant funding that these insurgent/ terrorist organizations receive from their involvement in drug trafficking, the NSC chose DEA to act as the lead agency for the ATFC while the Department of Treasury and Department of Defense were chosen to act as co-deputies. Though the insurgency receives a significant amount of funds from drug trafficking activities, this is not the sole revenue source and the ATFC will examine the various funding streams including extortion, kidnapping, natural resource smuggling, misappropriation of aid, non-governmental organizations and charitable contributions, to name a few. DEA has been instrumental in start-up and initial activities by providing office and living space to ATFC personnel, purchasing equipment and vehicles, providing transportation throughout country and will also provide additional investigative personnel to be assigned to the ATFC. By limiting the financial resources available to the insurgent and terrorist groups operating in Afghanistan, the ATFC will limit and disrupt the ability of these groups to operate throughout the country.

AFGHANISTAN

QUESTION: The FY08 Supplemental funding is being used largely for personnel costs, which will need to be funded again in FY2010 to keep those activities going. What amounts will be included in the FY09 Supplemental or the FY 2010 budget requests for DEA to continue or expand your presence in Afghanistan?

ANSWER
The FY 2009 Supplemental funding request submitted to Congress on April 9, 2009, includes $137.6 million under the State Department's Diplomatic and Consular Programs that is available for transfer to other departments and agencies, including the Department of Justice, to support operations in and assistance for Afghanistan. This includes funding for DEA's presence in Afghanistan. The details of the President's budget for FY 2010 have not yet been released. Once they have, I would be happy to discuss DEA's requests.

MOBILE ENFORCEMENT TEAMS (MET) PROGRAM

QUESTION: The FY09 bill includes an increase above the request of $10 million for Mobile Enforcement Teams. How is DEA planning to use this increase? And what is the budget request for MET in FY 2010?

ANSWER
The enacted FY 2008 budget included resources (83 positions and $20.6 million) to continue the MET program. With these resources, DEA reestablished MET teams, each consisting of eight Special Agents, in the following 10 domestic field divisions: Dallas, Detroit, Houston, Los Angeles, Miami, Newark, Philadelphia, San Diego, St. Louis, and Washington, DC. The FY 2009 appropriation included $10 million to enhance the MET program. This funding provided 44 positions (including 32 Special Agents) to add four new teams focusing on methamphetamine trafficking, which is often conducted by violent Mexican cartels and gangs. The four teams will be added in El Paso, Phoenix, Chicago and Atlanta. Additional operational funding will also support all MET investigations, which will allow all teams to complete long-term deployments in support of the cases. The details of the President's budget for 2010 have not yet been released. Once they have, I would be happy to discuss DEA's request.

MOBILE ENFORCEMENT TEAMS (MET) PROGRAM

QUESTION: Before 2007, there was funding for 22 MET teams, one for each DEA Field Office, and two for Los Angeles. How many teams are currently funded?

ANSWER
Fourteen teams are currently funded. In FY 2008, DEA had ten teams located in Dallas, Detroit, Houston, Los Angeles, Miami, Newark, Philadelphia, San Diego, St. Louis, and Washington DC. In FY 2009, DEA is adding four teams located in El Paso, Phoenix, Chicago and Atlanta.

MOBILE ENFORCEMENT TEAMS (MET) PROGRAM

QUESTION: How many DEA Field Offices are still without a MET team, and are you seeking funding for more teams in FY 2010?

ANSWER
After the 4 new teams are established in FY 2009, 7 of DEA's 21 domestic field divisions will not have a MET. Details on the FY 2010 President's Budget have not yet been released. Once these details have been released, I would be happy to discuss DEA's request.

MOBILE ENFORCEMENT TEAMS (MET) PROGRAM

QUESTION: What would be the cost of bringing DEA back to having a MET team for each DEA Field Office?

ANSWER
Adding 7 additional METs, to have one in each field division, would cost approximately $17 million.

DIVERSION CONTROL – LEGITIMATE CONTROLLED SUBSTANCES

QUESTION: Nearly 7 million Americans are abusing prescription drugs—more than the number who are abusing cocaine, heroin, hallucinogens, Ecstasy, and inhalants, combined. That 7 million was just 3.8 million in 2000, an 80 percent increase in just 6 years. What are you currently doing to work cooperatively with FDA regarding the approval of new drugs that may have a high risk of abuse?

ANSWER

DEA does not have a direct role in the drug development process or a drug's final approval for marketing. The DEA only becomes involved in these processes if a drug under development is a Schedule I substance and/or the Department of Health and Human Services (HHS) has determined that a drug must be scheduled or rescheduled under the Controlled Substances Act (CSA)as a condition for marketing.

Scheduling or rescheduling a drug product requires a working partnership between HHS and DEA. The following outlines the steps that need to be taken to reschedule or place a new substance under control in the CSA.

If a drug is not under control in the CSA at the time a new drug application (NDA) is submitted, HHS will determine if the drug has an abuse potential. HHS will then inform DEA of that determination. This allows time for DEA to gather any available information on the substance or drug product prior to receiving any scheduling recommendations from HHS.

Once HHS has completed a scheduling review document (the Food and Drug Administration is the primary reviewer, with input from the National Institute on Drug Abuse), and made a determination regarding a recommendation for control, HHS will forward that information to DEA.

DEA will then review available data, make a determination regarding scheduling, and publish a proposed rule in the *Federal Register.* This rulemaking procedure gives interested parties an opportunity to comment or request a hearing. A final rule is only published after all comments are addressed.

Additionally, DEA's Special Testing Laboratory acquires drugs that are claimed to be "abuse-resistant" by their manufacturers. DEA chemists then conduct analysis on these products to determine their vulnerability and to what extend they are in fact "abuse-resistant."

DIVERSION CONTROL - LEGITIMATE CONTROLLED SUBSTANCES

QUESTION: How much prescription drug abuse is associated with major trafficking rings? How are you combating major traffickers and getting at the problem of internet sales? Are you working with HHS and ONDCP to educate students and parents on the dangers of prescription drug abuse?

ANSWER

In 2007, the National Survey on Drug Use and Health found that among persons aged 12 or older in 2007 that had used pain relievers non-medically in the past 12 months, 56.5 percent said they obtained the pain relievers most recently used from a friend or relative for free. Another 8.9 percent bought them from a friend or relative, and 5.2 percent reported stealing them from a friend or relative. Nearly one fifth (18.1 percent) indicated that they had obtained the drugs from one doctor. Around 1 in 20 users (4.1 percent) obtained pain relievers from a drug dealer or other stranger, and 0.5 percent said they bought them on the Internet.

Although the survey responses suggest major trafficking rings and the Internet most often are not the direct sources of diversion, DEA investigations indicate that drug trafficking organizations, including those using illegal Internet pharmacies, pose a serious threat. To address this threat, DEA converted 108 Diversion Investigator positions to Special Agent positions at the end of FY 2007. The conversion of these positions will provide investigators with full law enforcement authorities to investigate and bring to justice those responsible for diverting these dangerous substances. Additionally, DEA is restructuring the Diversion program and establishing Tactical Diversion Squads throughout the country. These Tactical Diversion Squads will combine the talents of Special Agents, Diversion Investigators, Intelligence Analysts, and Task Force Officers from state and local agencies to combat the problem of diversion.

DEA is also working with the Department of Health and Human Services, the Office of National Drug Control Policy, and other organizations to educate students and parents about the dangers of prescription drug abuse. DEA participates in the Interagency Working Group on Demand Reduction and provides educational materials and information to a variety of organizations such as the Community Anti-Drug Coalitions of America, PRIDE Youth Programs, and Youth Crime Watch of America. In addition, DEA maintains the www.justthinktwice.com (JTT) website to educate teens and the www.getsmartaboutdrugs.com (GSAD) website to provide a reference for parents.

Launched in August2005, the JTT website has had over 400 million hits. The site is designed to give teens the straight facts about street drugs, as well as prescription drugs and the negative consequences associated with abusing these substances. The site also provides teens with information on the legal consequences of drug trafficking and manufacturing, and provides them with thought-provoking 'real life' scenarios and their legal responsibilities in the areas of drugged driving, drug-facilitated sexual assaults, and providing drugs to their peers.

Launched in December 2008, the GSAD website is designed to supplement the JTT site by providing parents and caregivers of teens the information they need to help identify

drug abuse, drug paraphernalia, and the warning signs and side effects of the most commonly abused drugs. GSAD will also help parents and caregivers understand the language and slang surrounding drug trafficking and abuse, highlight new trends in the drug trade, and provide legal explanations and their implications relating to drug use. Finally, GSAD helps parents and caregivers find local resources for substance abuse prevention and treatment. The site is designed for provide parents and caregivers of middle school, high school, and college-aged children reliable information in an informative and non-technical manner.

METH

QUESTION: According to the National Drug Intelligence Center, meth precursor chemical restrictions in Mexico contributed to a decrease in Mexican meth flowing into the US in 2007 and 2008. However, as a result domestic production has increased and the Mexican drug cartels are adapting their operations to circumvent the precursor chemical restrictions in Mexico. Have you seen a rise in number of small toxic labs in the US?

ANSWER

Thanks to state laws and the Combat Methamphetamine Epidemic Act (CMEA) passed by Congress in March 2006, domestic production of methamphetamine in small toxic labs throughout the United States decreased dramatically in 2006 and 2007. Unfortunately, the traffickers have found a way around the controls the CMEA put in place so the number of small toxic labs is rising once again. Traffickers get their pseudoephedrine for these small labs by sending people store to store to purchase the maximum allowable amount of pseudoephedrine. They then pool their purchases -- a practice known as "smurfing"-- and make the methamphetamine. Smurfing is illegal, but difficult to stop because the CMEA does not require electronic or interconnected log books. Adjustments to the CMEA may be necessary to bring this trend under control.

DEA and State/Local Clan Lab Seizure Stats

Year	All Incidents*	Labs Only	Super Labs
2004	18,584	10,335	54
2005	13,408	6,308	34
2006	8,445	4,072	18
2007	6,144	3,067	11
2008	7,007	3,612	18
2009 1st Qtr	935	506	7

**All incidents include labs, dumpsites, chemicals, and equipment*

Source: National Seizure System as of March 31, 2009

METH

QUESTION: Have you experienced a growth in number of doctors or pharmacies diverting ephedrine and pseudoephedrine to make meth domestically?

ANSWER
Under the Combat Methamphetamine Epidemic Act (CMEA), retail outlets that sell pseudoephedrine and ephedrine products must be self-certified with DEA. However, there are no requirements for distributors of pseudoephedrine and ephedrine products to ensure that their customers are in fact self-certified prior to any sales. Based on the current number of self-certifications that DEA has issued, we suspect that there are still a significant number of retailers that are not self-certified and could potentially be diverting pseudoephedrine and ephedrine products by not complying with CMEA regulations. (Senators Feinstein, Durbin, and others have introduced pending legislation that partially addresses this issue (S.256)).

METH

QUESTION: Have you been working with other governments in Central America to impose precursor chemical restrictions similar to those implemented by the Mexican government?

ANSWER
DEA does not lobby or advocate for a ban on any specific precursor chemical. DEA does, however, actively work jointly with its Central American host counterparts to create adequate import/export and internal controls on certain precursors. Pseudoephedrine products, because of their high level of illicit diversion to manufacture methamphetamine, have been specifically highlighted when internal controls and import quotas are being evaluated.

METH

QUESTION: Have you been working with the major producers of meth precursor chemicals in India, Germany, and China to encourage those countries only export their products to legitimate customers?

ANSWER

DEA, along with the international community, is working with the major producers of the methamphetamine precursors to encourage these countries to only export their products to legitimate customers. China, India, and Germany continue to be solid partners with the United States in its precursor chemical control efforts. Investigations and intelligence reports reflect that these countries typically do export to legitimate companies; however, the diversion of these chemicals often occurs downstream and without the knowledge of the producing country.

With the increase in the diversion of chemicals from legitimate commerce to the illicit production of drugs, and the corresponding need for closer monitoring of chemical shipments, certain foreign governments in chemical source countries require a permit or other written authorization from an importing country's government stating the legitimacy of the transaction. DEA, therefore, issues a letter of non-objection (LONO) to advise the exporting county that there is no objection to a specific import. In 2008, DEA issued more than 180 LONOs to India and more than 80 LONOs to China. This system has been effective in ensuring that products from these two countries go to legitimate customers in the United States.

China is an active participant in the International Narcotics Control Board's (INCB's) ***Project Prism***, which monitors the movement of methamphetamine precursor chemicals. Chinese authorities have not reported the export of preparations in the past and it will take some time for them to install the proper controls and educate their industry. U.S. and Chinese chemical control cooperation is good, within the limits of Chinese capabilities.

India is also an active participant in INCB's ***Projects Prism***. India is a provisional member of the Project Prism Task Force and has been very active during the two operations targeting the diversion of ephedrine and pseudoephedrine, and to the extent possible the pharmaceutical preparations containing these chemicals as well as phenyl-2-propanone and phenyl acetic acid, Operations Crystal Flow and Ice Block. Cooperation between the Indian enforcement agencies, the Narcotic Control Bureau (NCB) and the Central Bureau of Narcotics (CBN), and DEA continues to be excellent.

Germany is also an active participant in ***Project Prism***. The relationship between German law enforcement authorities and the chemical industry is very good and suspicious orders are routinely reported and investigated. Cooperation between German law enforcement and DEA continues to be excellent.

Commerce, Justice, Science And Related Agencies

Appropriations for 2010

Drug Enforcement Administration

Thursday, March 26, 2009

Questions Submitted By Mr. Aderholt

DRUG TRAFFICKING

QUESTION: As we have previously discussed, Alabama sits on a major corridor between Mexico & Atlanta, so our state deals with a high number of drug trafficking issues. What can you tell me about DEA's efforts to seal the border with Mexico in regards to Meth and other high trafficked drugs such as cocaine, heroin and marijuana? I know that there is a new initiative being unveiled by the Administration to curtail violent trafficking in drugs, guns and money.

ANSWER

DEA's main objective is to cause major disruption, and to ultimately dismantle, the Mexican Drug Cartels and all other Drug Trafficking Organizations (DTOs) at the highest levels. These organizations are responsible for the smuggling of drugs across the Southwest Border, as well as the trafficking of these drugs throughout the United States.

To facilitate these objectives, DEA maintains eleven domestic field offices on the Southwest Border, from San Ysidro, California to Brownsville, Texas. In addition to the domestic border offices, DEA has established three offices on the Mexican side of the Southwest Border, located in Tijuana, Ciudad Juarez, and Nuevo Laredo, with a fourth office scheduled to open in Nogales, Mexico by July 2009. These border offices are continually conducting complex criminal investigations, passing intelligence, and conducting enforcement operations designed to disrupt and dismantle these Cartels and DTOs. At the beginning of FY 2009, DEA had 1,265 Special Agent positions allocated to its Southwest Border offices, which include 5 Domestic Field Divisions, the El Paso Intelligence Center (EPIC) and its Mexico offices. This is a 20 percent increase over the 1,055 Agents allocated to DEA's Southwest Border offices in FY 2002. DEA currently dedicates 29 percent of its domestic Special Agent positions to its Southwest Border field divisions.

DEA accomplishes these goals by coordinating and working with interagency partners and our state and local law enforcement partners in the United States, as well as our Mexican counterparts. In addition to DEA's activities on the Southwest Border, DEA field offices throughout the United States are continually coordinating investigative

activities through direct communications as well as through DEA's Special Operations Division (SOD), whose mission is to establish seamless law enforcement strategies and operations aimed at dismantling national and international trafficking organizations by attacking their command and control communications. SOD is able to facilitate coordination and communication among DEA divisions with overlapping investigations, and ensure that tactical and strategic intelligence is shared between DEA and SOD's participating agencies.

In conjunction with our interagency partners, DEA also maintains EPIC, a national tactical intelligence center that focuses its efforts on supporting law enforcement efforts in the Western Hemisphere, with a significant emphasis on the Southwest Border. Through its 24-hour Watch function, EPIC provides immediate access to participating agencies' databases to law enforcement agents, investigators, and analysts. This function is critical in the dissemination of relevant information in support of tactical and investigative activities, deconfliction, and officer safety. EPIC also provides significant, direct tactical intelligence support to state and local law enforcement agencies, especially in the areas of clandestine laboratory investigations and highway interdiction efforts. One of EPIC's major initiatives is the Gatekeeper Project. The Gatekeeper Project is a comprehensive, multi-source assessment of trafficking organizations involved in and controlling movement of illegal contraband through "entry corridors" along the Southwest Border. The analysis of Gatekeeper organizations not only provides a better understanding of command and control, organizational structure, and methods of operations, but also serves as a guide for policymakers to initiate enforcement operations and prioritize operations by U.S. anti-drug elements. Numerous Gatekeepers have direct links to Priority Target Organizations (PTOs) and/or Consolidated Priority Organization Targets (CPOTs).

DEA has also implemented a bulk currency initiative to stop the flow of illegal drug proceeds back into Mexico. In support of the bulk currency initiative, license plate readers along the Southwest Border have provided a surveillance method that uses optical character recognition on images that read vehicle license plates. The purpose of the License Plate Reader Initiative is to combine existing DEA and other law enforcement database capabilities with new technology to identify and interdict conveyances being utilized to transport bulk cash, drugs, weapons, as well as other illegal contraband. DEA can query and input alerts on license plates via an existing DEA database, and other law enforcement agencies can do the same via the EPIC.

MOBILE ENFORCEMENT TEAM (MET) PROGRAM

QUESTION: I was pleased to see the increased funding that the Mobile Enforcement Team (MET) Program received in the FY09 appropriation. What can you tell me about the 11 deployments made by the METs in FY08 and the areas they might be targeting for this fiscal year with the additional teams? I know that Alabama can use whatever additional resources might be available through MET deployments or other assets.

ANSWER

The MET deployments in FY 2008 occurred within the local metropolitan areas of the 10 division offices with MET groups (Dallas, Detroit, Houston, Los Angeles, Miami, Newark, Philadelphia, San Diego, St. Louis, and Washington DC).

From May 2008 through the end of FY08, the METs initiated 11 deployments, which resulted in the arrest of 301 suspects, and led to the disruption of four Drug Trafficking Organizations and the dismantlement of one additional Drug Trafficking Organization. The combined efforts of these deployments resulted in the following seizures:

Firearms: 74

Assets: $333,555

Cocaine: 8.96 Kilograms

Crack Cocaine: 5.03 Kilograms

Heroin: 10.94 Kilograms

Marijuana: 34.59 Kilograms

Methamphetamine:4.55 Kilograms

In Fiscal Year 2009, four additional METs will be established at the El Paso, Phoenix, Chicago, and Atlanta Field Division Offices. The Fiscal Year 2009 budget also includes funding for temporary duty expenses for the METs, which will enable them to deploy throughout the geographical area of the Division's Area or Responsibility.

The state of Alabama falls within the Area of Responsibility of the New Orleans Field Division, which does not currently have a MET. However, a request for assistance could be made of the new Atlanta MET for a deployment to a rural area of Alabama that is fighting a drug and gang problem.

WEDNESDAY, APRIL 1, 2009.

LEGAL SERVICES CORPORATION

WITNESSES

HELAINE BARNETT, PRESIDENT, LSC
LILLIAN BEVIER, VICE-CHAIR, LSC BOARD OF DIRECTORS

Mr. MOLLOHAN. The hearing will come to order.

OPENING STATEMENT OF CHAIRMAN MOLLOHAN

Well, good morning. The Subcommittee would like to welcome Helaine Barnett, President of the Legal Services Corporation, and Lillian BeVier, Vice-Chairman of the LSC Board, to discuss civil legal aid for the low-income community. We are pleased to have you both and thank you for your time.

I would like to add that we are appreciative of the good work you do. In this economy, I can only imagine that your workload has increased significantly, and I know that there have been some challenges with regard to funding from various sources.

Being able to pull that together and provide the services to those in our communities that need it desperately and do not have access is a wonderful service to the community and you are to be commended for that service.

We are fortunate to have already seen your fiscal year 2010 budget request, which many other agencies will not be delivering until later this spring. That means that this hearing will be able to address both thematic and budgetary issues and there is plenty of ground to cover.

Your budget request proposes a funding level of $485 million which is nearly a $100 million increase over fiscal year 2009. Although the President's budget will propose a smaller increase, this is the first time in many years that LSC and the Administration have both agreed that additional funds for legal services are needed. I certainly share that sentiment and, in fact, believe that it could not be more timely because of these conditions.

The recession is driving more and more Americans below the poverty thresholds that establish eligibility for legal aid services. This growing population of eligible clients is confronted with legal needs that are increasing in both number and complexity. Many clients face the prospect of foreclosure or foreclosure-related eviction.

With job losses increasing, there are more clients needing assistance gaining access to food stamp benefits, unemployment compensation, or Medicare services.

There is also substantial evidence that economic distress increases family distress, including divorce and unfortunately domestic violence.

All these factors are driving up demand for legal aid services at precisely the same time that the supply of those services is threatened.

Legal aid providers across the country have been forced to make significant budget cuts due to state government deficits and diminishing charitable and private support. For many legal aid programs, federal assistance through this bill is the only thing that will keep them going.

This morning's hearing will give us an opportunity to examine these issues in more detail. We will look at how LSC and its partner service providers around the country are both impacted by and responding to the current financial crisis.

Within that context, we will discuss your proposed budget and your ideas for how you can make the best and most responsible use of these funds.

Before we invite you to begin your remarks, and your written statements will be made a part of the record, I would like to call on Mr. Culberson for any comments that he might have.

Mr. CULBERSON. Thank you, Mr. Chairman.

OPENING STATEMENT OF MR. CULBERSON

On behalf of Mr. Wolf, I would welcome you to the hearing this morning and especially appreciate the fact that there is under the statute that created the Legal Services Corporation that you are given pass-through budget authority which is a unique and very special privilege because of the unique and very special services that you provide to the poor in this country.

And the whole concept of a pass-through budget authority, Mr. Chairman, that bypasses OMB is something I think we ought to seriously consider for NASA and the National Science Foundation and our science funding, which is such an essential part of our nation's long-term security, so they do not have to go through OMB. I am charmed of the whole idea.

Thank you very much.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

We will start with Ms. BeVier.

Ms. BEVIER. Thank you.

OPENING STATEMENT OF VICE CHAIR LILLIAN BEVIER

Chairman Mollohan, Congressman Culberson, Congressman Serrano, I am Professor Lillian BeVier, Vice-Chairman of the Board of Directors of the Legal Services Corporation.

Thank you for holding this hearing today. The Legal Services Corporation is on the front lines of ensuring equal justice under law in this country and it is an honor to serve on its board.

I bring you greetings today from Chairman Frank Strickland and from our entire bipartisan board. Each board member is eager to do the right thing by the people we serve. We listen to and respect one another's viewpoints about how best to fulfill LSC's mission.

Providing civil legal assistance to individual indigent clients has never been more important. Equally important, of course, is the proper use of the funds that this Subcommittee has entrusted to

our stewardship. That stewardship is the central mission of the board and of the corporation.

And before President Barnett speaks about our appropriation request for fiscal year 2010, let me say a few words about what our board and the corporation have done to improve our stewardship and ensure that we fulfill our responsibilities.

Prompted by two GAO reports, the board and LSC's management made concentrated efforts over the last two years to bring our board governance practices into alignment with Sarbanes-Oxley requirements, to improve the board's oversight of the corporation's financial and compliance responsibilities, and to focus the corporation's attention on improved internal cooperation and good management practices. In making these efforts, the board has had assistance from and cooperation of the corporation's management.

My full statement provides a listing of our accomplishments, so I will mention only a few.

The board adopted a Code of Ethics in Conduct for directors, officers, and employees of the corporation in March 2008. The corporation has now conducted training for all employees, officers, and directors. In addition, training and compliance with the Code is now an important part of new employee orientation.

The board has added a separate Audit Committee, has reconstituted the Governance and Performance Review Committee, and has approved charters for all permanent board committees. LSC worked with an ad hoc Committee of the board to clarify the rules and responsibilities of the various oversight activities within the corporation.

In addition, LSC has revised and updated written guidelines for the fiscal component of the corporation's on-site grantee program reviews. Management is conducting expanded financial reviews that are designed specifically to address issues raised by GAO.

I am pleased to report that for the fifth consecutive year, LSC received an opinion from outside auditors that the corporation's financial statements present fairly in all material respects the financial position of LSC.

Management has this year established a rigorous and formal risk management program at the corporation. The risk management plan includes a full listing of the risks to LSC's strategic objectives, a delineation of strategies to be followed to mitigate these risks, a list of the offices responsible within the corporation for implementing each of these strategies, and dates for annual review.

Oversight and emphasis on compliance with proper financial management practices and provisions of law and regulation will continue to be a priority of the board this year.

President Barnett issued an advisory letter to all grantees in December on the subject of compliance guidance and indicated that this will be an annual alert on issues that have surfaced in the year's compliance reviews.

Finally, as a board, we are making board training and transition a priority for 2009. We want to do what we can to facilitate a fully oriented and fully functioning board in the shortest possible interval after the President appoints and the Senate confirms the new board members.

To ensure that our efforts to improve board governance are sustained, future boards need to know not only the written rules and procedures that we put in place but also the background and history of our actions and the benefits that the new policies and procedures provide in fulfilling the mission of LSC.

Mr. Chairman, in closing, let me say again what an honor it has been and is to work with my board colleagues to support the mission of the Legal Services Corporation.

And I want to emphasize that the corporation's management, President Barnett, and her able management team have the confidence and support of the board.

My career has been devoted to training people to provide the best legal services possible to any client who needs them. The point of my professional life has been to preserve and maintain the rule of law, but the rule of law means little if access to justice is not maintained and available to all.

The Legal Services Corporation embodies that principle, and I thank you for your continued support for this worthy endeavor. I will be happy to answer any questions that you might have at the appropriate time.

Thank you.

[Testimony of Vice Chair Lillian BeVier follows:]

Professor Lillian R. BeVier
Vice Chairman of the Board of Directors
Legal Services Corporation

Testimony before the
Subcommittee on Commerce, Justice, Science and Related Agencies
Committee on Appropriations
House of Representatives

April 1, 2009

Chairman Mollohan, Congressman Wolf, members of the Subcommittee, I am Professor Lillian R. BeVier, Vice Chairman of the Board of Directors of the Legal Services Corporation. I was appointed by President George W. Bush to this position in April 2003 and confirmed by the Senate in July of that same year. I am the David and Mary Harrison Distinguished Professor of Law at the University of Virginia School of Law and have taught constitutional law, intellectual property, real property, and torts since coming to Virginia in 1973.

I want to begin by thanking you for holding this important hearing today. The Legal Services Corporation is on the front lines of ensuring equal justice under law in this country and I consider it an honor to serve on its Board.

I bring you greetings today from Chairman Frank Strickland and our entire bipartisan Board. Each Board member is eager to do the right thing by the people we serve, and we listen to and respect one another's viewpoints about how best to fulfill LSC's mission. Providing civil legal assistance to individual indigent clients has never been more important.

Equally important, of course, is the proper use of the funds that this Subcommittee has entrusted to our stewardship. We consider that stewardship to be a central mission of our Board and the Corporation, and before President Barnett speaks about our Board-approved request for Fiscal Year 2010, I would like to say a few words about what our Board and LSC have done to improve and ensure that vital responsibility.

Mr. Chairman, as you and Mr. Wolf know, the Legal Services Corporation is the largest funder of civil legal assistance in the country. The Corporation makes competitive grants to 137 independent 501(c) 3 corporations for the provision of civil legal aid to clients who are at or below 125% of the federal poverty rate. Our Board, prompted by two Government Accountability Office (GAO) reports, has concentrated its efforts over the last two years to improve our governance practices and to bring our Board's governance practices into alignment with Sarbanes/Oxley requirements, to improve the

Board's oversight of the Corporation's financial and compliance responsibilities, and to focus the Corporation's attention on improved internal cooperation and good management practices. In making these efforts, the Board has had the assistance of and complete cooperation from the Corporation's management. We have made great progress and I'd like to outline those results for you today.

Established a new code of conduct and ethics

LSC management researched codes of conduct for corporations and boards similar in size and structure to LSC, drafted a Code of Ethics and Conduct for directors, officers and employees of the Corporation and presented it to the Board early last year. The Board adopted the Code on March 24, 2008, and the Corporation has conducted training for all employees, officers, and directors. In addition, training in compliance with the Code is now an important part of new employee orientation.

Modernized Board governance

An *Ad Hoc* Committee of the Board researched corporate audit committee options and charters, recommended the establishment of a separate Audit Committee, and proposed a charter for the new Committee. The Board approved the new committee and its charter. The Audit Committee held its first meeting at the Oklahoma City Board meeting in April 2008, at which time it adopted a work plan for the coming year.

The Board has drafted and approved charters for all its standing committees. A charter for a newly constituted Governance and Performance Review Committee was adopted at the August 2008 meeting of the Board. I serve as Chairman of that committee. At our first meeting, the committee affirmed the importance of establishing a comprehensive training and transition plan for the next Board, and agreed on a board member self-assessment tool for Board approval and implementation. We completed the Board self-assessment and an evaluation of the full Board at our annual Board meeting in January 2009. The Committee's newly approved charter includes an annual review cycle.

The Board has established Board training and transition as a priority for 2009. We want to do everything that we can to facilitate a fully oriented and functioning Board in the shortest possible interval after the President appoints and the Senate confirms the new Board's members. To ensure that our efforts to improve Board governance are sustained, future Boards need to know not only the rules and procedures that have been established but also the background and history of our actions and the benefits that the new policies and procedures provide in fulfilling the mission of LSC.

Strengthened financial accountability procedures

LSC management evaluated the use of financial standards for LSC's annual financial statements, and with the LSC Board of Directors' approval, decided to continue to use the Government Accounting Standards Board guidelines for LSC's financial reports.

The Board directed the Office of Inspector General to deliver the LSC annual audit report from LSC's independent public accountant in a timelier manner. Accordingly, we have been able to act on the previous year's report at the end of January for each of the last two years.

In addition, LSC has revised and updated written guidelines for the fiscal component of the Corporation's Office of Compliance and Enforcement (OCE)'s regulatory compliance reviews and established written guidance for following up on grantee interviews. When reviewing programs on-site, OCE is now conducting expanded financial reviews that are designed specifically to address issues raised by GAO. These include review of prohibited political activities, proper use of non-LSC funds, transfers of funds, program integrity, private attorney involvement, sub-grants, membership fees or dues, timekeeping, attorney fees, and internal controls associated with the programs' accounting practices.

An advisory was sent to all LSC-funded programs on March 20, 2008, reminding Executive Directors of the need for appropriate documentation of expenditures of LSC funds and of the regulations regarding unallowable costs. The advisory specifically stressed the prohibition of expenditures of LSC funds for alcohol and lobbying, of the need for the grantees to adopt written policies governing salary advances, and of the regulation governing derivative income.

I am also pleased to report that for the fifth consecutive year, LSC received an opinion from outside auditors that LSC's financial statements present fairly, in all material respects, the financial position of LSC.

Established a risk management program

LSC management has this year established a formal and rigorous risk management program at the Corporation. Management researched a variety of risk management programs and best practices, identified the risk environment for the corporation, and performed an office-by-office risk assessment process. The final Risk Management Plan for LSC includes a full listing of the risks to LSC's strategic objectives, a delineation of the strategies to be followed to mitigate those risks, a list of the offices responsible for each of those strategies, and the dates of annual review. The completed program was presented to the Board at its January 2009 meeting and unanimously approved. One of the key annual duties of our new Audit Committee will be to review processes for risk assessment and mitigation, and the status of ongoing implementation of the plan.

To mitigate the risk of an interruption in grant payments or support to our 137 grantees, LSC management developed and implemented an emergency continuity of operations plan (COOP) for the Corporation, including notification protocols and procedures for each individual LSC office. As a part of the readiness aspect of the plan, LSC has established a remote computer facility and is using it as a backup for its computer operations. A test of the COOP, including the telephone tree initiation of the plan, was performed last September. Both announced and unannounced testing will be conducted on a regular schedule.

In a related area, LSC has reviewed and expanded the current risk factors for selection of grantees for program visits. The Corporation is updating procedures included in the Office of Program Performance (OPP) and OCE manuals. OCE and OPP will each apply the risk factors—such as date of last LSC visit, issues identified by the OIG, any change in grantee leadership, and issues related to program size (large or small). Together they will discuss their conclusions and make decisions about which programs to visit for compliance and programmatic oversight. In addition, LSC has updated procedures to ensure that they reflect our current practice of using information and results from oversight and audit activities and other risk criteria in planning internal control and compliance reviews.

Tightened turnaround times on reports and guidance to grantees

In fulfillment of a commitment to go beyond the GAO recommendations to make related improvements, LSC suspended routine on-site program visits in February and March 2008 to complete all outstanding reports to LSC programs. In addition, LSC has set timeframes for report preparation following program visits. Most reports must be provided to the grantees within 90 days of on-site program visits, although for the large, statewide programs with multiple offices, the timeframe is 120 days. These and other procedures all have been laid out in writing in manuals.

Improved coordination and communication between program, compliance, and Inspector General offices

LSC management developed and implemented policies and procedures for information sharing among the OIG, OCE, and OPP and coordination of OCE and OPP on-site visits.

LSC worked with an *Ad Hoc* Committee of the Board to establish working groups and held many hours of joint staff meetings to work on the roles and responsibilities of the various oversight offices. New information sharing and coordination of site visits, where appropriate, among OCE, OPP, and the OIG, is now proceeding. Care is being taken to ensure the OIG's independence. New training of LSC's oversight staff has now been completed and quarterly staff meetings to continue coordination of work efforts are being conducted.

Continued emphasis on oversight

Oversight and emphasis on compliance with proper financial management practices and provisions of law and regulation will continue to be a priority of the Board this year. President Barnett issued an advisory letter to all grantees in December on the subject of compliance guidance, and indicated that this will be an annual alert on issues that have surfaced in the year's compliance reviews. The Board recently initiated an effort with LSC management to focus on the oversight responsibilities of the individual grantee boards. They are vital partners in ensuring that the programs provide high-quality civil legal services in compliance with all laws, regulations, and best governance practices.

Mr. Chairman, in closing, let me say again what an honor and a pleasure it has been, and is, to work with my Board colleagues to support the mission of the Legal Services Corporation. And I want to emphasize that the Corporation's management—President Barnett and her very able management team—have the full confidence and support of the Board.

My career has been about training people to provide the best legal services possible to any client who needs them. The whole point of my career has been to preserve and maintain the rule of law, and the rule of law means little if access to justice is not provided to all. The Legal Services Corporation embodies that principle and I thank you for your continued support for this worthy endeavor.

I would be happy to answer any questions that you might have at the appropriate time.

Mr. MOLLOHAN. Thank you, Ms. BeVier.
President Barnett.
Ms. BARNETT. Thank you.

OPENING STATEMENT OF PRESIDENT HELAINE BARNETT

Chairman Mollohan, Congressman Culberson, Congressman Serrano, thank you very much for holding this hearing and for giving me the opportunity to testify on the fiscal 2010 budget request for the Legal Services Corporation.

I also want to thank the Subcommittee for its bipartisan support for LSC's mission of ensuring equal access to justice and the delivery of high-quality legal services to low-income Americans.

Because of this Subcommittee, funding for LSC has increased for each of the last three years and your efforts are greatly appreciated throughout the legal services community.

Let me also thank board Vice-Chairman, Lillian BeVier, board Chairman, Frank Strickland, and the entire board for their hard work on improving the governance and operations of the corporation.

We will continue to build on these improvements as we carry out our important stewardship and oversight responsibilities.

Our challenge is large. The nation is in a recession and this downward shift in the economy means that the number of low-income Americans eligible for LSC-funded services will continue to increase.

As you are well aware, in an economic downturn, the poor are the first to feel the effects and the last to recover. In addition, millions of Americans for the first time are or will be finding themselves facing poverty.

Many LSC-funded programs have reported a dramatic increase in requests for help because of the economic downturn, especially because of foreclosure actions threatening the loss of homes, including actions that affect renters.

The rash of natural disasters across the country has added a new dimension to our caseload, creating legal problems for clients that can continue for years.

In addition to the increased demand, unfortunately, many states are confronted by significantly reduced revenues because of the recession and cannot be counted on for additional funding of legal aid.

In particular, an important source of nonfederal funding, interest on lawyers' trust accounts or IOLTA, is dropping because interest rates have plummeted.

Some programs are reducing services and laying off attorneys because IOLTA funders have cut back grants or announced they intend to cut grants.

My entire legal career has been devoted to providing legal assistance to low-income persons. I know firsthand what a meaningful difference legal assistance makes in the lives of our clients. Allow me to briefly summarize two cases.

Imagine returning to Virginia from the Iraq War and being told that you, your wife, who suffers from epilepsy and severe depression, and three children, one of whom is disabled, are facing fore-

closure and eviction after missing mortgage payments because you cannot find a job.

Blue Ridge Legal Services helped the family avert foreclosure which was triggered by a default provision in the financing agreement through which the veteran had invested all $30,000 of his life savings. A legal aid attorney negotiated a new payment plan for the mortgage so that the family did not become homeless.

Imagine that you are a mother of two and married to a man who has physically abused you for seven years. You finally seek help from a legal aid program, secure a protective order and begin divorce proceedings. And then it comes to light that your husband has been married several times and has other wives in four states.

Legal aid of West Virginia helped this woman win freedom from her abusive husband and appealed a Social Security overpayment claim of more than $20,000 caused by her ex-husband's improper actions. This direct quote says it all. "Legal aid has given my girls and me our life back. I thank God every day for you."

At a time when the demand is increasing from people who need civil legal assistance, at a time when major nonfederal funding sources are declining, it is more important than ever that Congress recognize the federal government's responsibility under the LSC Act, reaffirm the nation's bedrock principle of equal justice for all, and increase appropriations for LSC.

With respect to fiscal year 2010, LSC requests an appropriation of $485.8 million. Of that, 95 percent, $460 million, would be distributed to programs as basic field grants for the provision of civil legal assistance to low-income individuals and families.

We are also seeking $3 million for technology grants, $1 million for LSC's education loan repayment program, and increased funding for management and grants oversight to ensure improved grantee accountability and compliance.

In adopting this budget request, the LSC Board of Directors recognized the increased need for assistance and took into account the difficult fiscal demands weighing on the Congress, but remained faithful to its goal of closing the justice gap. We urge you to support this budget request.

Mr. Chairman, Congressman Culberson, Congressman Serrano, and Congressman Honda, you have provided crucial support for civil legal aid in past years and we want to thank you for that support. Through your efforts, we are closer to fulfilling the promise of our Constitution, equal justice under law.

Thank you, and I would be pleased to answer your questions.

[Testimony of President Helaine Barnett follows:]

Helaine M. Barnett
President
Legal Services Corporation

Testimony Before the
Subcommittee on Justice, Science, and Related Agencies
Committee on Appropriations
U.S. House of Representatives

April 1, 2009

Chairman Mollohan, Congressman Wolf, and Members of the Subcommittee, thank you for holding this hearing and for giving me the opportunity to testify on the Fiscal Year 2010 Budget Request of the Legal Services Corporation. I also want to thank the Subcommittee for the bipartisan support provided to LSC. Because of the leadership of this Subcommittee, funding for LSC has increased each of the last three years, and your efforts to help close the justice gap are greatly appreciated throughout the legal services community.

The Corporation is the single largest source of funding for civil legal aid for low-income individuals and families. We fund 137 nonprofit programs with more than 920 offices serving every Congressional district. More than 95 percent of LSC appropriations are distributed to these programs. The Corporation provides guidance, training and oversight to ensure that programs provide high-quality legal services and comply with the mandates of Congress, LSC rules and regulations.

As you know, my entire legal career has been devoted to providing legal aid to low-income persons. I am the longest serving President of the Corporation, now in my sixth year. Prior to joining LSC, I served for 37 years at the Legal Aid Society of New York City, the oldest and largest legal aid organization in the country, as an attorney and head of its multi-office Civil Division. I know, firsthand, that civil legal aid programs make a meaningful difference in the lives of our clients.

Our challenge is large. The nation is in a recession, and this downward shift in the economy strongly suggests that millions of Americans for the first time are falling into poverty. Economic downturns affect the poor disproportionately and add to the pressures on the nation's public health and safety, child welfare, housing and job programs. Based on previous economic downturns, we estimate the client eligible population for civil legal assistance will increase by 22 percent from 2007 to 2009.

Many states are confronted by significantly reduced revenues because of the recession and cannot be counted on for additional funding of legal aid. In

particular, a significant source of non-federal funding, Interest on Lawyers' Trust Accounts (IOLTA), is dropping sharply because of the reduction in the federal funds rate. IOLTA follows the federal interest rate, which fell throughout 2008. The Federal Reserve's benchmark federal funds rate was 4.25 percent in mid-December 2007. It was cut seven times during 2008, to 2 percent at the end of April and to zero to 0.25 percent in December. The interest rate will probably stay at this unprecedented low until the nation's economic recovery begins. IOLTA funds to LSC programs last year totaled $111.8 million.

The decrease in IOLTA revenue is playing out unevenly across the nation, because some states have drawn on reserve funding to maintain legal aid grants, although often at reduced levels. Still, it is clear that legal aid programs will be left with significantly less capacity in 2009 and 2010 because of the IOLTA decline. The reductions in funding in several states will require some LSC-funded programs to reduce services and lay off attorneys and support staff. Charitable organizations also will be unable to contribute as much to legal aid as in the past.

Serving Clients and Communities

Legal aid can facilitate solutions and help clients who have nowhere else to turn in these troubled economic times. Ensuring that the poor are adequately represented in the civil judicial system greatly improves their chances of keeping or securing basic necessities—the keys to stability and self-sufficiency. It also helps keep communities healthy.

Our programs' clients live at or below 125 percent of the federal poverty level—an income of $27,563 a year for a family of four. Three out of four are women, many of whom are struggling to keep their families together and their children safe, fed and housed.

The clients of LSC-funded programs are of all races and ethnicities, young and old, the working poor, people with disabilities, families with children, military veterans, victims of domestic violence and victims of natural disasters.

Clients come to civil legal aid programs when they need a lawyer to help them escape an abusive relationship; to gain access to health care, food, subsistence income, and disability benefits; and to prevent foreclosure and eviction that may lead to homelessness. LSC-funded programs save lives and save taxpayer dollars by averting more costly interventions by state and local social services and public assistance agencies.

Imagine that you are a mother of two and married to a man who has physically abused you for seven years. You finally seek help from a legal aid program, secure a protective order and begin divorce proceedings. And then it comes to light what you had suspected—your husband has been married several times

and has other wives in four states. Legal Aid of West Virginia helped this woman win freedom from her abusive husband and successfully appealed a Social Security overpayment claim of more than $20,000 caused by her ex-husband's improper actions. "Legal Aid has given my girls and me our life back! I thank God every day for you," she said.

Imagine traveling from Louisiana to California in search of your 12-year-old daughter, taken by relatives of your former husband. Imagine going to the Los Angeles police department for help and learning that you must obtain a custody order from a California court. Imagine turning to the District Attorney's office for help, and being told that you need more paperwork to enforce a previously granted Louisiana court order. This family law case was resolved through coordination between Southeast Louisiana Legal Services and the Legal Aid Foundation of Los Angeles. Southeast Louisiana pulled together the missing paperwork and sent it to Los Angeles, where a legal aid attorney prepared the necessary court papers to make the Louisiana order enforceable in California. The legal aid attorney escorted the client to the courthouse to file the papers and then to the police station, which sent a squad car to pick up the daughter. The next morning, mother and daughter were headed home to Louisiana.

Imagine returning from the Iraq war and being told you, your wife who suffers from epilepsy and severe depression and three children, one of whom is disabled, are facing foreclosure and eviction after missing mortgage payments because you cannot find a job. In Virginia, Blue Ridge Legal Services helped the family avert foreclosure, which was triggered by a default provision in a financing agreement through which the veteran had invested all $30,000 of his life savings. A legal aid attorney negotiated a new payment plan for the mortgage so that the family did not become homeless.

Delivering Legal Services

In recent months, many LSC-funded programs have reported an increasing number of requests for help because of foreclosure actions. Many programs did not have the resources available to increase staffing for the foreclosure crisis and often had to first help those in immediate jeopardy and delay assistance for others seeking help.

Foreclosures often force families out of their communities and devastate once thriving neighborhoods. Low-income individuals and families who rent often are the last to know that their landlord is in foreclosure and they are facing eviction.

Foreclosure laws vary by state, and LSC programs are well-suited to help low-income homeowners, especially with foreclosures that can be traced to predatory lending schemes. With legal assistance, low-income Americans can renegotiate the terms of their loans or assert truth-in-lending protections in court.

In response to the crisis, a number of LSC-funded programs have joined with others in statewide efforts to address the subprime mortgage crisis and related housing issues, including partnering with lenders and banks to explore workouts that keep families in their homes, helping the elderly modify or write down loans, and creating or expanding foreclosure assistance projects. LSC has taken a leadership role to ensure coordination among legal services programs and national organizations working on foreclosure issues, and has helped identify gaps and areas for collaboration and the sharing of successful housing and consumer initiatives.

The economic downturn also takes a toll on families in other ways. Studies show that domestic violence is more severe in disadvantaged neighborhoods and occurs more often in households facing economic distress. Legal services help women facing critical matters, such as the need for protective orders, custody and child support.

Programs also are helping low-income families and individuals gain access to health care or resolve eligibility and benefit problems with Medicare and Medicaid. Low-income workers are especially vulnerable to becoming uninsured, since they have typically little savings to pay health insurance premiums when they are unemployed. Without insurance, they are more likely to forgo needed medical care.

In an effort to improve overall health outcomes for low-income children and families, 39 LSC-funded programs are participating in medical-legal partnerships. In these partnerships, our lawyers are trained to work as a part of health-care teams to enforce the laws and regulations that are in place to protect health. Common examples are cases where landlords do not repair leaky pipes that cause mold or fungus to spread and trigger a child's asthma. A lawyer can cite housing and safety codes to get results. Lawyers also can ensure that benefits to the elderly and disabled are provided, that children receive special education, and that environmental cleanups are undertaken.

LSC-funded programs strive to serve all segments of our society. For example, requests from veterans and military personnel, especially those who have recently returned from overseas, for help on housing, debt and employment issues appear to be rising.

One of our California programs has expanded its homeless veterans project to address an increased demand for services. Our Chicago program sponsors a Veterans Rights Project to train pro bono attorneys to help veterans in filing claims for re-employment rights, housing accommodations for the disabled and consumer protections. One of our Tennessee programs collaborates with a local military command to improve coordination of services, including domestic violence prevention, between the military and civilian communities. LSC

continues to provide guidance to the Veterans Consortium Pro Bono Program, which uses pro bono attorneys to represent veterans before the U.S. Court of Appeals for Veterans Claims. With this help, thousands of veterans have prevailed in more than 70 percent of their cases, ensuring that the veterans and their families receive all of their eligible benefits.

Some of our programs were inundated with requests for assistance last year because of natural disasters. Hurricanes Ike, Gustav and Dolly walloped Texas and Louisiana; wildfires destroyed communities in California; tornadoes struck communities in the middle of the nation and in the South; the worst flooding in a century devastated a five-state area in the Midwest.

Long after the initial disruption caused by a natural disaster, persons affected turn to legal aid lawyers for help in rebuilding their lives. In the aftermath of these disasters, legal aid programs find many clients need assistance with:

- Resolution of landlord-tenant disputes, such as challenges to rent-gouging by unscrupulous landlords and faulty rental housing repairs.
- Legal issues related to temporary housing in mobile homes.
- Home repair and contractor disputes.
- Consumer fraud, which runs the gamut from problems with small appliances to major insurance complaints.
- Health problems arising from the cleanup of homes and other environmental issues.
- Increased family law issues, including child abuse and domestic violence from disaster-related stress.

Legal aid lawyers staff legal services desks at disaster recovery centers operated by the Federal Emergency Management Agency and at disaster sites run by the American Red Cross. Programs also coordinate hotlines and services with state bar associations and the Young Lawyers Division of the American Bar Association.

As the Subcommittee has documented in previous hearings, an overwhelming unmet demand already existed for civil legal services before the recession, foreclosure crisis and rash of natural disasters. In 2005, LSC's *Justice Gap Report*, the Corporation's first comprehensive national statistical study, established that for every client who received service, one eligible applicant was turned away. Fifty percent of eligible potential clients requesting assistance from LSC grantees were turned away for lack of adequate program resources. The findings understate the need, because LSC did not count persons who do not contact a program because they are unaware they have a legal problem, do not know that the program can help them, or, in fact, may have heard that legal aid programs are turning away applicants.

Since LSC's FY 2009 Budget Request to Congress last year, groups in three states and the District of Columbia have released reports detailing the unmet legal needs of the poor in their area. All the reports suggest that the actual number of low-income Americans in need of civil legal services, but without access, is far higher than outlined in LSC's *Justice Gap Report*:

- **Arizona,** where 75 percent of people who reported facing a civil legal problem received no assistance from a person or agency.
- **Hawaii,** where 77 percent of the civil legal needs of low- and moderate-income residents are unmet.
- **Alabama,** where a soon-to-be-released study by the Alabama Law Foundation found that 84 percent of the civil legal needs of low-income households are unmet.
- **Washington, D.C.,** where court data shows that 98 percent of parties in domestic violence cases are unrepresented by a lawyer and 97 percent of defendants in Landlord/Tenant Court are unrepresented.

In addition, state legal need studies and reports issued since LSC's *Justice Gap Report* in six other states also demonstrate that LSC's data was understated:

- **Wisconsin,** where 80 percent of poor households facing a legal problem do so without an attorney.
- **California,** where more than 66 percent of the civil legal needs of low-income Californians are unmet.
- **Nebraska,** where 86 percent of eligible clients with a legal problem are unable to receive help from Legal Aid of Nebraska.
- **Utah,** where 87 percent of poor households facing a legal problem do so without an attorney.
- **New Mexico,** where more than 80 percent of the legal needs of low-income New Mexicans are unmet.
- **New Jersey,** where 99 percent of defendants in eviction cases are unrepresented by a lawyer.

LSC is updating its 2005 report on the Justice Gap. New data should be available this summer with analysis completed by early fall. Census Bureau data released last year shows that the number of poor Americans eligible to receive civil legal aid is growing. The Census snapshot from 2007, taken prior to the full force of the recession, found nearly 51 million people in poverty. That represents an

increase of 1.8 million from 2006. This 2007 poverty snapshot includes 17.6 million children—about 24 percent of the nation's children.

Fiscal 2010 Budget Request

At a time when demand is increasing and major non-federal funding sources are declining, it is more important than ever that Congress recognize the federal government's responsibility under the LSC Act, reaffirm the nation's bedrock principle of equal justice for all, and increase appropriations for LSC in Fiscal 2010.

LSC requests a total of $485,100,000 for FY 2010. As in prior years, at least 95 percent of the request is for basic field grants and for grants to improve efficiency and effectiveness through the use of technology.

The following chart illustrates LSC's FY 2008 appropriation, FY 2009 appropriation, and LSC's funding request for FY 2010.

Budget Category	FY 2008 Budget	FY 2009 Budget	FY 2010 Request
Basic Field Grants	$332,390,000	$365,800,000	$460,000,000
Technology Initiative Grants	$2,100,000	$3,000,000	$3,400,000
Loan Repayment Assistance	$500,000	$1,000,000	$1,000,000
Management & Grants Oversight	$12,500,000	$16,000,000	$17,200,000
Office of Inspector General	$3,000,000	$4,200,000	$3,500,000
TOTALS	**$350,490,000**	**$390,000,000**	**$485,100,000**

The FY 2009 appropriation provided $365,800,000 for basic field grants, and this year's request would bring basic field grants to $460,000,000.

Based on the findings of the 2005 Justice Gap Report, federal and non-federal funding would have to at least double from the 2005 level just to serve those who actually sought help and were eligible to receive it—or $624 million in basic field grants. The Fiscal 2009 appropriation provides $365.8 million for basic field—still more than $250 million short of what the Justice Gap Report recommended.

For Fiscal 2010, the LSC Board of Directors voted to request $460 million for basic field grants and to initiate a plan to reach the $624 million goal over the course of the next four years. The requested Fiscal 2010 increase will fall well short of what would be needed to address the loss of non-federal dollars and the

projected increase in the client-eligible population. It is crucial for the Congress to fund civil legal services across the country at a time when poor Americans are struggling to keep their jobs, homes and basic necessities for their families and desperately need legal assistance to do so.

In addition to recommending increased funding for basic field grants, LSC also requests:

- $3,400,000 for Technology Initiative Grants. With this funding, statewide legal services websites will be furnished with more information, forms, document-assembly tools, client-friendly webcasts and searchable databases. The grants also will provide more web-based legal information for families facing foreclosure and for veterans and their families, as well as assistance for low-income workers in filing tax returns and in applying for Earned Income Tax Credits.

- $1,000,000 for Loan Repayment Assistance Grants. Legal aid salaries have failed to keep pace with other public service salaries, and civil legal aid attorneys continue to be the lowest-paid public service attorneys in the legal profession. The median entry-level salaries according to the National Association of Law Placement are $40,000 for legal services, $47,000 for public defenders, and $50,000 for state prosecuting attorneys. Our programs have found that helping lawyers reduce their student debt substantially increases the likelihood they will stay with their programs and that it also makes it easier to recruit new lawyers.

- $17,200,000 for Management & Grants Oversight. This proposed increase will expand LSC's oversight of grantee compliance with law and regulations and enhance the quality of services provided by programs. If the funding request is approved, the Office of Program Performance and the Office of Compliance and Enforcement will be able to increase their oversight visits to programs, from 57 in 2009 to 84 in 2010. The Management & Grants Oversight request for 2010 represents a 3.5 percent administrative cost, compared to the total request, and is below the 4 percent average for fiscal years 2005-2007.

The OIG request is included in the LSC total, but made separately by the Inspector General through the LSC Board of Directors.

Conclusion

Through these and other efforts, Mr. Chairman, and with the support of this Subcommittee, we are working to ensure the effective use of grant funds, to provide high-quality civil legal services and are committed to working to ensure equal justice for all low-income Americans. There are some things that only

government can do. Chief among them is administering justice fairly under the law for all people and promoting equal access to justice.

In a time of recession, a time of increasing demand, and a time of decreasing IOLTA and other non-federal funding for LSC, it is even more vital and necessary to avoid further declines in the delivery of civil legal services to the nation's poor. The Chairman and members of the Subcommittee have provided critical support for legal aid in past years, and we thank you for that support. For Fiscal 2010, we urge this Subcommittee to help close the justice gap by approving our budget request for $485.1 million.

Mr. MOLLOHAN. Thank you, Madam President.

DEFINING THE JUSTICE GAP

A few questions with regard to the gap. For some years now we have talked about the gap through a number of different hearings.

How do you measure adequate legal service? Should we provide legal service to every single person who needs it? Should we provide some ratio, the availability of lawyers to the nonlegal service community versus the availability of lawyers to those who would be eligible for legal services? How should we think about that in the broadest terms?

Ms. BARNETT. Mr. Chairman, as you know, in 2005, LSC conducted the first national statistical study, the unable to serve study, from all 137 LSC-funded programs and at that time concluded that for every one eligible client that we were able to help, one eligible applicant who actually came to our offices, who actually fell within our office's priorities and were eligible for our services had to be turned away because of a lack of resources.

Mr. MOLLOHAN. So at one time you were able to serve 50 percent of the demand?

Ms. BARNETT. That is correct. And even then, we knew that was an undercount. We know many people do not know they have a legal problem. We know many people do not know they can go to legal aid and they can help them with a problem and perhaps even many heard that LSC programs were turning away applicants.

Since that time, there have been at least ten state studies of civil legal needs that have demonstrated that it is much closer to 80 percent of the need not being met.

Mr. MOLLOHAN. Does that mean it has grown from the first study, or the first study just undercounts it? What is the trend line?

Ms. BARNETT. I think the trend line certainly is going up or down depending the way you frame the answer to the question.

I want to share with you that we are currently updating our justice gap report. As we speak, as a matter of fact, beginning March 16th, we have asked all our LSC-funded programs to once again with uniform instructions capture those eligible applicants they are unable to serve. And we expect to get the data sometime over the summer and issue an updated justice gap report in September of 2009.

We sincerely believe that we are going to see a greater number of people, especially because of the economic depression, especially because millions more Americans for the first time are qualifying for legal aid assistance because of the loss of jobs, so that we expect that there will be, although we await the document, that the need is just increasing.

Mr. MOLLOHAN. Well, it appears your budget is anticipating an increase, so even before you get the results of your latest study, describe for the Committee how your budget is addressing the gap issue and the anticipated gap into the future.

Ms. BARNETT. Well, in 2007, the census data indicated there were 51 million Americans that qualified for LSC-funded assistance. We are estimating by the end of this year that there will be 62 million and we are basing that on an analysis of the unemploy-

ment rate in times of previous recessions and the spike in poverty at that time.

In addition to the need that is being caused by the ongoing foreclosure crisis and the apparently recurring natural disasters, non-LSC funding is declining.

The most significant source is IOLTA funding and the IOLTA funding, we are estimating a drop in 2009 of 21 percent. It is uneven throughout the country, but that is our projection of what the decline will be. In the past, IOLTA funding has provided 21 percent of the funding to our program.

In addition, state budgets are facing deficits, as we all know, and private funding is down because of the recession and the stock market decline.

So a combination of the increased need and the decrease in non-federal funding makes it imperative that the federal government step up to address the gap.

Now, in addressing the gap——

Mr. MOLLOHAN. Well, we are addressing two things now. We are addressing the gap and your decrease in funding, as you have just described.

Ms. BARNETT. Yes. But our justice gap report actually concluded in 2005 that we would have to double both federal and nonfederal funding to close the gap.

Mr. MOLLOHAN. Does your budget request this year and your budget projections for the next four or five years anticipate not only closing the gap but making up for decreased funding from other sources?

Ms. BARNETT. Well, I am not sure it makes up for the decreased funding from other sources. But on the federal side, in 2005, the basic field grant was $312 million. And the conclusion was it would have to go to $624 million.

Our board——

Mr. MOLLOHAN. Six hundred and twenty to achieve a closing of the——

Ms. BARNETT. Of the gap—

Mr. MOLLOHAN [continuing]. Anticipated gap?

Ms. BARNETT [continuing]. In 2005.

Mr. MOLLOHAN. Yes.

Ms. BARNETT. What our board decided in making its budget request for fiscal year 2010 was that they would ask for $460 million in basic field and look to close it in a four-year cycle.

Mr. MOLLOHAN. Okay.

Ms. BARNETT. So that is the basis for the board's request in fiscal year 2010.

Mr. MOLLOHAN. Okay. But the reality is that you are experiencing a decrease in funding from other sources and that the faster you run, the further you are getting behind, is that correct? Is that a fair assessment? And I want to hear you talk about that.

Ms. BARNETT. I think it is a very fair assessment that we ask our programs and encourage them to leverage the federal dollars and they have done a very good job in the past. The total in 2008 was something like $526 million of nonfederal funds. We anticipate another drop of 21 percent to $505 million for this year.

So you are quite right. The demand is increasing and non-federal funding is decreasing and I do not know whether the plan of getting to $624 million in four years will in effect take all of that into account.

Mr. MOLLOHAN. Well, you are either going to have to have a bigger request in each of the next four years or you are going to have to develop some strategy for increasing the nonfederal contribution. How are you dealing with that? I mean, it seems to be a really fundamental issue given the drying up, or maybe not drying up, but the decrease in nonfederal funds, as I understand your testimony. Am I right about that, and how are you going to address if it I am?

Ms. BARNETT. Well, I do not think we can do very much about the nonfederal funding and it may very well impel us to——

Mr. MOLLOHAN. Well, Ms. BeVier, do you have a comment on that?

Ms. BEVIER. Well, I do think that——

Mr. MOLLOHAN. Is the board dealing with this?

Ms. BEVIER [continuing]. One of the things that the board has concentrated on and tried to get information about is how to leverage pro bono activity. And I think that initiatives along those lines are possible. In particular, it strikes me that it is possible to think about the fact that there are a lot of unemployed lawyers out there and they could be helpful in this particular time.

Mr. MOLLOHAN. No.

Ms. BEVIER. Now.

Mr. MOLLOHAN. That is the worst testimony we have had this whole year.

Ms. BEVIER. Oh, I would think you would take it as a very good sign.

Mr. MOLLOHAN. No. I am a lawyer.

Ms. BEVIER. Yeah, right. But you are employed.

Mr. MOLLOHAN. Well, my point is, and I am going to go on, that with your plan four years from now and with the decrease in nonfederal funding, it does not look like you are going to achieve your objective. And so maybe we will talk about that a little more as the hearing goes on.

Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

FINDING FEES OR OTHER SOURCES OF OUTSIDE FUNDING

Let me stipulate for the record I am an attorney as well and came out of the State House in Texas. And I know many of my colleagues also came out of State Legislatures and remember as a legislature that the licensed professions in Texas are self-supporting because of license fees.

And it occurs to me, Mr. Chairman, listening to the testimony and the problem that the Legal Services Corporation faces, that one thing we should certainly, I think, consider very seriously is, for example, I do not know why there is not a fee attached to my annual renewal of my license, because I renew it, it is inactive. My license as an attorney in Texas, I pay dues to the State Bar. I know I set aside some, you know, make a contribution to the IOLTA, I–O–L–T–A, account.

But being a lawyer is a privilege. I do not know why there is not a fee tacked on to my annual Bar dues. Why isn't there, for example, a fee attached to the license to practice in Federal District Court, in Federal Appellate Court, in the Supreme Court that would go to help fund the Legal Services Corporation?

And then finally, why isn't there a fee attached to filing civil court documents? Any time you go down to—I mean, there are all kinds of fees that are attached to the filing in State Civil Court.

And I wanted to throw that out as a suggestion because as a fiscal conservative—and I particularly admire the fact that you come from University of Virginia, Thomas Jefferson is my hero, and I do my very best to follow Jeffersonian principles in everything that I do. I describe myself often as a Jeffersonian Libertarian Republican at heart. And I really am. And Mr. Jefferson was right. You apply core Republican principles with a small "r", the knot will always untie itself.

And what would you recommend? If a fee were to be created at those different levels, could you go back and look and tell us how much would the fee need to be? What would you recommend it be attached to and, you know, what level would the fee need to be in order for Legal Services Corporation to be self-supporting, in particular, since the federal government is facing one of the biggest deficits, an era of record debt, record deficit, a particularly scary time because the amount of unfunded liabilities of the United States is accelerating?

And the Comptroller actually told us that in about 12 years, if we are not careful and do not quit growing the federal budget and quit deficit spending, the Comptroller notified us last year that in 12 years, Treasury bonds could be graded as junk bonds. So we need to find ways, creative ways to think outside the box.

And I would like to, if I could, ask you to think about what kind of fee and how much would be necessary to make legal services largely self-supporting, Mr. Chairman, as our state licensing boards are in West Virginia and New York and California and in Texas, for example.

What do you think about that concept, number one, and are there other—because it certainly is a privilege for a lawyer to practice law and this is an essential part of our job, to provide legal services for the poor, and what do you think of the concept and what sort of fee would be necessary, to get away from federal appropriations because we have just got to find ways to save money at the federal level?

Ms. BEVIER. It is a very interesting idea, and I think that many State Bar associations have considered something like that with respect to their dues—their annual dues—a checkoff or a mandatory checkoff and you opt into it or you opt out of it. Issues like that have arisen at the state level.

There is a question of federal versus state regulation of the practice of law, so to the extent that that is true, we could certainly encourage State Bars to consider something in the nature of your suggestion in terms of Bar licensing.

Mr. CULBERSON. I agree with you on the Bar fees. I had not thought about the—and I notice you are a member of the Federalist Society.

Ms. BEVIER. Right.

Mr. CULBERSON. It is a great organization. I appreciate your recognition of the 10th Amendment.

Ms. BEVIER. Yeah.

Mr. CULBERSON. What about filing in Federal Court?

Ms. BEVIER. Well, that is a different issue and I do not know the answer to that.

Mr. CULBERSON. Practice in Federal Court.

Ms. BEVIER. Right. There are certainly filing fees, but I am not familiar with those. And I am sure we can get some information about that.

Mr. CULBERSON. What is your recommendation? What would be necessary? What level of fee would be necessary because when I go practice—I know the Chairman is probably licensed and any other members who—I know my good friend, Adam Schiff from California, was a federal prosecutor and to have the privilege of practicing in Federal Court, there is a fee. You have to go down and take a course to practice in the southern district and the 5th Circuit Court of Appeals and then the U.S. Supreme Court.

I really would like you to tell us what level of fee would be necessary to practice in each of the District Courts, Federal Appellate Courts, Supreme Court, and then finally what kind of a filing fee on civil documents, civil cases would be necessary, and Federal Court, because, Professor, you are exactly right. We have got to respect the 10th Amendment and that is up to the states to license attorneys. What would be necessary?

Ms. BARNETT. We would be pleased to get back to you, Congressman. I do believe there are some states that have filing fees already supporting the civil legal aid programs in those states. So we would like to gather the information——

Mr. CULBERSON. State fees?

Ms. BARNETT. State fees. I am not sure on the Federal Court fees that you raise. But we would like to look into that and with your permission get back to you.

Mr. CULBERSON. Thank you, because, again, as everyone knows, those fees are recoverable. I mean, if it is a plaintiff case, you typically can recover those fees as part of your costs of court.

But you do provide an absolutely essential service and one we need to continue to fund. And I just hope we can find creative ways thinking outside of the box to do so.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

RESTRICTION ON SERVING IMMIGRANT CLIENTS

It is a pleasure and honor to see both of you here. I have always been, as you well know, a big fan in every capacity I have been on this Committee of the Legal Services Corporation.

It strikes right, I believe, at the center of our democracy, the ability for people of lower income and no financial means at times to be able to get legal representation. So with that in mind, I am part of that group that continues to want to be very supportive even during very difficult times.

I am worried, however, at the fact that during another party's Administration in the House, very serious restrictions were placed on what you could do. Certainly you were not allowed to defend certain people and you were not allowed to ask for certain remedies.

And I am wondering at this point how much that has hampered you. While I know you do not take sides, you simply follow the law, you know, what you could tell us about where you would want to go with that.

And in the specific case of immigrants, do current LSC grant recipients have restrictions for representing—what problems do they have representing immigrants who are involved in immigration, deportation, or citizenship process? Are the LSC grant recipients able to represent families of mixed immigration status? That is, with some family members who are documented or citizens and some who are not. Surely we are missing a large class of low-income individuals if LSC grant recipients cannot represent these types of families.

So in the time that I have, I would like to know if you know just how much the corporation has been held back in being able to help people in general over the last few years and what specific problems you face when dealing with immigrants.

Ms. BARNETT. As you know, it is the corporation's responsibility to carry out the will of Congress. We enforce the mandate of Congress. Our programs abide by it. And, in fact, we are defending in court two actions as we speak.

Our programs, as you know, currently are unable to meet the need. We are turning away, as I indicated earlier, one, at least one, at least one eligible person for every one that we are able to handle.

So we are clearly not meeting the need and have a great need for the additional resources accordingly.

Mr. SERRANO. Well, this is based on resources. And I know what you are telling me, that you follow the will of Congress, but if Congress had not imposed these restrictions on you, let us do it this way, how many other folks would you have been able to serve?

Ms. BARNETT. I do not think I am in a position to answer that question, Congressman. I can only tell you the number of cases we currently handle and are turning away with the given restrictions that are the law today.

Mr. SERRANO. Okay. Mr. Chairman, it is obvious, and my colleague said, that I could have put them in a very difficult situation and I do not want to do that, to answer questions that appear like they are disagreeing with Congress.

But I think we have to revisit the fact that some years ago, Congress did impose very serious restrictions on who they could represent. And it was done purely for philosophical reasons, what you think public money should be used for. It is the same argument that we have had in terms of arts programs throughout the nation, what kind of art do we support, what kind of art do we not support.

It is the same as what we have in my Subcommittee that I am trying to get rid of with the District of Columbia of testing every issue we have throughout the country in D.C., you know, be it vouchers or gay marriage or whatever. What we do not like in our

districts, then we do not do in our districts. But we do it in D.C. just to test it.

So all I would like to say is that this is one of the greatest programs in our federal budget and this one strikes at the essence of who we are as a country, the ability of all people to have representation.

Some folks who did not like the program in general and did not care about some of the services in particular decided to put some restrictions that I think we should revisit. And little by little, I believe we should revisit those restrictions and wherever possible, use whatever power we have to undo them so that people can be serviced fully and so that next time, they will not be so uneasy when I ask a question like that, although it was not my intent.

You know my record is as being a friend of the Corporation. It is not my intent to make it difficult for you. I just thought you could tell us, well, we could have served a lot more people if we did not have the restrictions. But you are not going to say that.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Serrano.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chair.

IMPACT OF RESTRICTIONS ON PREDATORY LENDING AND MORTGAGE FRAUD CASES

I would like to associate myself also with the words of Mr. Serrano. I think he is entirely correct.

I am not an attorney, but I am a classroom teacher and it seems to me that—I was taught that justice was blind but not gagged. And so this is what it feels like. And I am not sure whether the restrictions that are placed upon LSC are constitutional.

But not being a lawyer, this is a question that I would pose to you, and in addition to understanding that this kind of restriction also keeps you from being able to provide services to low income people who are victims of predatory lending and mortgage fraud and being victims of the economy, I was curious what your position was on, if it is an appropriate question, this constitutionality, and then the impact that this restriction has had on the folks that are out there suffering from predatory lending.

Ms. BARNETT. Let me tell you what our programs are doing with regard to predatory lending and foreclosure actions.

I think we actually are taking a leadership position in trying to bring together national organizations and legal service programs, to identify the gaps, and the need for information sharing. There are a tremendous number of resources that we are sharing with our programs.

Our programs are doing a tremendous amount of work in renegotiating the terms of the mortgage, whether it is reducing the interest rate, reducing the principal, whether asserting truth in lending protections in court, whether seeking bankruptcy, whether filing objections in court after the sale.

So our programs are doing a tremendous amount of work in representing poor, minority, elderly, persons who have been the victim of predatory lending practices and the subprime mortgage debacle.

Of course, if we have more funding, we could do more work in that area.

Mr. HONDA. If the restrictions were removed on things such as these class-action suits and collecting attorneys' fees, would that in some way benefit the clients that you are representing and also make litigation processes shorter?

Ms. BARNETT. I hope you understand that our position at the corporation is that we enforce the will of Congress. The will of Congress currently is reflected in the restrictions that are in place. Our programs abide by them. And as I indicated earlier, we are defending them in two actions at the moment on both coasts.

Mr. HONDA. Defending?

Ms. BARNETT. Defending the validity and constitutionality of the restrictions in two actions, one in the State of New York and one in the State of Oregon currently.

Mr. HONDA. I see.

Mr. CULBERSON. Because you have no choice.

Mr. HONDA. God created us and he created free will. And I think God is probably a higher being than Congress.

Thank you. I appreciate your testimony.

Mr. MOLLOHAN. Thank you, Mr. Honda.

Mr. Schiff.

RESTRICTION ON COLLECTING ATTORNEYS' FEES

Mr. SCHIFF. Thank you, Mr. Chairman.

And welcome. It is nice to see you and I appreciate your coming and the fine work that you do.

Mr. SERRANO. And he is a lawyer.

Mr. SCHIFF. Yes, I am a lawyer.

That reminds me of, a short digression, when I was first running for the State Legislature, I knocked on someone's door and told them about my background as a prosecutor. And, Mr. Chairman, they said prosecutor, does that mean you are a lawyer. I said, yes, it does. And he said, well, then I am not going to vote for you. Are you kidding, vote for a lawyer, which I responded in the only way I could under the circumstances, by saying, well, you know, my opponent is also a lawyer, to which the potential constituent responded, surely there is a third-party candidate. And I said actually there is. He is an insurance salesman. And he said that is who I am voting for. So just to tell you where we fit in the pecking order.

I want to join my colleagues in expressing my concern about the restrictions that you have operated under. And in particular, I want to focus attention drawing on my colleague's question about finding additional revenue sources in difficult times.

The restriction that you have in seeking attorneys' fees for the work you do, and I want to make sure that I understand the restriction correctly, but if Mr. Serrano and I were counsel representing two tenants being wrongly evicted and Mr. Serrano was a private attorney and I was a legal services attorney and we filed a case against the landlord, we had evidence that the landlord was taking this action knowing that it was improper and there were bases for the award of punitive damages or the award of attorneys' fees, my understanding is that Mr. Serrano on behalf of his client

could make a claim for his attorneys' fees, but as a legal services attorney, I could not.

And as I understand it, that has two consequences. One is that if I were successful in that claim and I obtained attorneys' fees, that would mean I would need less money from the government because I would have the attorneys' fees.

But more than that, if we were both going to settle the case, the landlord would be looking at Mr. Serrano and saying if I lose this case to Mr. Serrano and his client, I am going to have to pay Mr. Serrano's attorneys' fees and he is an expensive attorney, I am going to settle the case.

And that ends up being good for Mr. Serrano's client. In my case, attorney's fees are not on the table. There is a lot less reason for the defendant to settle because there is no worry that you are going to have to pay my attorneys' fees.

Do I understand that correctly? Is that one of the restrictions that you operate under?

Ms. BARNETT. I believe you are correct in your assessment.

Mr. CULBERSON. Will the gentleman yield for a quick question?

Mr. SCHIFF. Yes.

Mr. CULBERSON. What if the state statute under which Mr. Schiff is suing on behalf of the tenant entitles the prevailing attorney or the prevailing side to attorneys' fees by a statute and Mr. Schiff is a Legal Services Corporation attorney?

Mr. SCHIFF. You know, my guess, and maybe you can correct me if I am wrong, is that we would not be able to collect attorneys' fees if legal services is prohibited from doing so.

Ms. BARNETT. They cannot accept it. I am being informed by my General Counsel.

Ms. BEVIER. Could not accept the case, so——

Mr. SCHIFF. Could not accept the case? Well, is it that you could not accept the case——

Ms. BARNETT. Is that right?

Mr. SCHIFF. Yeah, I would think you could accept the case, but——

Ms. BARNETT. The fee.

Mr. SCHIFF [continuing]. You could not accept the fees.

Ms. BARNETT. The fee, just the fee.

Ms. BEVIER. Excuse me.

Ms. BARNETT. They could take the case, but they would not be entitled to the fee.

Mr. SCHIFF. Yeah. Well, I mean, this is something that given our, you know, financial times is probably not—it may not have been a good policy to begin with, but now it is even more financially insupportable. So that is something I really think we should change.

I also think, you know, that in terms of the issues that Mr. Serrano mentioned, as I understand it, you are not only restricted from handling certain cases that involve issues that are very difficult here for the Congress to deal with, you are precluded from using public funds to do it, but you are also precluded from using private funds to do it.

So if there is a case that you are barred from using public funds to handle, you also cannot raise private funds for that and that inhibits your private fundraising, and as I understand it, because the

private parties are not going to give you money if you are under those restrictions.

So that, I think, has a financial consequence as well. That, you know, I think is another reason why we need to revisit and I hope repeal some of the restrictions that you are operating under.

Now, I know that you both operate under the restrictions that the Congress sets and you are not here to lobby to change those restrictions. And you can testify as to the impact on you, but you are not here to advocate one way or another. But I am using my five minutes to at least express my view on the subject.

So I would hope that we can make some of these changes. And I think that will alleviate some of the financial difficulty you are facing. I think it is the right policy for us to undertake as well.

And, you know, I think my colleagues have acknowledged that you are facing what a lot of other nonprofits are facing right now, which is a greater demand than ever for your services and small revenues coming in from the charitable givers than ever. So it is sort of you are getting it in both directions.

In any event, this is all to say that I appreciate the work you are doing. And I have got one of, I think, your best grantees in my district, Neighborhood Legal Services.

And I just want to share one case and I will close. And this is sort of not uncommon. This was reported in the LA Times about a couple who always paid their rent on time, were good tenants, even as the conditions in their unit deteriorated.

Their landlord was forced into foreclosure. And this is a sort of below-the-radar problem. We have people that are being foreclosed upon in their homes, the homes that they own and being forced out, but then we have a lot of renters whose owners are being foreclosed upon and they are being evicted because their—even though they made their rent payment every month on time, full amount, their owners are being foreclosed upon and so they are losing their homes.

So this couple had their landlord forced into foreclosure. The bank holding the mortgage tried to evict the family. Someone who promised to help with the eviction ran off with $1,400 of this couple's money. This is another scam going on. And a legal aid group took the case, prevented the eviction, got the family's money back from the scammer.

But this was only one couple and I guess the—in Orange County, California, which is a fairly wealthy county compared to many others, the wait times for the Legal Aid Society hotline have jumped from eight minutes to 45 minutes. And in an average year, we are seeing a million cases turned down, turned away due to funding shortages.

So there is a lot of need out there. And we appreciate what you are doing. We will try to help.

And, Mr. Chairman, I want to thank you for the important increase the Committee made last year and really appreciate your leadership.

Mr. MOLLOHAN. Thank you, Mr. Schiff.

Ms. BARNETT. If I might for one moment, Congressman Schiff, thank you very much for pointing out a third of the problems in

foreclosures affect renters and they are often the last to know. So thank you for sharing that story.

Mr. MOLLOHAN. And that is the growing area, is it not, or what is the area of issues that is growing fastest now?

Ms. BARNETT. It depends on the part of the country, but it is both the home buyers and the renters.

Mr. MOLLOHAN. Okay.

Mr. Wolf.

RESTRICTIONS ON POLITICAL ADVOCACY

Mr. WOLF. Has Mr. Culberson——

Mr. CULBERSON. I did. Thank you.

Mr. WOLF. I did not want to jump ahead of Mr. Culberson.

Mr. MOLLOHAN. I would not let that happen.

Mr. WOLF. Thank you. I am sorry. I was——

Mr. SERRANO. We already heard from him.

Mr. WOLF. I was at an event. Well, I was at an event in my district and so I am sorry.

Let me say something, and I am going to ask the staff to look at some of these things, for the record here. I think this was a Republican initiative proposal to set up legal services, a Congressman I used to work for, Congressman Pete Petster and Tom Ralesback. I am having my staff get all the history so that we can submit it for the record to make sure that it is accurate.

Secondly, I have always—I am going to differ with some of the things that are said, but I think—I have always been supportive of legal services. And I think the Committee has to be careful because you are coming to a very slippery slope. The Democrats will not always control this Congress. And if this thing slips back in to where it was, I think there is going to be a serious problem.

I believe deeply in legal services. The poor ought to have the help and they need it. But the legal services got involved in some very aggressive political activity. There was actually a tape, and I heard the tape, if you can go back in your files and find that, where legal services were meeting down somewhere in the south, I forget where, and naming members of Congress that they wanted to defeat.

Can you go ask your archives to find that for us and submit it for the record so we can play it here or also put it in?

Just so the Committee knows, John Erlenborn, may he rest in peace, who you knew very well, served in this House and was brought back to clean up the controversy. There was great controversy and politicizing and John Erlenborn, who was the Ranking Republican on the Labor Committee and was a conservative member of the Congress, I think you would agree did an outstanding job. Do you agree?

And so I hear some of the comments from my colleagues and some of these things dealt with lobby and political advocacy. And I believe that if these restrictions are lifted, it will be the beginning of the destruction of legal services because I do not believe people on the other side will stand by.

Now, I used to always oppose, and I hope I am not wrong, if I do, we can be corrected, the cuts that would come—I think, Mr. Serrano, we were on together at that time—and I always would de-

fend legal services, tell my side and other sides that this is not a good thing that we cut it.

So I tell you you are ready to get on a very slippery slope and I am not going to kind of have the rug pulled out twice. And so if I see something wrong, I am going to start speaking out because once you make a mistake, you say, okay, the second time—so I would ask you, one, if you would search your archives and find the tape whereby—you both remember that case? You remember hearing about it?

Ms. BARNETT. Personally I do not.

Mr. WOLF. Is there anybody here who remembers it? It was in the early 1980s. That is one of the arguments against term limits as someone around who kind of remembers. But I would like you to go back into the archives and dig it out.

And also if you would submit for the record some of the stories and I will ask CRS in my office to do the same, to get some of the stories about the politicalization of the legal services.

[The information follows:]

OVERSIGHT OF THE LEGAL SERVICES CORPORATION, 1983

FRIDAY, JULY 15, 1983

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to recess, at 9:40 a.m., in room 428-A, Dirksen Senate Office Building, Senator Orrin Hatch (chairman) presiding.

Present: Senators Hatch, Denton, and Grassley.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. Good morning. We are waiting for Senator Denton who will be chairing this particular session with regard to Legal Services, as I have to go to the White House shortly. However, I don't think he will mind if I start off so that I can make my statement, which I think will be a fairly tough statement this morning, especially after the testimony we received this last week.

Before beginning, again I would like to thank my colleague, Senator Denton, for his tireless help and cooperation with these hearings. Trying to sift through all of the documents and to make sense of what is happening and what was happening at the Corporation has not been an easy task, and we all owe him our gratitude for his willingness to pursue these issues to their resolution.

When I first came to the Senate, I supported the Legal Services Corporation, in large part because of my knowledge about the program in Utah where I think it works fairly well, but I think most Federal programs are run fairly well in our State whether we like them or not. Since then, however, I have begun to learn how the Corporation is being used improperly; how legal services for the poor are sometimes sacrificed to protect political activities popular with local legal services attorneys.

The hearings held by this committee in May and this week are the first to document in detail the way in which the program is being abused. Alan Houseman, Director of the Legal Services Corporation's Research Institute, repeatedly violated the spirit and the letter of the Legal Services Corporation Act. The committee staff found document after document which demonstrated that Mr. Houseman was attempting to coordinate a program for keeping the Corporation intact and, I quote, "with committed aggressive and political staff."

He also used his position to engineer the creation of an outside lobbying organization despite specific statutory commands prohibit-

29-327 O - 84 - 40

ing such action. His own boss, Mr. Dan Bradley, told the committee that Mr. Houseman's activities were improper, yet no action was taken against him other than a verbal rebuke.

Mr. Houseman's indiscretions were not the only example of misconduct. When J. Kenneth Smith, the Director of Regional Operations, received written submissions from a grantee indicating he was spending his grant on political activities, he did not stop the grantee. He simply told the man to reword his submissions—do whatever you want, I suppose, but reword your submission so it looks good.

We also learned that one Corporation grantee, the Center for Law and Education, has sought to block the State of Florida from instituting a program which requires its high school students to be literate before they can receive a diploma. An official from the center claimed that the suit enabled 10,000 students to receive a high school degree even though they failed the State's functional literacy test, and now the center wants to go back to court and sue for over $500,000 in legal fees.

Witnesses on Tuesday told the committee that what we found were isolated incidents of bad judgment; that the vast majority of legal services programs are run in a legal manner. I tend to disagree. I think the committee has just scratched the surface. Unfortunately, we may never know because the Corporation has no adequate data on the activities of its grantees, and apparently after the election of 1980, orders were given to destroy sensitive files.

Now let me address one issue in particular, because there are many that we have raised and there are many more that could be raised. I am talking about the use of programs for political purposes. In material revealed on Tuesday, it was learned that Bea Moulton, the former Director of the Office of Program Services, offered the following advice to a consultant:

> These grants are in a very sensitive area, will be subject at some point, I believe, to considerable scrutiny. * * * We need to discuss the other grants you propose to make. They all call for worthwhile, very important activity, but as described on your forms, it may be the very kind of activity Congress has specifically prohibited us from funding. Maybe they can be turned into training proposals.

In another memorandum from Ms. Moulton which the committee received just yesterday she states:

> I have indicated before my interest in developing some timely packages around legislative and administrative advocacy strategies to deal with the Reagan budget and block grants to the States. It seems we could play an important role in assisting them by helping to develop strategies to deal with budget reductions at the State and local level.

One cannot help but read these memorandums and conclude that the training grants were being used as a ruse to cover Federal funding of political activity. For example, in 1981 Legal Services of Eastern Missouri requested on behalf of the Coalition for Sensible and Human Solutions, funding: one, to publish a handbook for the "People's Lobbyists"; two, to conduct, as a followup to our current CBI's, a People's college of law to continue training of community activists in both substantive issues and the processes of community education and action, legislative and administrative advocacy, as well as their relations to litigation; three, to research and to publish a "People's Alternative" to budget cuts and tax issues on a

State and local level; and, four, to develop an ongoing bimonthly communication on a statewide basis to focus on budget and tax questions and ways to impact them.

Accompanying the request were materials which made clear that the coalition's founding purpose was purely political: To oppose all Reagan budget cuts and to oppose all block grants. Moreover, the purpose of one of its committees—entitled "Immediate Battles"—was described as organizing major events and actions such as letterwriting campaigns and demonstrations.

When asked about this grant request this last week, three former Corporation officials—Dan Bradley, Clint Lyons, and Hulett Askew—stated that they were not familiar with the request or the coalition. Later at the hearing, when they were shown copies of payment approval forms for the grant, Mr. Askew stated that the grant had only been funded to cover permitted activities and that the coalition did not receive funding for the improper activities listed in its proposal.

The committee has subsequently learned that the Corporation did, in fact, fund the Coalition for Sensible and Human Solutions to conduct training programs designed to: One, educate and inform community activists about current Federal, State, and local budget-cutting activities; and, two, share and develop strategies for fighting back.

Materials distributed at these programs were political in nature, uniformly critical of the Reagan administration legislative proposals, and they encouraged lobbying. In a narrative summary of one of the training sessions, the following observations are made. This is from the summary of the training session itself:

> The focus of the morning session was action. Khateeb Waheed from St. Louis gave a "call to action" inspiring everyone. * * * When we broke for lunch, which was delicious, people were "fired up." Building on this energy, Linda Holtzman facilitated a group discussion where it quickly became evident to everyone they wanted to form a local anti-cutbacks coalition, now the Southeast Missouri Coalition for Sensible and Humane Solutions. The participants then broke down into small groups to plan their first course of action and to divide up tasks.

Well, that quote was from the Corporation's own records. This is in direct refutation, I should say, of what the three people who sat here and told us this last week. I might mention that in the most righteous way they told the press outside how ridiculous these hearings were. "Ridiculous" my foot. The purpose behind this training was to form groups to lobby against the administration's budget cuts.

It is clear the training program was a success. To pretend now that this program was designed to inform eligible clients of their rights is simply inaccurate, and I might add that all of this information was contained in documents accompanying a letter requesting that the coalition be paid for the services it performed, and it was paid.

The point here is that the instances of illegal activity uncovered by the committee may be more the rule than the exception. Whether intentional or not, the portrayal by Mr. Bradley, Mr. Lyons, and Mr. Askew of the Corporation's handling of the grant request from the Coalition for Sensible and Humane Solutions was far different from the facts contained in Corporation documents.

One can only wonder what else the Corporation was funding, and in fact the Corporation itself does not know. It does not even have a complete list of its own grantees and subgrantees. That is how poorly it has been run.

I might add that I don't know whether they deliberately lied in front of this committee this week—and I choose to hope that isn't the case—but I can tell you this: They didn't know what they were talking about in the least. Moreover, they should have had the facts before they tried to smooth it over and make it look like the Corporation was just acting in a very ethical and decent way, as they did on occasion after occasion after occasion this week.

You just have to ask, what was this Corporation funding? What was it really doing? I think this has to be investigated by people who are professionals. I think it is time to stop the politicizing of taxpayers' moneys in favor of one ideology or another. All I can say is that I am darn mad about it. I think that the people who sat here last week have some explaining to do, and I am hoping that Federal officials will look into it because I don't think glib answers and constantly saying, "Well, we know the moneys went for the right things," are sufficient answers.

If we want to provide legal services to the poor, it seems to me we should not be jeopardizing such provision with a variety of schemes to finance political propaganda. This committee has an obligation to determine whether the Corporation can be an effective, neutral provider. If not, then it is our obligation to find a better alternative, one which can provide legal services in a manner divorced from politics and staff manipulation.

At this point I would like to insert several documents into the record. I apologize to Senator Denton, but I have to be at the White House and I had to get this into the record before I left. I will cite with particularity "The Law and Direct Citizen Action," funded by the Legal Services Corporation, to my knowledge. This is page 1, "Introduction":

> It takes power to achieve significant social change. People get power by organizing. Social change organizations provide a power base from which people can take systematic collective action on their own behalf. The strategies and tactics of such organizations may vary, but whether they engage in electoral politics or direct action, community education or militant disruption, consumer boycotts or picket lines, their ultimate strength lies in their ability to mobilize and empower large numbers of people.

Let me just quote from the third paragraph of the introduction:

> A victory won through direct action by 50 members is more meaningful in the long run than a triumph achieved by a single leader or a lawyer making a phone call.

It bothers you a little bit, doesn't it, Mr. Bogard, to hear this stuff?

Mr. BOGARD. Yes, sir.

The CHAIRMAN. Let me hit the second page of this introduction, where it says:

> As a result, many lawyers are oriented toward solving specific problems by using the legal system to win individual cases, instead of helping people solve their own problems by direct action, but there are other lawyers who believe in the basic principles of organizing to achieve social change. They want to work with community organizations, and want to know what kinds of assistance they can provide and how best to provide it. This handbook is intended to help them, and to help community

organization leaders and members as well by helping them understand the limitations the law imposes, the opportunities it provides, and the reasons behind the advice their lawyer is giving.

Now I don't know about you, but this bothers me an awful lot, that the taxpayers of this country who have a wide variety of ideological beliefs have to fund one particular liberal set of ideological beliefs and fund the lawyers who are suing to enforce those and implement those. That bothers me a lot.

I think the criticisms of the Legal Services Corporation are valid. I think it is pathetic. I am not going to take more of Senator Denton's time or more of Mr. Bogard's time, but I will put the rest of these matters into the record.

What I am upset about is that we had four glib people here this last week who I thought were honest, and I thought admitted that there were illegalities and certainly improprieties. I think in front of the media they tried to say: "Well, those were exceptions that could happen in any administration." I suspect that my words this last week are true, that we have just begun to scratch the tip of the iceberg and yet what we have scratched are very, very serious things.

Let me just say this: I cannot begin to tell my committee and the public at large how much Senator Denton means to me on this committee, for the work that he has done in going through these documents and working so hard to try to uncover these matters. It is an awful job, and it takes a lot of time, especially when you really cannot find the documents anymore. I just have inestimable respect for him, and I want everybody to know it. I appreciate him chairing these hearings, and I apologize for leaving at this time but I have to go down to the White House.

I might add that this document, "The Law and Direct Citizen Action," was distributed by the Legal Services Corporation, its advocacy training and development unit. This is a training manual. When you read that introduction, I think you can't help but be pretty irritated that taxpayer funds are being used for something like this.

Now I was interested in what the four had to say. They referred to what we found as regurgitated crap, called the investigators scalawags in this matter. I think that they were giving us crap, if you want to know, and I think it is pathetic. I am not going to call them liars here but I want to know whether they are liars or not. I know that what they said was untrue. Whether they deliberately knew it was untrue or not I don't know, but it was untrue, at least in this one particular. I appreciated the candor in some other particulars.

I think that something has to be done about it. I am going to cooperate with Senator Denton and anybody else who is interested in finding where these taxpayer moneys are going, for what they are going, and whether they are being used even today for political purposes, in order to get to the bottom of this. Again, I want to evidence my respect for Senator Denton, who I think also has a number of important things to say about what has gone on in these hearings and what is going on at the Legal Services Corporation.

However, I am pretty irritated that four people would sit here and call our investigators scalawags when they brought up this

Former Employes of Legal Services Faulted
By Mary Thornton Washington Post Staff Writer
The Washington Post (1974-Current file); Sep 21, 1983; ProQuest Historical Newspapers The Washington Post (1877 - 1992)
pg. A6

Former Employes of Legal Services Faulted

By Mary Thornton
Washington Post Staff Writer

The General Accounting Office has found that former employes of the Legal Services Corp. violated federal spending restrictions in January, 1981, just before the Reagan administration took office, when they held a training seminar focused largely on how to lobby against anticipated budget cuts.

The GAO said yesterday that the corporation and its subsidiary programs, which provide legal assistance to the poor, apparently violated prohibitions against political lobbying and advocacy.

Sen. Orrin G. Hatch (R-Utah), who heads the Labor and Human Resources Committee, which has jurisdiction over Legal Services, had asked the GAO to investigate allegations of irregularities in the program.

Hatch called the alleged violations "tantamount to stealing from the poor."

"We should fix the law so that every dime of federal money from this program helps poor people and not one penny goes for illegal political activities," he said.

GAO Finds Spending Violations

Under the regulations, the corporation and its affiliates are prohibited from most lobbying, from using training programs for political advocacy, from using corporation funds to create political organizations and from any involvement in referendum or ballot issues.

The GAO, in a preliminary report, found that Legal Services violated all those prohibitions at the Denver training session.

As one example, the GAO found that Jeanne Connolly, the former Legal Services assistant director of government relations, violated the political advocacy provision by urging "members of the audience to engage in political activities by encouraging their friends to write letters to members of Congress on behalf of the Legal Services program."

Connolly, who is no longer with Legal Services, said yesterday she believes that the GAO reached the "wrong interpretation" and that it "was perfectly legal for Legal Services employes to lobby for their authorization."

At that time, she said, the Reagan administration had already made it clear that it would like to eliminate the Legal Services program.

"People could see that the Legal Services program was coming under attack and they were calling and asking what they could do. We just pointed out that one thing they could always do was write to their congressmen," she said.

The GAO found that although Legal Services officials like Connolly and former president Dan Bradley, who was present at the session, "did not technically violate [the regulations], they are not blameless . . . .

"[They] advocated a public policy of fighting threatened cuts in the Legal Services and other federal social benefit and entitlement programs . . . . Because the corporation encouraged grantees to engage in [prohibited] activities, it was in no position to discipline grantees for their violations," the GAO said.

The report also criticized Don Wharton of the Oregon Legal Services program, who said at the training session that Legal Services fund recipients in his state were "building a state-wide coalition dedicated to the survival of Legal Services."

Alan Rader, an attorney at a Los Angeles Legal Services program called the Western Center on Law and Poverty, was criticized for discussing a 1980 campaign he conducted to defeat Proposition 9, a referendum on cutting state income taxes. The GAO said Rader obtained a $61,655 Legal Services grant to run his effort.

The GAO said that although there have been violations, the government would be "unable" to recover the funds that were improperly spent. Meanwhile, the GAO will continue to look into other charges of Legal Services wrongdoing referred by Hatch.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

I had a number of questions. I just wanted to put that out. And I will just ask two other questions. But be careful because even if I am the only one on the floor that will talk about it from here on in, I will talk about it because I remember what happened.

And I think it is important to protect this program and keep it out of the political process where it becomes a lobbying effort, a political activity effort because then I think in essence those who want to help the poor will be in essence doing something that will, I think, do more to hurt the poor. And so we can submit that.

And, Mr. Chairman, I will ask CRS to pull some of those articles together and we will submit them for the record. And I would ask the corporation, if you can go back and dig in your archives and have somebody come up and sit down with my staff so that when this comes up, we have everything on the record.

If I can recall the tape that I did hear, just remember, I actually heard in the voice on the tape naming members of Congress that legal services wanted to defeat.

And does anyone here out there remember that? I saw one or two of you shaking your heads, but I will not call on you.

INTERACTION OF LSC AND THE LSC INSPECTOR GENERAL

Second issue, Mr. Chairman, and I would ask this question and another one after that, your appropriation bill language carries restrictions on the activities that can be conducted by LSC grantees such as prohibition on class action and collection of attorneys' fees.

We talked about general oversight that you have been asking for, I am sure a question, but how does, and compliance, how does the LSC and your IG specifically monitor grantees' compliance with these restrictions and are you confident that all grantees are in compliance with the law? That is the first question.

The second one is I remember when during Mr. Erlenborn's time, we came in and they worked out the differences. And if you recall, there was a problem on the IG. If you will explain how your IG reports to you. I think IGs to be truly effective ought to be totally and completely independent of—for instance, at the Justice Department, the IG there is not under the Attorney General. That individual can go anywhere. The IG that the President has appointed for the stimulus package is not working for anyone. He and his office can go wherever they believe.

The first question is here on monitoring and, second, if you would just explain for the members how your IG differs and why you think that is good or should that be changed whereby your IG can be truly independent.

And I think, Ms. Barnett, has the IG that had the controversy, has he left?

Ms. BARNETT. We have a new IG and I thought I would ask Professor BeVier to talk about the relationship with the IG. And I am happy to talk about my relationship as well.

Mr. WOLF. Okay.

Ms. BARNETT. The new IG just happens to be here. He is Jeffrey Schanz formerly from the Department of Justice.

Mr. WOLF. But they are the three questions.

Ms. BEVIER. The board hires the IG and as it presently stands, the board can fire the IG. The board has not exercised that authority, but we do have a general——

Mr. WOLF. If I may interrupt.

Ms. BEVIER. Sure.

Mr. WOLF. Authority not exercised that may very well be is tremendous authority. It would appear to me—has there been any consideration of having a totally completely independent IG like the Interior has or something?

Ms. BEVIER. I think there has been some consideration of that, but I do not think that that legislation has passed. At least if it has, we have not been informed of it.

You are completely right, Congressman Wolf. We hire and we review the performance. At the same time, the board is extraordinarily conscious and aware of and respectful of the nature of the IG to be independent in terms of what he chooses to investigate, how he chooses to investigate, what he reports to Congress, and that his job is indeed to monitor and to ensure that we comply and that to investigate complaints without us telling him what he should and should not investigate.

And as much as you can promise that that is true and you can believe us, I believe that is the case. I think the board is extraordinarily sensitive to the need to keep the IG independent. Indeed, the board's view is that the IG helps us and helps the corporation.

Mr. WOLF. If I may, pardon me, but the last IG was driven out.

Ms. BEVIER. The last I——

Mr. WOLF. The IG used to come by the Committee and explain that he felt that he was being pressured by the board.

Ms. BEVIER. Well, as a member of the board——

Mr. WOLF. Was that accurate or——

Ms. BEVIER. As a member of the board, I think that I would probably describe our actions with respect to the last IG in a very different way. And he was not pressed out. He had a very lucrative offer from a private firm. So that is——

Mr. WOLF. But do you deny that there was great controversy?

Ms. BEVIER. No, I do not deny that there was tension.

Mr. WOLF. If I could, Mr. Chairman, submit for the record any articles about that because there was great tension. The IG would come up and express differences with regard to the fact that he was being ignored and felt great pressure by the board.

You can shrug your shoulders——

Ms. BEVIER. Well, no. What I—I am not——

Mr. WOLF. The reality was I had the conversation with him. Would it not be better to have it totally and completely—if you have nothing to be concerned about, I think the IG has worked well—would it not be better to have a truly totally independent——

Ms. BEVIER. It might be better, Congressman. That is not an issue to which the board has given any focused attention. What we basically have—what we are trying to do now is abide by what our responsibilities are now and what our limitations are now and what the IG has to do now.

It is very awkward, I hope you appreciate, with respect to a particular individual who engaged in particular activities, to go into

the board's engagement with that individual, to go into particulars at a hearing like this.

I understand that he had concerns and all I will say is that from the board's perspective, the situation could have been looked at in a different way.

But as we speak now and the present IG, we started with an understanding with him that he is independent and that we respect his independence totally and completely. And that is the understanding that we began with.

So I think it has clarified the IG's role for us to begin with this new IG and to make sure that we understand what the IG's role is.

Mr. WOLF. But if there were a conflict, who has the ultimate decision making, the IG or the board?

Ms. BEVIER. If it is a conflict about what to investigate, it is the IG, absolutely, completely.

Mr. WOLF. Well, that is not quite the answer. Who has the ultimate authority, the board or the IG?

Ms. BEVIER. With respect to what he investigates, the IG has complete authority over that. So the board has authority with respect, for example, to issues of the IG's employment practices and if there are issues with respect to whether the IG is treating his own employees fairly and that sort of thing because the board does review his performance annually.

Mr. WOLF. So the board can fire the IG?

Ms. BEVIER. Yes. The board can fire the guy.

Mr. WOLF. I rest my case.

Ms. BEVIER. Okay.

MONITORING GRANTEE COMPLIANCE

Mr. WOLF. The last issue is, how do you monitor the grantees' compliance with the restrictions and are you confident that all grantees are in compliance with the law?

Ms. BEVIER. I think I am going to turn that one over to President Barnett.

I will tell you before I do so, however, that compliance has been increasingly an issue that the board has felt strongly about and has attempted to assure takes place.

In particular, with respect to our response to the GAO report which enabled us to take a close look at particular compliance issues has, our response to that has strengthened both the board's own governance and the internal compliance procedures that management follows.

And I will turn that one over to the President and she can tell you a little bit more specifically perhaps how that has worked.

Ms. BARNETT. I think as a result of the GAO recommendations with regard to grant oversight and management, we have strengthened our ability to provide oversight and ensure compliance and ensure high quality legal services. Our procedures are in writing today. We have risk factors that we use in determining when to make a program visit. We also consult with the Office of the Inspector General in making those decisions.

We do program visits and, in fact, our budget request is for additional staff, the vast majority of whom would be staff that would

go out to program visits and provide the oversight review. We are looking for 13 additional positions that would help us go from 57 site visits to 84 in 2010.

GAO found problems in nine of our programs. We referred eight of them to the Office of Inspector General. They have given us the reports. The last one we got yesterday afternoon, so I cannot refer to that one, but the other seven we have followed up with and there is only one program which we are still in the process of following up with with an issue.

The ninth program we kept for ourselves which was the Nevada program and I think there were definitely issues there. We have worked closely with the program that now has a new board chair and has a new Executive Director and, in fact, is now on two-month funding and we are very pleased with the progress that they have made.

I think our programs want to comply. I sent two advisories to all the programs, one in March of 2008 where I reminded them of the need to have supporting documentation, of what expenditures cannot be used with federal funds such as the purchase of alcohol and lobbying, to remind them of the regulation governing derivative income, to remind them if they have salary advances, they have to have written policies.

And then in December of 2008, I sent a reminder to all the programs where we highlighted issues that we found in our visits during the course of the year as a reminder. We think all the programs are following them, but we wanted to remind them of the need for certain procedures—to have reconciliations on a monthly basis, to have separation and segregation of duties, and we outlined a number of procedures just to remind the programs to be alert to these issues.

So I think we are taking a very proactive role in trying to ensure that our programs are complying with all the rules, regulations, and LSC Act requirements. And I think that we feel quite confident that the vast majority of our programs surely are doing so.

Mr. WOLF. Okay. Thank you.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Mr. Fattah.

LSC SERVICES TO VETERANS

Mr. FATTAH. Thank you, Mr. Chairman.

And let me thank the Chairman. We worked very hard in the last budget to provide an increase for legal services and it was needed, but obviously there is still a very significant justice gap, if you would.

And I would like to thank the Vice-Chair for her testimony and your service on the board.

But I wanted to ask a question. I really want to talk about two things. One is support and help for veterans, returning veterans. I note that a number of your programs in California, Tennessee, and other places are now working aggressively with veterans, particularly those returning from Iraq and Afghanistan, on a host of legal issues.

And I wonder whether or not in this appropriations request you foresee that those services could be provided in other locations, in other states. So if you could talk a little bit about that.

Ms. BARNETT. There is no question that we are seeing an increased need of returning military personnel from Iraq and Afghanistan, not just with veteran benefits problems and we do have a veterans' pro bono consortium that works on veterans' benefits at the U.S. Court of Claims for Veterans, but housing matters, family law matters, debt-related matters such as evictions, foreclosure, unemployment insurance problems.

We do not feel that we are actually, Congressman Fattah, capturing the full range of services and we are looking at ways in which we can better capture so we can tell you more accurately how many cases we are handling that involve returning veterans.

Also, you should know that with our technology initiative grants program for 2010, we indicated a particular area of interest that we would make grants in is if they concentrated on ways in which we can help veterans, either help themselves, help advocates who are representing them, or pro bono attorneys who want to represent them.

So in this round of TIG grants, we will be making specific grants to programs that focus on meeting the needs of veterans.

Mr. FATTAH. And, secondly, the foreclosure challenges which are gripping the nation—I am later in the day participating in an activity where we are looking at what we have done in Philadelphia in terms of mandatory mediation efforts and looking at whether that is applicable in other places.

But I know that a lot of your grantees have been working very hard, but you are still not able to provide—there is a significant gap in terms of the services needed and services being provided to help families cope with the foreclosure crisis nationwide.

Would part of this request help you better respond to that?

Ms. BARNETT. Clearly that is part of the increased need upon which we are basing this request without a question of a doubt, that the foreclosure crisis is affecting families, home buyers and renters in properties that are being foreclosed. And we are not able to meet the increased need which has been documented practically across the country.

I will just tell you I visited our Cleveland program last week. One out of thirteen homes are vacant. They get more than six calls a day. They are turning away 40 percent of those that are seeking their relief and it is two and a half times as many requests as last year just as an example.

Mr. FATTAH. Well, now, if we were able to meet this request, where would that put you relative to, guess the last ten years in terms of your overall financial capacity as an entity?

Ms. BARNETT. Well, if I could just make a small comparison to put things in perspective, our request is $485.8 million. In 1995, LSC received its largest appropriation which was $400 million. In inflation adjusted dollars today, that would be $550 million.

If we went back to 1981 where the appropriation was $312 million, where it was thought that was to meet the need, today in inflation adjusted dollars would be $770 million just to put our request in perspective over the last at least ten years.

Mr. FATTAH. And let me return to this issue of veterans. For active-duty military, Congressman Murtha was talking yesterday about a young lady from his district who faced a child support procedure back home in Pennsylvania while she was on duty in Iraq and was not represented. And there was in the Congressman's mind significant injustice to the entire process.

Do your grantees also provide services not just like your California or Tennessee veterans but to active-duty military?

Ms. BARNETT. To their family——

Mr. FATTAH. If they have——

Ms. BARNETT. If they have a family problem——

Mr. FATTAH. Right.

Ms. BARNETT [continuing]. Here, I am sure that they do and we just are not capturing that sufficiently to be able to report the numbers to you. But I am hoping next year at this time, we will be in a position to do so.

Mr. FATTAH. But in 40 or 50 percent of the cases, no matter a veteran or not, you are just not in a position to——

Ms. BARNETT. Exactly.

Mr. FATTAH [continuing]. To respond to the need?

Ms. BARNETT. Exactly. We are turning away as—in 2005, we documented 50 percent of those that come to us. And as I indicated prior to your joining us, we are updating that justice gap report right now and hope to reissue the report in September of 2009. And we expect that we will be turning away far more than we did in 2005.

Mr. FATTAH. And the veterans initiative, particularly in California, focus on reemployment issues, family issues, housing. We have seen reports that one out of three veterans are homeless. So the issues of your support for veterans and some of these legal challenges is critical. And I think that the Committee should appropriately take that into consideration.

I thank you for your testimony.

Ms. BARNETT. Thank you.

Mr. FATTAH. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Fattah.

IMPACT OF FEDERAL AND NONFEDERAL FUNDING TRENDS

Well, there are a number of bottom lines here. There is the bottom line that you request. There is the bottom line of how much nonfederal funding you receive. And then there is the bottom line of how many eligible and needy clients you serve.

It is clear that the bottom line that you are requesting from the Committee and even your projections over four years are not going to achieve the bottom line we should achieve with regard to servicing clients.

So picking up where I had left off in my questioning and talking about how we can improve the bottom line of eligible clients needing to be served, given the constraints on the federal budget and the declining funding from outside federal sources, I would like to explore how you all are thinking about it.

First, I would like to ask Ms. BeVier if I could get insights on how the board is dealing with this problem. What are your goals

in the future, recognizing that the federal budget cannot close this gap all by itself?

Ms. BEVIER. The board——

Mr. MOLLOHAN. Speaking strategically here.

Ms. BEVIER. Yes. I understand that, Congressman, and I appreciate it.

What the board has established as its goal to close the justice gap that we have discovered within four years. Now, our requests, our budget requests have never completely matched what Congress was willing to appropriate.

But in terms more of your question for the future——

Mr. MOLLOHAN. Can I just say something? I mean, it does not close the gap, your plan. I mean, tell me. To say closing the gap within four years, your plan does not do that. Am I wrong about that?

Ms. BEVIER. I do not think you are wrong about that, no. What——

Mr. MOLLOHAN. So how should we be talking? In what terms? Are we starting to close the gap to 40 percent or 60 percent, to get real about this for the Committee?

This Committee is going to be committed to closing it as much as possible. I can tell you that. But it is a reality. We are not going to be able to come up with the dollars to close it completely. So talking about closing the gap is almost happy talk.

I just want to get real here and see what you all can do on the outside incentivizing pro bono and law graduates or law school students or however you can increase participation from whatever source. You are dealing more closely, far more closely, with it than we are. But let us talk about the gap as realistically here as possible.

Ms. BEVIER. Well, I think that in terms of the funding source, our funding does come from Congress and so we look at that funding as being our major funding source.

We have attempted during the course of my service on the board to be proactive with respect to pro bono, to really try to see what initiatives can be taken with respect to pro bono.

PRIVATE ATTORNEY INVOLVEMENT

Mr. MOLLOHAN. But private attorney participation decreased instead of increased.

Ms. BEVIER. That is a fact. I wish it were a different fact.

We have been working with State Justice Commissions to attempt to encourage state courts and at the state level to get their Bar associations involved. There is only so much that the board of the Legal Services Corporation can do. But certainly in terms of engaging attorneys and State Bar associations and State Supreme Courts, we have made a real effort to engage them and to prod them into more active involvement with the provision of legal services.

And we have talked about the possibility of private fundraising, but that, I think, is an issue that we have not really undertaken ourselves, to engage the activity of trying to go out and raise money ourselves from private sources.

Mr. MOLLOHAN. President Barnett, you know, we talked about this with Chairman Strickland, I think, last year, did we not? He is very active in the Bar, right?

Ms. BARNETT. Yes.

Mr. MOLLOHAN. What progress has been made since our discussions last year with regard to the Bar Association? For example, trying to encourage its membership to participate more actively in legal services?

Ms. BARNETT. Perhaps a better way to talk about the justice gap in light of your very real comments is to address the justice gap. I am not sure myself what actually would it take to close the justice gap since I think the gap is widening as we speak rather than being narrowed.

But I think certainly private attorney involvement. We have——

Mr. MOLLOHAN. I am sorry to interrupt you. Please forgive me for doing it—but it is going to be really disappointing when we sit here and talk about increased funding, closing the justice gap and having all that talk here today, and one year from now when you all come up, and I know you are working hard, you are doing everything, you are doing a terrific job, you and the board both, but when you come up here next year and it is the same situation. We really have not closed the gap.

So if we are serious about doing it, I think we have to get serious about what all the resources are that can be brought to bear. It seems to me the American Bar Association ought to be standing up or leaning forward considerably more than they are. These are all smart men and women in every community. They ought to be able to figure this out in their own community.

I am sorry to interrupt you and make a speech on that, but please go ahead.

Ms. BARNETT. I certainly respect the point that you made.

Private attorney involvement, we are working with the American Bar Association right now on the deferred lawyers, seeing if they would work in our programs.

I was just up at Yale Law School talking to those involved in the clinical programs and suggesting adopting a local legal services program in the community and instilling a pro bono ethic no matter how students choose to practice in their careers.

I think we are very much involved with state access to justice commissions. They are proliferating in states now. They have the involvement not only of the Judiciary, the State Bar leaders, the business community, and we are actively involved in those efforts trying to raise additional funds, to leverage the federal dollars, to increase pro bono, to increase self-help initiatives.

That is another thing we are working on and with the court system and our technology grants and web sites to provide information so that people who are unable to get our assistance can hopefully in those areas that it is appropriate handle it themselves with pro se initiatives being supported by the court system.

So we are working on the court level. We are working with the private Bar. We are working with the access to state justice commissions throughout the states, looking to establish them where they are not and working with those that are there, all looking at ways in which to leverage the federal dollars, recognizing that it

is the federal government that is the heart of it. We are happy to look at other sources of state and local government initiatives, whether it is the filing fees in federal court, and see if there can not be a comprehensive package of initiatives to pursue to leverage the federal dollars as we go forward.

Mr. MOLLOHAN. Well, there is no question the Committee is going to be increasingly interested in funding LSC. We are also increasingly interested in achieving the goals which you are talking about in terms of closing the gap.

But as we increase our commitment, which will surely happen, I think we need to work with you in real time throughout the year with our staffs and with members in understanding how you are really going to enhance funding outside the federal government. We will have push-back on some of these things.

But I think there is a lot of sentiment on a bipartisan basis to fund the basic core functions of legal services. So I think that is going to happen. Repeating myself, we want to work with you on that.

OUTREACH

Now, there are two parts of this. One is serving indigent folks, or those who are eligible for legal services. Obviously resources and funding is part of that. The other part that disturbs me, and one of the witnesses alluded to it or mentioned it in their testimony, is the lack of knowledge of those who would be eligible for legal services about the fact that they do have eligibility.

Now, you have got a restriction against soliciting and I would like for you to talk about that in terms of making people aware of their eligibility. I would call it advertising. That may be the wrong word in the legal community, although I notice it is happening a lot more since I graduated.

What is the difference between soliciting and informing people that they have eligibility? Is there a difference and how do you go about telling people that there are folks out here that can help you with foreclosures, can help you with being battered and can help you with all these problems? How do you inform people, or do you? Does this soliciting restriction keep you from doing that?

Ms. BARNETT. No, no. Certainly we have statewide web sites that have information for people needing assistance on it. In our offices, there is information in the waiting rooms on the kind of services that can be provided. We can go to community education trainings and do sessions on know your rights.

What we cannot do is then take a client, solicit a client to come to us who has a particular issue that we want to raise. But we certainly want to let it be well known, and I think it probably is fairly well known, our existence in so many areas of the country have been for so many years and the programs have such a wonderful——

Mr. MOLLOHAN. Well, it was your reference that there are those out there who do not know. I do not——

Ms. BARNETT. It was.

Mr. MOLLOHAN. Was it President——

Ms. BARNETT. I definitely said it was an undercount because we are sure everybody who—not everybody who comes to an office—

anybody who does not come to an office does not mean they do not have a problem.

Mr. MOLLOHAN. Is advertising a bad word? Can you advertise? Can you put an advertisement in the paper saying that if you can not afford a lawyer and are you having foreclosure problems——

Ms. BARNETT. Actually, we have on Google, if you Google I need a lawyer——

Mr. MOLLOHAN. How many poor people Google "I need a lawyer"?

Ms. BARNETT. Well, you would be surprised.

Mr. MOLLOHAN. A lot?

Ms. BARNETT. Yes.

Mr. MOLLOHAN. All right.

Ms. BARNETT. You would be surprised at the number of——

Mr. MOLLOHAN. Okay. Maybe it is just because that would probably be the last thing I would be able to do.

Mr. SERRANO. But you do make a point, Mr. Chairman, still a big issue in this country.

Mr. MOLLOHAN. Yes, it is bound to be. Well, do we have a problem in this area?

Ms. BARNETT. You know, we are——

Mr. MOLLOHAN. Are we getting to everybody——

Ms. BARNETT. We are not.

Mr. MOLLOHAN [continuing]. And letting them know?

Ms. BARNETT. We are not getting to everybody.

Mr. MOLLOHAN. How can we do it better?

Ms. BARNETT. We can do it better by what some of the programs are talking about, going out to where potential clients will be, going to schools and meeting with parents there who might have problems with school suspension or special legal ed needs or going to health centers. Forty of our programs are partnering in medical/legal partnerships.

Mr. MOLLOHAN. Do you advertise in community newspapers, or with Spanish community? Do you advertise in newspapers for legal aid?

Ms. BARNETT. What is being shared with me is not an advertisement, but news stories in newspapers every day on what legal aid has done to help a particular client with a particular problem. And as I said, we do community know your rights sessions. I believe all our programs are in engaged in community outreach and training sessions trying to get the word out that you have certain rights if these conditions occur and we can help you if we have available resources.

Mr. MOLLOHAN. Well, people out there are alone and desperate in many cases and they need to know they have this resource available. Nothing is better than a good lawyer.

Mr. Serrano, you believe that; do you not?

Mr. SERRANO. Yes. I am not a lawyer. I played a judge once on Law and Order, but I am not a lawyer. I did really.

When they called me up, they said we have this role, here, you want to play. On our show, we have a role for you, but there is a problem with it. I said, oh no. They said you are going to play a Hispanic judge, but there is a problem with it. I said, oh, God. I said I do not want to play a drug dealing, corrupt Hispanic judge.

He said, no, this guy is very liberal. I said, oh. The part was written for me.

SUPPORT FOR LSC IN THE LEGISLATIVE PROCESS

Mr. Chairman, I want to use my time not to ask a question, but rather continue my comments in support of this organization and to do a little clarification on the presentation by Mr. Wolf.

You know, I was Ranking Member under Frank Wolf and he did something that I think is one of the best things that ever happened to the Legal Services Corporation. He may not remember that he did it. He may not take credit for it, but he did.

Legal Services Corporation used to leave Subcommittee when I was Ranking Member sort of having been tinkered with but not dealing with full funding of it with a full understanding that the minute it got to the House floor, Mr. Ramstad from Minnesota and other members would team up, remind the world what a great program it was and honestly, remind Republicans that it was Richard Nixon's baby, President Nixon's baby, and it would be amended on the floor by millions of dollars, you remember that, by millions of dollars to reach the goal.

And that just did not make sense and it was dangerous to send it on the floor that way. Well, he changed that. Frank Wolf changed that and it would leave Committee with the funding that it was supposed to get. If it got more funding on the floor, so be it.

But he brings up an interesting point that may turn out to be an issue again and that is as we return to regular order and for those in the audience, I know I am not supposed to direct any comments to those in the audience, who do not know what regular order means, that means this bill will be debated on the House floor as a bill by itself with opportunities for people to amend and get rid of programs and so on.

And he may be alerting us to the fact that some folks still have some issues with Legal Services Corporation that will be debated on the floor. And while he may be right, that some people felt that the Corporation had engaged in some activities that are political in nature, that some of the restrictions that were placed on them were political statements also about abortion, about the census, about redistricting, and some other issues. And people used that opportunity. So perhaps at that point, both sides had some explaining to do.

The restrictions are in place. In my opinion, the restrictions have to be modified. We have to be ready to defend Legal Services Corporation during a difficult budget period on the House floor. It will be an easy target for people who want to put money elsewhere. And you can make an argument within our bill in this Committee to put money elsewhere. You can make that argument in any bill.

But I wanted to make two points, the one I made that Frank Wolf appeared to be very strong in his comments and he certainly is, but he is also a fair man. And I remember when he did a lot to put this corporation's funding where it should be.

And, secondly, I really think that in reviewing the restrictions, we should just look at it in terms of what it is that the Corporation is supposed to do, what poor people are supposed to get in services,

and begin to discuss the issues that I brought up, the issue of immigrants, which immigrant can you— okay.

So a person that is in this country and is not a citizen yet, but that person is still protected by our Constitution. In fact, I would argue much to the dismay of Lou Dobbs and others that a person who is in this country not documented still has the protection of our Constitution. If you assault an undocumented alien, the court does not look the other way and say, well, the guy is not a citizen or he is not here legally.

Therefore, people who need services should be looked at as people living within the country. I do not think the idea of you do not get that service because you are not here legally, that is a question, you know. There is an immigration issue. I do not call it a problem, but there is an immigration issue.

Once that person is inside our borders, I think there are other issues you deal with and that is do you allow that person to be sick and not to go to an emergency room in a hospital? Do you tell the children of undocumented parents that the child cannot attend school? Do you not give them the ability to have a lawyer?

So that is what we have to look at. And I think we have to be ready for what could be an assault on the Corporation, not for any of the issues that we have discussed now, but certainly it is a very difficult budget period. It may not be one of those that has a lot of constituents on the floor, although it did in the past and we have to be careful.

And I will continue to be as you are and most members here are, all members are advocates because, again, it is at the essence of who we are as a country, the ability to have a lawyer even though you do not have the money to hire a private lawyer with a lot of money.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Serrano.

Mr. Wolf.

Mr. WOLF. I have no questions.

Mr. MOLLOHAN. Mr. Fattah.

Mr. FATTAH. No further questions.

Mr. SERRANO. Gee, did I leave some silence in this?

Mr. MOLLOHAN. I do not know. You may have gotten us to an end point though.

CLOSING REMARKS

If there are no more questions by members of the Committee, I would like to give the witnesses an opportunity to make whatever concluding comments they would like to make.

Ms. BARNETT. I would just like to emphasize that we believe providing civil legal assistance to low-income individuals and families is part of the solution to the problems facing this country in an economic downturn.

When we help someone stay in their home, we are preventing them from becoming homeless.

When we help families stay together and children stay with their families, we are preventing them going into the foster care system.

When we help somebody get access to needed medical care, we are avoiding costly hospitalization.

When we help somebody get disability benefits to which they are entitled or food stamps to which they are entitled, we are helping to make them more productive workers in our society.

So we believe very strongly that we are the front line, first responders for many low-income individuals and that they have nowhere else to turn and that we are really part of the solution and not the problem.

Mr. MOLLOHAN. Vice-Chair BeVier.

Ms. BEVIER. I echo President Barnett's comments.

And I appreciate what I took to be your sort of prodding the board to be a little bit more proactive with respect to marshaling other resources that we might do.

And I appreciate President Barnett describing some of the things that are done already. And I think it is quite true that we can be doing more going into the future. I hope that we will be.

So I appreciate that very much. Thank you.

Mr. MOLLOHAN. Well, we look forward to working with you in that regard to really do as much as we can to close the gap.

Let me again, on behalf of myself and the Committee, thank you both and the very fine organization that you represent for the good work that you do. We look forward to working with you and supporting you as best we can.

Thank you.

Ms. BARNETT. Thank you very much.

Mr. MOLLOHAN. The hearing is adjourned.

Submitted April 22, 2009

Questions for the Record—Chairman Alan Mollohan

Legal Services Corporation, President Helaine Barnett and Vice Chair Lillian BeVier

1. Your budget request says that 2010 will be the first year of a four year plan to close the justice gap. However, there are several factors at work that suggest that your plan will still be insufficient. For example, the size of the gap has probably widened since it was last measured in 2005. In addition, non-federal sources of legal aid funding are in decline, so the total level of legal aid funding you're anticipating may not be achievable. What other factors may undercut LSC's ability to achieve its four year goals?

Response: You are correct. Demand for legal aid is going up and non-federal funding is going down.

Because of the dire straits of the economy and the prospect that millions of more Americans will slip into poverty for the first time, our programs face growing demand for assistance. The justice gap has been defined by the Corporation's 2005 study; we are in the process of collecting new information on the unmet need and plan to publish the results and reassess the justice gap in September.

LSC is not alone in the effort to close the justice gap. Access to Justice Commissions have been established by courts in many states, and they are pulling together judges, bar association leaders, law schools, community groups, other funders, and legal aid programs to find solutions that will help meet the rising demand for services. The American Bar Association provides assistance to state judicial and bar leaders interested in expanding access to justice.

LSC is a supporter of Access to Justice initiatives and has urged programs to join in efforts to better coordinate the delivery of legal services as part of state civil justice communities.. LSC also champions technology as a way for programs and state courts to provide legal forms and information so that low-income Americans who cannot receive a lawyer's assistance at least have an opportunity to help themselves.

In addition, the LSC Board has taken a leadership role and used LSC's national voice to encourage a culture of private attorney involvement (PAI) as an effective tool for providing legal services to more persons in need. All LSC-funded programs are required to expend 12.5 percent of their LSC funding to involve private attorneys in the delivery of legal services to eligible clients and PAI cases represent 10% of our cases and have a higher percentage of extended service cases.

There are some things that only the federal government can do, however. Chief among them is administering justice under the law for all people and promoting equal access to justice. LSC requires a budget that continues to address the justice gap and invests in the future.

In drawing up the FY 2010 LSC budget plan, the LSC Board of Directors recognized that its previous timetable of closing the justice gap could not be met. But the Board also signaled that it was not willing to give up on its goal of closing the justice gap, noting that economic downturns disproportionately affect the poor, resulting in the loss of jobs, housing and access to health care.

Submitted April 22, 2009

The Board wants to reach a goal of $624 million federal appropriation over the course of the next four years, which represents a doubling of the 2005 Basic Field appropriation. As stated in 2005, both federal and non-federal funding needs to double in order to close the gap, and we recognize that the recent decline in non-federal funding puts increasing pressure on the federal contribution. While the goal will admittedly be difficult to achieve, granting the Fiscal 2010 request would not only be a down-payment toward a higher level of appropriations but boldly declare the continued commitment of the Congress to closing the justice gap.

2. **Your budget request represents a nearly 25% increase over the enacted fiscal year 2009 amount for LSC. Do you anticipate any difficulties by either LSC or your partner service providers around the country absorbing such a large funding increase in a short period of time?**

Response: Due to anticipated decreases in non-federal funding sources for 2009 and 2010—specifically in IOLTA, state and local government, and private bar foundations revenues due to the current economic downturn—many programs will likely use the increases in LSC funds to maintain current staffing levels and services. We do not expect LSC programs to have any difficulties in absorbing funding increases; in fact, more funding will make a significant impact on the program's capacity to maintain quality services to clients. As documented by the Justice Gap Report, programs are turning away at least 50 percent of the people who are requesting civil legal assistance. Also, legal aid funding when adjusted for inflation has been steadily decreasing, forcing programs to cut back services and staff. Increased funding, even at 25 percent, will only make a small dent in narrowing the justice gap.

3. Currently, LSC's funding accounts for about 42% of all legal aid funding across the nation. With such a sizable increase proposed for federal appropriations at the same time that state governments are cutting back, how do you predict that percentage will change under your budget request?

Response: In 2008, LSC's funding accounted for 40 percent of all legal aid funding for LSC grantees. Due to the expected sharp decline in IOLTA funding and shrinking state budgets and charitable contributions for 2009 and 2010, we expect LSC's contribution to increase to about 50 percent.

4. Does LSC believe that funding legal aid can actually save money for the overall economy? In other words, do you believe that the return on investment for legal aid services is sufficient to override concerns about excess government spending?

Response: Yes, we believe that legal aid contributes to the overall economic and social welfare of states and communities. Legal aid typically addresses complex issues that divert resources from more productive uses. When families are more stable, for instance, they are likely to be self-sustaining and do not require government and social services resources.

Submitted April 22, 2009

Ensuring that clients are adequately represented in the civil judicial system greatly improves their chances of keeping their home rather than moving into a shelter, holding a job rather than going onto public assistance, retaining custody of their children rather than losing them to foster care, receiving access to necessary health care rather than requiring costly hospitalization, escaping an abusive relationship rather than suffering injury.

Overall, legal aid is part of the solution to the problems facing the nation. Many of our programs have adopted innovative approaches to the foreclosure crisis, helping low-income Americans stay in their homes through a renegotiation of the terms of loans or by asserting truth-in-lending protections in court. Many programs have legal-medical partnerships aimed at improving the health outcomes of low-income children, individuals and families. Such efforts lead to more stable communities and help sustain long-term economic growth.

Measuring the return on investment from legal aid is difficult, in large part because legal services are provided in the context of federal, state and local mandates and through countless hours of volunteer and charitable activities. While difficult, one recent study has quantified the return on investment.

In October 2008, the Empire Justice Center, a poverty law and research clearinghouse in Albany, N.Y., reported that legal services representation helps adults and children avoid eviction and the higher cost of homelessness. For each New York family that avoids eviction, $31,215 in savings is generated, the Center estimated. For every child that legal aid keeps out of the foster care system, the State of New York saves an average of $16,200, according to the Center. Legal aid also maximizes Social Security disability payments and food stamps to clients that become expenditures by clients in the local economy, the Center found.

5. LSC has attempted to leverage additional non-federal funds by encouraging private attorney involvement in legal aid. Despite significant efforts, however, private attorney involvement has actually decreased. Why haven't LSC's pro bono initiatives been more successful, and what can we do to improve them?

Response: LSC strongly believes that private attorneys and pro bono activities are an important component of legal services delivery to eligible clients. We have taken steps to increase private attorney involvement (PAI) in the work of our programs. For example, in December of 2007, LSC issued a program letter to all of our programs with guidance on how they might enhance their private attorney initiatives by using best practices and innovative techniques that have proven of benefit to some of our grantees.

We are also cognizant of the continuing challenge that many programs face in enhancing the involvement of private attorneys in the work of their programs.

While the total number of PAI cases closed by LSC-funded programs declined by 4,540 between 2007 and 2008, the number of extended service cases closed increased by 2,337 or 4 percent for the same time period. This full representation is very valuable to many clients. Furthermore, the total number of cases handled by the private bar does not reflect the wide range of other valuable services provided to programs and to the client community by volunteer attorneys, such as

preventive education, assistance with document preparation, development of training manuals, or time spent co-counseling with or training and mentoring program staff.

Effective PAI requires a strategic and deliberative process tailored to individual programs and offices. Due to the economic conditions prevailing in the legal community, recruiting volunteer lawyers is even more difficult.

6. To augment legal aid funding provided through federal or state governments, some states have pursued revenue expansion solutions, including dedicating pro hac vice fees, cy pres comme distributions or portions of awarded punitive damages to civil legal aid groups. What other creative revenue expansion solutions are you aware of at the state or local level? Are there comparable solutions that could be implemented at the federal level?

Response: Currently, 29 states provide a portion of their state court filings fees towards legal aid funding. While we do not collect data on the court filing fees as a separate category, we do capture all of these fees as part of our non-federal funding statistics each year. The majority of these fees are included as a portion of the state and local funding data that we collect from our grantees. LSC grantees nationwide received approximately $194 million in state and local revenues in 2008 or 37 percent of their total non-federal funding.

No federal court filing fees go to directly support civil legal services programs. According to the Administrative Office of the U.S. Courts (AO), more than 260,000 civil cases were filed in U.S. District Courts nationwide in 2008. That would mean that for every $50 million in contributions to civil legal assistance, fees would have to be increased by $38 or 11% of the current average filing fee of $350. Another approach could be the addition of a civil legal assistance stipend to the $150 fee for a certificate of admission to practice before the federal court. The AO does not track the number of certificates that are issued annually, so the required increase per certificate is unclear, but could be determined with additional research. While our rough estimates might be helpful, the Congressional Budget Office would clearly be in the best position to cost out the options as well as the cost of administering a new revenue stream. The preliminary numbers, however, would seem to suggest that this approach would only be a small contributor to the justice gap.

7. Would the appropriations rider restriction on political advocacy prevent LSC from advocating for the adoption of revenue expansion solutions at any level of government?

Response: The restrictions on political advocacy in the appropriations rider since 1996 are applicable to LSC grantees and not to LSC itself. The Corporation, however, is subject to lobbying restrictions as set forth in the LSC Act, as amended. Specifically, section 1006(c) of the LSC Act prohibits the Corporation from attempting to "influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation." Thus, under the terms of the LSC Act, LSC could engage in political advocacy on

a question of adoption of revenue expansion solutions that directly affects the activities of the Corporation, or if not directly affecting the activities of the Corporation, in response to a specific request from the body (or a committee or member thereof) considering such revenue expansion solutions.

8. On average, how many clients per year can be served by an additional staff attorney? How does that compare to the number of clients per year who can be assisted by self-help kiosks and other TIG-funded projects? How do you balance the addition of funds for attorneys with TIG projects in your budget request?

Response: Legal assistance is specifically tailored to an individual client's unique circumstances and includes a range of services from the provision of advice, to negotiated settlements and representation in administrative and court hearings. In contrast, self-help kiosks, website content and related initiatives offer general substantive legal information to the public. In these circumstances, attorneys do not analyze an individual's particular legal problems nor do they recommend a specific course of action. Given these differences, an attempted comparison of the number of cases handled per attorney to the number of persons accessing legal information at a kiosk or similar means does not yield comparable information.

LSC's TIG program supports innovative technology projects that improve services to clients, enhance efficiency at LSC-funded programs, and increase access to legal information and services. The TIG program ensures efficient use of federal dollars by funding projects that can be easily replicated throughout the country and that provide clients with the tools and information they need to help themselves. In addition to supporting technologies that improve access to the court system and legal processes through self-help assistance, TIG funds support technologies that improve program attorneys' efficiencies in providing representation. For example:

- After implementing a new case management system, Montana Legal Services increased the number of extended services cases by 37 percent over a two-year period, at the same time that the number of staff handling these cases fell by nearly a quarter.
- Virginia Aid Society doubled the number of clients served in the year after it implemented a centralized telephone intake system incorporating automated forms.
- Bay Area Legal Services in California handled 71 percent more service requests with 30 percent less staff time for intake, advice and brief service in the two years after implementing its Legal Advice Line
- Family law attorneys in Dayton, Ohio were able to reduce the time required to complete court pleadings by 37 percent by a new document assembly capacities.

Based on these increased efficiencies, LSC has sought to increase TIG funding as one aspect of the ongoing effort to close the justice gap.

Submitted April 22, 2009

9. When resource constraints prevent a service provider from assisting every eligible client, how do they determine which clients to turn away? Is it "first come, first serve", or is it based on perceived level of need?

Response: All LSC-funded programs are required by Section 1007 (a)(2)(C)(i)) of the LSC Act to set program priorities based on consideration of the needs of eligible clients in their own communities. In addition, all programs have adopted case acceptance policies and procedures that match those program priorities and specifically govern the acceptance of cases. For example, often a program will accept divorce cases only if the opposing party is represented by an attorney and/or if the applicant is a victim of domestic violence. Other applicants seeking divorces may be referred to pro se assistance, if available. Applicants for service are screened to determine eligibility for legal services and to obtain basic case facts as part of the intake process. Prior to case acceptance for extended representation, programs generally perform an analysis of the case to establish that there is sufficient merit to proceed, that there is a legal remedy that will benefit the client and that the program has sufficient personnel and other resources to handle the case. Because of the volume of cases, some programs have recently placed restrictions on the hours they are open to accept new applications or close intake after a certain number of cases are accepted. This occurs most often in the highest volume practice areas, such as family law.

Submitted April 22, 2009

Questions for the Record - Rep. Frank Wolf

Legal Services Corporation, President Helaine Barnett and Vice Chair Lillian BeVier

Implementing GAO Recommendations

1. You recently established a separate Audit Committee of the Board. Can you describe this Committee's Charter? What are the Committee's specific responsibilities and what are they doing that wasn't done before?

Response: The newly formed Audit Committee of the LSC Board was established to oversee the quality and integrity of the Corporation's accounting, auditing and reporting practices and to ensure that the Corporation's assets are properly safeguarded. The attached Charter establishes all the roles and responsibilities of the committee, but in brief, the committee is responsible for:

- Reviewing LSC's annual audit report and any responses to audit findings by the OIG and Management.
- Monitoring, reviewing and evaluating LSC's internal controls and policies with respect to identifying and managing financial and other risk exposures.
- Reviewing with the OIG its internal audit responsibilities, sanctions and performance and risk assessment that drives its internal audit plan.
- Establishing procedures to address the concerns regarding accounting, internal controls and auditing issues.

Prior to the establishment of the Audit Committee, most of these functions were performed by the Finance and Performance Review Committees, and by the Board as a whole. They are now consolidated under one committee and are being performed in greater depth than was previously the case.

CHARTER OF THE AUDIT COMMITTEE OF LEGAL SERVICES CORPORATION

I. Establishment

On March 24, 2008, the Board of Directors ("Board") of the Legal Services Corporation ("LSC" or "Corporation") established, as a standing committee of the Board, a committee to be known as the Audit Committee (the "Committee"), and adopted this as the Committee's Charter.

II. Purposes

The purpose of the Committee shall be to assist the Board in fulfilling its responsibility to ensure that the Corporation's assets are properly safeguarded; to oversee the quality and integrity of the Corporation's accounting, auditing, and reporting practices; and to perform such other duties as assigned by the Board.

III. Membership

The Chairman of the Board ('Chairman") shall appoint at least three Directors other than the Chairman to serve on the Committee. The Chairman shall appoint the Chair of the Audit Committee from among these Directors. Three Committee members will be required in order to constitute a quorum. No member of the Committee may be an officer or employee of the Corporation. To the extent practicable, Members of the Committee should have at least a basic understanding of finance and accounting, be able to read and understand fundamental financial statements, and understand the Corporation's financial operations and reporting requirements.

IV. Terms

Members of the Committee shall serve for a term of one year, or until their earlier resignation, replacement or removal from the Committee or Board.

V. Meetings

The Committee:

(1) shall meet at least four times per calendar year, but may meet more frequently at the call of any member of the Committee;

(2) may adopt procedural rules that are not inconsistent with this Charter, the Corporation's Bylaws, or the laws to which the Corporation is subject.

VI. Resources

All offices, divisions and components of the Corporation ("Management"), including the Office of Inspector General ("OIG") shall cooperate with all requests made by the Committee for information and support. The Committee shall be given the resources necessary to carry out its responsibilities.

VII. Authority

The Committee:

(1) unless otherwise directed by the Board, shall oversee the selection and retention of the external auditor ('External Auditor(s)") by the Inspector General ("IG") of the Corporation;

(2) shall have unrestricted access to the Corporation's books, records, facilities, personnel, and External Auditor(s);

(3) is authorized to carry out the duties and responsibilities described in this Charter, as well as any other activities reasonably related to the Committee's purposes or as may be directed by the Board from time to time;

(4) may delegate authority to one or more designated members of the Committee;

(5) may rely on the expertise and knowledge of Management, the OIG, External Auditor(s), and such consultants and experts that the Board approves for carrying out its oversight responsibilities;

(6) may authorize to be conducted, or itself conduct, reviews into any matters within the scope of its responsibilities; and

(7) may require any person, including the External Auditor or any officer or employee of the Corporation, to attend Committee meetings or to meet with any member(s) of or advisor(s) to the Committee.

VIII. Duties and Responsibilities

The Committee:

(1) shall review with Management, the OIG, and the Corporation's External Auditor(s) the contemplated scope and plan for LSC's required annual audit;

(2) shall review and discuss with the External Auditor(s), the OIG, and Management the annual audit report and results of the External Auditor's year-end audit, including any problems or difficulties encountered by the

External Auditor(s); the OIG and the Management's response to any audit findings, and any areas of significant disagreement between Management, the OIG, and the External Auditor(s); and any recommendations of the External Auditor(s);

(3) shall in concert with the OIG annually review and confirm the independence of the External Auditor(s);

(4) shall review with the OIG its internal audit responsibilities, sanctions, and performance; its internal audit plan and the risk assessment that drives its internal audit plan; and the effectiveness of its internal audit plan and activities;

(5) shall consult with the IG as to an appropriate approach regarding communications and meetings between the Committee and the OIG;

(6) shall confirm the existence of appropriate monitoring of LSC's internal controls preventing or disclosing activities prohibited by statute, regulations or applicable circulars of the Office of Management and Budget;

(7) shall, in conjunction with the Board's Finance Committee, review, monitor, and evaluate the effectiveness and execution of the Corporation's policies and procedures with respect to identifying and managing financial and other risk exposures, and to assess the steps Management has taken to identify and control such risks to the Corporation;

(8) shall review Management representation letters or certifications and the LSC Finance Committee chairperson's letters or certifications regarding the contents, accuracy, or completeness of financial reports, as appropriate;

(9) shall establish procedures for the receipt, retention, and treatment of complaints or expressions of concern regarding accounting, internal controls and auditing issues, and which procedures should provide for the anonymity and confidentiality of such communications from employees;

(10) shall review and discuss with the OIG all significant matters relative to their financial audits and conduct of financial audits performed by the OIG, including any problems the OIG encountered while performing their audits;

(11) shall ensure that significant findings and recommendations made by the OIG and External Auditor(s) are addressed and, where appropriate, implemented by Management and/or the Board on a timely basis;

(12) shall report to the Board at least twice per calendar year and on such other occasions as requested to do so by the Board;

(13) shall review all regulatory and internal control matters that may have a material effect on the Corporation's financial statements;

(14) shall periodically assess the Committee's performance under the Charter, reassess the adequacy of the Charter, and report to the Board the results of the evaluation and any recommendations for proposed changes to the Charter;

(15) shall review any significant deficiencies in internal control over financial reporting identified by Management, the IG, or the External Auditor(s) and ensure that corrective action is taken by Management; and

(16) shall perform such other duties, consistent with this Charter, as are delegated to the Committee by the Board.

IX. Limitations

(1) Nothing contained in this Charter is intended to expand the applicable standards of liability under statutory or regulatory requirements for the Board or its Directors.

(2) Members of the Committee are entitled to rely on the expertise, knowledge, and judgment of Management, the Inspector General, and the External Auditor(s) and any consultant or expert retained by them. The Committee's responsibilities are not to be interpreted as a substitute for the professional obligations of others.

(3) It is not the duty of the Committee to conduct audits or to determine that the Corporation's financial statements are in accordance with generally accepted accounting principles, generally accepted government auditing standards (the "Yellow Book") and other applicable rules, regulations, guidelines and instructions. These are the responsibilities of the OIG, the External Auditor(s) and Management.

(4) Nothing contained in this Charter shall be construed as circumscribing the authority of the Inspector General under the Inspector General Act or is intended to restrict the authority of the Inspector General to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation.

2. What is the role of the boards of the individual grantee organizations in ensuring proper use of funds, and what are you doing to strengthen their oversight?

Response: Each of the LSC grantees are independent 501(c) (3) corporations organized solely for the purpose of providing legal assistance to eligible clients. They are each governed by a Board of Directors, made up of at least 60 percent attorneys who are members of the Bar in the home state of the program.

The principal way that LSC conveys its expectations and requirements for grantee and grantee boards is through its Grant Assurances, a document that is signed by the grantee CEO and the grantee Board chairman at the initiation of the grant. This document, a copy of which is attached, lists 21 requirements that the grantee and the grantee board must meet including recordkeeping, disclosure, and reporting provisions.

In addition, as the centerpiece of the LSC Quality Initiative, the Corporation updated and published *Legal Services Corporation Performance Criteria* in 2007. This best practices guide is designed to be used in LSC program evaluations, self-assessments, and external peer reviews. Performance Area Four of the document concentrates on the effectiveness of governance, leadership, and administration and leads off with a section on Board Governance. Boards are evaluated on program oversight, involvement in major policy decisions, effective evaluation of the program CEO, and proper oversight of the finances and budget of the program. "Indicators"-- a set of specific markers or factors, which are suggestive of whether these four areas are being successfully achieved -- have been established for the Board evaluation and aid in the review.

Also, in fulfillment of a request by the LSC Board of Directors to increase attention and awareness of recipient Board oversight responsibilities, at the January 2009 LSC Board meeting, a panel of grantee board chairs made a presentation on the roles of grantee board of directors in grantee governance and oversight. Coming out of that session, LSC is developing guidance to be shared with grantee boards, best practices to be posted on the LSC website, and training materials for board members.

LSC Grant Assurances
For Calendar Year 2009 Funding
Form C

If Applicant is successful and receives an LSC grant or contract,

APPLICANT HEREBY ASSURES THAT:

1. It will comply with the requirements of the Legal Services Corporation Act of 1974 as amended (LSC Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide, the CSR Handbook, the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of this grant and provided to the successful Applicant. It will comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. It understands that a successful Applicant may be required to agree to special grant conditions before the awarding of the grant. Multi-year grants must be renewed each year. Upon renewal, new terms and conditions may apply.

2. It agrees to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. §1640.2(a)(1). It understands that if Applicant violates any Federal laws identified in 45 C.F.R. §1640 it may be subject to civil, criminal and/or administrative penalties. It will, before LSC awards the grant, inform employees and board members of the Federal law and its consequences as required in 45 C.F.R. §1640.3.

3. It agrees that all derivative income from these grant funds shall also be subject to the terms and conditions of this grant as authorized by 45 C.F.R. §1630.

4. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, sexual orientation, or any other basis prohibited by law against: (1) any person applying for employment or employed by the Applicant; or (2) any person seeking or provided assistance from the Applicant or other program(s) supported in whole or in part by this grant. The governing body has adopted or will adopt in a timely manner Equal Opportunity and Sexual Harassment Policies, each of which must include an effective mechanism for processing complaints.

5. It will notify the LSC Office of Inspector General (OIG) within thirty (30) calendar days after replacement of the Independent Public Accountant (IPA), termination of the IPA, or any other occurrence resulting in a new IPA performing the grantee's annual financial audit. No audit costs may be charged to the LSC grant when the audit required has not been made in accordance with the guidance promulgated by the OIG. It understands that if it fails to have an audit acceptable to the OIG in accordance with the OIG's audit

guidance (including the Audit Guide for Recipients and Auditors), LSC may impose sanctions in addition to those required by statute, which are: (1) withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (2) suspension of the recipient's funding until an acceptable audit is completed. For example, other possible sanctions that LSC may impose for not having an acceptable audit include special grant conditions and/or corrective actions.

6. It understands that Congress may reduce, rescind or sequester LSC funding or may impose additional requirements or restrictions on the use of LSC funding. An award of a grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress, nor preclude the imposition of additional Congressional requirements on any funds that are so disbursed. Such requirements or reductions as implemented by LSC shall not constitute a termination or suspension of funding.

7. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with LSC, and agrees to provide high quality, economical, and effective legal assistance, as measured by the LSC Performance Criteria, ABA Standards for the Provision of Civil Legal Aid, ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, and consistent with any applicable code or rules of professional conduct, responsibilities, or ethics.

8. With respect to its office technology:

   (a) it will conduct program-wide conflicts checking contemporaneously with intake using a case management system with an electronic database, including when intake is conducted outside its offices and contemporaneous access to the case management system is available.

   (b) it has a plan for backing up case management data, financial data, documents and other critical data. It performs these backups at least weekly and checks their integrity by restoring test files. Further, it stores copies of these backups in a safe, offsite location.

   (c) it has the capacity to convert paper documents into Portable Document Format (PDF) and the capacity to transmit those documents as electronic files.

   (d) each case handler has a computer at her or his work area that can perform all of the following functions: word processing, access to the case management system, access to time-keeping, access to the Internet, including the ability to download files from the Internet, and e-mail capability with the capacity to send and receive messages and attachments both internally and externally. It understands that the above functions describe the minimum functionality of existing computers only. It further agrees that any new computer, monitor, or printer purchased to perform the above functions will have a capacity to exceed the demands of current operating systems and software so that it can reasonably be expected to perform adequately with few upgrades for at least three years.

9. It will work with other LSC and non-LSC-funded legal services providers in the State to ensure that there is a statewide website that publishes a full range of community legal education/pro se related materials and referral information, at least covering the common topics facing the client communities on the subject matters that are the Applicant's priorities. It will contribute to sustaining said website according to the plan for the development and maintenance of the website adopted by the statewide website Stakeholders Committee of which it will be a member. As a member of the Committee it will work to ensure that: 1) outreach is conducted for members of the client community to inform them of the website and about how to use it, 2) the website is periodically evaluated and updated for ease of use and accessibility, and 3) the LSC logo is used on at least the homepage of the website (see grant assurance 21 for further instructions and clarification on terms of usage). If a Technology Initiative Grant (TIG) was awarded to start the website using either the LawHelp or Open Source template, it will maintain the scope of functionality of the template it was using, including the capability of having separate sections on the website for clients, legal services advocates, and pro bono attorneys; adhering to the National Index and LSXML standards; and the ability to use the NPADO HotDocs server.

10. During normal business hours and upon request, it will give any authorized representative of LSC (including the OIG), or the Comptroller General of the United States (which includes the Government Accountability Office(GAO)) access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicable law or rules. It agrees to provide LSC with the requested materials in a form determined by LSC while, to the extent possible consistent with this requirement, preserving applicable client secrets and confidences and respecting the privacy rights of the Applicant's staff members. For those records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record(s).

11. Notwithstanding any other grant assurance, §1006(b)(3) of the LSC Act, 42 U.S.C. §2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law governing attorney-client privilege, to LSC and the LSC OIG and to any Federal department or agency that is auditing or monitoring the activities of LSC or of the Applicant and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of LSC. For those reports or records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record. Any materials furnished pursuant to this Assurance shall be provided in a timely manner.

12. It will cooperate with all reasonable information collection, including surveys, questionnaires, monitoring, audits, investigations, and compliance or evaluation activities undertaken by LSC, its agents, or the OIG. Such cooperation shall include making staff

available to LSC, its agents, or the OIG for interview and otherwise allowing staff to cooperate with the same. It understands that nothing in these Grant Assurances in any way restricts or limits the authority of the LSC OIG to access any and all records and information to which it is entitled under the Inspector General Act of 1978, as amended, 5 U.S.C. app. §3. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by LSC.

13. It will not take or threaten to take any disciplinary action against any person, including employees and volunteers, because of any appropriate cooperation with or the appropriate release of information to LSC or other entity authorized to receive such cooperation or information pursuant to applicable procedures and consistent with any applicable law, code of ethics, or rule of professional responsibility. It will notify its employees and volunteers that it will not take retaliatory actions against an employee or volunteer for any appropriate cooperation with LSC or other entity authorized to receive such cooperation.

14. It will notify the LSC Office of Information Management within thirty (30) calendar days after any of the following occurrences that involve activities funded by the grant:

    a. a decision to close and/or relocate any main or staffed branch office;
    b.chang e of chairperson of the governing/policy body;
    c. change of chief executive officer;
    d.chang e in its charter, articles of incorporation, by-laws, or governing body structure; or
    e. change in its main e-mail address or its website address (URL).

15. It will notify the LSC OIG by telephone (OIG hotline: 800-678-8868 or 202-295-1670) within two (2) work days of the discovery of any information that gives it reason to believe it has been the victim of a loss of $200 or more as a result of any crime, fraud, misappropriation, embezzlement, or theft or loss of property, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance; or when local, state, or federal law enforcement officials are contacted by the program about a crime. Such notice shall be followed by written notice by mail, e-mail or facsimile within ten (10) calendar days of the discovery of the theft or loss. The required notice shall be provided regardless of whether the funds or property are recovered. Once it has determined that a reportable event has occurred, it agrees it will contact the OIG before conducting its own investigation into the loss.

16. It will notify the LSC Office of Compliance and Enforcement (OCE) within twenty (20) calendar days whenever:

    (a) under the provisions of §1006(f) of the LSC Act, 42 U.S.C. §2996e(f), the Applicant receives any notice of a claim for attorneys' fees. The Applicant also will forward, upon receipt, a copy of the pleading requesting these attorneys' fees;

(b) any of the following events likely to have a substantial impact on its delivery of services occur:

(i) a monetary judgment, sanction or penalty has been entered against it;
(ii) it enters into a voluntary settlement of an action or matter which involves the payment of a monetary judgment, sanction or penalty;
(iii) it experiences a *force majeure* event.

17. It will maintain all records pertaining to the grant during the grant year and for a period of six (6) years after expiration of the grant year. With respect to financial records, it will maintain originals of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. LSC retains the right to perform an audit, or engage independent auditors to do so, whether during or subsequent to the grant period.

18. It will, in accordance with internal policies, retain and preserve closed client files for a period of not less than five (5) years from the date the file is closed or for the period set by Federal, state, or local rules on maintenance of records, whichever is longer.

19. In the event that the Applicant merges or consolidates with another LSC grantee, changes its current identity or status as a legal entity, or ceases to be a direct recipient of LSC grant funds at the end of the grant term or during the grant term for whatever reason, it agrees:

a. to provide the LSC Office of Program Performance (OPP) with written notice at least sixty (60) calendar days prior to any of the above events (except when the LSC grant relationship changes as a result of LSC action);

b.not to transfer its interests in its LSC grant to another entity without prior approval from LSC for such transfer, including submission to LSC and approval by LSC of a Successor in Interest Agreement;

c. to ensure that any successor entity maintains the Applicant's records, including financial records, for a period of six (6) years after expiration of the grant year to which they pertain and maintains client files for a period of not less that five (5) years after the closure of the case to which they pertain;

d.to submit to the LSC OPP, either at the time that it provides the written notice in (a) above, or within fifteen (15) calendar days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the Applicant as a recipient of LSC funds. Detailed instructions for preparing this plan are at www.grants.lsc.gov under the title "Planning the Orderly Conclusion of the Role and Responsibilities of a Recipient of LSC Funds." Once at the website, click "LSC Recipient Information", then locate the instructions under "Reference Materials".

20. It agrees to cooperate with LSC in its efforts to follow up on audit findings, recommendations, significant deficiencies or material weaknesses, and corrective actions by LSC Offices, including the LSC OCE and OIG, or the GAO, and/or with the findings, recommendations or significant deficiencies or material weaknesses found by the Applicant's IPA to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. It agrees to expeditiously resolve all such reported audit findings, significant deficiencies or material weaknesses, and corrective actions, including those of sub-recipients, to the satisfaction of LSC.

21. It will use the LSC logo on any Internet website page that may serve as a "homepage" for the Applicant, and on its Annual Report, press releases, and official letterhead, and may use the logo on other official documents such as business cards, newsletters, telephone directory listings or other advertisements or announcements about services provided by the Applicant and supported with LSC funds. It understands that the LSC logo is a registered service mark of LSC and that permission to use the logo is provided to Applicant under a limited license such that the logo may be used: (1) only while Applicant is receiving LSC funds; (2) only for the purposes described above; and (3) only in accordance with such size, format and color instructions as LSC provides. Other uses of the logo are not permitted unless expressly authorized in writing by LSC. Electronic and camera-ready versions of the logo are available at www.grant.lsc.gov. Once at the website, click "LSC Recipient Information", then click "Announcements" to access the logo.

Name of Executive Director	Name of Governing/Policy Board Chairperson (or other organization official authorizing this application)
Title	Title
Signature	Signature

3. The second GAO report dealt with weaknesses in grants management. The GAO found nine cases of alleged inappropriate expenditures of LSC funds. Were all these cases referred to the LSC OIG? And if so, how has each of these cases been disposed?

Response: Eight of the nine programs identified in the GAO report were referred to the Acting Inspector General for follow-up on November 20, 2007. The ninth program, Nevada Legal Services, was retained by management for follow-up since the Office of Compliance and Enforcement had already commenced a compliance review of the program prior to the GAO visit. The Nevada program is currently on a two-month funding cycle with stringent grant conditions. The program has a new executive director and a new Board Chairman who have been cooperating and making timely reports to LSC over the course of the last year. LSC anticipates conducting an on-site review of the program in May 2009 to verify the corrective actions taken and to further assess program performance. The goal for 2009 is to determine how well the program will operate under reduced guidance from LSC.

The OIG has issued final reports on all eight programs referred to them by LSC. The OIG reports that management at six of the grantees has adequately addressed the GAO recommendations and is implementing additional controls to prevent those issues from recurring. The two remaining programs, one in Detroit and another in California, required follow up action by LSC and we are in the process of working with those programs to receive documentation pursuant to issues questioned by the IG.

An advisory was sent to all LSC-funded programs on March 20, 2008, reminding Executive Directors of the need for appropriate documentation of expenditures of LSC funds, of the regulations regarding unallowable costs, specifically stressed the prohibition of expenditures of LSC funds for alcohol and lobbying, the need for written policies governing salary advances, and a reminder of the regulation governing derivative income.

LSC issued an advisory letter to all grantees in December 2008 on compliance guidance, and indicated that this will be an annual alert on issues that have surfaced in the year's compliance reviews.

In addition, on February 24, 2009 the LSC Inspector General issued Audit Bulletin 2009-01 to all IPAs for LSC programs, advising them that Section 509(a) of LSC's 1996 appropriations act (and all subsequent LSC appropriations acts) requires the evaluation of the internal control systems of LSC grantees to provide reasonable assurance that grantees are managing funds, regardless of source, in compliance with federal laws and regulations. The Inspector General also added an affirmative requirement that the IPAs report the results of the internal control review each year.

Roles and Responsibilities of LSC Offices Responsible for Grantee Oversight

The Legal Services Corporation (LSC or the Corporation) is responsible for funding civil legal assistance programs throughout the United States and for ensuring that programs receiving LSC grants provide high quality legal services and comply with governing laws, rules, and regulations. In performing these duties, LSC is responsible for awarding grants to qualified organizations on a competitive basis; providing guidance to the recipient organizations through regulations and other policy documents; providing advice and technical assistance on compliance and program quality issues; reviewing programs' operations to assure compliance with governing laws and regulations; and requiring and reviewing financial audits to assure the reliability of financial statements and the existence of internal controls. LSC relies upon four offices to perform these duties: the Office of Program Performance (OPP); the Office of Compliance and Enforcement (OCE); the Office of Legal Affairs (OLA); and the Office of Inspector General (OIG), an independent unit with distinct statutory responsibilities.

OPP

The Office of Program Performance (OPP) has the primary responsibility for implementing the competitive application and awards process for LSC grants and for assisting grantees to achieve a high level of quality in the delivery of legal services. To this end, OPP promotes LSC's Performance Criteria; recommends special grant conditions and grant assurances with respect to program quality and reviews grantee compliance with them; identifies the need for communicating policy through program letters and reviews grantee compliance with such policy; visits grantees for assessment of program quality; maintains and promotes best practices summaries for legal services providers; promotes the innovative uses of technology by grantees; and as part of the application and grants oversight process collects data from programs on their performance.

OCE

The Office of Compliance and Enforcement (OCE) has the primary responsibility in LSC Management for reviewing grantee compliance with the LSC Act, with congressional restrictions on LSC funds, and with LSC regulations and instructions. It is also responsible for referrals to the OIG as appropriate; investigations of complaints referred to them; responses to OIG referrals to OCE; approval of grantee subgrant agreements and expenditures above $10,000; review and approval of grantee waivers related to PAI requirements and fund balance

requirements; and review and assessment of grantee policies with respect to equal opportunity, sexual harassment, and accessibility of services.

In carrying out its responsibilities, OCE prepares and LSC issues the LSC Accounting Guide; conducts case service report and case management system (CSR/CMS) reviews; conducts reviews of compliance with the LSC accounting manual and fiscal-related regulations; recommends special grant conditions and grant assurances with respect to program compliance and reviews grantee compliance with them; provides technical assistance and training; reviews audited financial statements; issues corrective action notices and follows up on corrective action plans; and initiates questioned cost proceedings.

OLA

The Office of Legal Affairs (OLA) provides interpretations of statutory and regulatory authorities applicable to LSC grantees. The various operating components (e.g., OCE and OPP) of LSC seek legal counsel and information from OLA regarding application of relevant laws and regulations, as well as legal issues arising from oversight and enforcement activities, and LSC grantees may directly contact OLA for advisory opinions or for legal information regarding the application of LSC laws and regulatory authorities. OLA also assists LSC's Board and management draft and revise LSC regulations, advises LSC management on enforcement actions/proceedings and may prosecute some such proceedings or defend those actions before assorted tribunals.

OIG

The Office of Inspector General (OIG) was established as an independent unit within LSC by the 1988 amendments to the Inspector General Act of 1978, and is charged by statute with a number of distinct roles and responsibilities:

1. To provide policy direction for and to conduct and supervise audits and investigations of LSC and its grantees;
2. To promote economy, efficiency, and effectiveness in the programs and operations of LSC and its grantees;
3. To prevent and detect fraud and abuse in the programs and operations of LSC and its grantees;
4. To review and make recommendations regarding legislation and regulations relating to the programs and operations of LSC and its grantees; and
5. To keep the Board and Congress fully informed about problems, abuses, and deficiencies in the programs and operations of LSC and its grantees, to recommend corrective actions, and to report on the progress thereof.

In carrying out these responsibilities, the OIG determines in its discretion which matters it will investigate or audit. Reports resulting from such investigations and audits are intended to provide independent analysis to assist Congress, the LSC Board of Directors, and LSC Management in fulfilling their oversight and management responsibilities.

Grantee Audit Process

Pursuant to legislation governing LSC and its programs, each LSC grantee is required to have an annual audit. Such audits are conducted by independent public accountants (IPAs), in accordance with generally accepted government auditing standards and guidance established by the OIG, and report whether: the grantee's financial statements fairly present its financial position and results of financial operations; its internal control systems provide reasonable assurance that it is managing its funds in compliance with Federal laws and regulations; and whether it has complied with Federal laws and regulations applicable to funds received.

The OIG prepares and issues an audit guide, including a compliance supplement, providing guidance to IPAs and grantees with respect to the required audits.

The OIG reviews each audit to determine if it meets OIG audit requirements. If a grantee fails to have an acceptable audit in accordance with the guidance promulgated by the OIG, the OIG has authority to recommend that specified sanctions be taken by LSC.

The OIG refers significant reportable conditions and findings from the audits to LSC management. The OIG follows up on referrals to LSC management to ensure progress of corrective actions.

The OIG provides oversight of IPAs through both in-house and on-site reviews of their reports and underlying work. The OIG has authority to remove, suspend, or bar an IPA, in accordance with established procedures, from performing audit services required by LSC legislation.

As deemed appropriate by the Inspector General, the OIG also uses its statutory authority to conduct on-site monitoring, audits, inspections of grantees.

Adopted by LSC Board of Directors
April 26, 2008

4. You have three offices that deal in some way with grants oversight: the Office of Program Performance; the Office of Compliance and Enforcement and the Office of Inspector General. How have the responsibilities of these offices been redefined to ensure proper grants oversight?

Response: In April 2008, the Board of Directors adopted a resolution setting forth a clear delineation of the roles and responsibilities of the various offices. A copy is attached for your information. This has resulted in better communications and coordination among the three oversight offices. To date, the Corporation has improved coordination and communication among the three offices by adopting new protocols for information sharing and coordination of all work among oversight offices, including coordinated on-site visits where appropriate, and establishing quarterly staff meetings to continue coordination of work efforts.

5. I understand that you have made changes to the Independent Public Accountant (IPA) process whereby each grantee has an annual independent audit. What improvements have been made? And how are you educating grantees and their IPA's to comply with new procedures?

Response: As affirmed by LSC's Office of Inspector General (OIG), the OIG is responsible for overseeing the work of the Independent Public Accountants, which are in turn responsible for conducting financial audits of LSC grantees, examining internal controls over financial reporting, and looking at their compliance with laws and regulations that could have a direct and material impact on their financial statements. With the cooperation of LSC management, the OIG provides guidance to the IPAs by alerting them to specific issues of concern to the Corporation, and, when necessary, drafting audit bulletins to get information to the IPAs on reporting requirements. The OIG also provides oversight by conducting Audit Service Reviews which are reviews of the audit documentation of selected IPAs to ensure that they adequately tested the grantee's compliance with LSC regulations. The OIG is also exploring providing online training courses to the IPAs on LSC regulations.

In addition, on February 24, 2009 the LSC Inspector General issued Audit Bulletin 2009-01 to all IPAs for LSC programs, advising them that Section 509(a) of LSC's 1996 appropriations act (and all subsequent LSC appropriations acts) requires the evaluation of the internal control systems of LSC grantees to provide reasonable assurance that grantees are managing funds, regardless of source, in compliance with federal laws and regulations. The Inspector General also added an affirmative requirement that the IPAs report the results of the internal control review each year.

6. You are seeking an additional $1.2 million in FY 2010 for Management and Grants Oversight. This would represent a 38% increase over the FY 2008 level. Why are you seeking this additional funding and what would the increase go toward?

Response: The request for Management and Grant Oversight represents less than 4 percent of the total request—low overhead compared to many agencies. We are committed to providing the highest quality legal services to the poor, and that requires investing in oversight. As recommended by GAO, we plan to hire more program and compliance staff for visits to programs and to strengthen program reviews.

The increase is necessary to expand oversight of grantee compliance with regulations and congressional restrictions and to help enhance the quality of legal services provided by the grantees to clients. If the requested funding increase for FY2010 is approved, the number of program visits will increase from 55 in 2008 to 84 in 2010, a 53 percent increase.

With the $3 million we already received in FY 2009 and the additional $1 million in FY2010, we plan to increase our oversight staff by 14 positions. To put this into perspective, LSC's management account has essentially received flat funding for the last five years. Because the account did not keep pace with inflation, transportation and payroll costs, LSC was forced to reprogram $500,000 in fiscal 2008 to avert a budget shortfall and employee layoffs in the current fiscal year. Until 2008, the Corporation had absorbed rising costs through a combination of carryover funds and interest income. But carryover funds have been greatly diminished and interest income has declined sharply because of the drop in bank rates.

Basic Field Grants & Reduced IOLTA Funding

7. The vast majority of your requested increase would go toward basic field grants in a climate of increased foreclosure-related workload and reduced IOLTA funding available to grantees. Your testimony states that IOLTA funds to LSC programs last year totaled $111.8 million. Do you have a reliable estimate for what the comparable figure will be for 2009?

Response: LSC estimates that IOLTA funds provided to our programs will drop by 21 percent in 2009, compared to the previous year. While we do not have actual 2009 data at this time, our grantees are projecting a total of $88 million in IOLTA funds for 2009. The cuts will be uneven across the country but below are some examples from specific states:

- **Texas:** IOLTA revenue has dropped 90 percent over a three-year period, to less than $1.5 million this year. The three LSC grantees receive 56 percent of total revenues.

Submitted April 22, 2009

- **Maryland:** IOLTA revenues expected to decrease by 70 percent ($6.7 million in 2008 and $2 million in 2009). The legal aid program in Maryland will have to cut its budget by 25 percent in 2009 and reduce its services statewide.

- **West Virginia**: The LSC program lost 20 percent of its IOLTA funding in 2008.

- **Virginia**: Predicts a 50 percent to 70 percent decline in revenue by the end of the year, to between $1.8 million and $1.12 million.

8. I understand that some States have reserves to draw upon to lessen the impact of reduced IOLTA funds. Are you able to quantify the estimated impact on LSC funded programs directly resulting from IOLTA reductions? What are the estimates for staff reductions and service cuts related to IOLTA?

Response: The expected reductions from IOLTA revenues will force some LSC-funded programs to lay off attorneys and support staff—putting greater risk on the ability of eligible clients to receive desperately needed services. While we are not able to quantify the reductions in staff or services nationwide, we have heard from our programs in the following states.

- **Kentucky:** Legal Aid of Bluegrass has eliminated at least five positions due to cuts in their IOLTA revenues.

- **California**: Bay Area Legal Aid estimates it will close lose half of its IOLTA grant in 2009 and will lay off three people.

- **New Jersey:** South Jersey Legal Services expects to cuts its staff by five attorneys, shut down two offices and cut services by 25 percent, leaving 3,000 more people without legal help.

- **Ohio:** Legal aid of Columbus has lost $1 million in the past year out of a total annual budget of $4.5 million and laid off seven attorneys.

- **Wisconsin**: Legal Action of Wisconsin IOLTA funding will be cut by 92 percent that will force the program to eliminate 13 staff positions.

THURSDAY, APRIL 23, 2009.

DEPARTMENT OF JUSTICE

WITNESS

ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES

OPENING STATEMENT OF CHAIRMAN OBEY

Mr. OBEY. The room will please come to order.

This afternoon we will hear from the Attorney General, testifying on behalf of his budget for the coming year. Before we begin, let me simply say that, as always, the committee welcomes everyone in attendance at this hearing. We expect only one thing, and that is that people respect the prerogatives and needs of this committee. People are obviously in a free country. They are perfectly within their rights to make their views known, but they are not within their rights to disrupt any hearing of this committee. So we will conduct this hearing accordingly.

Mr. Attorney General, we welcome you to the committee. I frankly do not know where to begin. I do not know which Cabinet offices people regard as being the premier Cabinet offices in the country. I know that there are some who feel that Secretary of State is the top dog, so to speak, and others may feel Secretary of Defense or some other. To me, the most important job in the Cabinet is that of the Attorney General, because he is the number one person in the Department of Justice for the United States of America.

The Defense Department defends the country, the Education Department helps to educate our children, and that is all important. But the most important thing that any government official can do is to defend the Constitution, to defend the liberty of each and every citizen, and to do their damndest to deliver justice to every citizen.

I know that today Members will focus largely on the news reports about the interrogation reports that were released recently, but I hope you will forgive me if I, in my introductory remarks, tell you what I am focused on today. It is not that I do not think those other issues are important. I think they are excruciatingly important. But I just want to tell you a little story about something that happened in my State so that you understand what my focus is.

There is a woman in the State of Wisconsin by the name of Georgia Thompson, who was a low-level, nonpolitical civil servant at the Wisconsin Department of Administration and had never met our Governor in her life. She was hired by the State civil service during a prior Republican administration. She was one of those whose job it was to determine who had the State contract for State employee travel. As I understand events, that body wound up accepting the bid of the party that turned out to be the low bidder, but somehow

allegations began to arise that she had done something improper in deciding who was going to get that contract.

The State Republican Party put out press releases demanding that the U.S. Attorney investigate the situation. The U.S. Attorney had a public press conference announcing that he was going to undertake an investigation of that item. My understanding is that it was counter to Justice Department policy to have a press conference on something like that. To make a long story short, she was called before the grand jury and eventually, despite the fact that she testified that she had no political dealings whatsoever with Wisconsin's Governor, she was convicted and sent to prison.

The case was then appealed, and when it went to the three-judge court of appeals, something extraordinary happened. Before the court was even finished with the hearing, they decided that the case was so flimsy that they threw it out, and they ordered her released immediately from prison. From the bench one of the judges told the prosecutor that his case was worse than flimsy and questioned why on Earth they would even bring that case.

She spent over $300,000 defending herself. She lost her home. She lost her reputation. The Court restored her good name, but it was still soiled, in her eyes, by events.

It later came to light that that Federal attorney had initially been on the infamous list of prosecutors who should be considered for firing because they were not sufficiently aggressive to suit the higher-ups in the administration. So I think it raises an interesting question as to whether or not that attorney felt pressured to go after a case that he certainly should not have gone after.

What makes this even more insidious is that immediately after she was convicted, the opponent of Wisconsin's Governor in the next election spent almost $4 million on television ads attacking the Governor as being corrupt, citing this case as illustration number one of why he was unfit for public office. It was a scurrilous smear.

When your predecessor was before this subcommittee a year ago, I asked him whether or not Justice was looking into this. I presume they are. I hope they are. Obviously I am not qualified in any way to determine what the outcome ought to be. But I think you have a special responsibility, given some of the things that have happened in the Department, to dig into cases like this and to make crystal clear to the country that at the Justice Department politics is out and justice is back. That, to me, is the most important thing that any government official, from the President on down, can do.

Every American citizen has to know that whether you are a humble civil servant, or if you are a very visible politician, you are going to get justice. In that regard, I simply want to congratulate you for the action that you took in the case involving Senator Stevens. Now, Ted and I agreed with each other about once a century. He fought everything that I believed in, and I fought a lot of things that he believed in. I have no idea what the facts are in his case, but it was appalling to see revealed the actions and missteps of those who were prosecuting that case. While I have no idea what the outcome would have been had there been a fair prosecution, I want to thank you for standing up for due process and for recog-

nizing that the job of prosecutors in this country is not to win a high conviction rate, it is to do justice, whether that means that you win the case or not. So I want to thank you for what you have done so far.

I apologize to the committee for taking this much time, but ain't nothing more important than justice. And I personally am glad to see a person of your integrity in that chair.

With that, let me turn to Mr. Wolf for any comments he might have before we take your testimony.

OPENING STATEMENT OF RANKING MEMBER WOLF

Mr. WOLF. Thank you, Mr. Chairman.

And, Mr. Holder, we welcome you to the committee, and I thank you for your appearance today. I understand, I hope I do, I think I do, the difficulty of the tasks you have been assigned to complete by the President, especially your assignment to deal with the closing of the Guantanamo Bay facility and the issues connected with the recent memos on the interrogation methods.

These are very dangerous detainees at Guantanamo Bay, including Khalid Sheikh Mohammed, who masterminded the 9/11 attacks that took the lives of 3,000 people, 30 people from my congressional district, and brutally beheaded journalist Daniel Pearl.

I am extremely concerned that the hard lessons from the first World Trade Center bombing in 1993, the U.S. embassy bombings in Kenya and Tanzania, the *USS Cole* attack, and the 9/11 atrocities could be ignored, which could put our country at risk of another attack, which I sent you a letter, I do not know if you saw it the other day, recommending you read the book called The Seven Deadly Scenarios. Did you get the letter?

Attorney General HOLDER. I am not sure I have seen it yet.

Mr. WOLF. I sent it. And if not, we can get you another copy. Potentially other nuclear, chemical, or biological weapons.

Shortly after I returned from a trip to Algeria in 1998—and, Mr. Secretary, in Algeria about 150,000 people have been killed from terrorist activities. We then went to Egypt, and as I landed the plane, we then found that the bombings had taken place in the two embassies in both Tanzania and in Nairobi, where 267 people were killed, including one from my congressional district, a person that lived in McLean. And as you know, more than 5,000 were injured.

I then authored—and was ridiculed by, quite frankly, both sides of the aisle—the bill to set up the National Commission on Terror. In fact, as many Members on both sides said, what is this about terror? When I put the bill in, I mentioned Osama bin Laden. We passed the bill. And the Commission report came out in the year 2000, provided evidence of a growing threat of international terrorism and the steps needed to combat it.

I was disappointed that both the Clinton administration, where you had served in the Justice Department, and the Bush administration, both administrations, the Clinton administration and the Bush administration ignored it and did not take seriously the recommendations that were in the terrorist commission report.

What followed were the devastating attacks on September 11th of 2001. Thirty, as I said, of my constituents died in the attack on the Pentagon. On that day I left the Capitol and went out to the

Pentagon and sat up on the hill and watched the scene of what took place. The first person that was killed, American employee, American citizen that was killed in Afghanistan, was a CIA employee of mine that lived in Manassas Park.

Now our country could be faced with the real prospects that those associated with the terrorist attacks on our country could very well be brought to a large urban center in eye's view of where a commercial jet turned into a missile exploded into the Pentagon on 9/11. On March 13, I sent a letter to you asking a series of questions regarding the security and logistical concerns associated with transferring Guantanamo Bay detainees to the jail and courthouse in Alexandria, Virginia. And I met with your team yesterday, and they tell me you are still working on the letter, and I appreciate that, but we look forward to receiving the response.

As you know, the Zacharias Moussaoui trial in Alexandria took over 4 years, at a public expense in multimillion dollars, represented a nightmare scenario. An equally difficult situation would exist in the Southern District of New York if trials were to occur there.

Today we are going to be giving you a second letter asking additional questions on the possible dangers the administration should consider if you decide to transfer Guantanamo detainees to population centers, and also the ramifications of granting these individuals access to civilian courts. I am also submitting both letters for the committee record, and would ask as you submit the response to me, you could also send the answers to the committee.

As you move forward in responding to the President's Executive Order and present policy options for the release or transfer of the prosecution of detainees, I believe there are serious issues involving the safety and the security of a lot of people in urban and metropolitan and other districts that really have to be addressed.

Before making your decisions, I would ask and respectfully urge, and it is in the letter, but I wanted to say it, that the Justice Department and even you, if possible, should meet with those whose loved ones were killed in the 9/11 attacks both in New York and in the other localities, and here and Pennsylvania, and I know you knew people that were on those planes, too, including the families of our military members killed in Iraq and Afghanistan, and ask their perspective on the fate of these detainees, especially the detainees who played a lead role in carrying out the attacks.

I read the memorandum on Khalid Sheikh Mohammed, what he said brutally with regard to Daniel Pearl. You should probably meet with Daniel Pearl's family, too.

It is troubling to me that an option of transferring detainees to Federal court sites in urban areas such as Alexandria would even be considered. I went to Alexandria this past Tuesday. We parked the car. I walked out from the courthouse across the street to the Westin and off to the hotel on the other side and the apartment. You know the location as well as I do. And since that time, having been down there during the Moussaoui trial, the Patent and Trademark Office is now there, the Westin hotel is now there, the apartments are there now, and there is also a ramp as you come down off of the Beltway.

So there are a number of issues like this we would like to raise with you both at the hearing here today and, equally important, in the letter that I am sending. And before you make any of these decisions, I would appreciate having the opportunity to talk to you about it.

And with that, Mr. Chairman, I yield back the balance.

[The information follows:]

N E W S R E L E A S E

FRANK R. WOLF

Member of Congress 10th District, Virginia

United States House of Representatives, Washington, D.C. 20515
Phone (202) 225-5136 • Fax (202) 225-0437 • Web site: www.house.gov/wolf/

For Immediate Release
April 23, 2009

Contact: Dan Scandling
Jennifer Allen
(202) 225-5136

OPENING STATEMENT OF CONGRESSMAN FRANK WOLF
Commerce-Justice-Science Appropriations Hearing with U.S. Attorney General Holder

Attorney General Holder, I would like to welcome you to the committee and thank you for your appearance today.

I understand the difficulty of the tasks you have been assigned to complete by the president, especially your assignment to deal with the closing of the Guantanamo Bay facility and potential prosecution of individuals connected with the recent memos on interrogation methods.

These are very dangerous detainees at Guantanamo Bay, including Kahlid Sheik Mohammed, who masterminded the 9/11 attacks that took the lives of 3,000 people and brutally beheaded journalist Daniel Pearl.

I am extremely concerned that the hard lessons from the first World Trade Center bombing in 1993, the U.S. embassy bombings in Kenya and Tanzania, the U.S.S. Cole attack, and the 9/11 atrocities are being ignored, putting our country at risk of another attack- which could include nuclear, chemical or biological weapons.

Shortly after I returned from a trip to Algeria in 1998 where thousands had been killed by terror attacks and in the wake of the two U.S. embassy bombings in Africa where 267 people were killed – including one of my constituents from McLean serving at the Nairobi embassy – and more than 5,000 were injured, I authored the bill creating a National Commission on Terrorism.

The commission's report in June 2000 provided evidence of the growing threat of international terrorism and the steps needed to combat the threat.

I was disappointed that both the Clinton administration – where you served in the Justice Department when the report was released – and later the Bush administration did not take more seriously the recommendations of the commission.

-MORE-

What followed were the devastating attacks of September 11, 2001. Thirty of my constituents died in the attack on the Pentagon. Then the war on terrorism was launched in Afghanistan. The first person killed in Afghanistan was a CIA employee who resided in my district.

Now our country could be faced with the real prospect that those associated with the terrorist attacks on our country could be brought to a large urban center in eye's view of where a commercial jet-turned missile exploded into the Pentagon on 9/11.

On March 13 I sent you a letter (attached) asking a series of questions regarding the security and logistical concerns associated with transferring Guantanamo Bay detainees to the jail and courthouse in Alexandria, Virginia, and I look forward to receiving your response shortly. The Zacharias Moussaoui trial in Alexandria took over four years, at a public expense in multi-million dollars, and presented a nightmare security scenario. An equally difficult situation would exist in the Southern District of New York if trials were to occur there.

I will be giving you a second letter (attached) today asking additional questions on the possible dangers the administration should consider if you decide to transfer Guantanamo detainees to population centers and the ramifications of granting these individuals access to civilian courts. I am also submitting both letters for the committee record and asked that you respond not only to me, but also to the committee.

As you move forward in responding to the president's executive order and present policy options for the release or transfer or prosecution of detainees, I believe there are serious issues involving the safety and security of millions of American citizens that must be addressed.

Before making your decision, I believe the Justice Department should meet with those whose loved ones were killed in the 9/11 attacks and other attacks, including families of our military members killed in Iraq and Afghanistan, and ask their perspective on the fate of these detainees, especially the detainees who played a lead role in carrying out the attacks.

It is baffling to me that the option of transferring detainees to federal court sites in urban areas such as Alexandria would even be considered. I went to Alexandria this past Tuesday and saw for myself the proximity to the federal courthouse of the Westin Hotel and the Patent and Trademark office, both high pedestrian traffic areas. There is also a Metro station nearby as well as an apartment complex and major vehicle routes.

Again, I appreciate the challenges with which you are faced. I have some questions on these issues which I will ask when the chairman proceeds to that part of the hearing.

Before I get into the issues surrounding the closure of the Guantanamo Bay detention facility, I'd like to raise with you the issue of interrogation policy. I understand the president has stated that he will defer to you in determining whether to prosecute federal officials for the implementation of now-prohibited interrogation policies. This represents a dramatic shift from

-MORE-

the president's and his chief of staff's earlier statements that I worry would have a chilling effect on current and future administration officials and our federal workforce.

1. Will you pursue the prosecution of federal employees or administration officials, and, if so, what criteria will you use to determine grounds for prosecution?
2. Is it true that the administration is suppressing additional memos that demonstrate the effectiveness of interrogation techniques as well as document Bush administration efforts to correct problems? If so, by whom and why?
3. Did these portions show that the interrogations resulted in valuable intelligence that stopped other terrorist attack?
4. Why would the administration want to hide the information on the intelligence gained from the interrogations when you the information on the interrogation methods themselves was readily divulged?

-30-

g/press/releases/CJS111th/holderhearing

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:
RANKING MEMBER—COMMERCE-JUSTICE-SCIENCE
TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS
HUMAN RIGHTS COMMISSION

241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–4610
(202) 225–5136

13873 PARK CENTER ROAD
SUITE 120
HERNDON, VA 20171
(703) 709–5800
(800) 945–9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667–0990
(800) 850–3463 (IN STATE)

wolf.house.gov

Congress of the United States
House of Representatives
April 23, 2009

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

My letter of March 13 indicated my concerns about bringing enemy combatants from the detention facility at Naval Station Guantanamo Bay, Cuba, to the United States. I understand that the president has given you the task of determining the release, transfer or prosecution of these detainees. I noted your recent comments on how this is the most challenging aspect of your job as attorney general and I respect the difficulty of your position.

But as I have learned more about these detainees and received additional information from terrorism experts, I remain extremely concerned that transferring these combatants to locations near large civilian populations would place an overwhelming burden on the court system and endanger public safety.

The detainees currently held at Guantanamo Bay are some of the most dangerous individuals in the world who have openly dedicated their lives to killing Americans. Kahlid Sheik Mohammed was the architect of the 9/11 attacks and took pleasure in beheading *Wall Street Journal* reporter Daniel Pearl. Ramzi Binalshibh was identified as one of the planners of 9/11 and was supposed to be one of the hijackers until he was denied entry into the United States. Walid bin Attash is believed to be the mastermind behind the bombing of the U.S.S. Cole in Yemen in 2000. These individuals are responsible for planning the deaths of thousands of Americans.

Guantanamo Bay also houses combatants who were detained after actively trying to kill U.S. troops in Iraq and Afghanistan. From news reports I have read, it appears consideration is being given to allow these detainees rights that go beyond protections offered U.S. military personnel by the Uniform Code of Military Justice. Giving such rights to the men listed above greatly concerns me.

Earlier trials of terrorists in the U.S. demonstrated the necessity for extraordinary security resources that would be needed if some of those at Guantanamo are transferred here. *Newsday* and the *Buffalo News* reported that during the 1995 trial in New York of Omar Abdel Rahman, the mastermind of the 1993 World Trade Center bombing, terrorist confederates of El Sayyid Nosair,

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

another World Trade Center bombing planner, were plotting to break him out of Attica State Prison in New York. In the same case, court tapes show that conspirators provided each other assurance that, in the event that some were captured, the others would work to free them. In addition, during the 2000 trial of Mahmud Salim, one of the terrorists accused of the 1998 bombing of the U.S. Embassy in Kenya, he stabbed New York prison guard Louis Pepe in the eye during an escape attempt. Al Qaeda saw the rights given to its members to meet with counsel as an opportunity to carry out a violent escape attempt. Mr. Salim was one of the original followers of Osama bin Laden and the highest ranking al Qaeda member held in the U.S. at the time.

In addition to trying to escape from prison, al Qaeda members have communicated with confederates while in prison. It is my understanding that El Sayyid Nosair was involved in plotting the 1993 World Trade Center bombing while in custody in Attica State Prison. In addition, Osama bin Laden has publicly credited Sheik Abdel Rahman with issuing the "fatwa" that approved the 9/11 attacks while he was in federal prison, despite the high security confinement conditions imposed on him. It also emerged later that, with the assistance of his lawyer, Rahman was continuing to send instructional messages to the Islamic Group, his Egyptian terrorist organization.

In 2004, *NBC News* reported that, despite their incarceration in maximum security conditions, convicted World Trade Center bombers were communicating by mail with terrorists in Madrid, Spain. There would certainly be strong reasons to believe that detainees currently held at Guantanamo Bay -- who are known to have rioted and grossly abused prison guards – would use their access to counsel and investigators in order to convey messages to their allies.

It took federal prosecutors eight years in the 1990s to try 29 defendants charged with terrorism-related crimes as a result of attacks on U.S. property and interests abroad. The detention facility at Guantanamo Bay currently holds almost 10 times that number. If it took eight years to prosecute 29 individuals, how long will it take to transfer and prosecute over 200?

How is the Justice Department responding to the fact that prosecutors, judges, and juries in recent terrorism trials, and their families, have required government protection measures, sometimes for many years, at great cost in manpower and to our security budget? Has the Justice Department estimated the cost of providing enhanced personal security for trials yet to come?

I am also concerned about the extra costs that will be incurred in preparing prisons and courthouses for possible trials. I understand that the courthouses in which prior terrorism cases were litigated and the prisons where defendants were held had to be "hardened" to accommodate terrorism prosecutions and the attendant threats they entail for participants and the public. Can you provide me with what the cost was for these upgrades? Has the Justice Department considered what the cost will be for upgrading facilities for detainees who may be transferred to the civilian court system.

I am also concerned about the precedent that the standards set in *Boumediene v. Bush*, the Supreme Court case regarding al Qaeda operative Lakhdar Boumediene, which granted habeas corpus rights to Guantanamo detainees, would set for future cases. In his dissent in this case, Justice Antonin Scalia raised the issue that if enemy combatants currently housed at Guantanamo Bay are given habeas corpus rights, the same rights would have to be given to any combatant detained where the U.S. military conducts operations. Recently, Justice Scalia's admonition has proved prescient as a federal judge in Washington ruled that *Boumediene's* grant of habeas corpus rights now extends to Afghanistan.

The process in deciding where the detainees will ultimately be housed and under what means they will be tried should be transparent so the American people know who is making these important decisions. I believe that the Justice Department should meet with those who lost loved ones in the 9/11 attacks as well as the families of service members who have died in Iraq and Afghanistan and ask for their perspective on the fate of these detainees, especially those who played a lead role in carrying out the attacks.

If you are convinced these combatants must be transferred to the United States, I believe an isolated part of the country away from population centers would be a better choice. As your department continues to consider plans for these combatants, I ask that you please address these issues as well as the questions I asked in my earlier letter. I also have these additional questions:

1. The trial of Zacharias Moussaoui in Alexandria, Virginia, lasted over four years due primarily to the judge's belief that the due process standards applicable in civilian trials required more disclosure than the Justice Department believed was required and safe to provide. I understand any appeal to the 4th Circuit Court could take up to an additional year per trial. Considering that a federal appeals court in New York just recently decided an appeal in the embassy bombing case -- more than a decade after the attack and eight years after the trial -- how long does your department envision civilian legal proceedings for Guantanamo detainees taking?
2. Khalid Sheikh Mohammed, Mohammed al Qatani and Ramzi Binalshibh have been linked directly to the September 11, 2001, attacks and appear far more culpable than Zacharias Moussaoui. Will the Justice Department seek the death penalty for detainees such as them? If so, does the Justice Department think seeking the death penalty would lengthen each trial, and, if so, for how long?
3. Will the defense attorneys for these combatants be given access to classified evidence that would inevitably lead to legal challenge and possible consideration by the Supreme Court, adding more time to trials?
4. If terror suspects are brought into the civilian system for trial and they insist on representing themselves, would the Justice Department allow them access to all discovery, including classified national defense information?

5. Will defense attorneys be allowed discovery on all such evidence and be allowed to challenge its admission in court? Would this require allowing defense attorneys to enter combat zones to view evidence?
6. Will U.S. service members who collected evidence on the battlefield be forced to leave their duties in theater and return to the United States to give testimony in open court?
7. Will military personnel be required to have training on how to legally obtain evidence and preserve the chain of command needed to make such evidence admissible in court?
8. Will every combatant be given full legal rights and will these rights also be given to combatants detained in the future?
9. The system of military tribunals for these combatants was designed to avoid the difficulties inherent in civilian trials. If the military is trusted to run a system of justice good enough for members of our armed forces, why is it deemed insufficiently fair for these detainees who have openly stated they are "terrorists to the bone?"
10. If these combatants are transferred to the U.S. Court for the Eastern District of Virginia, how will the trials of other defendants in that court be affected?
11. If regular defense attorneys are not allowed to meet with clients at the jail facility in Alexandria due to increased security associated with these combatants, is the Justice Department concerned that those cases could be delayed to the point where those defendants have grounds for appeal?
12. The Moussaoui trial took a heavy toll on the prosecution team and I would be concerned that extended trials for numerous combatants could overwhelm the legal staffs. Do you have a plan for addressing how prosecution teams will work?
13. Are you concerned about the safety of the legal staff and the jurors who are assigned to these cases and have steps been taken to ensure their safety and the safety of their families?
14. Has the Justice Department considered establishing a separate court similar to the FISA court where judges would be assigned these cases on a rotating basis?
15. Has the Justice Department considered consulting with military experts, U.S. Marshals and other law enforcement officials before determining the safest place to house these detainees?
16. Have you consulted with the families of the victims of 9/11 as well as the families of the service members killed in Iraq and Afghanistan as to how these detainees should be prosecuted? If not, will you direct your staff to do so?
17. Will the Justice Department provide the Appropriations Committee with the costs for the security measures necessitated by the terrorism cases of the 1990s and the Moussaoui case?
18. The Congress has received your FY 2009 supplemental request, seeking $47 million for some ongoing DOJ activities. But the majority of the funding, $36.4 million, is for activities related to the closure of the Guantanamo detention facility. Can you tell the Appropriations Committee what exactly the department is doing related to Guantanamo, and what you are proposing to do in the future with the requested supplemental funding?
19. I understand that you have created three task forces to implement the executive orders regarding Guantanamo Bay. How many individual detainee cases must be reviewed and disposed of?

20. Can you provide a list of possible outcomes from these task forces, such as transferring detainees to their home countries or detaining them indefinitely without trial?
21. For any detainees released to third countries, what assurances are you seeking from those governments in order to minimize the risks of recidivism?
22. You have stated that the issues related to closing Guantanamo Bay represent your biggest challenge. If the task forces conclude that the risks associated with civilian trials in the United States are too dangerous and costly, will you recommend to the president that the closure of the detention facility be delayed?
23. Beyond the supplemental request, what other post-Guantanamo requirements will there be?

I realize that your department has numerous issues to address before Guantanamo Bay is closed and all the combatants housed there moved. As the Justice Department continues to consider the disposition of these combatants, I think it is important for Congress to play an active role. As my previous letter stated, I take Congress's oversight role seriously and believe that Congress must be consulted before any of these combatants are moved to the continental U.S.

Thank you for your service.

Sincerely,

Frank R. Wolf
Member of Congress

FRW:ccw

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE-JUSTICE-SCIENCE

TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS
HUMAN RIGHTS COMMISSION



241 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4610
(202) 225-5136

13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 20171
(703) 708-5800
(800) 945-9653 (IN STATE)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(540) 667-0990
(800) 850-3463 (IN STATE)

wolf.house.gov

Congress of the United States
House of Representatives

March 13, 2009

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

President Obama recently issued an executive order to close the detention facility at Naval Station Guantanamo Bay, Cuba, and decisions must now be made regarding how and where to house the 250 suspected terrorists and enemy combatants held there.

I was particularly concerned to read in the March 7 *Washington Post* that some of these detainees may be tried in and housed by the United States District Court for the Eastern District of Virginia (Eastern District of Virginia) or the United States District Court for the Southern District of New York. Their presence so close to large civilian population centers raises serious questions of security and logistics for any region forced to accept these detainees.

I do not -- and would not -- support the transfer of any prisoners presently being detained at Guantanamo Bay to any facilities in Virginia and have joined Virginia colleagues Reps. Randy Forbes and Eric Cantor in introducing legislation (H.R. 1186) to prohibit prisoners at the Guantanamo Bay detention facility from being transferred to federal prisons or military bases in Virginia.

I take seriously the responsibility of congressional oversight, especially in matters with national security implications. In 1998 I authored legislation that created the National Commission on Terrorism. Unfortunately, it took the horrific events of September 11, 2001, for the recommendations of the commission to be taken seriously. I have traveled to Sudan five times and seen evidence of the terrorist training camps used by Osama bin Laden in the 1990s.

The first bombing of the World Trade Center in 1993 was treated as a routine criminal case by the Clinton administration when there were clear indications from Sheik Omar Abdel-Rahman that terrorism was the intent of the bombing.

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

Furthermore, the individuals currently at Guantanamo Bay are members of the same organization that bombed the U.S. embassies in Kenya and Tanzania as well as the USS Cole in Yemen.

The March 11 *Washington Post* detailed how a detainee recently released from Guantanamo Bay is now the operations commander of Taliban forces attacking U.S. and NATO forces in southern Afghanistan. There also have been news reports that 61 of the detainees that were processed and released from Guantanamo Bay were recaptured fighting American forces. If those individuals were deemed safe to release from custody yet returned to terrorist activities and killing Americans, what does that say about how dangerous the detainees still at Guantanamo Bay must be?

I was also troubled to read that five Guantanamo detainees described themselves as "terrorists to the bone," and stated in a court filing that they describe their role in the 9/11 attacks as "a badge of honor." These dangerous individuals simply cannot be transferred anywhere near large civilian populations.

As the ranking member on the House Appropriations Commerce-Justice-Science Subcommittee, I am particularly concerned about the complexities of bringing any of these enemy combatants to any installation, military or civilian, close to U.S. civilian populations. Regardless of where these detainees are confined, I would appreciate your detailed response to the following questions:

1. What steps has the Justice Department taken to assure the security of the surrounding population if such violent combatants are confined and tried in urban areas?
2. What precautions will be taken to ensure that the detainees do not escape?
3. Is the Obama administration concerned that the presence of these detainees will invite attacks from ideological followers in an attempt to set them free and, if so, what precautions are being taken to prevent this scenario?
4. How will the detainees be transported to the courthouses?
5. What type of security cordon will be in place if detainees are transported on local highways?
6. Has the Justice Department considered the traffic disruptions associated with road closures around federal courthouses and local jails during the trials of these individuals?
7. If the detainees are flown to any location, will they use military or commercial airports?

8. If commercial airports are used, will terminals have to be evacuated to ensure security?
9. What will be the security perimeter around federal courthouses and will local residents and businesses be forced to move or close to ensure security? If so, for how long?
10. Will Metrorail stations in close proximity to the U.S. Courthouse in Alexandria be closed?
11. Will the Westin Hotel, approximately 200 feet from the courthouse, and the Patent and Trademark Office, approximately 250 feet from the courthouse be evacuated?
12. Has the Justice Department considered the impact such detainees will have on local prisons, such as the city jail in Alexandria, where federal defendants are often held during trial?
13. Will prisoners in local jails have to be moved to provide a secure location for housing these combatants, and, if so, who will bear the costs associated with their transfer?
14. Will there be an extensive list of rules and regulations given to local and state officials regarding the housing and trial of these suspects? If so, will a copy of the regulations be made available to state and local officials as well as members of Congress?
15. Will state and local law enforcement officers be required to assist federal officials and will the federal government compensate those agencies for the use of those officers' time?
16. What costs will be associated with the trial and what portion, if any, will be borne by state and local governments?
17. Has the Justice Department consulted with the Defense Department regarding its ability or willingness to house these detainees?
18. Do a set of protocols for transferring and housing these individuals exist, and, if so, will you make it available to members of Congress?
19. What discussions regarding these detainees, if any, have administration officials had with the commanders of the Naval Station Brig in Norfolk, Virginia; the Marine Corps Base at Quantico, Virginia, or any other military instillation in the contiguous United States, Alaska or Hawaii?
20. Has the administration or the Department of Defense had any discussions with Naval commanders regarding the possibility of transferring detainees to U.S. Naval vessels either in U.S. territorial or international waters?
21. Has the administration had any discussions with the warden of the Administrative Maximum prison facility in Florence, Colorado, regarding the difficulties surrounding the housing of Zacharias Moussaoui and how other prisons might be affected by housing similar detainees?

22. Has the administration had discussions with any of the detainees' country of origin regarding their willingness to accept custody?

While I understand that the Eastern District of Virginia and the Southern District of New York have successfully held the only trials to date of terror suspects, I remain extremely concerned that adequate thought has not been given to the extensive security, financial and logistical costs associated with the transfer of any of these individuals to civilian court districts. State and local officials, as well as the citizens of northern Virginia, will face many challenges and dangers with these combatants housed in the Eastern District of Virginia.

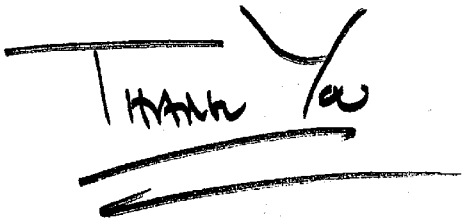
I look forward to receiving your responses to these concerns.

Best wishes.

Sincerely,

Frank R. Wolf
Member of Congress

FRW:ccw
Enclosure



Mr. OBEY. Mr. Lewis.

Mr. LEWIS. I will wait for questions, Mr. Chairman.

Mr. OBEY. All right.

Mr. Attorney General, I forgot to mention one thing in my comments. The head of the Wisconsin Employees Union, in commenting on the Thompson case, simply said the following: Prosecution of innocent civil servants to win elections should not become the standard in this State or this country. If this conviction had been upheld, no State employee exercising discretion would have felt secure from Federal criminal prosecution. This was an innocent woman put in prison for doing her job. She lost her income, her house, her reputation, and 4 months of her life.

I just want to put that in for a sense of perspective. With that, please proceed with your testimony.

ATTORNEY GENERAL HOLDER'S OPENING REMARKS

Attorney General HOLDER. Good afternoon, Chairman Obey, Ranking Member Wolf, other members of the subcommittee. Thank you very much for the opportunity to come before you and testify today.

Before I get into my remarks concerning the fiscal year 2010 budget, let me just say that with regard to the matter that you have raised, Mr. Chairman, there is, in fact, a Justice Department investigation under way. It is being conducted by the Office of Professional Responsibility. It was begun by my predecessors. I expect that investigation should be completed relatively soon, and it is my hope that we will be in a position to share the results of that investigation.

One of the things I want to do with the Office of Professional Responsibility, is to make more transparent the work that it does so that the people of the United States will see in the vast majority of cases how our lawyers conduct themselves, I think, in appropriate ways; but to the extent that we make mistakes, that we own up to them and make clear to the people that we have made those mistakes, and then take actions that I think are appropriate, as I did in the Stevens case.

But getting back to that which has brought me here today, due to the Presidential transition, the fiscal year 2010 budget request is being released in two parts. In February, the administration announced the top-line request for each agency, including the Department of Justice. Once released, the full submission will provide detailed budget proposals and the traditional congressional justification materials necessary for your committee to do its very important work. I appreciate the opportunity to appear before you today to highlight certain aspects of our current submission and further discuss key priorities for the Department of Justice.

The President promised that from the day he took office, America will have a Justice Department that is truly dedicated to justice. The fiscal year 2010 budget that will be transmitted soon supports this vital task by investing a total of $26.7 billion in our critical law enforcement mission, including protecting Americans from terrorism, fighting financial and mortgage fraud, getting more police officers on the beat, reinvigorating civil rights enforcement, and providing essential resources for our prisons.

As I testified during my confirmation hearing earlier this year, I will also pursue a very specific set of priorities. First, I will work to strengthen the activities of the Federal Government that protect the American people from terrorism. I will use every available tactic to defeat our adversaries, and I will do so within the letter and the spirit of our Constitution. Adherence to the rule of law strengthens security by depriving terrorist organizations of one of their prime recruiting tools. America must be a beacon to the world. We will lead by strength, we will lead by wisdom, and we will lead by example.

Second, I will ensure that law enforcement decisions and personnel actions are untainted by partisanship.

Third, I will revive the traditional missions of the Department of Justice. Without ever relaxing our guard in the fight against global terrorism, the Department must also embrace its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the marketplace.

The Department's work does not end with these priorities. On January the 22nd, President Obama issued three Executive Orders and a Presidential memorandum that gave significant responsibility to the Department of Justice. These orders require immediate agency action regarding Guantanamo Bay detainees, specifically to review the appropriate disposition of individuals currently detained there, to develop policies for handling individuals captured or apprehended in connection with armed conflicts and terrorist activities, and also to evaluate current interrogation practices and make recommendations as necessary.

While implementing these orders, the Department will take necessary precautions to ensure decisions regarding Guantanamo Bay detainees account for safety concerns of all Americans. Executing these orders will have a significant workload and cost impact on the Department, and this budget reflects that need.

Earlier this month, I, along with other U.S. Government officials, attended the Mexico-United States Arms Trafficking Conference in Mexico. This was my first foreign trip as Attorney General. My attendance at this conference reflects my commitment to continuing the fight against the drug cartels. The United States shares responsibility to find solutions to this problem, and we will join with our very courageous Mexican counterparts in every step of that fight.

$26.7 billion is a significant amount of money that comes with a commensurate amount of responsibility. We will use these funds wisely and with transparency. Our internal efforts, which range from implementing the Department's new United Financial Management System to establishing internal controls to ensure the proper expenditure of Recovery Act funds, will demonstrate our commitment to accountability at the highest level.

Chairman Obey, Congressman Wolf, and members of the subcommittee, I want to thank you for the opportunity to discuss the Department's priorities and for your support of our programs. I appreciate your recognition of the Department's mission and the important work that we do. I look forward to working in partnership with this subcommittee and with the Congress as a whole. I am pleased to answer any questions that you might have.

Mr. OBEY. Thank you.

[The information follows:]

Insert 1-2

STATEMENT OF ERIC H. HOLDER JR.
ATTORNEY GENERAL OF THE UNITED STATES
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

APRIL 23, 2009

Good afternoon Chairman Obey, Ranking Member Wolf, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to highlight areas of the President's Fiscal Year (FY) 2010 Budget for the U.S. Department of Justice (Department) and further discuss key priorities for the Department. I would also like to thank you for your support of the American Recovery and Reinvestment Act and the FY 2009 Omnibus Appropriations Act. I look forward to your continued support and appreciate your recognition of the Department's mission and the important work that we do.

The Department is responsible for defending the interests of the United States according to the law; ensuring public safety against threats both foreign and domestic; seeking just punishment for individuals who break the law; assisting our state and local partners; and ensuring fair and impartial administration of justice for all Americans. The Department's ability to meet its mission is dependent on funding that supports our operations and allows us to enhance our efforts in identified areas of need.

The President's FY 2010 Budget has not been released; however, the Department's top line budget proposal is $26.7 billion. This is a 3.8 percent increase over the FY 2009 appropriation. The Department's budget includes enhanced funding for: strengthening national security and intelligence programs; combating financial fraud; hiring additional police officers; enforcing civil rights; securing our Nation's borders; and expanding federal detention and incarceration programs. More specifically, the President's FY 2010 Budget request:

- ***Counters the Threat of Terrorism and strengthens National Security.*** The request provides $7.9 billion for the Federal Bureau of Investigation (FBI), including $480 million in enhancements and $101 million for continued support of overseas contingency operations and $88 million for the National Security Division (NSD), to address the President's highest priority: protecting the American people from terrorist acts. Funding supports the detection and disruption of terrorists, counterintelligence, cyber security, and other threats against our National Security.
- ***Provides funding to begin to put 50,000 more cops on the street.*** The request expands the COPS Hiring Grants, and includes funding to begin hiring 50,000 additional police officers. Supporting the hiring of police officers nationwide will

help states and communities prevent the growth of crime during the economic downturn.

- ***Combats Financial Fraud.*** The request includes resources for additional FBI agents to investigate mortgage fraud and white collar crime and for additional Federal prosecutors, civil litigators and bankruptcy attorneys to protect investors, the market, the Federal Government's investment of resources in the financial crisis, and the American public.
- ***Reinvigorates Federal Civil Rights Enforcement.*** The request provides a total of $145 million for the Civil Rights Division to strengthen civil rights enforcement against racial, ethnic, sexual preference, religious, gender, and other forms of discrimination.
- ***Strengthens Immigration Enforcement and Border Security***. The request supports resources for a comprehensive approach to enforcement along our borders that combines law enforcement and prosecutorial efforts to investigate, arrest, detain, and prosecute illegal immigrants and other criminals. This initiative also enhances the Department's ability to track fugitives from justice, combat gunrunners and shut down illegal drug traffickers.
- ***Supports Federal Detention and Incarceration Programs.*** The request provides $6.1 billion for the Bureau of Prisons and $1.4 billion for the Office of the Detention Trustee to ensure that sentenced criminals and detainees are housed in facilities that are safe, humane, cost-efficient, and appropriately secure.
- ***Expands Prisoner Reentry Programs.*** The request includes $114 million for prisoner reentry programs, including an additional $75 million for the Office of Justice Programs to expand grant programs authorized by the Second Chance Act that provide counseling, job training, drug treatment, and other transitional assistance to former prisoners.

As I testified during my confirmation hearing earlier this year, I will pursue a very specific set of goals:

First, I will work to strengthen the activities of the federal government that protect the American people from terrorism. I will use every available tactic to defeat our adversaries, and I will do so within the letter and spirit of the Constitution. Adherence to the rule of law strengthens security by depriving terrorist organizations of their prime recruiting tools. America must be a beacon to the world. We will lead by strength, we will lead by wisdom, and we will lead by example.

Second, I will work to restore the credibility of a Department badly shaken by allegations of improper political interference. Law enforcement decisions and personnel actions must be untainted by partisanship. Under my stewardship, the Department of Justice will serve justice, not the fleeting interests of any political party.

Third, I will reinvigorate the traditional missions of the Department. Without ever relaxing our guard in the fight against global terrorism, the Department must also embrace its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the market place.

In addressing these priorities over the next several years, I look to the continued support of this Subcommittee and Congress, as a whole, to ensure a systematic approach is implemented to target each one of the priorities outlined.

National Security: Counter-Terrorism Efforts since 9/11

Since the attacks of September 11, 2001, the highest priority of the Department has been to protect America against acts of terrorism. Despite repeated and sustained efforts by terrorists, there has not been another attack on American soil. The Department has improved significantly its ability to identify, penetrate, and dismantle terrorist plots as a result of a series of structural reforms, the development of new intelligence and law enforcement tools, and a new mindset that values information sharing, communication and prevention. Working with its federal, state, and local partners, as well as international counterparts, the Department has tirelessly worked to safeguard America.

The FBI has transformed its operations to better detect and dismantle terrorist enterprises - part of the FBI's larger emphasis on threat-driven intelligence. As part of this strategic shift, the FBI has overhauled its counterterrorism operations, expanded intelligence capabilities, modernized business practices and technology, and improved coordination with its partners.

All of the Department's law enforcement components, especially those involved in national security efforts need reliable wireless communication capabilities. The ability of law enforcement to adequately communicate is vital in emergency situations and for day-to-day operations. Inadequate radio systems put our agents' lives, as well as those of the public, at risk. On average, the current Department radio systems are between 15 and 20 years old. The Integrated Wireless Network (IWN) Program is an interagency effort to provide secure, interoperable wireless communications that support the missions of the federal agencies involved in this initiative. IWN will provide a range of secure and reliable wireless communications services, including voice, data and multimedia, to support federal law enforcement, homeland security, and first responder operations. IWN will implement solutions to provide federal agency interoperability with appropriate links to state, local and tribal public safety and homeland security entities. IWN will be deployed incrementally across the country by 2014.

Southwest Border Violence

Several weeks ago, this Subcommittee held hearings with Special Agents in Charge of the Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and then with Acting DEA Administrator Michele Leonhart. These hearings provided you critical information on the Department's efforts to address this issue. I will not attempt to summarize what took place during the previous hearings regarding this matter, but I will highlight some of the work the Department has engaged in recently to address southwest border violence.

Illegal immigration and border security continue to be paramount concerns for the United States and the Department. The Southwest Border in particular is a vulnerable area for illegal immigration, drug trafficking, and the smuggling of illegal firearms. Implementing a comprehensive strategy involves collaboration and coordination at various levels of the government. Late last month, the Department announced increased efforts to be used in the fight against Mexican Drug Cartels. The Department, along with the Department of Homeland Security (DHS) and the Department of State, will invest $700 million this year to enhance Mexican law enforcement and judicial capacity and work closely to coordinate efforts against the cartels through the Merida Initiative. The Department's coordination will include the FBI, DEA, ATF, U.S. Marshals Service (USMS) and the Criminal Division, who will work to investigate and prosecute cartel members for their illegal activities in the United States and with law enforcement colleagues to disrupt the illegal flow of weapons and bulk cash to Mexico.

The Mexican Cartel Strategy will allow the Department to commit 100 ATF personnel to the Southwest Border to supplement our ongoing Project Gunrunner, DEA will add 16 new positions on the border, as well as newly reconstituted Mobile Enforcement Teams, and the FBI is creating a new intelligence group that will focus on kidnapping and extortion. DHS is making similar commitments regarding southwest border resources. In addition, I have met with Secretary Napolitano to discuss increased coordination on various matters between the Department of Justice and DHS.

The Mexican Cartel Strategy is being led by Deputy Attorney General David Ogden. This strategy uses federal prosecutor-led task forces that bring together federal, state and local law enforcement agencies to identify, disrupt and dismantle the Mexican drug cartels through investigation, prosecution, and extradition of their key leaders and facilitators, and seizure and forfeiture of their assets. The Department is increasing its focus on investigations and prosecutions of the southbound smuggling of guns and cash that fuel the violence and corruption and attacking the cartels in Mexico itself, in partnership with the Mexican Attorney General's Office and the Secretariat of Public Security.

Earlier this month I, along with other U.S. government officials, attended the Mexico/United States Arms Trafficking Conference in Cuernavaca, Mexico. This was my first foreign trip as Attorney General. My attendance at this conference reflects my commitment to continuing this fight against the drug cartels. The United States shares the responsibility to find solutions to this problem and we will join our Mexican counterparts in every step of this fight.

Implementing the President's Executive Orders to Close Guantanamo

On January 22nd, President Obama issued three Executive Orders and a Presidential Memorandum that gave significant responsibility to the Department. These Orders, which are clearly important Presidential initiatives, require immediate interagency action to:

- review and effect the appropriate disposition of individuals currently detained by the Department of Defense at the Guantanamo Bay Naval Base;
- develop policies for the detention, trial transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations;
- study and evaluate current interrogation practices and techniques and, if warranted, recommend additional or different guidance;
- and review the detention of Ali Saleh Kahlah al-Marri.

The Department has begun implementing these Orders and the Memorandum. I have appointed an Executive Director to lead the Task Force on Review of Guantanamo Bay Detainees. I have also named two officials to lead the Task Force Reviews on Interrogation and Detention Policy.

The Guantanamo Detainee Review Task Force is responsible for assembling and examining relevant information and making recommendations regarding the proper disposition of each individual currently detained at Guantanamo Bay. The Task Force will consider whether it is possible to transfer or release detained individuals consistent with the national security and foreign policy interests of the United States; evaluate whether the government should seek to prosecute detained individuals for crimes they may have committed; and, if none of those options are possible, the Task Force will recommend other lawful means for disposition of the detained individuals.

The Special Task Force on Interrogation and Transfer Policies is charged with conducting a review to determine whether the Army Field Manual interrogation guidelines, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence to protect the nation, and whether different or additional interrogation guidance is necessary. This task force is also responsible for examining the transfer of individuals to other nations to ensure that such practices comply with all domestic and international legal obligations and are sufficient to ensure that such individuals do not face torture or inhumane treatment.

The Special Task Force on Detention Policy is charged with conducting a review of the lawful options available to the federal government for the apprehension, detention, trial, transfer, release or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations.

The Presidential Orders and the Memorandum require me to coordinate or co-chair each of these interagency activities. These task forces also involve other Departments and agencies, including the Secretaries of Defense, State, Homeland Security, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Chairman of the Joint Chiefs of Staff and other officials.

While implementing these Orders the Department will take necessary precautions to ensure decisions regarding Guantanamo detainees account for safety concerns of all

Americans. Executing these orders will have a significant workload and cost impact on the Department and this budget reflects that need.

Federal and State Partnerships Targeting Foreclosure Scams and Loan Modification Fraud

As many Americans face the adverse affects of a devastating economy and an unstable housing market, the Administration announced a new coordinated effort across federal and state government and the private sector to target mortgage loan modification fraud and foreclosure rescue scams. These fraudulent activities threaten to hurt American homeowners and prevent them from getting the help they need during these challenging times. The new effort aligns responses from federal law enforcement agencies, state investigators and prosecutors, civil enforcement authorities, and the private sector to protect homeowners seeking assistance under the Administration's Making Home Affordable Program from criminals looking to perpetrate predatory schemes.

The Department, in partnership with the U.S. Department of Treasury, the Department of Housing and Urban Development (HUD), the Federal Trade Commission (FTC) and the Attorney General of Illinois, will coordinate information and resources across agencies to maximize targeting and efficiency in fraud investigations, alert financial institutions to emerging schemes and step up enforcement actions. As part of this multi-agency effort, the Department has outlined ways to crack down on mortgage fraud schemes. The FBI is investigating more than 2,100 mortgage fraud cases. This number is up almost 400 percent from five years ago. The Bureau has more than doubled the number of agents investigating mortgage scams, created a National Mortgage Fraud Team at Headquarters, and is working hand-in-hand with other partnering agencies.

In addition to focusing on fraudulent scams, I am committed to ensuring that homeowners who may be having difficulty making their mortgage payments do not experience discrimination and can benefit in equal measure from legitimate loan modification programs and other federal programs to provide mortgage assistance and stabilize home prices. Lending discrimination prevents those who are discriminated against from enjoying the benefits of access to credit, including reasonable mortgage payments, so they can stay in their homes and provide much needed stability for their neighborhoods.

Discrimination in lending on the basis of race, national origin, or other prohibited factors is destructive, morally repugnant, and against the law. We will use the full range of our enforcement authority to investigate and prosecute this type of unacceptable lending discrimination.

Unified Financial Management System

Lastly, the Department continues to address ways to improve work efficiency and productivity. One important and complex effort in the Department's management arena is the implementation of the Unified Financial Management System (UFMS). Once fully

implemented, UFMS will result in more accurate, timely and useful financial information that can better support management decisions and actions. UFMS will also enhance the Department's accountability, accuracy, and transparency as it relates to financial performance, internal controls, and standard business practices. Significant achievements and progress have been made on UFMS, and details of our future plans are provided in our Congressional request.

UFMS is a critical element in the long-term health of the Department's financial operations and we look forward to working with the Subcommittee as we move forward with UFMS implementation.

Conclusion

Chairman Obey, Representative Wolf, and Members of the Subcommittee, I want to thank you for this opportunity to discuss my priorities for the Department.

Today I have highlighted critical areas that require attention and resources so that the Department can fulfill its mission to enforce the Nation's laws and help protect national security. Once the budget is released, I hope you will support me in these worthy investments. As always, we are aware that there are tough decisions and challenges ahead and I look forward to working with you as we move forward.

Once again, thank you for inviting me here today. I am pleased to answer any questions you might have.



The Honorable Eric H. Holder, Jr.
Attorney General of the United States

Eric H. Holder, Jr. was born in New York City and attended public schools there, graduating from Stuyvesant High School, before earning a B.A. in American History from Columbia College in 1973 and a J.D. from Columbia Law School in 1976.

Upon his graduation from law school, Mr. Holder joined the Department of Justice through the Attorney General's Honors Program. He was assigned to the newly-formed Public Integrity Section, where he investigated and prosecuted corruption involving officials in local, state, and federal government. In 1988, President Reagan appointed Mr. Holder to serve as an Associate Judge of the Superior Court of the District of Columbia, where he presided over hundreds of criminal and civil trials during his five years on the bench. In 1993, President Clinton appointed Judge Holder to serve as the United States Attorney for the District of Columbia. In 1997, President Clinton appointed Mr. Holder to serve as Deputy Attorney General of the United States, a position that he held until the end of the Clinton administration. At the request of President George W. Bush, Mr. Holder served as Acting Attorney General in 2001 pending the confirmation of Attorney General John Ashcroft.

In July 2001, Mr. Holder joined the Washington, D.C. law firm of Covington & Burling as a partner in the firm's litigation practice group, where he represented clients in complex civil and criminal cases as well as internal corporate investigations.

President Barack Obama nominated Mr. Holder to be Attorney General and his nomination was confirmed by the United States Senate on February 2, 2009. Mr. Holder began his service as the eighty-second Attorney General of the United States the next day.

Mr. Holder's many civic commitments have included service on the boards of Columbia University, the National Center for Victims of Crime, the Meyer Foundation, and the Save the Children Foundation, among many others. He also served on the U.S. Sentencing Commission Ad Hoc Advisory Group.

Mr. Holder has received numerous awards in recognition of his professional and civic contributions, including the Department of Justice's Special Achievement Award, the District of Columbia Bar Association's Beatrice Rosenberg Award, and George Washington University's Martin Luther King, Jr. Medal for Outstanding Service in Human Rights. The District of Columbia Bar Association recognized Mr. Holder as its Lawyer of the Year in 1997.

Mr. Holder lives in Washington, D.C. with his wife, Dr. Sharon Malone, and their three children.

INTERROGATION TECHNIQUES

Mr. OBEY. A week ago today, the Department released the full text of four Bush-era OLC memoranda that provided the legal justifications for the use of interrogation techniques that many consider torture. I certainly do. The question arises whether or not the Department of Justice lawyers who wrote the memos could be subject to some kind of sanction for their role in the interrogation program. President Obama indicated that decisions about the fate of those lawyers would ultimately be made by you as the chief law enforcement officer of the country.

I have got a series of questions for you, and I do not expect you to answer all of them today. I would expect you to make a comment when I have finished with the questions, because I would like you to respond after you have had a chance to think through carefully what your plans are. But these are roughly the questions that I am sure everybody is asking.

What will your policy be with respect to sanctions or prosecution for those individuals who offered those memos? What is the status of the Office of Professional Responsibility review of the authors of those memos? When do you expect this review to be completed, and will the results be made public? While the President has repeatedly said that CIA employees who followed the legal advice provided by DOJ will not be prosecuted, will you proactively pursue investigations of individuals who acted prior to the issuance of DOJ's memos or who deviated from the specific tactics and methods approved by DOJ? Lastly, a DOJ-led task force has been formed to craft a new comprehensive policy on interrogation methods and rendition. Can you tell us anything at this stage about the work of this task force, when its work might be concluded, and whether its findings will be shared with the Congress?

Attorney General HOLDER. Mr. Chairman. I am not sure where to start. With regard to the task forces that the President placed me in charge of, we are charged with making individualized determinations about how the current detainees held at Guantanamo are to be treated. We expect that some people will be released, when determinations are made that they can be sent to other countries. With regard to a second group, we expect that we will be trying them in Article 3 courts, in Federal courts, perhaps also in military courts, and perhaps also under military tribunals that have significant changes made to the manner in which they would be conducted.

With regard to the second task force, we are also looking at interrogation policy and coming up with what we think are the best interrogation policies, that are consistent with our values, and yet effective in getting information from those who would do harm to this Nation.

With regard to that first task force, our responsibility is to report by next January. With regard to the question of interrogation, we are to report by July. And with regard to a third task force that has to deal with detention policies and how people are to be detained who are presently in Guantanamo, or people who might be apprehended on the battlefields around this world, that task force is due to make a response in July of this year as well. So we have

two that have a 6-month reporting time, and one that has the full year to make its determinations.

Mr. OBEY. What is the process you will go through to make those determinations, who would be consulted, and who would play a role in making those eventual decisions?

Attorney General HOLDER. All three efforts are interagency efforts that involve the CIA, the Department of Defense, the Department of State, the Director of National Intelligence, the Justice Department, various members of the National Security Council. There are representatives from all of those organizations who are on a working group level. They report to a larger group, who ultimately report to a principals group. We have had two principals meetings thus far with regard to the work of the task forces.

And so it is truly an interagency effort that will draw on the expertise of various agencies so that we can make the decisions that we think are in the best interests of this country and consistent, as I said, with the values that have always made this Nation great.

Mr. OBEY. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

PROSECUTION OF FEDERAL OFFICIALS

Mr. Obey raised a couple of the issues, but I will come at them perhaps in a little different way.

President Obama has stated that he will defer to you, as the Chairman said, in determining whether or not to prosecute Federal officials. I think this represents, most Americans believe it represents, a dramatic shift from the President and his Chief of Staff's earlier statements that I worry will have a chilling effect on current and future administration officials and our Federal workforce.

I personally agree with the statement of Senators McCain and Lieberman and Graham that, quote, and they said, pursuing such prosecutions would have serious and negative effects on the candor with which officials in any administration provide their best advice, and would take our country in a backward-looking direction at a time when our detainee-related challenges demand that we look forward.

Insofar as that, the questions are several, and one, will you pursue the prosecutions? And can you tell us what the criteria will be? And if you have anything you can tell us now, and we can wait for what you tell the Chairman.

Secondly, is it true that there were additional memos or documents that have not been released that show that the interrogations resulted in invaluable intelligence, perhaps saving lives? I think if there are other ones, and the first ones were released, the second ones should be released. And with regard to that, can you just comment?

Attorney General HOLDER. First, I will reiterate what I said, last week, and it is consistent with what the President has said as well. Those Intelligence Community officials who acted reasonably and in good faith and in reliance on Department of Justice opinions are not going to be prosecuted. It would not be fair, in my view, to bring such prosecutions. But I also want to be clear that I will not permit the criminalization of policy differences. However, it is my responsibility, as the Attorney General, to enforce the law. It is my

duty to enforce the law. If I see evidence of wrongdoing, I will pursue it to the full extent of the law, and I will do that in an appropriate way. As I think I have shown throughout my career, I am prepared to make tough decisions that are, in fact, fair decisions.

I want to end this response with where I started. With regard to those members of the Intelligence Community who acted in good faith and on reliance of Justice Department opinions that were shared with them, it is not our intention to prosecute those individuals.

Mr. WOLF. And the second part, of the other memos that have not been released.

RELEASE OF OLC MEMORANDA

Attorney General HOLDER. There are other Office of Legal Counsel memoranda and opinions that have not been released. It has been my hope that as this process goes on, we can make those opinions, those memoranda, available, and make OLC a much more transparent place, consistent with our need to protect national security and to protect the ability of the President to have unfettered, unchilled communication with members of that office.

Mr. WOLF. But with regard to any results of the interrogations. That is the question that I was asking.

Attorney General HOLDER. I am not familiar with those memos. I have heard Vice President Cheney indicated such memos exist. I, frankly, have not seen them. I do not know if they exist. But I will say that generally my hope is we will make available to the American people the opinions of OLC so that they will have a full understanding of what the Justice Department thought about the questions that were put to it.

Mr. WOLF. Okay. So if there are, that information will be released?

Attorney General HOLDER. Again, as I said, I would hope that we would be able to be in a position to release all of the material that I have described, these OLC memoranda.

Mr. WOLF. See, pardon me, I am not aware if that is OLC. I do not know that. So I am just saying the other memos. I think once a decision was made to release the existing memos—and I saw today Secretary Gates favored it, and I have great admiration for Secretary Gates, he was on the Iraq Study Group that we helped put together, and I admire him—but I think once you have taken that step, I think all of the memos—and, of course, those of us who are not on the Intelligence Committee, I just read today Pete Hoekstra had an article in the Wall Street Journal—there are things like that that go on in the Intelligence Committee that many Members do not know about. So there may be memos.

I would not want to get in a situation where I am asking you and you say, well, Wolf, you just said Office of Legislative, and it was really there, but you didn't ask me there. I just think in fairness to the American people, once you made a decision, once the administration made a decision to release the existing memos that you put out, then I think you have an obligation to release the rest of the memos. That is the point I am trying to make.

The question that I wanted to ask——

Attorney General HOLDER. Well, Congressman, with regard to that, I am the Attorney General, and I do not control many of the memos that you might be talking about. I was referring to those memos that originated in the Justice Department. Now, to the extent that they do, as I said before, my hope would be to make those available, again consistent with our national security interests.

Mr. WOLF. Well, the time is up, and I will not abuse my time, but I think in fairness everyone has to know, and just to say if it is not in this building, it may be in another building, so therefore that building, I think this is a decision, quite frankly, that not only you are responsible for, but whatever decision is made is really the decision of the President of the United States. Harry Truman had a sign on his desk that said "The Buck Stops Here." So the President is over all of the agencies. So whatever you do, it cannot just be it is not in this building, it may be in another building, and I do not control that building.

Thank you, Mr. Chairman.

Attorney General HOLDER. Let me just say this: It is certainly the intention of this administration not to play hide and seek or not to release certain things in a way that is not consistent with other things. It is not our intention to try to advance a political agenda or to hide things from the American people.

There has been much said, I guess, in the last couple of days about the effectiveness of these enhanced interrogation techniques. I have also seen articles written by people who were involved in the use of these techniques who say those techniques, in fact, were not particularly effective, that the information could have been gotten by more traditional means. So that is something I guess we will have to debate.

One of the things that I think this administration wants to do, though, is to put in front of the American people as much of this information as we can so that a good, healthy debate can ensue, and we can come up with interrogation policies, among other things, that are consistent with our values and that can be supported by the American people.

Mr. OBEY. Mr. Fattah.

Mr. FATTAH. Thank you. And let me welcome the Attorney General.

I want to go for a minute to the substance of what brings you here, which is your appropriations process for this year. So the top line is $26.7 billion, and that would include $7.9 billion for the FBI, and then there is 50,000 additional cops on the street, and $145 million for civil rights. There is border enforcement and immigration enforcement. And then we come down to Federal prisons. There seems to be $7.5 billion for Federal prisons and only $75 million for reentry.

I am interested in whether or not you think we might ought to be investing a little bit more in reentry programs, given $7.5 billion spent on incarceration. And we know about some of the challenges on reentry.

But before I go to that, I noticed that you are going to invest more effort in going after mortgage fraud. I sent a letter to the Department under its previous leadership in August of last year challenging why more resources were not made available to go after

mortgage fraud since it was apparent that the FBI knew, or was informed about, some significant widespread mortgage fraud. This is not under your watch, I am not asking you to take responsibility. I am pleased that in the budget request before the committee that you are going to invest considerable resources. And I note your public statements on the matter.

So, welcome. I am interested in those two issues, and I appreciate an opportunity to hear you comment.

MORTGAGE FRAUD

Attorney General HOLDER. We are committed to dealing with the problem of mortgage fraud. The FBI has dedicated fairly significant resources in that regard, and has opened a mortgage fraud task force that is headquartered in Washington. I believe that there are about 2,100 cases that are presently being examined. We have asked for additional funds to look at that very important criminal justice topic not only from a criminal perspective, but also from a civil rights perspective. And to the extent that this fraud was perpetrated in particular communities, having the effect of destabilizing those communities—and I am talking about communities that contain people who are poor or people of color—that is something of great concern to us.

So our look at the mortgage problem is really twofold: One, to detect fraud to the extent possible, and then to look at the discriminatory impact of that fraudulent activity. We are going to be talking very soon about a financial fraud task force that will look at a variety of things given the situation in which our Nation finds itself and the fraudulent activity we have been talking about. I think there needs to be a more comprehensive view of this. We need to look at this with our State and local partners, and a key component of that effort will involve the mortgage industry.

Mr. FATTAH. Well, as a member of the subcommittee, you know, obviously, whatever additional resources that need to be put into place. I mean, there are problems with this warranty scam that is going on. You have, you know, the mortgage fraud issues. There are a lot of problems in this whole financial fraud area that have not gotten a great deal of attention, or at least not the appropriate level of attention from the Justice Department, FBI in particular. And I am happy to see that you are going to go at that.

SECOND CHANCE ACT

I would like you to comment on the commitment that the Department is going to pursue, given your budget request on reentry. I know that Ranking Member Wolf and others have had similar concerns that we do as much as we possibly can inasmuch as we incarcerate a great many people, almost all of whom are going to be returned to these communities at some point, to make sure that we do not create more problems than we are solving.

Attorney General HOLDER. Right. We are fully in support of the Second Chance Act, to try to give people who are coming out of prisons an opportunity to become productive citizens once again. And we are also going to be dedicating attention, through our Office of Justice Programs, to ways in which we can deal with that whole reentry problem.

But I think we have to look at this whole crime problem in a holistic way, and that is to see if there are ways in which we can prevent people from becoming involved in the criminal justice system. It is not a coincidence that we see the greatest amount of violent crime where we see schools that do not educate, where we see the highest levels of unemployment, and where we see men who are not meaningfully engaged in the raising of their children. We have to deal with those social conditions. Those are crime issues in addition to social issues.

We also have to make sure that those people who are incarcerated are simply not warehoused; that somehow we are able to make them better than when they came in through educational opportunities, vocational opportunities; and then to come up with ways in which we make the reentry of those people from prisons into regular society more successful than it has been in the past. Substantial numbers of people are recidivists. I think two-thirds or so is the number that you see within 3 to 5 years. And I think that is an indication that the system that we now have in place is failing in many ways.

I think it is time for us to ask really tough questions of ourselves when we look at this criminal justice system that we have, and challenge some of the assumptions that we have made. It does not mean we are not going to be tough against people who would do harm to citizens who only want the things that we all do, but I think we have to be smart as well. And so I hope that as Attorney General I will lead a Justice Department, working with members of this committee, that will ask those tough questions and come up with some different solutions.

Mr. OBEY. Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman.

Attorney General Holder, welcome.

Attorney General HOLDER. Thank you.

Mr. LEWIS. I reviewed pretty carefully your background and the experience that you have had in the Department. I am very comfortable with the direction and the leadership, I believe, that you will provide for us.

DRUG COURTS

Two subject areas of interest. You may not be aware that a program called Drug Court, one of the first drug courts in the country, was developed in San Bernardino County and sponsored by then-Judge Pat Morris, who is now the mayor of San Bernardino. I think he probably felt much more comfortable in that other frying pan than the one he is in right now. But in the meantime his work is being carried forward by Judge Stephen Manley. And they are doing a fabulous job in our State, where we have sizable—the country has, but we especially have sizable numbers of men and women, especially young people, who need a way to find a different path for their life. And Drug Court is having a tremendous impact. I have had some indication of support from the administration for the Drug Court model, and I am presuming we might even enjoy some increased funding there. Could you comment on that?

Attorney General HOLDER. Yes. There is contained in the budget a very substantial increase to support the Drug Court effort. Con-

gressman, I think you are 100 percent right that that is one of those novel approaches that we need to start thinking about. We had a drug court here in Washington, D.C., when I was the United States Attorney, patterned after the one that you have described. We tried a three-track system here, found that one of the tracks actually worked better than the other two, and that was the one that held the possibility of incarceration over somebody's head if they did not stay off drugs.

But the recidivism rate of people who go through drug courts is substantially lower than it is for people who simply are incarcerated, and our administration has given substantial resources for the expansion of that program. So I totally agree with you.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

Mr. LEWIS. I appreciate that very much.

The other area of questioning I may not get exactly the same kind of response, but I have an interest in, and my State has a great interest in, the State Criminal Alien Assistance Program, SCAAP. In the 2009 package there was a reduction of about $10 million in that programming. I do not have any idea what your thoughts are or the plans you may have for the fiscal year ahead of us. I would like to hear from you if you intend to see SCAAP funding either reduced significantly or terminated, and if so, why.

Attorney General HOLDER. I think that on this one we may have a slightly different view. The program is one that I do not think we are intending to support to the extent I think that you would—and we are talking about the State Criminal Alien Assistance Program?

Mr. LEWIS. Yes.

Attorney General HOLDER. I do not think we are looking at that with the degree of support that you might want. One of our top priorities is to secure our borders and address threats that are posed by criminal aliens. It is our thought that money that we have coming from our JAG grants, our Byrne grants, can actually be more effective in dealing with the issues than the SCAAP program. The budget that we are proposing eliminates funding for a program that we think does not help communities directly address crime in the way that the JAG-Byrne grants do.

I think our aim is the same. I think we have different view as to what can be most effective. But I am always open to hearing a different view. And to the extent that you think that our view of this program is not necessarily a correct one, I would be more than glad to speak with you about it.

Mr. LEWIS. Attorney General Holder, I very much appreciate that. The border States that have lots of impact from people who are here illegally, may have been involved in violations of the law, puts pressure on our budgets.

I must share with you that I really asked that question because of the priority given to it by our Governor in California. It is not the highest priority that I have in these things, and there could be better approaches to deal with this circumstance. But in the meantime, I may very well get communication from the Governor's office and share that with your people.

Attorney General HOLDER. I would be glad to talk to you about that, Congressman.

Mr. OBEY. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Attorney General, it is a great privilege to have you here. I spent 6 years in the Department, and I have a great fondness for it, and it broke my heart to see what the Department went through under the leadership of Mr. Gonzales. I think your immediate predecessor Mr. Mukasey did an admirable job turning around the management and morale of the Department, but nevertheless, there is quite a mess left to be cleaned up, and it is your unhappy task to do it. But I cannot imagine anyone more capable, and it gives me great confidence to have someone of your intellect at the job.

TORTURE

I want to raise two issues with you, the first that my colleagues have already touched on, and that is the torture issue. If we start out with your testimony in the Senate, and I start off from the same place, that waterboarding is torture, we know that waterboarding occurred, we therefore know that torture occurred. I don't think we can have a policy in this country that, notwithstanding the knowledge that people have been tortured, that it is impossible to hold anyone accountable. You cannot hold accountable people who follow legal opinions, you cannot hold accountable people who wrote legal opinions, so we have people torture, but no one is responsible.

I do not think that is good policy. I do not think that lives up to our ideals and values as a Nation. What I would hope we would do is do a thorough investigation of exactly what happened, what laws were violated. Before we make any decision about prosecuting or not prosecuting, determine what the culpability is and what the legal avenues are. And then you have the tough decision to make do we decide not to prosecute because of the mitigating factors, people operated in good faith on a legal opinion, or maybe they did not have the mens rea.

But particularly in the case of the attorneys who wrote these memos, the fact that they have a law degree should not immunize them. And if there is evidence that these attorneys knew what they were writing were flawed opinions, that they merely sought to give a legal patina to conduct which they knew to be violative of the criminal laws, they should not be held immune from prosecution.

I think part of the problem—and this gets me to my first question—part of the problem is that the last administration had an attitude that if the Commander in Chief felt something was necessary in the war on terror, his authority as Commander in Chief overrode everything else. And this idea is embodied, I think, most graphically in the March 2003 OLC opinion when the author wrote, even if an interrogation method arguably were to violate a criminal statute, the Justice Department could not bring a prosecution because the statute would be unconstitutional as applied in this context. So we can violate criminal laws, the former administration seemed to say, as long as it is pursuant to our authority as Commander in Chief.

And I would ask you today if you are able to disavow that view, because that view not only affected the interrogation issue, it also infected the surveillance issue. We heard the same argument on surveillance. If the President says we need to surveil people, notwithstanding what FISA says, he has the authority as Commander in Chief. And if there is a conflict between what he says and the laws as passed by Congress, the laws must be unconstitutional. Can you tell us today that you disavow that point of view?

Attorney General HOLDER. It is the Administration's view, consistent with Justice Jackson's, concurring opinion in the Youngstown Steel cases, that the President's power is at his greatest when he is acting in a manner that is consistent with congressional authorizations. To the extent that there is an existing law, FISA, as you indicated, it is incumbent, in our view, for the President to conform his conduct to that statute unless the statute is unconstitutional. There is no basis, from my perspective and from President Obama's perspective, to view the FISA statute as one that was unconstitutional. And so programs that were designed to deal with the issues that FISA specifically was passed by Congress to deal with, efforts by the Administration, should conform themselves to the law that is passed by Congress.

Mr. SCHIFF. Would you agree that that is also more true than ever in the context of interrogation in that if Congress prohibits conduct which it defines as torture, the President is not entitled to disregard that law because the President believes that as Commander in Chief he must engage in torture, and therefore Congress cannot prohibit it?

Attorney General HOLDER. It is our view that the expansive view that the prior Administration took of the Commander in Chief's authority is one that we will not embrace when it comes to the question of interrogation techniques. That is one of the reasons why the President has put me in charge of this interrogation policy group. We will share those results with the Members of Congress with the hope that we can come up with techniques that are both effective, consistent with our values, and supported by Congress. Because when that happens, the President, the Administration, is acting with its greatest authority.

Mr. OBEY. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mr. Attorney General, thank you for appearing before us today.

PROSECUTION OF INTELLIGENCE OFFICERS

I want a quick clarification, if I could. I understood you to testify earlier in response to Mr. Wolf's question that essentially the Department will prosecute DOJ employees if you determine they did not act reasonably or in accordance with DOJ policy, and that you would prosecute intelligence officers who did not act in good faith reliance on DOJ memos.

Attorney General HOLDER. No, I did not say that. I put it in the affirmative, that those people who acted in a manner that was consistent with Department of Justice guidance, who relied on that guidance and acted in good faith, those would be people who we would not prosecute or investigate.

Mr. CULBERSON. Right. But if they did not act in good faith, the flip side of that is they are open to investigation and prosecution.

Attorney General HOLDER. Well, there is always prosecutorial discretion. And one has to look at the particular facts.

Mr. CULBERSON. Sure. I just wanted to make sure I understood, because what is reasonable and what is good faith are subjective terms. And you will make that determination as to what is reasonable and what is good faith.

Attorney General HOLDER. I will try to apply the law and the facts as best I can, working with the career prosecutors and men and women in the Justice Department in making those kinds of determinations.

Mr. CULBERSON. Okay. I just wanted to make sure I understood that. So you have left that door open.

DHS INTELLIGENCE ASSESSMENT

I also wanted to ask, Mr. Holder, if I could, you work, I know, very closely with the Department of Homeland Security. It is essential that the Department of Justice work very closely with the Department of Homeland Security. I serve on the Homeland Security Subcommittee. And DOJ works arm in arm, your law enforcement officers, with the Homeland Security officials in attempting to identify potential threats to the people of the United States and to our government. And I wanted to ask, if I could, to the extent you agree or disagree with the intelligence assessment that the Department of Homeland Security has just put out that to attempt to identify and to quote from—this is—as all intelligence assessments, this is designed to help Federal, State, and—Federal, State, and local law enforcement officials identify potential terrorist threats and effectively deter, prevent, preempt or respond to terrorist attacks. And in this Department of Homeland Security intelligence assessment on right-wing extremists, the memo identifies right-wing extremists as groups or individuals—adherents, rather, that are mainly antigovernment, who reject Federal authority in favor of State or local authority.

Do you agree or disagree that an individual who rejects Federal authority in favor of State or local authority is a right-wing extremist and subject to heightened scrutiny and suspicion?

Attorney General HOLDER. Well, there is a spectrum of people who, I think, could fit the category that you have described. There are people who certainly disagree with tax policies and think that certain parts of our tax system should be made more fair, and more responsibility should be given to the States. On the extreme end there are people who do not recognize our Federal system and who think that the Federal Government——

Mr. CULBERSON. Sure.

Attorney General HOLDER [continuing]. Is illegitimate.

Mr. CULBERSON. You are familiar with the memo that I am referring to. This Department of Homeland Security intelligence assessment, Mr. Attorney General, goes on to even classify returning veterans as potential problems that need to be watched closely. People who purchase high volumes of weapons and ammunition are a source of concern to Homeland Security. The veterans. The people

that—and even the memo, I think, even goes on to say those people who oppose the administration are a source of concern.

Do you agree or disagree with this memorandum? And if you disagree with it, to what extent do you disagree with it? Do you think the memo is too broad, goes too far? And in particular, what is your reaction to the classification of returning veterans as a potential threat to the security of the United States? I find that just appalling and absolutely unacceptable.

Attorney General HOLDER. In coming up with enforcement policies, it seems to me we have to make individualized determinations, to the extent we can, and when you start to cast too broad a net, you end up with ineffective law enforcement.

In some ways, it is the same thing you see with profiling. You want to focus on people who are truly threats. And to the extent that that memo is read as characterizing returning veterans, people who have put their lives on the line to protect our Nation, as threats clearly that is wrong.

I don't think that was the intention of the memo. If the language used there was not as exact as it should have been, I am sure that Secretary Napolitano would walk back from it.

Mr. CULBERSON. One last question on this line, because our time is brief, and I have a second round. Are you aware of any lists that are being developed by DOJ to identify what this memo calls right-wing extremists who favor State and local authority, returning veterans, people who disagree with the administration—is there a list being developed of people like that in your Department?

Attorney General HOLDER. No, not that I am aware of. As long as I am Attorney General, that would not be the policy of the Department of Justice.

Mr. OBEY. Mr. Serrano.

Mr. SERRANO. Thank you.

Thank you, Mr. Attorney General, for your past service and what I know will be excellent service in the future.

So much has been discussed already and should be discussed in the future about the area of torture. I want to take you to another subject, but prefacing my comments by saying that I join my colleagues in saying that something has to be done about what happened in the past. I know the President has said let us put the past behind us, and I think in some ways there are many issues that have to be left behind. This cannot be one of them. And I take a different view from some people on this.

Notwithstanding some of our enemies who will always try to hurt us, there are others who would use this behavior of ours, if it goes unpunished or uninvestigated or undealt with, as well as you know, as a recruiting tool to bring more people to hate us.

Secondly, and this is not a frivolous or a funny remark, but if we don't do something, there are some folks who will never be able to travel out of this country because in other countries there are people ready to arrest them and prosecute them. And we have never had that kind of behavior put on us. And so we have to pay attention to that seriously. I want to just identify myself with the comments made before and put that before you.

DEFINITION OF HATE CRIMES

Another area of concern that I have is during the last administration civil rights groups and local groups complained about the fact that the decline that existed in numbers of hate crimes reported or dealt with by the Civil Rights Department was just a bad situation. I see in the President's comments and I see in your comments a desire to do something about the border and about illegal immigration. So be it. But there is another side to the immigration issue, and that is immigrants who are being targeted for hate crimes in this country, that even happen—and I say "even"—in a city like New York, which is known to traditionally be a pro-immigrant, very tolerant city, and yet we saw people killed and abused and hurt physically.

Will the Department, in its desire to deal with the border and the immigration issue, also deal with the issue of hate crimes and identifying this new community, if you will, that is included in the hate crime category?

Attorney General HOLDER. Yes. In fact, one of the things that we want to do is expand the Federal definition of hate crimes. We unsuccessfully tried to do that during the Clinton Administration. We are going to try to do that again during the Obama Administration.

The focus should not be on the status of the victim, but on the conduct of the perpetrator, and that is what I think good law enforcement is all about. If a person is here inappropriately and is nevertheless the victim of a crime, that crime is just as serious as a crime committed upon somebody who is a citizen of this country, and is worthy of the attention of those of us in law enforcement.

To the extent people are being singled out because of their ethnicity, their status, that is something that deserves special attention and will get it from any Justice Department that I lead.

Mr. SERRANO. And I thank you for that comment.

WEAPONS CROSSING THE MEXICAN BORDER

I would also hope that we deal with probably the most difficult issue to deal with here. President Calderon has made it clear to us that he understands there is a serious problem in his country and, therefore, a serious problem that spills over on the border. But he has also told us that most of the weapons used in Mexico in those crimes come from this country.

I am politically savvy enough to know that that is one of the most difficult issues in this country. But there has got to be a way that, through our leadership, we show that there is a big difference between having a right to own a weapon—constitutional right—and allowing people to just sell indiscriminately these weapons that then come to haunt us, because, as we all know, that violence is beginning to spill over into the borders, and it is reaching other areas where they are recruiting folks to join those gangs.

So what hope can we have that within what you are allowed to do, within what the Department and the administration is allowed to do, knowing the difficult waters that you travel, that we can see something said and done about these weapons that end up going somewhere else?

Attorney General HOLDER. With regard to the problem in Mexico, what we have done with ATF, which is now a part of the Justice Department—it wasn't when I left it—is move 100 ATF agents to the border area to try to stop the flow of these high-powered weapons into Mexico.

I had a chance to speak to President Calderon and Attorney General Medina Mora during my visit there. I indicated to them that we needed to get more information about the weapons that they seize to have an ability to look at things as simple as serial numbers so that we can trace those back to places they may be bought in the United States and identify those dealers of these guns who are problematic.

A lot of these purchases, from what we know, are made by straw purchasers, people who come in who have an ability to buy a weapon, but then transfer it to somebody who then takes it south of the border.

I have also talked to Secretary Napolitano, who is coming up with innovative ways in which searches can be done of cars that are going across the border. We have asked our Mexican counterparts to help us to inspect vehicles coming into Mexico to a greater degree than they presently do, because we think that is probably the main mechanism by which these weapons are smuggled into Mexico.

Mr. SERRANO. Thank you.

Mr. OBEY. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Thank you for being here.

INTERROGATION GUIDELINES

The area that I want to get into again is torture, but I want to talk about going forward and guidelines.

I happen to represent NSA in my district, and I am on the Intelligence Committee with Mr. Schiff. When we were debating the FISA issue, I felt, and a lot of us felt, very strongly—and we were glad that we were able to prevail—that we needed the court involved, the checks and balances. Our forefathers created a great system of government, and it has worked for us for a long time, and that is the checks and balances between administration, judiciary, and Congress.

The issue, though, about going forward and with the torture, though, as it relates to the CIA and NSA or any military whatever is the front line. These are really courageous men and women that are all over the world. They are in all of these different countries, and their job, especially in the CIA, as an example, is to collect and to get information, and that information is analyzed and then goes to the President or whatever decisionmakers are there.

They are subjected, though, to the orders and the rules and regulations and standards from the top. It all stops at the top.

I would hope that when you are evaluating the issue we are talking about with torture now, that whatever you come up with, and that you do come up with, with strict guidelines so that the men and women in the front line know exactly what the rules and regulations are, and they would not receive orders to do something that they don't know.

Now, you said that you are only going to move forward with the consent—if they are doing their job consistent with the Department of Justice guidelines and upholding fundamental American principles, that you are not going to move forward. And that is your call as the Attorney General.

But I think we have to really focus on strict guidelines now which would go into training. When our CIA people go out into the world to protect us, they are trained, and they receive orders, and they follow those orders. Of course, a lot of these people or the people that work for us—thank God for this—they are some of the best in what they do in the world, and they are very intelligent, and they should know right and wrong. But when it comes to the gray areas, that is where there is a problem.

So I would hope we could work with you, those of us on the Intelligence Committee, these different committees, Judiciary, whatever, to make sure that those are guidelines that will never be another Abu Ghraib, and we never have to deal with the issue we are dealing with now.

The other thing is that we always have a change in administrations, and the new President will bring in their people. And we have different policies, different ways that a President will look at governing. And the President has the opportunity, subject to the Senate a lot, to have their own people.

But in this situation I would hope that you would look in your investigation, which I would hope that you could use so we can set these guidelines in the future, the role of political appointees. We have, as you know, in the Justice Department—I think you have been there for a lot—we have career prosecutors or career people that work in Justice. But then you have the political appointees that every President does bring in. And I would hope that you could look and see how far where it goes. Were these political appointees involved; were they involved and given orders to make something happen, and then that all of a sudden, because that is where the mandate or that is the ruling, that then that means it's open season?

Because if you look at torture, torture doesn't really get us any more information. There could be a case or two. Most of the time, from what we understand, is that when someone is tortured, they will tell you whatever they want, or, in an al Qaeda situation, they will be trained to deal with that. Abu Ghraib set us back in terrorism for a long time.

So my point, and then I would like you to respond—I know I am asking a long question—but how do you see your investigation with respect to where we are now? And the end game, I would hope, would be strict guidelines that everyone can understand, and that we make sure that if there is a violation of those guidelines, then there should be retribution.

Attorney General HOLDER. Congressman, I think you raise a very good point that I hope will be the outcome of the effort with regard to those two task forces—the detention task force as well as the interrogation task force. The interrogation task force is looking at the Army Field Manual to make a determination if that is sufficient to have the abilities that we need to get information, good,

useful information, from our adversaries, or are there things beyond that that we need to do.

Our hope would be that we will come up with some conclusions that we will share with the Congress, and with the American people. Undoubtedly, we would respond in a hearing setting to what we have found, with the hope that we can come up with good interrogation techniques that can be supported by the Nation, that are effective, and that ultimately are the bright lines that you talk about, so that everybody will know these are the techniques that are acceptable; and if you go beyond that, you do so at your peril.

We owe that, it seems to me, to the people in the field who do these very dangerous things oftentimes—and I think the point you make is a very good one—too often without sufficient guidance from those of us who are the heads of their organizations. That is one of the things that we are bound and determined to try to end with the formation of these two task forces, and then the sharing of the information, the findings of those task forces.

Mr. OBEY. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

IMMIGRATION CASE REVIEWS

Welcome. Quite a few items have been already discussed. And I appreciate your comments on the drug courts and the items around legal orientation programs, and hopefully that will continue to grow, and the training for immigration judges that your office will look at, and engaging NGOs as part of the training for a more precise training program.

The question I had is something that has been bothering me for 8 or 9 years, is the folks who are caught in the immigration system where an INS officer who was involved in graft and corruption, giving out green cards to contractors who were in cahoots with them, they being dealt with through the legal system and being tried and sentenced. But when the cardholders, who are supposedly the customers of the contractors—in this case, I think about 250 individuals and families—when they came back for renewals, they ended up being put into a deportation process under this last administration, and, through no fault of their own, they became victims again.

Is there any work and any effort being placed in reviewing some of these cases where there may be some remediation of administration decisions to either return them back to their original status or review them quickly and making sure that the 9 years that they spent waiting for this process to go through would be terminated or at least come to some finalization?

These folks have just been suffering for 8 or 9 years, putting their lives on hold, and it just seems to be patently unfair. And we have not been able to get a response from the last administration. We are going to be sending a letter to you requesting that consideration.

Is that something that your office is looking at or would be willing to spend some time so that we can bring some justice to some of these folks?

Attorney General HOLDER. Congressman, that is not something that I am familiar with, but I would be more than glad to look at the letter that you say you are going to send and examine the situ-

ation. To the extent that people were acting in good faith and were taken advantage of, I certainly want to look at all the facts.

Mr. HONDA. I would expect that.

Attorney General HOLDER. I would be more than glad to look at that, and I promise you I will respond to you with what we think we can do in that situation.

Mr. HONDA. That would be greatly appreciated. Thank you.

Mr. OBEY. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

PRISON REFORM

If you could give me an update on prison rape. Bobby Scott and I authored the bill on prison rape. I sense a delay in the Justice Department. If somebody could come up and tell us what the status of that is.

Secondly, there was a little bit of inconsistency in your statement when you talked about—I have worked in prison reform, and I agree with you about keeping young kids out of prison. But this administration opposing the D.C. vouchers is an inconsistency. Quite frankly, my daughter worked in the Community of Hope at 14th and Belmont for 5 years. I have talked to some of these young people who are going to these schools. You are splitting families up, you are dividing families. A sister may be in a school, and a young brother may not be able to go to school.

If you really care about these young people, you will do what the Washington Post has recommended. For this administration to look at this—and for you, particularly you—you live in the District of Columbia. You are a man of wealth. You can send your children to great schools, and that is fine. That is wonderful. My five kids went to public schools. But I think wherever any parent wants their kids to go.

But do not negate the opportunity for these young kids that live in the inner city. I have spoken to many of them that tell me they have been beaten up in school. I had a daughter that taught at Eckington Gage. And some of the life stories there.

So if you want to really make a difference to do what you said, to keep young people out of prisons, then you have this administration support the voucher program where young kids in the inner city can go to private schools.

Having said that, amen. Let me ask you the question here. Will you meet with the families of the loved ones who were involved in 9/11, as I put in my statement?

Attorney General HOLDER. I am sorry, I didn't hear that.

Mr. WOLF. Will you meet with the families of those who lost individuals, loved ones, in the 9/11 attacks, and also those families who have lost loved ones in Iraq and Afghanistan, including someone like Daniel Pearl's family——

Attorney General HOLDER. Sure. In fact——

Mr. WOLF [continuing]. Before you make any decisions?

Attorney General HOLDER. Sure.

Mr. WOLF. That is enough.

Attorney General HOLDER. I was going to say that Daniel Pearl's widow was represented by my law firm, and I met her in private practice.

Mr. WOLF. I think the ones from my congressional district and all the others. Mrs. Burlingame. All of them, I think. I appreciate that.

Attorney General HOLDER. That is fair. That is fine.

GUANTANAMO DETAINEE TRIALS

Mr. WOLF. For those who may be transferred for U.S. prosecution, where do you think such trials will be held, and how long do you envision the trials to go on? Moussaoui was in Alexandria for 4 to 4½ years. Khalid Sheikh Mohammed, who has said what he has done, lawyers who know tell me he could be there for 4 to 5, to even longer perhaps.

How long do you think these trials would go, and where are you now looking to hold the trials?

Attorney General HOLDER. We have not made any decisions yet about where the trials would be held. That is part of the process that we are going through, to first identify how large that universe of people will be who we have to try, and then make determinations about whether they will be tried in Article 3 courts, military courts, or in some other proceeding. But no decisions have been made yet as to where those proceedings would occur.

Mr. WOLF. The system of military tribunals was designed to avoid the difficulties inherent in civilian trials. If the military is trusted to run a system of justice good enough for a 19-year-old service person who may have crossed the line, why should somebody, Khalid Sheikh Mohammed, get a better opportunity than, say, a 19-year-old military person who has crossed the line and faces it through the military system?

Attorney General HOLDER. I have great faith in our system of justice and its ability to hold accountable those who have committed the most heinous acts. My faith in that system means that it is capable of handling in a fair way the 19-year-old who you describe or somebody as awful as Khalid Sheikh Mohammed.

The system and how we deal with those people, let's say those people at different ends of that spectrum, says a lot about who we are as Americans; and it seems to me that if we have faith in that system, as I do, we should have confidence that that system can handle in a fair way Khalid Sheikh Mohammed and deal with him appropriately.

Mr. WOLF. But with due deference, that was not the question. The question was: If you were to treat a 19-year-old military personnel who crossed the line in a military court, why would you then give Khalid Sheikh Mohammed in a civilian court a higher status, if you will?

Attorney General HOLDER. I don't necessarily agree with that premise. I don't think that.

Mr. WOLF. Well, discovery and things like that. Are you going to call servicemen back in off the field?

The other question was: For those who stand trial in the U.S. courts, if they were not apprehended by law enforcement officials, do we run the risk of having the evidence against them deemed inadmissible? Will we release them?

I led the first delegation to Afghanistan. Our young men and women who were there—and also in Iraq—were doing incredible

things. They were not necessarily operating under the same Miranda standards as somebody would in the city of Philadelphia, the city of Washington, D.C. That is kind of what I am talking about.

So do you run the risk of having the evidence against them deemed inadmissible, and would they be released no matter how dangerous they are?

Attorney General HOLDER. The systems that I think that we will use or have to put in place will be ones that will be fair, that will be consistent with our notions of due process, and that ultimately will protect the American people.

I don't want anybody to leave with the misimpression that somehow, some way we are going to be soft on people who are responsible for the horrors of 9/11. They are going to be held accountable. But we will do so in a way that is consistent with who we are as Americans.

George Washington—it was interesting. I gave a speech at West Point, I guess, last week. He said after the Victory at Trenton on Christmas—and I should know the year, but I don't—he told his troops that the British soldiers who were captured had to be treated in a certain way even though our soldiers were not being treated in an appropriate way by the British.

So even our Founding Father, one of our greatest Presidents, realized that what makes this country great is that ability to do what was done back in the 1700s, and what I am bound and determined to do in the 21st century with regard to even people as reprehensible as Khalid Sheikh Mohammed.

Mr. OBEY. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

GUANTANAMO DETAINEE STATUS

I want to follow up on my colleague's question. And, Mr. Attorney General, we had a chance to talk about the detainee issue a couple of weeks ago. I guess I would phrase it a little differently than my colleague, but much along the same thinking, and that is that I think the military courts martial are really the best venue for proceedings involving the vast majority of the detainees. There may be some—and, ironically, it may be some like Khalid Sheikh Mohammed—who you decide to try in a district court for other reasons, because you want an even more public venue.

But I think for balancing the national security needs, as well as the due process concerns, the military courts have got a history longer than our country has been around of doing that very well. And I like the idea, frankly, of being able to hold up to the rest of the world and say, much as my colleague said, but in reverse, that we are giving the same due process to these people accused of acts of terror that we give to our own troops who are brought up on court martial charges.

I have introduced a bill along these lines, and I would love to share it with my colleague. And I have talked with many of your staff about it. One of the features of it, though, in addition to trying most of these people in military courts martial, is a threshold question, and that is: Are you going to be relying on the status determinations that were made under the prior flawed regime?

There are two determinations that have to be made: One, are they unlawful combatants or unprivileged belligerents; and, two, if they are, should we prosecute them, and where?

But on that threshold question I would say that the prior proceedings were so flawed that they need to be redone. That threshold decision has to be remade about whether they are, in fact, unprivileged combatants. And I think that you can use the military courts martial and modify the UCMJ for that purpose. And I have got a bill that accomplishes that.

My question is: Do you believe that you will have to redo the status determinations, or do you intend to accept status determinations made under the tribunals that were set up by the Bush administration?

Attorney General HOLDER. We are actually making new determinations. We are looking at all of the people who are at Guantanamo, taking a fresh look. With regard to those who the prior administration said could be released, we are looking at those as well to make sure that in applying the standards we think are applicable, we are being uniform in making those determinations. And so all of the people are being examined.

Mr. SCHIFF. I can ask more specifically though. I know you are doing a case-by-case determination. But in those cases where you decide you are not going to send them elsewhere, and that they are going to be tried, the threshold determination that has to be made is are they an unlawful belligerent. And will you be adopting what the Bush tribunal's conclusion was, or will you be establishing a tribunal to make that decision de novo?

Attorney General HOLDER. I think as we make the individual determinations for that group of people who should be tried, we will decide where they should be tried. It could be in Article 3 courts, it could be under the Uniform Code of Military Justice, a great system, or it could be under military tribunals that would be different from those that were previously in place—that would have, from my perspective, greater due process components.

Mr. SCHIFF. Let me just take this another way, and that is there is a separate question from where will they be tried, and that is the question of are they unprivileged belligerents to begin with. If they are not unprivileged belligerents—if they are prisoners of wars, for example, they are immune from prosecution as a prisoner of war in most circumstances. But if they are an unprivileged combatant under the laws of war, they can be prosecuted.

The Bush administration had tribunals that decided that they were unlawful combatants, but they were terribly flawed. Once they got through the tribunals, then they were brought before military commissions, where some of them were prosecuted, mostly without success, and overturned by the courts. But that first decision still needs to be made. On anyone that you don't want to send back to their home country or release, I think the decision still has to be made: Are they an unlawful combatant.

That is not an issue of whether it goes to—well, the threshold question, I guess, is: Do you accept any of the determinations made by the Bush administration? And I will just advocate here: I would suggest that you don't.

I would suggest that on the question of whether they are unprivileged, that that should be reviewed de novo by a more competent tribunal. And then the decision should be made where do they get prosecuted.

So I would just commend that to you and thank you again for your diligence on this.

Attorney General HOLDER. I have tried to say that I think I agree with what you are saying; that we will be making new determinations, both with regard to what courts they are to be tried in and what their status is. We are not, for instance, using the term "enemy combatant" anymore. We indicated that in a court filing a couple of weeks ago.

So that the determinations that we are making are on the basis of a fresh look that we are taking, and based on the evidence we can get from the various agencies that are involved in this process. That fresh look really starts from the beginning and goes all the way through.

I hope I answered your question.

Mr. OBEY. Mr. Lewis.

DETENTION SECURITY

Mr. LEWIS. Mr. Chairman, thank you. I think the Attorney General has been very generous with his time. I am not going to take any more of his time, but I believe my friend Frank Wolf wants to use a bit of my time to clarify the same line of questions that he was involved in earlier.

Mr. WOLF. I thank the Chairman.

This is an issue that I care deeply about, and I am not going to let it go. We are going to stay with it. I can still remember the people ridiculing us when we wanted to pass the National Commission on Terror.

Let me ask you this question: I have been led to believe—and there was a report here with regard to the other trials. It says here, "Earlier trials of terrorists in the U.S. demonstrated the necessity for extraordinary security resources that would be needed if some of those at Guantanamo are transferred here. Newsday and the Buffalo News reported that during the 1995 trial in New York of Omar Abdul Rahman"—Sheikh Rahman—"mastermind of the 1993 World Trade Center bombing," then they go on to say, "There were signals going back and forth." And you remember his attorney was taking information out.

Where you hold these people is very, very important. And I wanted to ask you to tell us a little bit about that, when they come here to the United States and after the disposition of the trials.

Secondly, are you aware of—you remember Officer Pepe who was stabbed in the eye? Do you remember that case? "There were also indications here," it said here, "that in many cases that the capturers were given word by their colleagues that they would work to free them. In addition, during the 2000 trial of Mahmud Salim, one of the terrorists accused in the 1998 bombing of the U.S. Embassy in Kenya, he stabbed New York prison guard Pepe in the eye during an escape attempt.

"Al Qaeda saw the rights given to its members to meet with counsel as an opportunity to carry out a violent escape attempt.

Mr. Salim was one of the original followers of Osama bin Laden and the highest-ranking member held in the U.S. at that time."

It goes on to say, "In addition to trying to escape from prison, al Qaeda members have communicated with confederates while in prison. It is my understanding that El Sayyid Nosair was involved in plotting the 1993 World Trade Center bombing while in custody at Attica State Prison. And, in addition, Osama bin Laden has publicly credited Sheikh Abdul Rahman with issuing the fatwa that approved the 9/11 attacks while he was in Federal prison, despite the high-security confinement conditions imposed on him." It emerged later that, with the assistance of his lawyer, Rahman continued to send instructional messages.

If you recall, on the bombing of the trains in Spain, there was actually communication from some of the terrorists that were in American prisons. Because I was Chairman of this committee, and we then set up a program that you now have in the prison department to read the mail to make sure that there are not any communications.

So it is a long issue, and I am not going to ask you to get into it now, but I want you to tell us how precisely this is going to work. I met with your team the other day. Some of them, I thought, were good. Others I left without having the best feeling. One person didn't even know some of the most elementary things that I thought for somebody to be head of the team that he would have known. He didn't even know about it. I am not going to put you in a spot.

Does al Qaeda have a policy that they will try to release the people if they are in prison? If so, if they are in Alexandria in an urban area, that is not very, very good.

And so there are a whole series of questions, and they are all in the letter. And I think out of deference to you—and I am not trying to ask you a question that you don't know—would you look at this thing carefully? I would like to talk to you and your team about all of these.

And I would ask you to go down to Alexandria, and I know you have been to the courthouse. Go to the courthouse and walk out and look around and try to get somebody to give you an overview of how conditions were there when the Moussaoui trial took place.

The other question that I have, if I can, is would you update us on what the Department plans to do with growing gang violence? I was the author of provisions setting up the Intelligence Gang Section over at the FBI now. Can you bring us an update on gang violence in this Nation? Do you expect MS–13—is it growing, is it diminishing? What is the impact with regard to gangs in the United States now, and what are your expectations for this summer?

Attorney General HOLDER. With regard to the question of where these trials might take place, as I said previously, no decision has been made. But the concerns that you raise are legitimate ones. You need not apologize for raising them. We are not naive. We understand the people we are dealing with. We understand that they are a part of a worldwide group that wants to do us harm.

As Deputy Attorney General, I signed a number of Special Administrative Measures to try to ensure that certain steps were taken to minimize the possibility that a particular prisoner could

have any influence, any impact, outside of the prison in which that person was kept. And we would obviously take into account the danger that person presented, that person's role in the organization, that person's ability or desire to try to communicate with others who are maybe not in this country, and come up with a way in which we try these people in a way that it is safe for the environment for the jurisdiction in which it occurs. We have to be sensitive to that.

The questions that you have asked are the very ones that we will be asking ourselves as we try to make this decision about where these trials might occur; to put these trials in places where we think we are most capable of ensuring that the surrounding areas will be kept safe. This will be a primary concern that we will have.

GANG VIOLENCE

Mr. WOLF. MS–13; gangs. You didn't answer. MS–13 gang violence, what are you doing, what is your program?

Mr. OBEY. Briefly, please.

Attorney General HOLDER. If you look at the crime rate, it has gone down pretty dramatically over the past few years. An exception to that is the violence that we see in a lot of communities with regard to gangs. There are task forces that have been set up within the Federal investigative agencies within the Justice Department to deal with the special problems that gangs present, and we will be giving that special attention.

Mr. OBEY. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Following through on the issue of gangs, I think a lot of what needs to be done—and we have been working on with this committee, and Congressman Wolf has probably been the leader in MS–13, Crips, Bloods, whatever—but there is a new strike force concept, which seems to be a positive concept, and a lot of things we do to fight terrorism or crime generally.

We know there have been serious gang problems in California. Now we have a lot of that on the east coast in the greater Washington area. There has been established a gang strike force from Philadelphia to North Carolina, including West Virginia, with technology and getting real-time information. But what has been very successful there is that it is Federal, State and local.

I am wondering if you are aware of this, or if you could try to prioritize, because we are having children in middle school now being recruited for gangs. Normally, the situation with a gang is that the gang becomes their family because their family life isn't any better.

Attorney General HOLDER. The gang problem is not one that is going to be solved by the Federal Government, alone. It is going to have to be solved by an effort that involves our State and local partners.

We just had a summit meeting of State and local law enforcement at the Justice Department 3 days ago. It is part of my attempt to reach out to our compatriots, our colleagues on the State and local side and establish ties that, frankly, I think have frayed in the past few years, and get back to what I think existed in the 1990s where the relationship between those of us here in Wash-

ington on the Federal side and our State and local partners was seen as a more productive one.

The gang problem is something that the Federal Government can help because we have unique tools that can be used, be they electronic surveillance, other kinds——

Mr. RUPPERSBERGER. And more money.

Attorney General HOLDER. And more money. That is true. And the budget is there for that. But there is a knowledge base that exists on the State and local side, especially the local side, that is particularly useful in trying to identify what gangs are into what activities, who are the leaders of these gangs. There is intelligence that you can get from the local side and from the State side that has to be a part of this process.

States can't do it by themselves; local jurisdictions can't do it by themselves; the Federal Government, we can't do it by ourselves.

FBI NATIONAL SECURITY BRANCH

Mr. RUPPERSBERGER. I want to get into another area: the national security branch, which is basically the FBI, going more into the intelligence business. We know the CIA does not have jurisdiction within the United States. Again, intelligence is sometimes the best defense against terrorism and other crimes.

I know that the FBI is standing up a national security branch. But the FBI for years, since the Elliott Ness days, has been arrest, convict, and investigate. When you are in intelligence, you are really collecting and analyzing. It is almost a different profession.

But it has taken a while for the FBI to stand up this national security branch. I think in the last year they have made a lot of progress. Part of it is to have that career path, kind of like in a fire department, where you have the suppression side, and you have the paramedic side.

Are you working on or are you aware of the national security branch? Where do you see it going right now? Because they do need financial support.

Attorney General HOLDER. The FBI, when you are dealing with gangs that are of national reach, MS–13, Crips, Bloods——

Mr. RUPPERSBERGER. I am also talking terrorism now, too; more so at the national security branch with the issue of terrorism.

Attorney General HOLDER. The FBI really has transformed itself from the agency that was there when I left government, say, in 2001. It is, I believe, in a way that it was not before, a national security agency in that it has as a primary mission the gathering of intelligence, the analysis of intelligence.

I go at 8:30 every morning to meet with the FBI Director, members of the CIA, members from other agencies, where we go over the past 24 hours' intelligence, and that is a primary role now.

Mr. RUPPERSBERGER. One other thing now is JTTF, the Joint Terrorism Task Force, which, I believe, and everyone takes credit for not having another attack. I think one of the major issues domestically is the Joint Terrorism Task Force, where the FBI coordinates it basically, but you have ICE, you have NSA, CIA, State and local not only collecting information, getting information from the CIA on bad guys that might be coming over into the United States,

and I think as they have grown, we have a lot more of JTTFs all over the country right now.

I would hope you would focus on that and make sure that they continue to get the funding that they need, because they have been very effective.

Here is another example of what I talked about in my first line of questioning of making sure that those collectors have the guidelines that are necessary, and to make sure that there are not mistakes made like the one with Napolitano or whatever, which I am sure was just a mistake, but these are things that really take our eye off the ball.

Attorney General HOLDER. I would agree with you that the Joint Terrorism Task Forces are particularly effective and will be supported.

Mr. RUPPERSBERGER. Thank you.

Mr. OBEY. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

OPERATION STREAMLINE

Mr. Attorney General, in my 5 minutes I wanted to bring to your attention on behalf of my colleagues in Texas that represent the southern border a very successful program that is a win-win that you may not be aware of. It is called Operation Streamline. And we do need your help, the support of the Department, in expanding it up and down the river. It is a truly successful program supported by the local community.

It has had tremendous results in bringing down the crime rate. In the Del Rio sector, crime rates have dropped by over 70 percent. They have had a 60 percent drop in the crime rate in the Laredo sector. The level of illegal crossings in Laredo and Del Rio are at the lowest level since they began to keep records, which is astonishing. And the Val Verde County jail, which contracts with the Marshal Service, actually has vacancies in it. That is a result, again, that the certainty of swift and sure punishment has led people to try to attempt to cross the border elsewhere.

And I am working with my colleagues, Ciro Rodriguez and Henry Cuellar, and Congressman Solomon Ortiz. We are working with him to extend this into the Rio Grande Valley. I wanted to be sure to bring it to your attention and work with whoever on your staff that you could designate to help us on this committee.

But we are working together in a bipartisan way to get this program extended up and down the entire southern border. It is essentially enforcing existing law, the existing criminal statute. It is up to 6 months in jail for crossing the border illegally. But obviously being prosecutorial discretion, law enforcement officers using their good judgment, some folks get a few days, some folks a few weeks, and then they are deported. The program is very, very successful.

There is also, Mr. Attorney General, wildly different levels of enforcement up and down the southern border. In Texas in Del Rio and Laredo, the arrest rate is over 90 percent, nearing 100 percent in some areas. In the Yuma sector they also have the Operation Streamline program in place. Again, the crime rate has plummeted. It is very successful, very popular locally.

Right next door in the Tucson, Arizona, sector is where I am going to really need your help. The local U.S. attorney who was there before, and she is no longer there, refuses to prosecute most of the cases. The Border Patrol has provided numbers, which we can share with your staff, that 99.6 percent of the people arrested by the Border Patrol in the Tucson sector are never prosecuted, and they are generally home in time for dinner, even if they are carrying a load of up to 500 pounds.

We asked the Border Patrol agents how long did it take the smugglers to get the memo, so to speak, that if you carried less than 500 pounds, you weren't going to be prosecuted? They said it was about 48 hours. These guys are no dummies.

And the judges are ready to help you in that sector. We have got the cooperation of the Border Patrol. I know the subcommittee is ready to help. It is a bipartisan effort. We are really going to need your help to focus the attention of whoever the new U.S. attorney is in that sector to make sure that the law is enforced there, obviously in accordance with what your local capacity needs are. But, in any event, I want to put it on your radar screen.

I look forward to working you, sir. And if you can designate someone on your staff to work with us. And I want to ask if you would support the expansion of that very successful program and work with us to help in a bipartisan way to see it is extended up and down the border.

Attorney General HOLDER. I have read a lot about Streamline, and I agree with you that it has had some pretty remarkable success. It is interesting that Streamline is different as you go from one part of the border to another; the same basic concept, but it really has different versions.

One of the concerns I have about it is that I don't think we have given enough attention to the downstream impact of Streamline in terms of detention capacity and court capacity to try the cases that it generates.

That doesn't mean it is not a good idea, it just means if we are really going to do it, we really ought to do it and support it so that we can make sure that it is as successful as it possibly can be.

Mr. CULBERSON. I have got a lot of information on this. I look forward to working with you.

INDIVIDUAL'S RIGHT TO BEAR ARMS

I have just got a couple of minutes left, but I want to tell you that there are vacancy—do I have 1 minute left?

Let me ask Mr. Holder, if I could, could you explain your own personal position, the position of the Department of Justice, on whether the D.C. V. Heller case was correctly decided, and do American citizens have an individual right to keep and bear arms under the second amendment?

Attorney General HOLDER. Under our system of laws, the Supreme Court has spoken, and they indicated that the second amendment does confer an individualized right. As a law enforcement officer, as a lawyer, I am bound to follow what the Supreme Court has said.

Mr. CULBERSON. So the Department will support that opinion and not seek to overturn it?

Attorney General HOLDER. I don't think there is a basis to try to overturn it. The Supreme Court has spoken.

Mr. CULBERSON. Thank you.

Mr. OBEY. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

TIAHRT AMENDMENT

Again, thank you for your time and your insights. I have three questions regarding the trace data restrictions. I applaud you and President Obama for the administration's pledge to repeal the Tiahrt amendment, which is on your urban policy agenda. You know that the Tiahrt amendment restricts the ability of local law enforcement to access important gun trace information and give police officers across the Nation the tools they need to solve gun crimes and fight illegal arms trade.

So one question is: Can you talk about the administration's commitment to repealing these restrictions, and will the administration's budget recommendations include reform of the Tiahrt amendment?

The second one is: The reason that was given not to repeal the amendment is that the restrictions protect the identities of Federal undercover law enforcements, and I believe that President Obama as a Senator, when he cosponsored with Senator Menendez, their bill had taken care of that, to allow the ATF to withhold specific trace information if it identifies any undercover law enforcement officer.

I was just curious whether you believe that these protections could deal with the hypothetical risks posed by removing these restrictions.

The third is the background check record destruction. The third key element of the Tiahrt amendment is a requirement that the FBI destroy firearms background check records within 24 hours of a completed transaction. I have a concern about that short timeline. And I believe that past administrations have maintained 180 days, reduced to about 90, and then the Tiahrt would say within 24 hours.

Director Mueller of the FBI had testified in 2007 that he believed that there should have been a more substantial period of time relative to these records being kept. Do you agree with the Director Mueller's comments, and what would be, in your opinion, a reasonable amount of time?

Attorney General HOLDER. Let me go through those. The administration is in the process of finalizing its position on the Tiahrt amendment, and we will be setting forth the administration's position when we submit the 2010 budget. I think it is our view, though, that we are concerned about the impact that the amendment has had on the ability to share information that is needed by State and local authorities.

The second question with regard to protecting informants, I think there are ways—if the administration decides to support repeal—that those concerns can be dealt with so that the information sharing does not put anybody at risk.

Then with regard to the question of records and the amount of time that they are kept, I would agree with the Director that the

period that we now have is a little short. I am not sure where that number ought to be set, but I think there ought to be some period of time that would give law enforcement an opportunity to do its job, while respecting the concerns that people might have as a result of the second amendment.

I don't think there is necessarily a tension there, just a question of figuring out where we set that number.

Mr. HONDA. These amendments and the destruction of records so quickly, is there a role, if any, played in the availability of these arms being traded over the border in our efforts to combat the drug cartels and the incidence of so many firearms? The consul general from Mexico in my area says that these high-powered arms are more relevant and more prevalent among the gangsters than among law enforcement. And I was wondering whether these kinds of information are necessary and play a part in the inability or the difficulty of tracing these arms.

Attorney General HOLDER. I think that if we had a longer period of time, we probably could be more effective in doing that tracing. That was a particular concern as I talked to Attorney General Mora. He indicated about 63 percent of the guns that they are getting in Mexico now are high-powered assault weapons, and that is going up pretty dramatically from where it was a few years before.

And so anything that we can do to help our Mexican counterparts in that regard I think is appropriate, although I think it also has potential benefit for law enforcement on our side of the border as well.

SALES OF ARMS AT GUN SHOWS

Mr. HONDA. A related question relative to gun shows and the sales of arms at gun shows, and the restrictions or the regulations we put behind the sales of firearms at gun shows. Are they different from the requirements that we have for retail sources who are selling arms in the stores? If they are the same, I would like to know that. If they are not, why not? And is there a role that your office can play in bringing some consistency so that it appears that these guns over the border appear to come from particular States that have certain rules that maybe could be more consistent?

Attorney General HOLDER. The rules are different with regard to the sale of weapons by federally licensed firearms dealers and at least some who can sell weapons at gun shows. I think that is a question that we in law enforcement, in conjunction with people in the advocacy community, need to talk about and see if there are ways in which we can reach a middle ground, something that I think will benefit those of us who are in law enforcement trying to do a job while being respectful of the second amendment rights that everybody in this Nation has.

It would seem to me that a dialog between many of us in law enforcement and those, for instance, at the NRA—I am just picking that organization—it might be a good thing to sit down and talk about these issues and see if there is a way in which we can resolve them, respecting the concerns that they have and the concerns that we have. Too often there is conversation and shouting

at each other without any kind of meaningful dialog. So I think that is at least a possibility.

Mr. OBEY. The gentleman's time has expired.

Mr. KENNEDY.

Mr. KENNEDY. Thank you.

Welcome, Mr. Attorney General. It is an honor to have you. Thank you for your service to our country.

REDUCING RECIDIVISM

Last year, the Urban Institute's Policy Center released a study on drug courts titled: To Treat Or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders.

I know you spoke earlier a little bit about expanding the budget for drug courts. What are your efforts going to be to ensure proper funding for our Nation's drug courts in fiscal 2010 in order to serve the estimated 1.2 million individuals identified in the study that the Urban Institute was citing from their model? And, in doing so, what do you think the Justice Department should be doing more in that effort to reduce recidivism in the context of the Second Chance Act and in the context of dealing with the mentally ill in our prisons, specifically, for example, making sure that they get their medications when they are about to be released so that they don't end up self-medicating when they get released?

As you know, they don't even get on Medicaid when they get released, and that forces many of them to go out and self-medicate. It is a vicious cycle.

I would encourage you to look at that piece of legislation. It was previously sponsored by Julia Carson out of Indianapolis. I am proud to sponsor it today. But I would love to get you to look at it.

DNA ANALYSIS

Mr. KENNEDY. In addition to that, one of the things that has always boggled my mind in terms of Justice is the fact that we have this backlog of rape kits. You know, we never get caught up in our DNA testing. You know, the American public watches CSI, you know, Miami, CSI New York, they watch all these things, and they assume that all of our departments and all of our DOJ is just—you know, we got the most modern laboratories, and we are just doing all these great tests on forensic evidence all the time. If they only knew, if they only knew how many crimes are going unsolved in this country simply because these DNA tests were sitting on the shelves, but for the lack of money to just do the test. And if we simply did the test, we could actually solve crimes, literally solve crimes, because we have done the DNA tests on all these other criminals who have come into our judicial system from around the country. Now we are requiring it for all these prisoners around the country in their prison systems. And if at the very least we could just match existing DNA samples with people that are already in prison for other crimes, you would bring closure to those victims. But what happens? We are letting them sit out there. A lot of this material is becoming degredated so it is not becoming useful for future testing.

How in the world can we justify the lack of funding for these rape kits? And how can we justify lack of funding for recidivism reduction in things like drug courts and paying for medication for the mentally ill, which we know is going to mean they are going to be less mentally ill coming back to prison?

Attorney General HOLDER. You raise a lot of good points. And actually, I was trying to find the numbers. They have now been shared with me. There is in this budget $150 million for DNA analysis and related programs. And you are right, there is a substantial amount of DNA evidence that really sits, for instance, in the FBI that has not been analyzed.

As a D.C. resident, at least one of the things I would point out is about a third of that comes from Washington, D.C., where we have been trying to get funding for our own forensic crime lab so that we would have an ability to do that and take that off the hands of the FBI. There is also $60 million in the budget for drug courts for next year, an expansion of a program that worked well here in Washington, D.C. I had personal experience with it when I was the U.S. attorney.

And you have touched on something that I think is a really troubling thing that I saw as a judge when I was here in D.C. I saw substantial numbers of people who had mental issues and who were in the criminal justice system, and they were clearly in the wrong place. There is no dispute that they had committed petty crimes, but they were clearly in the wrong place and not getting the kind of treatment that they needed.

And so I think we as a Nation have to understand that and look at who is in the jail for what reason, and expand the resources for those who have mental issues. It is something that, again, if we spend that money there, we will actually save money, I think, over the long haul, and use our limited criminal resources for people who truly deserve to be there.

JUVENILE DETENTION

Mr. KENNEDY. Well, if I could, I would also like to press you on the case of kids in jail. In Rhode Island we just put a 16-year-old into an adult corrections institution. Now, granted it was for a murder, but, I mean, even if he committed murder, there is no reason why anywhere in this country a child ought to be housed with an adult, period. I do not know, what is your opinion on that?

Attorney General HOLDER. Yes, there are instances, rare instances, where the prosecution of juveniles or people less than 18 years of age can be tried appropriately as adults. But in terms of how they are housed in the criminal justice system while they are awaiting trial or while they are serving sentences, they should be kept separate. It is simply not appropriate to mix those two populations.

Mr. KENNEDY. Well, maybe we could work together on trying to make sure that we make that stipulation to States; if they expect to receive juvenile justice dollars, that they are not mixing kids with adults. We know that those kids are going to come out psychologically damaged and worse offenders if they go in with adults at all.

And I might add, I do not know what we are doing in this country when we have 2,500 kids who have been handed down life without parole. That is an indictment on this country. These are kids that have not even reached their 18th birthday. And all neuroscientists will tell you their frontal lobe has not even been fully developed.

And we are saying, you know, three strikes and you are out. They are already out, and they have not even been able to get to first base in life. It is a pretty sad indictment on our country. I mean, I think those three strikes are on us as a society for not coming up with a better mousetrap.

And I guarantee you when I was up in the juvenile correction hall in my State, three-quarters of the kids, when I asked them if their parents were in jail at the time that they were there, they put their hands up.

This is not a mystery where these kids come from. And why we do not think that early intervention should not make more of a difference, and we are just waiting for a lot of these tragedies to take place, and we know how to do better, and yet we do not do it.

Do you think you are going to do more with the JPTA program and JABG and juvenile justice moneys that you have in your budget? Are you going to focus a lot on kids as Attorney General?

Attorney General HOLDER. Yes. It was one of the things that I focused on when I was Deputy Attorney General, and we focused on a program that we started called Children Exposed to Violence, and the impact that had on kids, and how, when they are victimized or when they see violence, they are much more likely to become victims of violence when they are adults, which I thought was very interesting, and then also much more likely to commit crimes.

And so, that is something that I really want to focus on. It is something I hope I will leave as a legacy as Attorney General, focusing on that prevention side——

Mr. KENNEDY. Great.

Attorney General HOLDER [continuing]. So that we keep kids out of the system.

Mr. KENNEDY. Great. Well, I wish you luck and look forward to working with you on that. Thank you, Mr. Attorney General.

Mr. CULBERSON. Mr. Chairman, 15 seconds just to add something to the record very quickly?

Mr. OBEY. Yeah.

Mr. CULBERSON. I just wonder if I could for the record, Mr. Chairman, just to reiterate some sworn testimony we got from the ATF Director, Mr. Attorney General, that over 99 percent of the licensed gun dealers in America are following the law and are doing their jobs.

Attorney General HOLDER. Oh, yeah.

Mr. CULBERSON. Thank you. I want to make sure we get that for the record, because it is important.

Attorney General HOLDER. I would not doubt that statistic at all. The focus needs to be on that very, very, very small number of dealers who are not following the law. But I think you are absolutely right.

Mr. CULBERSON. Thank you.

Mr. OBEY. Mr. Attorney General, I know we need to get you out of here fairly soon. I have got to ask you a few basic questions, at least a few, which will actually be related to the budget.

Attorney General HOLDER. Uh-oh.

WARRANTLESS WIRETAPS

Mr. OBEY. But first let me ask you about warrantless wiretapping. Last week the New York Times revealed some significant problems with the NSA's warrantless wiretapping program, including the charge that NSA illegally collected the domestic communications of Americans. Most of those problems were identified during a periodic review of the program by your Department.

Some say these revelations are a sign that the system is broken because significant violations occurred. Others say that they are a sign the system is working because the violations were identified.

How often does DOJ review the workings of these warrantless wiretapping programs? If the periodic review identified problems this severe, do you think the program would benefit from continuous DOJ oversight?

Let me just pop the other questions at you on this subject also. The Times article says that part of the problem is NSA's inability to distinguish between domestic communications and international messages passed through American communications gateways. When the Congress passed the legislation authorizing NSA's programs, we did so with the understanding that they had those technical abilities. Are revisions necessary to the law to include additional safeguards now that it appears NSA has trouble distinguishing between these two types of messages?

I have two other questions on this point that I will submit to you for the record.

Attorney General HOLDER. The Justice Department and the NSA were conducting, I think, routine oversight of the activities that you were describing and made the determination that there were issues, there were problems. Those issues were brought to the attention of the FISA court. Changes were made after interacting with the judges, and reauthorization to use those techniques was not sought until the judges were satisfied that the proposed changes dealt with the problem.

But there are periodic reviews that are done by Justice and by NSA that I could perhaps share with you by letter, or in a different forum I could give you a better sense of exactly the time period in which those reviews occur. But I actually think this is an indication of where the system worked. I mean, clearly it was a problem, but it was something that was discovered, was reported, and was modified, and the courts are now monitoring to make sure that the changes that have been put in place are, in fact, being carried out.

With regard to the question about NSA having trouble making the distinction between foreign and domestic transmissions, that is one that I will have to get back to you on, Congressman, Mr. Chairman. I do not think I am steeped enough in that to speak intelligently about it.

FUNDING EARMARKS

Mr. OBEY. All right. Earmarks. As you know, there have been occasional discussions in this town about the advisability of congressional earmarks. Congress is routinely criticized for earmarking, even though congressionally directed projects represent only a fraction of the funding under the executive branch's discretion.

The Congress has taken several steps in recent years to ensure transparency and accountability in our earmarking process, but it is not clear that the executive branch has had the same degree of transparency in its process for allocating funding. This committee directed the Office of Inspector General to review the award process for fiscal 2007 juvenile justice grants based upon allegations that award decisions may have circumvented the peer review process. In the omnibus spending bill enacted in March, the committee also directed the Department to report to this committee within 30 days on the results of the Department's internal review of that award process. That deadline has now passed; we do not have the report yet.

Questions: When can the committee expect to receive the report? In general, what is the Department's policy on the role of peer review in the award of grants? Most specifically, under what circumstances might the Department award a grant to an applicant who is ranked lower according to peer review than an applicant who does not receive an award? What level of departmental authority is entitled to overrule a peer review decision? For cases in which peer review is overruled, what kind of disclosure is required to ensure that the decision is transparent?

Attorney General HOLDER. Well, the way in which I would view this is I would advise the President and develop the Department's budget based upon the national priorities that we have identified without falling into the earmark way of doing things; to rely on the experts that we have in the Justice Department to come up with identifying programs that are worthy of funding, worthy of support. We have a lot of good people in the Office of Justice Programs and the various components that make up OJP, and I would rely on them so that we came up with fair competition and good decisions about what programs the Department would support.

Now, with regard to the request that was made of the inspector general, of that I am not aware. I will relay to him the concern that you have expressed about the timeliness of that report. But the IG acts pretty independently of the Department. But I will relay to him the concern that you had.

Mr. OBEY. No, it is the report from your agency that is overdue.

Attorney General HOLDER. From us?

Mr. OBEY. Yes.

Attorney General HOLDER. All right. Well, in that case I will look into it and see what is going on.

[The information follows:]

Overdue reports on awarding grants.

Answer:

The OJJDP Report to Congress regarding the awarding of grants is in the final stages of clearance within the Department and should be transmitted to the Committee by the end of May.

Mr. OBEY. My point is simply that there are programs for which the executive branch establishes criteria for funding, and then there seem to be exceptions that are made for those criteria. There may be perfectly legitimate reasons why there are exceptions. But if one branch of government is going to be held to a formulaic standard, it seems to me that we ought to ask the other branch of government to do the same thing, which is why I ask the question.

Mr. WOLF. Following up on the Chairman's issue, about 6 or 7 years ago we had a problem in northern Virginia with violent gangs. They took Brenda Paz, who was in the witness protection program, down to the Shenandoah Valley and killed her, MS-13. The Justice Department person said—and I put an earmark in to deal with the gang issue in this region. And if you look at the reports, we are doing better than any other region. And yet the Justice Department career person said there is no gang problem in northern Virginia. And it just so happened that that person lived in northern Virginia.

So I think what the Chairman may very well be saying, I think sometimes you can see things from this side, and maybe the Justice Department may not be always right in its decisions that it is making. Had we not done this, crime would have been rampant much more so. And on this whole issue of it, as the gentleman from Maryland was talking about, we have in this region now a crime antigang problem with FBI, DEA, ATF, Marshal Service, and every local law enforcement, Arlington, Fairfax, Loudoun, and yet the Justice Department person, along the lines what the Chairman says, we are not going to do that because they said it was not a problem. And we put an earmark in there, and I think it has made a big difference and saved a lot of lives.

Attorney General HOLDER. I think we have to come up with funding schemes, resources, attention to problems that are real. And I do not know who you talked to, but, I mean, obviously there is a gang problem here that we have to deal with.

I remember Jim Comey, when he was the U.S. Attorney in Richmond, came up with an idea about something he called Project Exile, and we found ways in which we funded that. I am not sure if that was an earmark or not, but it was an effective program that ultimately was replicated around the country.

So I think we want to stay away from earmarks, but we want, to the extent we can, to identify programs that work, identify problems that exist and programs that work, and then, working together, fund them and support them.

Mr. OBEY. Mr. Attorney General, I know you have to leave, so let me simply say I will submit for the record a series of questions, some of them involving the question of the FBI's growth policy, others involving the question of staffing levels at prisons, and especially the committee's concern about whether or not we are sufficiently coordinating between Justice and Homeland Security in terms of budget growth, because some of those things intertwine.

COMMENT ON TORTURE

Mr. OBEY. Then I want to simply make one last comment on torture. I am not quite sure how to say this, but let me say we have already had prosecution of people for interrogation. When people

ask whether or not we should have prosecutions, we have already had it. It has just been for some low-level grunts at Abu Ghraib. With a couple exceptions, we have not had any more.

What bothers me, in addition to the fact that it occurred at all, is the fact that I have no question that Congress was lied to. I absolutely know that I was lied to in several closed-door meetings when I asked specific questions about torture from a variety of agencies. In terms of whether something is defined as torture or not, the Washington Post's editorial 2 days ago indicated that 1 person was waterboarded 183 times in 1 month.

[Disturbance in the hearing room.]

Mr. OBEY. With all due respect, this is a congressional committee hearing, and I will clear the room if there are any other comments. No editorializing.

I am told that another person was waterboarded 83 times in 1 month. Now, if that is not torture, then I am Alice in Wonderland. I can recall after the scandals in Chile, a good many of us in Congress wanted to have the full story told about what happened in that government. Or Egypt, where we have criticized their lack of human rights and the way they deal with prisoners as well as their own political opposition.

So it seems to me that we have complained many times about torture when it is engaged in by other countries. I have to confess that I have been very reluctant to support the idea of any significant widespread prosecution of people, even though I vehemently disagree with the idea of torture, because I do not believe in politicizing prosecutorial judgments. So I instinctively lean over backwards in preferring that we not have a wholesale sweep of past conduct.

But having said that, I have to say that I get increasingly disturbed when I watch television, when I watch C-SPAN, as I have a couple mornings this week, and I see people on the tube, former government officials, enthusiastically defending what they did and playing word games with the national television audience.

So it seems to me that the important question is not whether there is widespread prosecution of people who either carried out or originated instructions or legal opinions. It seems to me the important question is whether we are going to strike the right balance between pursuing personal wrongdoing and making sure that the country has the correct narrative about what did happen so that we understand who did what, what did constitute overstepping of the line, because, with this news being out, I think we have an obligation to say to the world what we think goes beyond the line and what does not.

So you have got a tough job to do, as do others in the administration, in determining how to proceed with this issue. But it is important that we get it right. I hope that in the end we can produce a balanced, disciplined approach to this problem. I do not want things swept under the rug. Having come from the State of Joe McCarthy, I also do not want to see people in their zeal to go after wrongdoing wind up catching people in the net who really do not belong there. It requires a great deal of discretion. I have a lot of confidence in your ability to help find that.

Attorney General HOLDER. Thank you.

Mr. OBEY. Mr. Wolf, I do not know if you have any other comments.

With that, thank you very much for coming. Because we have not yet received the President's complete budget for fiscal 2010, the hearing record will remain open for 2 weeks following the budget submission so that Members have the opportunity to provide questions for the record related to the budget's details.

Mr. OBEY. Thanks for coming.

Attorney General HOLDER. Thank you.

Commerce, Justice, Science, And Related Agencies

HOUSE Appropriations for 2010

Department of Justice (The Attorney General)

Thursday, April 23, 2009

QUESTIONS SUBMITTED BY MR. MOLLOHAN

DEPENDENCE ON SUPPLEMENTAL FUNDING

QUESTION: How would you describe the success of your GWOT supplemental-funded programs so far?

ANSWER

The FY 2007 and FY 2008supplementals have been instrumental in supporting DEA's operations in Afghanistan including personnel increases, aviation support, narco-terrorism investigations coordinated by the Special Operations Division, and financial investigations targeting illicit activity in the Middle East.

The FY 2008 GWOT allowed DEA to expand its presence in Afghanistan by allocating55 positions, including 43 Special Agents.

The GWOT supplementals have also provided DEA with a new helicopter and aviation operations and maintenance funding. Haji Juma Khan Mohammadhasni (HJK). HJK, an Afghan national with close ties to the Taliban, was arrested on October 23, 2008, in Southeast Asia based on an international arrest warrant. HJK was expelled from Southeast Asia and placed into the custody of DEA Special Agents who transported him to the United States. On October 24, 2008, HJK had an initial appearance in the Southern District of New York. Since at least 1999, HJK led an international opium, morphine, and heroin trafficking organization (the "Khan Organization") based principally in the Helmand and Kandahar provinces of southern Afghanistan. The Khan Organization arranged to sell morphine base, an opium derivative that can be processed into heroin, in quantities as large as 40 tons – enough to supply the entire U.S. heroin market for more than two years. According to the indictment, the Khan Organization also operated labs in Afghanistan that produced refined heroin and sold the drug in quantities of as much as 100 kilograms, or 220 pounds, and more. If convicted, HJK faces a maximum sentence of life and a mandatory minimum sentence of 20 years in prison.

Finally, GWOT funds have been used for financial investigations training in Kabul and Dubai related to bulk currency smuggling and Hawalas

ATF's GWOT Supplemental-funded programs have been instrumental in providing ATF technical expertise in firearms and explosives to both the Department of Defense

(DOD) and the Department of State in Iraq. GWOT supplemental funding supports ATF's explosives enforcement officers (EEO) participation in DOD's Combined Explosives Exploitation Cell (CEXC). To date, ATF's EEOs have provided over 2,500 chemical analysis reports to field commanders, who in turn use this information in intelligence and operational planning. ATF has supported the field-level evidence exploitation efforts of the CEXC at the request of DOD since March 2005.

In addition, supplemental funding provides the resources necessary for ATF personnel to serve on the staff of the US Embassy in Baghdad, providing embassy staff with expertise on firearms and explosives. ATF personnel also provide technical assistance in the field; post-blast analysis; briefings to high-level military planners and commanders on explosive-related trends; and testimony in Iraqi courts on insurgent-related matters concerning the use of improvised explosive devices (IEDs). Requests by the Iraqi Ministry of Justice for ATF experts to testify have increased; to date, ATF personnel have testified approximately 40 times.

Lastly, supplemental funding supports the Terrorist Explosive Device Analytical Center (TEDAC) in Quantico. Established in 2007, TEDAC is a multi-agency organization, led by the Federal Bureau of Investigation and ATF that provides forensic analysis of IED components received primarily from Iraq and Afghanistan in support of ongoing military operations and investigations. The TEDAC Technical Exploitation Group has produced more than 1,129 Technical Reports on IEDs that are used extensively by members of the military, the intelligence community, and U.S. and foreign law enforcement agencies.

DEPENDENCE ON SUPPLEMENTAL FUNDING

QUESTION: Do you have a strategy for decreasing DOJ's long-term dependence on GWOT supplemental funding? How will you continue to support your supp-funded activities once the war supplemental is phased out?

ANSWER

Starting with FY 2010, the budgets produced by the President will show the true impact of the Administration's policies on spending and will minimize the need for future-year supplementals by including funding for recurring activities in base budgets. In FY 2009, supplemental funding is still required because certain counterterrorism-related activities were not built into the Department's FY 2009 budget request by the previous Administration. In addition to funding requested in the FY 2009 supplemental, other ongoing activities that were previously funded in supplementals for the Bureau of Prisons, Criminal Division, Drug Enforcement Administration, Federal Bureau of Investigation, and the Office of the Inspector General are addressed in the Department's FY 2010 budget request.

DEPENDENCE ON SUPPLEMENTAL FUNDING

QUESTION: The 2009 war supplemental proposes to consolidate non-military Afghanistan funding within the State Department, which will distribute funds to other agencies operating in the country. What is the rationale behind this change in funding

strategies? Are you comfortable with another agency holding the purse strings for your Afghanistan programs?

ANSWER

My understanding is that the consolidation of this funding within the State Department request is intended to ensure that all federal entities in Afghanistan are working in tandem and in the best interest of the United States and the Government of Afghanistan and preserves the necessary flexibility of the government to address emerging threats and other emergencies. This approach will also allow the State Department to request a level of interagency staffing in Afghanistan that it feels it can reasonably support and is appropriate given the tasks at hand.

The transfer authority proposed in the supplemental for the State Department, and included in the Senate passed version of the bill, should minimize the logistical burden of providing participating agencies funding (compared to moving the funds via reimbursable agreements, for example). However, this funding structure should not be interpreted to mean that DOJ's role in Afghanistan is limited to supporting the State Department mission. In the absence of State Department funding, DOJ components, such as DEA and the FBI, would still have operational reasons for staff to be in country.

RATIONALIZING THE GROWTH AT FBI

QUESTION: The FBI's budget has more than doubled since 2001, and they do not appear to believe that their rate of growth will slow any time soon. While we want to ensure that we are meeting the FBI's national security and criminal enforcement needs, we also want to ensure that the Bureau has appropriately managed the funds it has received so far and has a clear, logical plan for its needs in the future. Do you feel there is sufficient accountability at the FBI for showing that the massive increases they have received over the past eight years have been put to good use? How would you define what we've received for our money so far?

ANSWER

The Department and FBI have undertaken significant efforts over the past several years to ensure that both base funding and program enhancements are tied to a common end goal, and that they are properly aligned with the highest threats faced by the country. Additionally, as the Department develops its FY 2011 and outyear budgets, I will work to ensure funding is properly aligned to address both the highest priority national security and law enforcement programs. The FBI has experienced unprecedented growth since 2001. I believe these increases were, and continue to be, needed to combat the threat of global terrorism and other threats to our national security. With the additional funding provided to the Department, the FBI has been able to transform the Bureau into a critical member of the Intelligence Community,; enhance response capability to the ever increasing number of cyber attacks against government information systems and national infrastructure; expand forensic and investigative

teams to respond to Weapons of Mass Destruction; and develop new and improved information sharing systems that provide for the rapid exchange of intelligence and other information, in support of, and addition to, many other enhanced counterterrorism and national security capabilities.

There has also been growth in the FBI's traditional law enforcement programs. Most of the 300 violations of federal law that the FBI can handle are of a traditional criminal nature. After the attacks on 9/11/01 it was necessary for the FBI to shift resources from criminal matters to its national security mission. In just the first year after 9/11, over 1,000 criminal Special Agents were moved to counter-terrorism matters. Additionally, requirements to investigate new violations (e.g., Title 18 United States Code Section 2257 related to Record Keeping of pornographic activity), as well as the emergence of significant new criminal arenas (such as the collapse of ENRON and the current sub-prime mortgage crisis), change the workload of the remaining staff. The effect of these events is a reprioritization by the FBI to address traditional criminal programs where we have the highest impact. As we plan future budgets, I will work to ensure our existing capabilities can address the nation's highest threats, and request additional resources if there are any gaps. To ensure a high level of fiscal responsibility, the FBI has instituted numerous internal controls to plan and manage growth in its programs. These include:

1. Strategic Management System (SMS) - The SMS is a Bureau-wide initiative led by the Director and facilitated by the Resource Planning Office (RPO) to implement the FBI's strategic plan and unify strategic planning throughout the FBI. It uses a "balanced scorecard" approach to align Divisions' resources and internal operations to the FBI's Top 10 Priorities and to map how the priorities will be achieved. Budget justifications and resource allocation decisions made by Bureau officials will be based on the SMS. The SMS has been used during FY 2009 to hold Divisions accountable for realigning base funding to ensure their highest priority programs are fully funded.

2. Five Year Strategy - in a fundamental change in resource planning, the FBI has identified end-state capabilities to address identified or expected threats. These end-states are based on progress towards ameliorating threats, while recognizing that threats can change or evolve, and that mission responsibilities can also change.

3. Internal Resource Reviews - In FY 2008, the Finance Division, working in conjunction with the Resource Planning Office, significantly expanded the scope of its internal resource review process with the 26 Divisions at FBI Headquarters. This "Spend Plan" process allows the Finance Division and Executive Management teams from each Division to periodically evaluate progress in executing annual financial plans. The goal of the Spend Plan process is to ensure the maximum use of Bureau resources in support of strategic objectives, more timely acquisitions, better control over inventory, and improved financial management. The results of the Spend Plan reviews demonstrate that the FBI has well-defined programs, is allocating and requesting additional resources to the highest priority programs, and has effective financial management practices. The Spend Plan reviews emphasize focused use of resources to achieve Strategy Management System (SMS) objectives. This aspect of the review supports the Director's objective of having "strategy drive budget," a much more effective approach than "budget drives strategy." Topics considered in Spend Plan reviews include prioritization of program requirements, identification and

resolution of base shortfalls and critical gaps, and the impact on program operations of not receiving requested budget enhancements or being subjected to across-the-board reductions.

4. Base Funding Reviews - the FBI recognizes that in order to quantify resource enhancements needed to reach an end-state capability, there must be an accurate understanding of base level funding associated with each of its programs. Through the use of the Spend Plan review process, in coordination with the National Academy of Public Administration, the FBI is able to track financial data by programmatic activity and by Decision Unit level. Tracking funding specifically to a program will allow the FBI to identify funding gaps based on threats and plan for enhancement requests to fulfill mission critical end-state requirements.

5. "Transparency" in Financial Execution - in an effort to ensure transparency in financial execution, the Finance Division began this year regular reporting to the Department of Justice (DOJ) and the Office of Management and Budget (OMB) on how funding is allocated and executed within the FBI. This process will be further refined and be much more accurate as the FBI transitions to the new United Financial Management System (UFMS), which is currently under development.

[1]Guiding the development of the FBI's budget strategy are six enterprise-wide and interdependent capabilities that the FBI needs to effectively perform its national security, criminal investigative, and criminal justice services missions. These end-state capabilities are:

• *Domain and Operations*: A mature enterprise capability for employing intelligence and analysis to identify and understand the national security threats and crime problems challenging America, and developing and executing operational strategies to counter these threats and crime problems;

• *Surveillance*: A surveillance (physical, electronic, human source) and operational technology capability to meet operational requirements;

• *Partnerships*: An established and productive network of partnerships with local, state, federal, and international law enforcement and criminal justice agencies;

• *Leveraging Technology*: An enhanced capability for providing forensic, operational technology, identification, biometric, training, and criminal justice services to the FBI workforce and our local, state, federal, and international partners;

• *Workforce*: A professional workforce that possesses the critical skills and competencies (investigative, technical, analytical, language, supervisory, and managerial), experiences, and training required to perform our mission; and

• *Infrastructure*: A safe and appropriate work environment and information technology to facilitate the performance of the FBI's mission.

RATIONALIZING THE GROWTH AT FBI

QUESTION: Do you have a clear understanding of the FBI's growth policy? In other words, do you clearly understand the final capability that the FBI is trying to build toward and how they propose to achieve that capability within a given timeframe?

ANSWER

Since 2001, the FBI has focused on expanding its national security mission – as terrorism remains our top priority. At the same time, the FBI is able to adapt to a dynamic threat environment. For example, we have had to re-prioritize our criminal programs to address the current financial crisis. In Fiscal Year 2007, we had 120 agents investigating mortgage fraud cases. In Fiscal Year 2008, that number increased to 180 agents, and currently over 260 agents are assigned to mortgage fraud and related cases.

The FBI's capabilities depend upon squaring priorities within existing resources. We currently have roughly a 50/50 split in resources between national security and criminal programs. To make the best use of these resources, we will continue to focus on those areas where we bring something unique to the table, and to target those criminal threats against which we will have the most substantial and lasting impact.

RATIONALIZING THE GROWTH AT FBI

QUESTION: If massive growth remains necessary at the FBI for the foreseeable future, how do you propose to accommodate that growth without shortchanging other critical functions at the Department? Are you at all concerned that the growth of the FBI is crowding out the rest of DOJ?

ANSWER

As explained above, the FBI adapts to meet the full range of missions in light of its criminal and national security responsibilities. To meet these challenges going forward, the FBI will identify its resource requirements by regularly assessing threats facing the nation and the FBI's capabilities to address them.

COORDINATION WITH THE DEPARTMENT OF HOMELAND SECURITY

QUESTION: The previous administration routinely proposed budgets that doubled or tripled DHS enforcement capabilities without making the necessary associated investments in detention, prosecution and adjudication resources at DOJ. As a result, DOJ has struggled to keep pace with the workload of criminal cases and immigration review cases being generated by DHS, and DOJ has been forced to put its own priority initiatives on the back burner in order to accommodate the DHS workload. DHS has proposed an increase of $7.4 billion, or 18%, for fiscal year 2010. DOJ has proposed an

increase of only $1 billion, or 4%, and much of that increase is intended for counterterrorism programs. Are we repeating the prior administration's mistakes by underfunding DOJ relative to the border security investments being made in DHS?

ANSWER

Because of the imbalance in resources provided to address the criminal and immigration issues along the Southwest border, in FY 2009 the Congress provided $1 million to fund a National Academy of Sciences study to develop a methodology that captures the fiscal linkages between DHS activities and DOJ costs, and then leverages the linkages to estimate DOJ's immigration-related costs. This study is underway.

In addition, the Secretary of the Department of Homeland Security and I have initiated greater cooperation between the two agencies to help ensure that policy and funding decisions made by one agency consider the impact on the other. The Department of Justice's proposed increase of $231.6 million, including 632 agents and 110 attorneys for immigration enforcement and border security will provide for our projected needs in FY 2010. This request represents an increase of nearly 18 percent over last year's funding and will follow through on the President's commitment to provide more funding, technology, and manpower to secure the Southwest Border and help Mexico battle the drug cartels. While, the FY 2010 Budget cannot make up in one year for the downstream affect of DHS increases, we do have a plan to move forward to improve our budget planning and coordination. Secretary Napolitano and I confer regularly about operational and budget matters. Our two Departments will continue to cooperate in the formulation of the FY 2011 budget request.

COORDINATION WITH THE DEPARTMENT OF HOMELAND SECURITY

QUESTION: What specific steps did you take during the 2010 budget development process to ensure that your request was appropriately scaled to the DHS request? Did you get to review and comment on DHS's enforcement proposals prior to their being finalized?

ANSWER

As explained in the previous response, Secretary Napolitano and I are both committed to a strong partnership between the Departments of Justice and Homeland Security. We meet and speak regularly to ensure coordination on a wide variety of enforcement and operational issues. Earlier this year, we jointly informed the Director of the Office of Management and Budget of the Department of Justice's funding needs related to the DHS request. In addition, our component organizations, such as the U.S. Marshals Service and the Executive Office for Immigration Review, work closely with DHS components in the field. Although the Department did not review drafts of the DHS' enforcement proposals, the Department's FY 2010 request was formulated with a clear understanding of our needs in relation to DHS initiatives.

As stated in the previous response, DOJ and DHS will continue to cooperate in the formulation of the FY 2011 budget request, as well as outyear requirements.

COORDINATION WITH THE DEPARTMENT OF HOMELAND SECURITY

QUESTION: Will your proposed immigration increases not only keep pace with proposed DHS increases for 2010 but also allow you to backfill some of your unfunded needs from prior years?

ANSWER

The Department of Justice's proposed increases for immigration enforcement and border security will provide for our projected needs in FY 2010. This will include funding for needs that were not funded in prior years. The FY 2010 Budget cannot make up in one year for the downstream affect of DHS increases but we have a plan to move forward to improve our budget planning and coordination.

COORDINATION WITH THE DEPARTMENT OF HOMELAND SECURITY

QUESTION: Given that the newly announced "border czar" is a DHS official, do you believe he will help bring a more comprehensive view of border security to the government?

ANSWER

The Department's Southwest Border Strategy goes beyond border interdiction to directly attack the powerful transnational criminal drug trafficking organizations that are the root cause of the corruption and violence that currently pose a national security threat to Mexico and an organized crime threat to the United States. The Department utilizes multi-agency, intelligence-based, prosecutor-led task forces to focus comprehensive investigations and prosecutions of all aspects of the illegal activity of these criminal organizations – not only drug trafficking, but also money laundering, bulk cash smuggling, human smuggling, firearms trafficking, corruption of public officials, extortion, kidnapping, homicide, and other violent crimes that support their illegal activity.

Based on decades of experience against organized criminal organizations like the Mafia, the Department believes that only through disrupting and dismantling these drug cartels, identifying and incarcerating their leaders and facilitators, and taking away their profits and assets that law enforcement can have the greatest effect on the Southwest Border threat. The Department's multi-agency, intelligence-based prosecution approach has resulted in recent major blows against the Mexican cartels such as Operation Xcellerator and Project Reckoning.

The Department's strategy against the Mexican cartels is lead by the Deputy Attorney General. All of the Department of Justice's drug enforcement agencies – DEA, FBI, ATF, and USMS – participate in the Department's cartel strategy utilizing the multi-agency, intelligence-based, prosecutor-led task force, along with attorneys from the 94 United States Attorney's Offices and the Department's Criminal Division, and drug enforcement agencies from DHS (CBP, ICE, and USCG), the Department of the Treasury (IRS-Criminal Investigations Division), and our hundreds of partners in state, local, tribal, and international law enforcement agencies. I have the highest regard for Mr. Bersin, the Assistant Secretary for International Affairs and Special Representative for Border Affairs at DHS, and the Department looks forward to continue to work closely with DHS law enforcement components on our overall strategic approach to the Mexican cartels.

COORDINATION WITH THE DEPARTMENT OF HOMELAND SECURITY

QUESTION: Given DOJ's responsibilities related to border violence, through ATF DEA, and the US Attorneys, is there an official at DOJ who will be working on a peer level with DHS's border czar?

ANSWER

As discussed in the previous response, the Deputy Attorney General directs the overall Departmental strategy against the Mexican cartels. In addition, the Assistant Attorney General for the Criminal Division will be coordinating extensively with Alan Bersin in his role as DHS Assistant Secretary for International Affairs and Special Representative for Border Affairs.

US-MEXICO BORDER VIOLENCE

QUESTION: The border violence initiatives announced by the Department so far seem to focus on providing additional resources to existing DOJ programs targeting firearms and narcotics trafficking. Does this reflect a belief that our current strategy, if appropriately resourced, is sufficient to solve this problem? Or do we also need to consider new and innovative approaches?

ANSWER

The Administration is committed to ensuring that our borders are secure and we are doing all we can to reduce illegal flows in both directions against the border. As discussed above, The Department of Justice's Mexican cartel strategy is focused on dismantling the large criminal organizations responsible for narcotics and firearms trafficking and bulk cash smuggling. As part of that overall strategy, the Department's law enforcement components are integrally involved in the Administration's efforts to combat violence, stop the flow of illegal weapons and drug trafficking, bring dangerous

criminals to justice, and share critical information, provide technical assistance and training to our law enforcement partners on both sides of the border. The initiative brings together the formidable law enforcement and prosecutorial components of the Department, including DEA, ATF, the U.S. Marshals, the Organized Crime and Drug Enforcement Task Forces, the U.S. Attorneys, the Criminal and Civil Divisions, and the Executive Office for Immigration Review, to help secure the border and restore the rule of law to the region. The FY 2010 Budget request for the Department's Southwest Border effort, which includes an enhancement of $231.6 million, represents an increase of nearly 18 percent over FY 2009 funding and will follow through on the President's commitment to provide more funding, technology, and manpower to secure the Southwest Border and help Mexico battle the drug cartels. While the Department believes the Administration's consolidated approach, coordinated among federal agencies, lays solid bedrock that we are prepared to build upon and use as a platform to address the fluid and multi-faceted dynamic on the border, we would welcome and consider other new and innovative approaches.

US-MEXICO BORDER VIOLENCE

QUESTION: President Obama has stated that he wants the Senate to ratify a Clinton-era treaty on the import, export and transfer of firearms. If the Senate were to ratify it, what additional responsibilities and costs would it impose on the Department and what new tools would it provide to help the Department address illegal firearms trafficking?

ANSWER

The Inter-American Convention on the Illicit Manufacturing of and Trafficking in Firearms, Explosives, and Other Related Materials was signed by the United States in 1997 and was transmitted to the Senate for its advice and consent to ratification in 1998. The Convention remains pending before the Senate Committee on Foreign Relations. As the President indicated in his speech to the Summit of the Americas two weeks ago, the Administration strongly supports the Convention. The Convention was modeled on U.S. laws and regulations, and will make the hemisphere safer by helping to shut down the illicit transnational arms market that fuels the violence associated with drug trafficking, terrorism and international organized crime.

Because the treaty was modeled on United States law and regulations, the treaty itself will not impose any direct costs on the Department. Rather, the treaty will establish a hemispheric standard (the U.S. standard) for marking firearms and create regulatory controls on the import and export of these commodities. The treaty would provide United States law enforcement agencies with additional tools to combat the illicit international trafficking of firearms, ammunition and explosives, for example, by requiring cooperation in tracing illicit firearms. To the extent that the treaty provides U.S. law enforcement additional investigative leads and tracing requests, requests for resources to follow up such leads may increase.

US-MEXICO BORDER VIOLENCE

QUESTION: How will the Administration's recent decision to list additional Mexican cartels as drug "kingpins" enhance your ability to disrupt and dismantle their operations?

ANSWER

Among the objectives of the Foreign Narcotics Kingpin Designation Act (Kingpin Act) is the denial of access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals. The Kingpin Act allows sanctions to be applied not just to individuals, but to entire organizations and to the individuals within those organizations. This allows U.S. authorities to target the entire cartel network including: key financial associates, money launderers, front companies, and other financial assets. Based upon the Kingpin designation, any interest of a targeted person or entity that comes within the control of a U.S. person must be blocked. Also, no U.S. person may transact in any way with blocked property and persons holding blocked property must report it to the U.S. Treasury, Office of Foreign Assets Control (OFAC). Examples of blocked property include: cars, houses, and bank accounts. Criminal penalties for violating the Kingpin Act are up to 30 years in prison and up to a $5,000,000 fine for corporate officers; up to a $10,000,000 fine for corporations; and up to 10 years in prison for individuals. Although the Kingpin Act, in and of itself, may not disrupt and/or dismantle the listed Mexican cartels, the enhancement created by the designation can be a powerful additional tool in the fight against the cartels.

US-MEXICO BORDER VIOLENCE

QUESTION: We have heard stories of jurisdictional conflicts between DOJ and DHS on border violence issues, particularly between ICE and ATF in the area of firearms trafficking and ICE and DEA in the area of narcotics trafficking. Do you agree that these problems exist? Can we resolve these issues through better planning and coordination, or are policy changes necessary to better clarify the jurisdictional lines between these organizations?

ANSWER

As discussed above, Secretary Napolitano and I are both personally committed to a strong partnership between the Departments of Justice and Homeland Security. We understand that need for close collaboration and seamless cooperation between our Departments. Our respective departments routinely work together effectively in areas of joint concern, but given the importance of cooperation and coordination between our departments, there is always room for improvement. To that end, one of my first actions after becoming Attorney General was to meet with Secretary Napolitano and discuss how we might improve cooperation and coordination between our departments, and together we have established a high-level working group of agency senior staff to address these issues. Moreover, we continue to meet regularly to confer on operational

and budget issues, as does our senior staff. We are confident that we can work together to further improve coordination between our departments.

In point of fact, DOJ and DHS law enforcement agencies have worked successfully together for decades on investigations and prosecutions involving drug trafficking, money laundering, firearms trafficking, and border violence issues. ICE's predecessor U.S. Customs (formerly in the Treasury Department) and the U.S. Coast Guard (formerly in the Department of Transportation) have both been members of the Organized Crime Drug Enforcement Task Forces (OCDETF) since OCDETF's inception in 1982, along with the Treasury Department's IRS-Criminal Investigations Division, and DOJ's DEA, FBI, ATF, USMS, and prosecutors in the 94 U.S. Attorney's Offices and Criminal Division.

Every day agents in these OCDETF task forces across the country and along the Southwest Border continue to work together to disrupt and dismantle the most significant drug trafficking and money laundering cartels that operate along the Southwest Border and elsewhere. In fact, ICE participates in approximately 44% of all currently active OCDETF cases. ICE and USCG are particularly valuable members of OCDETF's maritime Co-located Strike Forces, which have so far interdicted more than 850 tons of cocaine in the maritime transit zones between the sources in Colombia, the transporters in Mexico, and the end users in the United States. DOJ will continue to emphasize planning, coordination, and this type of multi-agency approach to ensure the most effective working relationships that will minimize jurisdictional conflicts.

A March 2009 Government Accountability Office (GAO) report entitled, ***Drug Control: Better Coordination with the Department of Homeland Security and an Updated Accountability Framework Can Enhance DEA's Efforts to Meet Post-9/11 Responsibilities*** , highlights DEA's partnerships with DOJ components, such as the FBI, USMS, and ATF since 9/ 11. The report also highlights DEA's coordination with State and local law enforcement, as well as its coordination of international drug control efforts with the Departments of State and Defense and host-country governments in foreign locations.

However, this report includes recommendations to improve coordination between DEA and the Department of Homeland Security (DHS) components U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). The GAO report recommends that DOJ and DHS develop a new memorandum of understanding (MOU) addressing Title 21 cross-designation and information sharing between DEA and ICE, including the contribution of relevant drug-related information from ICE to the Special Operations Division (SOD) and the OCDETF Fusion Center.

Even prior to the issuance of the GAO report, Secretary Napolitano and I recognized the importance of reaching agreement on an updated MOU between the DEA and ICE. Successful large-scale investigations often depend upon meaningful coordination among law enforcement agencies, but more importantly, any risk to our law enforcement agents created by a failure to coordinate effectively is simply unacceptable. Consequently, updating these MOUs to reflect our contemporary environment was one of my first priorities, and Secretary Napolitano shared my sense of urgency. It is my understanding that we have made substantial progress with respect to updating the MOU, and it is my hope and expectation that we will be in a position to

announce revised agreements between these agencies shortly. In my view, it is critical that we resolve these issues through an updated MOU or other mechanism rather than legislative changes that would be a step backwards for coordination of successful domestic and international drug enforcement efforts.

It is important to note that DEA has positive and cooperative working relationship with CBP and ICE, including DEA's participation in a number of task forces and special initiatives such as OCDETF, HIDTA, the CBP/DEA Ports Project, Border Enforcement Security Task Forces, and the Tunnel Task Force. These initiatives also increase the flow of information between participating agencies regarding violent criminal organizations and gangs operating on both sides of the border. In addition, as requested by ICE, there are approximately 1,260 ICE Special Agents cross-designated by DEA with Title 21 authority. However, in my view, greater involvement by ICE in SOD, the OCDETF Fusion Center and the El Paso Intelligence Center (EPIC) will benefit all agencies, including ICE.

ATF has a long-standing history of assisting and working cooperatively with Federal, State, and local, and tribal and international law enforcement partners. Overall, ATF enjoys a good relationship with all Department of Homeland Security (DHS) law enforcement agencies, including Immigration and Customs Enforcement (ICE). ATF and ICE have cooperated on many criminal investigations of mutual interest. Additionally, ATF and ICE participate in a variety of enforcement initiatives, including OCDETF task forces, ICE-led Border Enforcement Security Task Forces (BEST). ATF and ICE share firearms-related intelligence at the El Paso Intelligence Center and enjoy regular access to each agency's databases and personnel. Information is de-conflicted and coordinated, as appropriate, with the relevant law-enforcement agencies as well as the government of Mexico. While it is true that ATF and ICE have on occasion disagreed over matters of jurisdiction at a local level, we believe that such differences will be largely resolved through the execution of a pending memorandum of understanding.

BUREAU OF PRISONS STAFFING AND OVERCROWDING ISSUES

QUESTION: The Federal Prison System is on an unsustainable path. The prison system is 36 percent over its rated population capacity, and the population is growing by approximately 4,500 prisoners every year. Several new prisons are scheduled to come on-line between now and 2015, at a cost of several billion dollars, but that additional capacity will not begin to keep pace with the growth of the prison population. Add to that the fact that one third of BOP's facilities are more than 50 years old, and have significant modernization and repair needs. The staff-to-inmate ratio in the federal prison system is 4.9 to 1, significantly higher than the 3.5 to1 ratio of the late 1990s. And that staffing shortage has created a less safe environment for both BOP staff and inmates, and it has forced the Bureau of Prisons to reassign staff from providing rehabilitation services to correctional duties. The proposed top-line budget number for the Federal Prison System for FY 2010 is $6.1 billion, which would be a 1.2 percent decrease from the FY 2009 enacted level. We do not yet know yet how the total will be allocated between the Salaries & Expenses and Building & Facilities accounts, but it is difficult to see how the FY 2010 budget proposal helps to put BOP on the right path. What are your plans are for addressing the critical challenges facing the federal prison system?

ANSWER

The Attorney General has formed a Sentencing and Corrections Workgroup to make recommendations on this and other issues. The Administration agrees it is important to have prisons which are adequately funded and safely staffed. The Administration is requesting an increase of $384 million over FY 2009 enacted for the Salaries and Expenses Budget. The FY 2010 budget request identifies funding for the BOP to continue its implementation of the Inmate Skills Development program, and to begin the activation process of two prisons.

BUREAU OF PRISONS STAFFING AND OVERCROWDING ISSUES

QUESTION: How many correctional staff do you believe BOP needs to operate safely and effectively, and by when do you plan to reach that staffing level?

ANSWER

Safe and secure institutions are created by the use of a number of reinforcing measures to observe and manage inmate populations. The number of staff is one element of a secure system and is determined by the level of risk posed by inmates to each other and BOP staff; and by security elements of the building, its age and state of repair. Under current conditions, the BOP estimates staffing at 92 percent (37,057) of authorized positions is the intermediate staffing goal.

At the 2009 enacted level, the BOP's on-board strength is approximately 87 percent. The on-board percentage could increase to approximately 89 percent with the additional funds in FY 2010. As of April 11, 2009, the BOP had 34,399 S&E staff on-board responsible for 168,428 inmates in BOP institutions and 36,679 under contract confinement. The BOP's facilities are crowded currently at 37 percent over rated capacity system-wide, and the BOP's population is projected to increase by at least 4,500 inmates per year for the next several years if all factors remain constant.

BUREAU OF PRISONS STAFFING AND OVERCROWDING ISSUES

QUESTION: Will the FY 2010 request permit BOP to significantly increase its correctional staffing? If so, by how much?

ANSWER

The FY 2010 budget request for the BOP supports current services and also provides funding to begin hiring for the two new prisons, which will eventually add 737 new positions including 350 correctional officers.

BUREAU OF PRISONS STAFFING AND OVERCROWDING ISSUES

QUESTION: Will the FY 2010 request permit BOP to address its backlog of modernization and repair needs?

ANSWER

The FY 2010 Modernization & Repair (M&R) request totals $71.3 million, and to address its backlog, the BOP plans to obligate these funds to the fullest extent possible to address unfunded priorities and required repairs. Priority has been placed on funding emergency and life safety type projects to remain within available resources. The current backlog of BOP unfunded M&R priorities total 78 major projects at an approximate cost of $251 million.

CRIMINAL JUSTICE REFORM

QUESTION: The subcommittee recently conducted a number of hearings looking at the critical issues of prisoner re-entry and criminal justice reform. A number of States are taking the lead – on a fully bipartisan basis – in fundamentally changing their approach to sentencing, incarceration, alternatives to incarceration, and re-entry, using an approach referred to as *Justice Reinvestment*. A number of states are actually closing prisons instead of building new ones, saving hundreds of millions of dollars, a portion of which they are reinvesting in rehabilitation and re-entry programs designed to reduce recidivism and increase public safety. Do you think it is time for the Federal government to follow the lead of the States by engaging in a "Justice Reinvestment" type of approach at the Federal level?

ANSWER

I am aware of the Justice Reinvestment approach and look forward to discussing this and other "best practices" with the members of the Department's working group designed to formulate recommendations for reforming the federal criminal justice system.

INCARCERATION OF CRIMINAL ALIENS

QUESTION: BOP has been in discussions with U.S. Immigration and Customs Enforcement regarding an agreement under which ICE would reimburse BOP for criminal aliens held in BOP facilities after the completion of their sentences. In addition, the statement accompanying the FY 2009 Omnibus Appropriations Act directed you to work with the Department of Homeland Security to either transfer ICE detainees out of BOP facilities or secure reimbursement from ICE for housing them. What is the status of your efforts to negotiate an agreement with ICE to resolve this issue of ICE detainees in BOP custody?

ANSWER

The Department is committed to working collaboratively with ICE on these important issues. While at the present time, the BOP does not have a reimbursable agreement (RA) with the U.S. Immigration and Custom Enforcement (ICE) for housing their detainees, BOP continues discussions with ICE toward that end.

INCARCERATION OF CRIMINAL ALIENS

QUESTION: What would the annual cost to ICE be to reimburse BOP for housing them?

ANSWER

As of March 24, 2009, the annual cost for reimbursement of ICE detainees in BOP custody would be approximately $24 million per year.

SECOND CHANCE ACT INTERAGENCY TASK FORCE ON FEDERAL PROGRAMS AND ACTIVITIES RELATING TO THE REENTRY OF OFFENDERS INTO THE COMMUNITY

QUESTION: According to the Administration's top-line budget document, offender reentry will be one of the Department's initiatives for FY10. The offender reentry grant provisions of the *Second Chance Act* refer to, but do not direct the formation of, an Interagency Task Force on Federal Programs and Activities Relating to the Reentry of Offenders into the Community. This task force was to have been charged with ensuring the coordination of Federal reentry grant programs across agencies. A similar interagency group was active several years ago related to the implementation of the Serious and Violent Offender Reentry Initiative grant program. The provision of the *Second Chance Act* that would have required the Attorney General to establish the Task Force was reportedly left out of the Act inadvertently, even though the Act clearly contemplates its formation and operation. Given that prisoner reentry is one of the Department's priority initiatives for FY2010; do you agree that the Task Force is critical to ensuring that Federal grants related to prisoner reentry are coordinated across agencies?

ANSWER

Funding and implementation of offender reentry programs that reduce recidivism and enhance public safety is an important priority for the Department of Justice. The creation of an interagency task force would facilitate the coordination of services and resources from all federal agencies to create successful reentry programs. The Office of Justice Programs plans to coordinate extensively with the Department of Labor's Employment and Training Administration and other agencies in administering the programs authorized by the Second Chance Act.

SECOND CHANCE ACT INTERAGENCY TASK FORCE ON FEDERAL PROGRAMS AND ACTIVITIES RELATING TO THE REENTRY OF OFFENDERS INTO THE COMMUNITIY

QUESTION: Do you intend to work with your counterparts at the Departments of Labor, Health and Human Services, Education, and Housing and Urban Development to convene such a task force?

ANSWER

The Department's Office of Justice Programs (OJP) has already established a close collaborative relationship with the Department of Labor through its work on the Prisoner Reentry Initiative and other related efforts. OJP works with the Department of Health and Human Services on issues related to child support payments as an impediment to successful reentry. These cooperative efforts need to be expanded to other critical areas. OJP anticipates building/enhancing relationships with the Departments of Housing and Urban Development, Education, and Veterans Affairs. Effective collaboration among all federal agencies with a stake in offender reentry programs is vital to the success of the programs.

CRIMINAL JUSTICE RESEARCH AND EVALUATION

QUESTION: Beyond assessments of the performance of individual grant awardees, there is an important question about what we are learning from our grant investments, and how that feeds back into a long-term criminal justice research agenda. Does the Department, through the National Institute of Justice, have a long term criminal justice research agenda?

ANSWER

Yes. NIJ's long-term research agenda is founded on strategic research goals that inform program-specific research objectives.

NIJ has established strategic research goals that unite research across its research portfolios (e.g., policing, corrections, information technology, violence, victimization, forensics research). These broad goals are translated into specific research objectives within each of NIJ's program areas. Together, they define NIJ's long-term research agenda.

NIJ's overarching strategic goals for improving the justice system and preventing crime through research, development, and evaluation are to:

· Develop practices and policies that improve performance in law enforcement and criminal justice agencies;

· Expand the scientific basis of the forensic sciences;

· Develop knowledge on violence and victimization in specific populations to reduce and prevent violence and improve the quality of life for individuals, families, neighborhoods, and communities;

· Expand the use and power of DNA evidence;

· Identify ways to reduce incarceration and probation while maintaining public safety and holding offenders accountable;

· Understand the causes of crime to more effectively predict, control, and prevent crime;

· Identify, solve, and prevent electronic crime;

· Identify the components of a successful reentry program for different populations of offenders;

· Develop methods and technologies for denying public spaces to criminals and criminal activity; and

· Develop, test, and evaluate ways to limit deaths and injuries to law enforcement officers and corrections professionals and suspects.

Additional strategic goals include increasing school safety, improving services to crime victims, and understanding and preventing the use and distribution of illegal drugs.

The research objectives for each of NIJ's portfolios are determined by:

· Existing research knowledge. Since knowledge accumulates, findings from existing research, including studies funded by NIJ, is an important source for determining objectives for future research. Among the most important compilations of existing research evidence are reports from the National Academy of Sciences (NAS), including their most recent report, *Strengthening Forensic Science in the United States: A Path Forward.* Previous NAS studies covered NIJ's policing research, violence against women, drug policy, firearms, and school violence.

· . These include practitioner-based technology working groups (TWGs) associated with each of NIJ's technology investment portfolios, a broad range of strategic planning sessions with researchers and practitioners, and recent "listening sessions" with criminal justice practitioners and policy makers, hosted by OJP and NIJ.

· These include the Weed and Seed Program's efforts to effectively target crime-fighting resources; Bureau of

Program-level research objectives are reviewed and updated regularly. For instance, NIJ's crime control and crime prevention programs will be reviewed this year by an external panel of experts. Another example is the planned annual review and update of the science and technology research agenda, outlined in the March 2009 NIJ report, *High-Priority Criminal Justice Technology Needs.*

Each of NIJ's portfolios pursues a research agenda that incorporates several kinds of knowledge-building activities, including basic research questions, program evaluation needs (including evaluations of OJP-funded programs), and development opportunities (to develop and test new interventions and strategies).

Balancing the state of current research knowledge and the pressing needs of criminal justice practitioners and policy makers is at the heart of the NIJ research planning process.

CRIMINAL JUSTICE RESEARCH AND EVALUATION

QUESTION: Are mechanisms in place to ensure that grant solicitations are written and grants are awarded in ways that help further that research agenda?

ANSWER

Yes. NIJ's solicitations for research, evaluation, and development are the key device through which NIJ's research agenda is articulated and advanced. Each solicitation is crafted to build on the current state of research knowledge and to provide the best opportunities for achieving significant knowledge gain beyond what we already know about crime and justice. Each solicitation incorporates the input NIJ gathers about needs from the field, including: solving crime problems; answering basic research questions; and developing and testing important technologies.

Research knowledge is integrated across successive studies, with more recent findings building on previous research findings. NIJ's planning process takes account of recent research results and the current needs of practitioners and policy makers to craft each year's funding opportunity.

There are two important factors that impact NIJ's solicitation planning and development. First, given the realities of operating in a constrained resources environment, it is not possible to maintain the optimal level of investment in every portfolio area from year to year. As a result, difficult tradeoffs among competing knowledge needs must be made, knowledge-building efforts slow, and important research opportunities are missed. (An example of this is NIJ's three-year effort focused on community corrections research. After three years of solicitations, funding was realigned to support other needed research areas.) Thus, the scope and pace of the knowledge-building work in each of NIJ's portfolios is subject to funding availability.

Second, NIJ's long-term planning can be overtaken by a sudden infusion of funds limited to a specific research question. For example in 2007, money to study sex offender registration was made available to NIJ. NIJ responded quickly by developing a research plan to effectively employ this welcome infusion of funds. Similar short-term funding has been provided for prison rape and reentry research.

NIJ releases 20 to 30 solicitations each fiscal year across a wide range of program areas. The scope of each solicitation varies. Some are "open" solicitations (where specific topics to be studied can be submitted by the applicant), while others are more "directed" (where the type of research or evaluation work to be commissioned is more limited). Each type of solicitation has utility, and both approaches are essential to inform criminal justice practice and policy. For instance, NIJ may use a directed solicitation to evaluate a specific OJP-funded program or intervention. On the other hand, an "open" solicitation for research can surface important innovative programs or research opportunities "beyond the Beltway," outside of OJP's line of sight.

Each research application submitted to NIJ undergoes independent peer review for project quality, impact, cost, and effective dissemination of findings. In this way, only the best proposals with the greatest chance of advancing the field are funded by NIJ.

CRIMINAL JUSTICE RESEARCH AND EVALUATION

QUESTION: Are mechanisms in place to ensure that research findings are translated back into best practices and performance requirements for grant recipients?

ANSWER

Yes. NIJ's research has been successfully translated into improved practices and policies among OJP grantees and other federal, state, and local law enforcement and criminal justice agencies.

NIJ has effective mechanisms to translate research findings into practices within OJP's programs and across the broader criminal justice system. The arc of *research-into-practice-and-policy* can be clearly traced in each program area. Examples include:

· The growth of community-level problem solving strategies based on the evidence derived a decade earlier from NIJ's study of the Boston Ceasefire initiative;

· Establishment of arrest policies for domestic violence, building on two decades of rigorous research and evaluation, including randomized experiments;

· The development of innovative specialty court dockets, building on the evidence NIJ provided about drug court effectiveness;

· Recent rapid expansion in the use of DNA technology for "high-volume" crimes, like burglary and auto theft, following NIJ's successful demonstration field experiment on using DNA to solve property crimes; and

· The commercialization of "mini-STR" DNA techniques (a method for testing small fragments of DNA, especially useful in mass disasters, missing persons investigations, or other cases with degraded evidence) based on NIJ research on extracting usable DNA.

NIJ works to keep OJP program offices informed of findings in order to feed research results back into federally funded criminal justice programs. A new undertaking by Assistant Attorney General Robinson puts research evidence at the center of an effort to make "OJP more evidence-based." In addition, NIJ is actively involved in improving OJP grant performance metrics across OJP's program areas.

Since OJP's funding constitutes only about one percent of the total national crime-fighting effort (most of the rest is provided by state and local jurisdictions), NIJ has several mechanisms in place to take research findings back to the broader field of criminal justice practitioners and policy makers. These include NIJ's extensive publication and dissemination work, including the award-winning *NIJ Journal*; the annual *NIJ Conference* to which more than 1200 practitioners, researchers, and policy makers come to hear the latest research findings; and an extensive cutting edge

presence on the internet (*www.ojp.usdoj.gov/nij*). In addition, NIJ staff regularly present NIJ research results at practitioner and researcher conferences in nearly every program area. Finally, a key role of NIJ's National Law Enforcement and Corrections Technology Centers (NLECTC) System is to support the transfer and adoption of technology into practice by serving as a communications conduit between technology developers and practitioners.

DEPARTMENT-WIDE IT

QUESTION: One of the most basic pieces of information necessary for oversight is the amount that you're spending on these projects, but the IG has said that the cost information provided on DOJ IT systems to OMB and the Congress is unreliable. If we don't know how much you are spending on IT implementation, how can we ensure that you are effectively overseeing those expenditures?

ANSWER

Many of the discrepancies identified by the Department's Inspector General revealed inconsistencies in cost classification and financial reporting practices among the various project, component, and Department-level financial reporting systems, which made it difficult to verify IT project costs.

The Department has integrated the IT program budget planning and program budget formulation processes through the use of a combined program and IT investment budget planning worksheet (Exhibit 51/53).

In addition to the foregoing actions, the Department regularly provides financial and budget planning reports to the OMB throughout the year as part of the annual budget planning, formulation, and execution review process. The reports (OMB Exhibit 53 – Agency IT Portfolio) provide a complete list of the Department's IT investments and report total expenditures for the previous fiscal year, planned expenditures for the current fiscal year, and projected budgetary requirements for the next fiscal year. These expenditure and budget projection reports are developed by collecting IT investment expenditure and budget planning information directly from the Department's component Chief Information Officers and IT managers. The financial and budget information submitted to the OMB has been reviewed and verified for accuracy by each respective component and is also reviewed at the Department level for accuracy before it is transmitted to OMB. These reports are submitted according to the schedule published by OMB.

Additionally, all of the Department's major IT investment projects provide monthly expenditure information to the CIO via the CIO's Project Dashboard, and financial reports for several of these investments are provided to OMB quarterly or monthly as part of OMB's review of projects designated as high risk.

While the OCIO takes significant care to ensure that the financial and budget planning information provided to OMB is current and accurate, the OCIO depends primarily on receiving accurate reports from the components, and does not conduct financial audits of component IT programs.

DEPARTMENT-WIDE IT

QUESTION: Your CIO has no direct control over the development of IT systems at the bureau level. This means that there is less oversight for these sometimes risky projects, and the CIO loses the opportunity to identify technologies in one bureau that could be of general benefit to the Department. Would you support giving your CIO more direct oversight of bureau-level IT projects?

ANSWER

The Department has initiated a number of procedures aimed at providing greater oversight of component level IT projects.

Larger mission critical projects are reviewed regularly by the Department Investment Review Board (DIRB), which includes the CIO and other senior Department officials.

Additionally, the Deputy Attorney General must certify the status of large mission critical projects with development and implementation costs in excess of $100 million and report that certification to Congress prior to programs being allowed to obligate or spend their budget allocations.

The Department CIO does have direct control of many Department-wide infrastructure investments and services that provide the foundation for the Department's networks and desktop services.

While these programs provide the Department with a series of tools to help improve the return on our investment in IT projects, more direct oversight of component (bureau) level IT projects would provide more assurance and coordination of these initiatives.

Commerce, Justice, Science, And Related Agencies

HOUSE Appropriations for 2010

Department of Justice (The Attorney General)

Thursday, April 23, 2009

QUESTIONS SUBMITTED BY MR. WOLF

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: The Congress has received your FY09 Supplemental request. The majority of the funding, $36.4 million is for activities related to the closure of the Guantanamo detention facility. Can you tell the Committee what exactly the Department is doing now related to Guantanamo, and what you are proposing to do in the future with the requested supplemental funding?

ANSWER

In response to the President's Executive Orders relating to GTMO, the Department created three Task Forces:

These are not ordinary task forces – in fact, with short deadlines, these groups are tasked with work that has extraordinary consequences for the country. With regard to the Guantanamo Review Task Force we have established a taskforce of more than took 80 attorneys, analysts, investigators and others professionals from around the country. In addition:

- We established the Task Force in a temporary location in a classified environment so that task force members can conduct their work and access information at the Top Secret/SCI level. This work must be done in a classified, secure environment, using secure networks, classified-capable computers, scanning devices, phones, and copiers. We had to ensure we had secure electronic document handling capabilities. We are carrying the costs for this secure office space, for the Top Secret/SCI clearances required for our detailees, and for outfitting these Task Forces with the secure equipment required for their work.

- We are reviewing tens of thousands of pages of classified documents; our costs cover the agents, analysts and attorneys performing those reviews.

- We have detailed more than 80 attorneys to Washington to work on this effort. We have also detailed paralegals with classified clearances. Our costs include the travel and lodging for those staff.

- Finally, we have entered into Automated Litigation Support arrangements to facilitate the massive document review effort, and also to ensure that the records of this effort are maintained properly and securely.

The costs for classified reviews of this magnitude are tangible. We greatly appreciate the support the Committee can give the Department in this effort.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: I understand that you have created three task forces to implement the Executive Orders. Can you tell the Committee specifically what each of these three task forces is doing; how many staff positions are involved; the estimated total costs of each; and what is the timetable for each to reach its conclusion? Provide a detailed budget to support the $30 million requested for the task forces.

ANSWER
On January 22, President Obama issued three executive orders and a presidential memorandum that gave significant responsibility to the department. These orders require immediate interagency action on several fronts: a comprehensive review and determination of the appropriate disposition with regard to each detainee currently held at Guantanamo Bay; the development of policies regarding the detention of individuals apprehended in connection with armed conflicts and terrorist activities; and, an evaluation of interrogation and transfer practices.

With regard to the Guantanamo Review Task Force, that Task Force is making individualized determinations on the detainees in order to facilitate the closure of Guantanamo per the President's Executive Order by January of 2010. The other two task forces are required to produce reports containing their recommendations in July 2009. There are now more than 80 attorneys, including several dozen detailed to Washington from our field offices, who are involved in this effort. We have also detailed paralegals with classified clearances that are involved in the effort.

The Department requested $30 million in the 2009 war supplemental for the task forces. These task forces are tasked with work that has extraordinary consequences for the country, and we took significant steps to stand up structures utilizing dozens of attorneys and subject matter experts from around the country in order to facilitate their work. Much of this work cannot be done in an ordinary work environment. To give you a sense of the effort involved, we have:

- Established the Task Force reviewing and making disposition determinations regarding the detainees at Guantanamo at an offsite facility that enables the task force members to work at the Top Secret/SCI level; they are reviewing tens of thousands of pages of classified documents. Our costs for this effort cover the agents, analysts and attorneys to perform those legal reviews.

- This work must be done in a classified, secure environment, using secure networks, classified-capable computers, scanning devices, phones, and copiers.

We had to ensure we had secure electronic document handling capabilities. We are carrying the costs for this secure office space, for the Top Secret/SCI clearances required for our detailees, and for outfitting these Task Forces with the secure equipment required for their work.

- Finally, we have entered into Automated Litigation Support arrangements to facilitate the massive document review effort, and also to ensure that the records of this effort are maintained properly and securely.

The costs for classified reviews of this magnitude are tangible. We greatly appreciate the support the Committee can give the Department in this extraordinary effort.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: I believe it would be helpful for these task forces to meet with those whose loved ones died from the 9/11 attacks and other attacks, including families of soldiers killed in Iraq and Afghanistan, and get their perspective on the fate of these detainees, especially those who played a lead role in carrying out the attacks. Will the task forces be meeting with terrorism victims and families?

ANSWER

Yes. The task forces are planning to meet with family members of terrorism victims in the very near future.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: How many individual detainee cases must be reviewed and disposed of?

ANSWER

The Detainee Review Task Force is reviewing 242 cases.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Will you publicly release the details and results of the task force reviews when announcing the decisions about the transfer, release, or prosecution of individual detainees?

ANSWER

Executive Order 133493 requires "periodic preliminary reports" to the Assistant to the President for National Security Affairs and the Counsel to the President. That process is ongoing. The format and final structure of the final reports for the detainee policy and

interrogation policy reviews have not been determined. With regard to the Guantanamo Detainee Review, that Task Force is in the process of reviewing each of the detainee cases at Guantanamo to determine appropriate dispositions.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: For those who will be released to third countries, what assurances are you seeking from those governments in order to minimize the risks of recidivism?

ANSWER
As the President said in his speech on May 21, 2009, we will not release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people. We are working with our counterparts in other countries to secure their assistance in closing Guantanamo.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: For those who may be transferred to the U.S. for prosecution, where do you think such trials would be held and how long would the Department envision legal proceedings for detainees to take?

ANSWER

Individualized determinations on each detainee will be made on a rolling case by case basis. As the Administration has previously announced, Ahmed Ghailani will be prosecuted in the Southern District of New York pursuant to an indictment against him in that district that has been pending since 2001 for his role in the 1998 embassy bombings in East Africa. It is too early to determine the location and expected length of time of any other legal proceedings.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: You have stated that the issues related to closing Guantanamo represents your biggest challenge. What if all the solutions proposed by the task force involve an increased risk of terrorist action both within the U.S. and abroad? Will you recommend to the President that the closure of Guantanamo be delayed?

ANSWER

The Task Forces are not anticipating delays in meeting the requirements of the Executive Orders.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: As you know, I have been very concerned about bringing any of these detainees to any installation, military or civilian, close to U.S. civilian populations. What steps are you taking to assure the security of the surrounding population in areas where they would be tried or detained?

ANSWER

Paramount in our concern is the safety of the American people. We are not going to put at risk the safety of the people of this country in any determination we make with regard to the disposition of any of these individuals.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Does Al Qaeda or do other terrorist groups have a policy or precedent of attempting to free imprisoned members?

ANSWER

Despite ongoing public rhetoric calling for the US to release their captive associates—including those detained in Guantanamo—al-Qa'ida has not taken action to free imprisoned members. Although al-Qa'ida members have escaped while in custody overseas, no broader al-Qa'ida involvement has been identified and the prison breaks do not appear to be part of a larger al-Qa'ida strategy.

Al-Qa'ida in Iraq (AQI) has also called publicly for members to kidnap westerners to use in prisoner exchanges. For example:

- In September 2006, Abu Ayyub al-Masri, the leader of AQI, issued an audio statement calling for the release of the "Blind Sheikh," Omar Abdul Rahman, who is currently in a US prison. Al-Masri called on AQI fighters to conduct kidnappings in Iraq in order to "swap them with our sheikh and get him out of his dark prison."

The Taliban and other Pakistani militant groups have a history of trying to secure the release of their imprisoned members in custody overseas through violence and negotiations.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Mahmud Salim, one of the terrorists accused of the 1998 bombing of the U.S. Embassy in Kenya, stabbed New York prison guard Louis Pepe in the eye during an escape attempt that also involved taking his court-appointed lawyer hostage. In

addition, according to news reports from the trial of the blind sheik, associates of El Sayyid Nosair were plotting to break him out of Attica State Prison in New York. If detainees are transferred to the U.S., what are your concerns about the extraordinary security measures that will be needed to prevent similar attacks or escape attempts?

ANSWER

Nationwide, the Justice Department and its U.S. Attorney's offices have prosecuted many terrorism cases in recent months and years. Last year, Human Rights First published a comprehensive study on prosecuting terrorism in federal court from 9/11 through the end of 2007. The study, entitled: *"In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Court,"* found that federal prosecutors achieved a conviction rate of more than 90 percent in the set of terrorism cases examined by the report's authors. The study examined a specific set of 257 defendants charged with terrorism related violations in the United States between 9/11 and the end of 2007. Of the 160 defendants from this group who had their cases resolved, 145 were convicted of at least one count, either by a verdict of guilty after trial or by a guilty plea.

Since Jan. 1, 2009, more than 30 individuals charged with terrorism violations have been successfully prosecuted and /or sentenced in federal courts nationwide. There are currently 216 inmates in Bureau of Prisons (BOP) custody who have a history of or nexus to international terrorism. Sixty-seven of these individuals were extradited to the United States for prosecution, while 149 were not extradited. Seventy-two of these individuals are U.S. citizens (45 of them born in the United States, 27 of them naturalized). The "Supermax" facility in Florence, Colo. (ADX Florence), which is BOP's most secure facility, houses 33 of these international terrorists. There has never been an escape from ADX Florence, and BOP has housed some of these international terrorists since the early 1990s.

In addition to ADX Florence, facilities used to house such individuals include the Communications Management Units at Terre Haute, Ind., and Marion, Ill., as well as other facilities in different institutions around the country. In addition to those inmates with an international terrorism history or nexus, there are approximately 139 individuals in BOP custody who have a history of or nexus to domestic terrorism.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Is the Justice Department consulting with military experts, U.S. Marshals and State and Local law enforcement officials to determine the safest place to transfer these detainees?

ANSWER

If decisions are made to have detainees come to the United States, we would consult with state and local officials, federal officials, and the military to ensure the safe handling of any individual detainee is addressed appropriately.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: How will detainees be transported to the courthouses?

ANSWER

Paramount in our concern is the safety of the American people. We are not going to put at risk the safety of the people of this country in any determination we make on the disposition of any of these individuals including transportation concerns.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Your budget justification raises the possibility that, should you receive the $30 million and the task forces come in under budget, some funds might be redirected to other post-Guantanamo requirements. Does $30 million represent your current best estimate of the total final cost of these task forces? And what other costs might the $30 million go toward?

ANSWER

Yes, the $30 million in funds requested are for the Task Force review and represent our best estimate at this time of the total costs for these task forces.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Beyond the Supplemental request, what other post-Guantanamo funding requirements do you expect in FY09 and FY10?

ANSWER

Beyond the FY 2009 supplemental request, the Department has included $60 million in the 2010 budget for:

· Secure detention housing, including hardening facilities during trial (USMS and BOP costs) and US Marshals Service security command posts;

· Secure air transport, specialized local transportation provided by USMS, armored vehicles with secure communications equipment, hardened cell blocks and sally ports, and overall hardening of our courthouses.

· Communication costs

- Linguists to communicate/facilitate instructions during trial

- Electronic surveillance equipment (USMS protective intelligence installs counter-surveillance devices to protect the federal judiciary)

- Litigation costs (US Attorneys, NSD, and CRM)

· Other costs such as specialized training and fees and expenses of witnesses who testify.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: The cost of the task forces that you are seeking in the Supplemental could be dwarfed by the follow-on costs of detention and trial in the U.S. The review and disposition task force is resolving cases on a rolling basis. What is the earliest that you could expect detainees to be transferred to the U.S. for trial?

ANSWER

With respect to Mr. Ghailani, the announcement of the Department's decision to prosecute him pursuant to an indictment pending in the Southern District of New York has already been announced.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Do you have a ballpark estimate of how many individual Guantanamo detainees will likely be tried or detained in the U.S.?

ANSWER

We cannot prejudge the results of the ongoing review. Pursuant to the Executive Order, if it is not possible to transfer or release a detainee consistent with the national security and foreign policy interests of the United States, then we will consider, in accordance with United States law, whether the federal government should seek to prosecute the detainee for any offense he may have committed, including before a court established pursuant to Article III of the United States Constitution. With respect to any detainee whose disposition is not achieved through transfer, release, or prosecution, we will recommend lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice for the disposition of such individuals.

GUANTANAMO CLOSURE - SUPPLEMENTAL REQUEST

QUESTION: Based on this estimate of transfers to the U.S., provide a corresponding budget requirement for all affected DOJ entities.

ANSWER

We cannot prejudge the results of the ongoing reviews. Once the reviews are completed, we will be in a better position to provide component specific budget requirements.

FBI COUNTERTERRORISM

QUESTION: Your FY2010 budget includes very little detail so far, but it does say that the request includes $450 million in enhancements for the FBI. Please provide the details. What are the highest priority FBI increases, and are they for the National Security side of the FBI's mission?

ANSWER

At the time of the Attorney General's FY 2010 budget hearing on April 30, 2009, the Administration had not publically released the budget. On May 7, 2009, the Administration formally released a detailed budget. For FY 2010, the FBI requests a total of 32,883 positions (12,732 Special Agents, 2,956 Intelligence Analysts, and 17,195 Professional Staff) and $7.9 billion.

Specifically, the budget includes an enhancement of 1,389 positions (407 Special Agents, 321 Intelligence Analysts, and 661 Professional Staff) and $581.1 million for both Salaries & Expenses and Construction.

Within these end-state capabilities, the FY 2010 budget supports several mission critical initiatives, including the areas of Cyber security, intelligence gathering and analysis, mortgage fraud, Weapons of Mass Destruction response, national security field investigations, and surveillance. This budget request is critical to the FBI's investment strategy to acquire capabilities needed to counter known or anticipated national security threat and crime problems.

FBI COUNTERTERRORISM

QUESTION: For the last few years, the FBI has received the largest amount of any DOJ agency in War Supplemental bills. Why is there no request for the FBI in the FY09 Supplemental request for the FBI?

ANSWER

The Department appreciates the Committee's support of its supplemental requirements over the last several years, including the FY 2008-2009 supplemental and FY 2009 "Bridge" supplemental, which allowed the FBI to cover critical requirements through FY 2009.

Included in the President's FY 2010 Request is $101,066,000 for Overseas Contingency Operations which supports continued FBI operations in Afghanistan, international deployment activities, overtime and hazardous duty pay, and other counterterrorism-related requirements that have previously been covered by supplemental appropriations.

FBI COUNTERTERRORISM

QUESTION: Is the amount that was included in the last Supp sufficient to continue all those activities through the end of FY09?

ANSWER

Yes, the Department received $188.7 million for the FY 2008-2009 supplemental as well as the FY 2009 "Bridge" supplemental which is sufficient funding to continue activities funded in those appropriations through the end of FY 2009.

FBI COUNTERTERRORISM

QUESTION: Other Justice entities are requesting FY09 Supp funds that will last beyond the end of FY09 and into FY10. Why is the FBI not included in that group?

ANSWER

The Department appreciates the Committee's support of its supplemental requirements over the last several years, including the FY 2008-2009 supplemental and FY 2009 "Bridge" supplemental, which allowed the FBI to cover critical requirements through FY 2009. I do not anticipate any supplemental requirements for the FBI for the remainder of FY 2009. Included in the President's FY 2010 Request is $101,066,000 for Overseas Contingency Operations which supports continued FBI operations in Afghanistan, international deployment activities, overtime and hazardous duty pay, and other counterterrorism-related requirements that have previously been covered by supplemental appropriations.

FBI COUNTERTERRORISM

QUESTION: Will there be a lapse in funding for the FBI's Supp-funded counterterrorism programs if we are under a CR and there is no FY10 bill in place on October 1?

ANSWER

The FY 2010 Request to Congress includes an enhancement of $101 million to continue counterterrorism programs currently supported by supplemental funding. The FBI does not anticipate receiving any funding under a FY 2009 supplemental that could

"bridge" into FY 2010 to support these programs. However, if there is an FY 2010 Continuing Resolution of any significant duration, the FBI would make every effort to prioritize resources so that all critical missions, both domestic and international, are adequately addressed.

FBI COUNTERTERRORISM

QUESTION: Are you satisfied that the FBI can wait until FY10 to receive any further enhancements for Counterterrorism and Counterintelligence programs?

BACKGROUND INFORMATION

The FY 2010 request to Congress includes an enhancement of 231 positions (105 Special Agents and 126 Professional Staff) and $47,993,000 for National Security Field Investigations efforts.

ANSWER

I believe that the national security enhancements for the FBI received in FY 2009 and the requested FY 2010 enhancements will enable the FBI to address new and expanding threats. Specifically, the budget includes an enhancement of 1,389 positions (407 Special Agents, 321 Intelligence Analysts, and 661 Professional Staff) and $581.1 million for both Salaries & Expenses and Construction. The enhancements are aligned with the FBI's end-state capability goals of Domain & Operations, Surveillance, Workforce, Infrastructure, Leveraging Technology, and Overseas Contingency Operations. This budget request builds on the enhancements received in FY 2009 and is critical to the FBI's investment strategy to acquire capabilities needed to counter known or anticipated national security threats and crime problems.

FBI COUNTERTERRORISM

QUESTION: I have recently written to the FBI about their recent decision to suspend formal engagement with the Council on American Islamic Relations (CAIR). The FBI responded to me that this action was taken as a result of evidence gathered through FBI investigations and presented at the Holy Land Foundation trial wherein CAIR was listed as an unindicted co-conspirator with ties to a support network for Hamas. Are you aware of this decision by the FBI? Do you support the continuation of this policy by the FBI, and is the rest of the Department following this same policy?

ANSWER

I am aware of the decision by the FBI to suspend formal engagement with the Council on American Islamic Relations (CAIR). I understand these decisions are difficult to make and I, along with the FBI, will look into the continuation of this policy.

GANGS

QUESTION: Earlier this year, the Department released its National Gang Threat Assessment. In 2008, fifty-eight percent of local law enforcement agencies reported that criminal gangs were active in their jurisdictions, an almost 30% increase since 2004. A few years ago, the Department and this Committee established the National Gang Intelligence Center and GangTECC, the national gang task force. They have done a lot of good work, but it is clearly a growing problem and one that is spreading to suburban and rural parts of the country. What more can the Department do, and will we see any initiatives in your budget request that specifically address the gang problem?

ANSWER

Every American deserves to live free from the fear of violent crime. Prosecuting gang and firearm violence and preventing youth from becoming involved in such violence are top priorities for the Department of Justice. The Department combats domestic gang and firearm violence by linking together federal, state, and local law enforcement, prosecutors, and community leaders to implement fully coordinated enforcement and prevention strategies addressing the unique gun and gang problems in each district.

Gang violence is not just a domestic problem, but also has cross-border implications. The Department has put considerable effort into working cooperatively with interagency partners and foreign colleagues in Mexico and Central America so that, together, we can disrupt and dismantle the international gangs negatively impacting all of our communities.

The Department's Anti-Gang Coordination Committee, chaired by the Deputy Attorney General, organizes the Department's wide ranging efforts to combat gangs. The Anti-Gang Coordinator in each United States Attorney's Office leads and directs our anti-gang efforts at the district level. In FY 2008, the United States Attorneys' Offices devoted combined prosecutor time equivalent to over 120 full time Assistant U.S. Attorneys to this important work. The United States Attorneys Offices charged at least 1,024 gang members in FY 2008. The Criminal Division's Gang Unit enhances the efforts of the United States Attorneys' Offices and serves as the prosecutorial arm of the Department's national anti-gang efforts. The Gang Unit is comprised of experienced prosecutors who pursue gangs that wield regional or nation-wide influence. The National Gang Targeting, Enforcement and Coordination Center (GangTECC), working in conjunction with the National Gang Intelligence Center (NGIC), coordinates overlapping investigations, ensures that tactical and strategic intelligence is shared among law enforcement agencies, and serves as a central coordinating center for multi-jurisdictional gang investigations.

In FY 2010, although budget increases are not requested, the Department will continue the following major initiatives:

Project Safe Neighborhood (PSN):

- Under PSN, each United States Attorney's office developed a task force comprised of federal, state and local law enforcement and community members to address both the gun and gang violence problems in the district through prosecutions and community-based strategies. The number of federal firearms

prosecutions against violent persons who use firearms has increased significantly and defendants received substantial sentences in federal prison.
    - From FY 2001 through FY 2008, the U.S. Attorney's Offices filed 78,412 cases against 95,080 defendants. That is more than a 100 percent increase over the 8 year period prior to the implementation of PSN.
    - In FY 2008 alone, the U.S. Attorney's Offices prosecuted 11,974 defendants for federal gun crimes. The conviction rate in FY 2008 for firearms defendants was a record 92 percent. The percentage of defendants sentenced to prison was over 92 percent, and 75 percent of those offenders received prison terms of more than 3 years.
- Under PSN, the Department has created and implemented successful community-based strategies including prevention, intervention, education, and re-entry.
    - One example is the High Point community strategy that has significantly reduced violent and drug crime where it has been used. More importantly, those crime rates have remained down.

Weed and Seed

- This is a community based strategy to "weed" out violent crime and "seed" community services. Weed & Seed has successfully reduced violent crime by encouraging community based policing and close collaboration between the U.S. Attorneys, federal and local law enforcement, and local community leaders. The more than 250 Weed and Seed communities range in size from several neighborhood blocks to several square miles.

Violent Crime Task Forces

- ATF-led Violent Crime Impact Teams have been established in 31 cities. These teams are designed to work together with local officials to identify and prosecute a community's worst offenders, giving back the neighborhood to law-abiding citizens.
- FBI-led Safe Streets Task Forces (SSTFs) focus on dismantling organized gangs by addressing them as criminal enterprises. The FBI operates 187 SSTFs in 54 of its 56 field offices, including 146 focused on violent gangs and 41 focused on violent crime. Safe Streets bring the resources of all the participating agencies to bear on the area's gang problem. This includes using sensitive investigative techniques with an emphasis on long term, proactive investigations into the violent criminal activities of the gang's leadership hierarchy. More than 2,200 federal, state and local gang investigators participate in these vital efforts.
- The U.S. Marshals Service (USMS) leads six Congressionally-mandated Regional Fugitive Task Forces as well as 85 local task forces across the country, forming the backbone of the USMS' fugitive apprehension efforts. The Marshals Service's investigative network extends to its three foreign field offices and its Regional Technical Operations Centers, which provide sophisticated electronic and air surveillance support in fugitive apprehensions on the federal, state and local levels. In FY 2008, Deputy U.S. Marshals and their task force partners apprehended over 36,600 federal fugitive felons and more than 73,000 state and local fugitive felons. Over 2,800 of those fugitives were gang-related.

- The DEA Mobile Enforcement Team (MET) program responds to requests from state, local and tribal law enforcement officials to help stem the rise in drug-related violence. Often times, these MET deployments target violent gangs involved in drug trafficking activity, such as the Hell's Angels, Latin Kings, Bloods, Crips, Mexican Mafia, and Gangster Disciples. In FY 2008, the DEA sponsored a total of 12 MET deployments.
- The FBI leads a multi-agency MS-13 National Gang Task Force focused specifically on dismantling MS-13 by increasing the flow of information and intelligence.

GANGS

QUESTION: The Assessment report also stresses what I believe has been overlooked in all the recent discussion about border violence: the relationship between U.S.-based gangs and foreign drug trafficking organizations. What is this relationship, and do you see it as a growing violent crime spillover threat to U.S. communities?

ANSWER

The Department's National Drug Intelligence Center has identified the Mexican drug cartels as a leading organized crime threat to the United States and has estimated that drug organizations in over 200 U.S. cities have links to the cartels. In addition, national-level gangs pose a significant threat to suburban areas because of increased connections with transnational criminal organizations and drug trafficking organizations (DTOs). Many gangs have developed or strengthened relationships with transnational criminal organizations and DTOs. These relationships provide gangs with access to international sources of supply for illicit drugs that they commonly distribute in urban, suburban, and rural communities. Many gangs are also increasing their level of sophistication; a number have become profit-generating enterprises with global connections and advanced communications capabilities.

At least 23 gangs have been identified by law enforcement officials as national-level gangs, operating in multiple states and/or numerous major drug markets. Moreover, law enforcement officials have documented connections between transnational DTOs and 11 national-level street gangs, six national-level prison gangs, four national-level outlaw motorcycle gangs, two regional-level street gangs, one regional-level prison gang, and three local prison gangs.

GANGS

QUESTION: The Threat Assessment found t hat gangs traffic illicit drugs at the regional and national levels and several are capable of competing with U.S.-based Mexican drug trafficking organizations. It also states that U.S.-based gang members illegally cross the border for the express purpose of smuggling drugs and illegal aliens. Finally, it states that U.S.-based gangs are intent on developing working relationships with foreign-based drug trafficking organizations to gain access to foreign sources of illicit drugs. In fact, the FBI's Deputy Assistant Director for criminal investigations was recently quoted as saying that about 20 gangs in the U.S. have direct links to the Mexican cartels. What parts of your recent border initiative and your FY10 request will counter the trends that the Gang Assessment describes?

ANSWER

Resources to combat Mexican drug cartels and illicit trafficking of drugs and guns along the Southwest Border will hinder the ability of U.S. based gangs and Mexican drug cartels to work together. The Administration has invested $700 million in FY 2009 as part of the Merida Initiative to enhance Mexican law enforcement and judicial capacity and work close to coordinate efforts against the cartels. As part of DOJ's FY 2009 Southwest Border effort, the DEA is placing 16 new positions in its Southwest Border field divisions, the ATF is relocating 100 personnel to the Southwest Border, the FBI is creating a Southwest Intelligence Group to act as a clearinghouse of all FBI activities involving Mexico, and OJP is investing $30 million in stimulus funding to assist with state and local law enforcement agency efforts along the border. In addition, in FY 2010, DOJ requests $232 million increase, including 632 agents and 110 attorneys, to strengthen border security and illegal immigration enforcement.

ADAM WALSH ACT

QUESTION: The Adam Walsh Child Protection and Safety Act gives the Marshals Service the authority to treat as fugitives convicted sex offenders who fail to comply with a registration requirement and directs the Marshals Service to assist jurisdictions in locating and apprehending these individuals. In fiscal year 2009, the Marshals Service has $22m to enhance their capability to track these offenders down, a number which is estimated to be 100,000. Do you believe that there are 100,000 unregistered sex offenders in our communities? Is that an accurate number?

ANSWER

Pursuant to the Adam Walsh Child Protection and Safety Act, USMS assists jurisdictions in locating and apprehending sex offenders who fail to comply with their sex offender registration requirements, and serves as the lead agency responsible for investigating violations of 18 U.S.C. § 2250 (a new offense for registered sex offenders who travel in interstate or foreign commerce after failing to register or keep their registration current) and related offenses. The USMS works closely with the National Center for Missing and Exploited Children (NCMEC) and the Department's Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office in enforcing the Adam Walsh Act. Based on NCMEC's 2.5 years of working with registry data and law enforcement professionals in the sex offender management business, they believe the estimate of as many as 100,000 non-compliant sex offenders in the United States is a reasonable estimate. While the Department cannot verify the exact number of non-compliant sex offenders we are committed to continuing our work with law enforcement partners and NCMEC to locate and apprehend those who fail to register.

ADAM WALSH ACT

QUESTION: Does the Marshalls Service need additional resources to fully implement the Adam Walsh Act?

ANSWER

As Attorney General I am personally committed to implementing fully the Adam Walsh Act, including aggressive enforcement of its provisions. The Department is implementing the Act to effectively battle the issue of non-compliance and fully implement its enforcement responsibilities. For fiscal year 2010 the USMS request includes a $15 million adjustment to base to recur the resources initially enacted as part of the Global War on Terrorism Supplemental to enforce AWA.

The USMS needs these additional resources to create and implement a true nationwide program of investigators solely dedicated to investigating issues of non-compliance and missing child cases where the companion/abductor has a felony warrant. Additionally, working in partnership with the NCMEC, the USMS would like to expand the staff at the National Sex Offender Targeting Center (NSOTC). The NSOTC is a USMS entity that was recently established to support federal and state law enforcement in identifying and apprehending non-compliant sex offenders. The NSOTC is due to launch in 2009 and will house a behavioral analysis unit to analyze sex offender related research and intelligence that will be used to methodically prioritize cases and forecast violent sex offender behavior. NCMEC estimates that there are approximately 620,000 registered sex offenders in the U.S., and as many as 100,000 additional non-compliant sex offenders. The USMS will play a critical role in the investigation, location, apprehension, and prosecution of non-compliant sex offenders.

The USMS also plans to staff its foreign field offices, and potentially open new offices, to further support the projected increase in international fugitive activity as a result of sex offender cases developed under the Adam Walsh Act. In addition, the USMS plans to staff Interpol in Lyon, France, to oversee the projected increase in Red and Green Notices coinciding with the increase in Adam Walsh Act investigations referred to USMS Regional Fugitive Task Forces.

ADAM WALSH ACT

QUESTION: Are US Attorneys aggressively prosecuting these cases? What is the track record so far?

ANSWER

Since the passage of the Adam Walsh Act in July 2006, the USMS has initiated 3,054 AWA investigations and issued 736 warrants for AWA violations, which resulted in the arrest of 548 AWA fugitives.

The United States Attorneys' Offices recognize the grave risk that unregistered sex offenders pose, especially to children, and aggressively prosecute the Sex Offender Registration and Notification Act (SORNA) cases investigated by the United States

Marshals Service. In fact, a recent Department of Justice Office of Inspector General Report, I-2009-001, "Review of the Sex Offender Registration and Notification Act," concluded:

"The United States Attorneys' Offices and the Criminal Division are required under SORNA to assign at least eight Assistant United States Attorneys to support the Project Safe Childhood initiative. They have exceeded the requirement. The Department has assigned additional resources to this effort, including 43 new Assistant United States Attorneys, to prosecute federal fugitive sex offenders, child pornography, and child exploitation crimes."

In 2007, the first year in which SORNA was available, the United States Attorneys' Offices went from zero prosecutions to 158. As of the end of April 2009, in just over two years, that figure now stands at 593 total cases filed, with a very significant majority of the cases resulting in convictions and significant prison terms. The United States Attorneys' Offices expect to devote even more resources to these cases on an ongoing basis. The United States Marshals Service and the trial attorneys of the Criminal Division's Child Exploitation and Obscenity Section have been key partners in these investigations and prosecutions.

One very recent case prosecuted in the Southern District of Ohio, United States v. Alfred Cash, illustrates the United States Attorney's effective SORNA efforts. In 1990, Cash, now age 52, was convicted of raping a four year old child in Oklahoma. He was sentenced to 20 years in prison, but the state released Cash after only eight years, with no supervised release. Cash's whereabouts were unknown for several years, until he was located in Dayton, Ohio, where – having failed to register – he sexually abused two more young children. The state of Ohio convicted Cash of gross sexual imposition and sentenced him to 72 months in state prison. The United States Attorney's Office followed that state prosecution with a federal SORNA prosecution. In March 2009, a United States District Court judge imposed an additional federal term of 90 months, stating that the even greater consecutive federal sentence was absolutely imperative to protect the safety of the children in the community.

TROUBLED ASSETS RELIEF PROGRAM FRAUD

QUESTION: The Special Inspector General for the TARP has stated in written testimony that: *We stand on the precipice of the largest infusion of Government funds over the shortest period of time in our Nation's history. History teaches us that an outlay of so much money in such a short period of time will inevitably attract those seeking to profit criminally. If, by percentage terms, some of the estimates of fraud in recent government programs apply to the TARP programs, we are looking at the potential exposure of hundreds of billions of dollars in taxpayer money lost to fraud.* Attorney General Holder, do you agree that hundreds of billions of dollars associated with the TARP could be lost to fraud?

ANSWER

I agree that there is the potential for fraud and abuse associated with the government's recovery efforts. Given the amount of taxpayer funds that are being committed to the recovery effort, we must be vigilant stewards of the public's money to make sure that those funds are not lost to fraud or abuse and to investigate, prosecute and recover funds from those who commit fraud.

TROUBLED ASSETS RELIEF PROGRAM FRAUD

QUESTION: What are you doing to work with the Special Inspector General to aggressively investigate and prosecute fraud associated with the TARP program?

ANSWER

Representatives from the Justice Department, including the Deputy Attorney General, FBI, Criminal Division, and several United States Attorneys Offices, have met with the Special Inspector General (SIG) of the Troubled Assets Relief Program (TARP), Neil Barofsky, and his staff on multiple occasions in order to discuss coordinating our efforts to investigate and prosecute fraud associated with the TARP program.

TROUBLED ASSETS RELIEF PROGRAM FRAUD

QUESTION: Are you detailing experts in financial crimes from the Tax Division, the Antitrust Division, the US Trustees, and the FBI to assist the Special Inspector General?

ANSWER

The Justice Department has been and will continue to work closely with the Special Inspector General to share expertise and training in the investigation of financial crimes. Several representatives from the Justice Department, including the Deputy Attorney General, the FBI, the Criminal Division, and several United States Attorneys Offices, have met with the Special Inspector General and his staff to discuss coordinating our efforts to investigate and prosecute fraud associated with the Troubled Assets Relief Program (TARP) program. In addition, the FBI is a member of the Term Asset-backed Securities Loan Facility (TALF) task force, which serves to identify areas of vulnerability to fraud in the TALF program and train agents and analysts in issues related to the program. We will continue to look for opportunities to coordinate our efforts with the Special Inspector General in deterring, detecting and prosecuting fraud associated with the TARP and TALF programs.

DETENTION TRUSTEE SHORTFALL

QUESTION: I understand that the Detention Trustee account, which pays for the costs of detention between arrest and sentencing, could have a shortfall this fiscal year of $50

to $100 million. There is no Supplemental request so far to address this. How do you plan on funding this shortfall - though a new supplemental request or a reprogramming of current resources?

ANSWER

The Department continues to assess the costs of housing our detainee population and to discuss these needs with the Office of Management and Budget and subcommittee staff. We are examining options for addressing any potential shortfall.

DETENTION TRUSTEE SHORTFALL

QUESTION: Do you have $50 to $100 million of existing resources that could be moved to this account?

ANSWER

The Department is examining all options for addressing any potential shortfall.

DETENTION TRUSTEE SHORTFALL

QUESTION: When will you know the magnitude of the shortfall and provide the Committee with a proposal to address it?

ANSWER

The Department continues to refine projections based on currently planned law enforcement and prosecutorial priorities and incoming data.

DETENTION TRUSTEE SHORTFALL

QUESTION: I understand that it is challenging to estimate the resource needs of this account, but this is evidence that the Department's models for estimating immigration-related workload are lacking. What are you doing to ensure that detention costs are adequately estimated and funded in future years?

ANSWER

Projecting future detention funding requirements is challenging given that the Department can neither control the number of persons taken into custody by the U.S. Marshals Service, nor the length of time those prisoners will remain in custody pending adjudication. Despite these challenges, over the past several years the Office of the Federal Detention Trustee (OFDT) has strived to develop a robust statistical model for projecting future detention populations, to include accounting for the increased criminal prosecution of immigration offenders along the Southwest border. Most recently, this model has been updated to account for anticipated changes in federal law enforcement

staffing. OFDT believes that its model performs adequately given known limitations. For example, recent experience has shown that at a two-year interval, *i.e.*, from budget formulation to mid-projection year, the model predicts the average daily detention population to within five percent of the actual level. Further, the population projections are revised to account for changing circumstances: these projections have been within two percent of the actual year-end level.

FEDERAL EMPLOYEE LIABILITY PROTECTION

QUESTION: According to Department of Justice regulations (28 C.F.R. 50.15(a)), you - as Attorney General - would be in the unique position of both deciding whether to prosecute a federal employee as well as whether to provide the accused employee with representation, should you decide that the employee's actions were reasonably within the scope of his job . Wouldn't you agree that your authority to decide both whether to prosecute and whether to provide representation for the same employee creates an inherent conflict of interest, should you decide to prosecute such employee?

ANSWER

The Department of Justice does not normally afford legal representation to federal employees in federal criminal proceedings under the referenced guidelines at 28 C.F.R. § 50.15(a). Section 50.15(a)(4) specifically states that "[r]epresentation generally is not available in federal criminal proceedings." (Emphasis added). Although the guidelines provide a narrow exception for the payment of private counsel for federal employees in some federal cases, it is authorized only when certain identified special factors demonstrate that it is in the interest of the United States to do so. That exception has only rarely been applied and mostly in regard to criminal proceedings instituted by independent prosecutors appointed by the courts. In those rare circumstances where private counsel is afforded to federal employees at Justice Department expense in federal criminal proceedings based on the special factors set forth in section 50.15(a)(4), there is no conflict of interest precluding such payments.

FEDERAL EMPLOYEE LIABILITY PROTECTION

QUESTION: Wouldn't you agree that any federal employee that you may choose to prosecute for interrogation was acting within the scope of their employment?

ANSWER

A provision of the Military Commissions Act codified at 42 U.S.C. 2000dd-1 establishes a broad statutory mandate to afford representation to federal employees and contractors who were involved in the specific operational practices of interrogating certain alien terrorist suspects using officially authorized interrogation practices that were determined to be lawful. This mandate is broader in a number of respects from the Department's traditional standards for affording representation to federal employees, and extends to any state, federal or international legal proceeding or investigation arising from a covered person's participation in such operational practices. Accordingly, in light of this broad mandate, I have previously announced that the Department will not prosecute any U.S. person who, while employed as a federal

employee or federal contractor, acted reasonably and relied in good faith on authoritative legal advice from the Department that their conduct in interrogating such aliens was lawful, and who conformed their conduct to that advice.

FEDERAL EMPLOYEE LIABILITY PROTECTION

QUESTION: Given Director Blair's memo stating that he would defend intelligence officials who were involved in the implementation of now-banned interrogation practices, will you provide blanket federal representation for current and former federal employees?

ANSWER

I can provide a blanket assurance that the Department will provide or authorize representation for all current or former federal employees who fall within the broad coverage of the Military Commissions Act provision codified at 42 U.S.C. 2000dd-1.

GUANTANAMO BAY

QUESTION: Please provide answers to the questions I raised in my letters of March 13 and April 23 regarding which are attached.

ANSWER

These letters have been formally referred to all of the Task Forces. The task forces will factor the issues raised in your letters in developing their overall recommendations and final report which is due to the President in July 2009.

Commerce, Justice, Science, And Related Agencies

HOUSE Appropriations for 2010

Department of Justice (The Attorney General)

Thursday, April 23, 2009

QUESTIONS SUBMITTED BY MR. ADERHOLT

DEFENSE OF MARRIAGE ACT

QUESTION: As you are probably aware, a letter signed by 77 Members was sent to you on March 24, 2009, regarding the Defense of Marriage Act. It refers to a case brought against DOMA on March 3, by the Gay and Lesbian Advocates and Defenders (GLAD), in Boston, Massachusetts. It is my understanding that there has been no reply yet to this letter, which was led by Mr. Cantor and Mr. Boehner. Will the Department of Justice defend this Federal law? What steps have you taken to do so?

ANSWER
On June 11, 2009, the Department of Justice filed a brief in the Central District of California defending the constitutionality of the Defense of Marriage Act (DOMA). The Department's defense of DOMA is consistent with its general practice of defending the constitutionality of federal statutes.

SW BORDER ADDITONAL AGENTS

QUESTION: Since you took office, how many additional FBI agents have been moved to the Southwest Border to address the border security threat?

ANSWER

Since, I have taken office, no additional FBI agents have been moved to the Southwest Border, however, the FBI has increased its efforts along the Southwest border and recently created a Southwest Intelligence Group (SWIG) that will serve as a clearinghouse of all FBI activities involving Mexico. The FBI will also increase its focus on public corruption, kidnappings, and extortion relating to Southwest border issues. The SWIG will coordinate FBI/Mexican support efforts, will serve as the central repository and distribution point for FBI intelligence regarding both criminal and national security issues, and will provide summaries of all operational interactions between FBI and Mexican law enforcement personnel. The SWIG is located at the El Paso Intelligence Center (EPIC) facilities in El Paso, Texas.

In FY 2009, the FBI offices in San Diego, Albuquerque, Phoenix, El Paso, Houston, Dallas, Los Angeles, and San Antonio have 343 agents working OCDETF and criminal enterprise cases. Thus far in FY 2009 these offices have participated in 343 total OCDETF drug/gang investigations, and 462 total criminal enterprise drug/gang investigations. Of these, 237 are OCDETF cases with a nexus to Mexican drug trafficking organizations, and 175 are criminal enterprise cases with a nexus to Mexican drug trafficking organizations. As a result of these investigative efforts, these border offices have been involved in 1,433 arrests, 454 indictments, and 417 convictions.

SW BORDER ADDITIONAL AGENTS

QUESTION: Since you took office, how many additional DEA agents have been moved to the Southwest Border to address the border security threat?

ANSWER

DEA has long recognized the organized crime threat posed by the Mexican drug cartels and increased its resources to address those treats. Over the past seven years, DEA has increased its staffing along the Southwest Border by 210 Special Agents. At the beginning of FY 2009, DEA had 1,265 Special Agent positions allocated to its Southwest Border offices, which include 5 domestic Field Divisions, the El Paso Intelligence Center (EPIC) and DEA's Mexico offices. This is a 20 percent increase over the 1,055 Special Agents allocated to DEA's Southwest Border offices in FY 2002. Domestically, 29 percent of DEA's Special Agent positions are allocated to Southwest Border Field Divisions in FY 2009.

As part of the FY 2009 Omnibus Appropriations Act, DEA received 16 positions, including 9 Special Agents, 2 intelligence analysts and 5 support positions for Southwest Border enforcement. DEA is in the process of allocating these positions to domestic Southwest Border offices. These positions will be assigned to border cities like McAllen and Laredo, TX.

In addition, DEA is also deploying 32 Special Agents to compose four new Mobile Enforcement Teams (METs), funded with FY 2009 funds, to target Mexican methamphetamine trafficking organizations along the border and in U.S. cities impacted by the cartels. Two of the MET teams will be assigned El Paso and Phoenix to augment DEA's current enforcement operations. The other two METs will be placed in the Chicago and Atlanta field offices, divisions severely impacted by Mexican methamphetamine trafficking cartels.

Finally, the two new Foreign-deployed Advisory and Support Teams (FAST) provided for the Western Hemisphere in FY 2009 will also be available to assist with Southwest Border operations.

SW BORDER ADDITIONAL AGENTS

QUESTION: Since you took office, how many additional ATF agents have been moved to the Southwest Border to address the border security threat?

ANSWER

The cornerstone of ATF's strategy at the Southwest Border is its Project Gun Runner program. ATF has created Gun Runner Impact Teams (GRITs) to immediately address firearms trafficking and violent crime along the Southwest border. Over 100 ATF employees (including 68 special agents) immediately detailed temporarily to the Southwest Border and have already begun working throughout Texas in a number of cities. In addition to the GRITs, and through the use of additional funding from Congress, ATF has begun the process of opening 5 additional field offices and one satellite office along the Southwest border, in addition to two offices in Mexico. When fully operational, these new offices will add approximately 50 special agents dedicated to working violent crime along the Southwest border. In addition, as part of the American Recovery and Reinvestment Act (ARRA) funding, ATF received $10 million for Project Gunrunner efforts, aimed at disrupting arms trafficking between the U.S. and Mexico, to include hiring 25 new special agents, six industry operations investigators, three intelligence research specialists and three investigative analysts. The funding will establish three permanent field offices, dedicated to firearms trafficking investigations, in McAllen, Texas; El Centro, Calif.; and Las Cruces, N.M (including a satellite office in Roswell, N.M.). Project Gunrunner has resulted in ATF referring more than 1,500 defendants for prosecution involving more than 12,000 weapons.

SW BORDER ADDITIONAL AGENTS

QUESTION: Since you took office, how many additional U.S. Deputy Marshals agents have been moved to the Southwest Border to address the border security threat?

ANSWER

The U.S. Marshals Service (USMS) plays a key role in the Department of Justice's Southwest Border strategy, leading the efforts of federal law enforcement in the apprehension of violent fugitives. In FY2009, USMS received 73 new positions for fugitive and immigration enforcement. The USMS plans to allocate at least 40 positions to the Southwest Border and the balance to other areas of the country. The Mexican drug cartels have infiltrated over 200 US cities with their violent drug trafficking requiring USMS resources to be deployed to non-border districts. At this time, the number of Deputy U.S. Marshals (DUSM) included in the 40 positions has not been determined. In FY2008, the USMS allocated 94 new positions (80 DUSM and 14 Professional Support) to the Southwest Border, all of which are now filled. Finally, the USMS has sent four additional DUSM to Mexico City to assist the Marshalls Service Mexico City Foreign Field Office.

SW BORDER ADDITIONAL AGENTS

QUESTION: Since you took office, how many additional Assistant U.S. Attorneys have been moved to the Southwest Border to address the border security threat?

ANSWER

Since February 2009, the U.S. Attorneys have been undertaking recruitment efforts to fill 63 new positions (including 30 Assistant U.S. Attorneys, or AUSAs) received as part of the FY 2009 appropriation. This recruitment effort will supplement the 64 attorney positions allocated in FY 2008, of which 60 have been filled. In addition, the U.S. Attorneys in the border districts have been involved with other federal agencies in coordinating responses to the turmoil and violence occurring along the Southwest Border. The U.S. Attorneys continually reassess priorities and adjust current AUSA resources as needed to address immediate threats.

SW BORDER PREVENTION OF DRUG AND HUMAN TRAFFICKERS

QUESTION: Can the border be secured through investigations, prosecutions, indictments and seizures, or is it better to put sufficient boots on the border and the bridges to prevent drug and human traffickers from coming across the border to begin with?

ANSWER

The explosion of violence along the Southwest border is caused by a limited number of large, sophisticated and vicious criminal organizations—not by individual drug traffickers acting in isolation. Indeed, the Justice Department's National Drug Intelligence Center has identified the Mexican drug cartels as the greatest organized crime threat facing the United States today. Thus, the Department's strategy confronts the Mexican cartels as criminal organizations, rather than simply responding to individual acts of criminal violence or to limit its enforcement strategy to policing the border region itself.

For more than a quarter-century, the principal law enforcement agencies in the United States have recognized that the best way to fight the most sophisticated and powerful criminal organizations is through intelligence-based, prosecutor-led task forces that leverage the strength, resources, and expertise of the complete spectrum of federal, state, local, and international investigative and prosecutorial agencies. It was this approach, for example, that fueled the ground-breaking Mafia prosecutions in the United States and Italy in the late 1980s and 1990s. The Department is applying these same intelligence-driven tactics that broke the back of the Mob to fighting the Mexican drug cartels.

The Department's strategy to identify, disrupt, and dismantle the Mexican drug cartels has five key elements:

First, the strategy employs extensive and coordinated intelligence capabilities. The Department pools information generated by DOJ law enforcement agencies and federal, state and local government partners, and then uses the product systematically to direct operations in the United States and assist the efforts of the Mexican authorities to attack the cartels and the corruption that facilitates their operations.

Second, led by experienced prosecutors, the Department focuses its efforts on investigation, extradition, prosecution, and punishment of key cartel leaders. As the Department has demonstrated in attacking other major criminal enterprises, destroying the leadership and financial assets of the cartels will undermine the entire organizations.

Third, the Department pursues investigations and prosecutions related to the smuggling of guns, cash, and contraband for drug-making facilities from the United States into Mexico.

Fourth, the Department uses traditional law enforcement approaches to address any potential spillover effects into the United States of cartel operations in Mexico.

Fifth, the Department prosecutes criminals responsible for the smuggling, kidnapping and violence in federal court.

Earlier this year, I announced the arrest of more than 750 individuals on narcotics-related charges under "Operation Xcellerator," a multi-agency, multi-national effort that began in May 2007 and targeted the Mexican drug trafficking organization known as the Sinaloa Cartel. Through Operation Xcellerator, federal law enforcement agencies --along with law enforcement officials from the governments of Mexico and Canada and state and local authorities in the United States -- delivered a significant blow to the Sinaloa Cartel by seizing over $59 million in U.S. Currency, more than 12,000 kilograms of cocaine, more than 1,200 pounds of methamphetamine, approximately 1.3 million Ecstasy pills, and other illegal drugs, as well as weapons, aircraft, and maritime vessels. An equally sweeping DOJ-led initiative against the Gulf Cartel announced in September 2008, called "Project Reckoning," produced similarly dramatic results. Operation Xcellerator and Project Reckoning were tremendous successes in the U.S. government's battle against the Mexican cartels and illustrate the strengths of the Department's strategy.

SW BORDER PATROL AGENTS

QUESTION: Is it reasonable to assume that the 2,000 miles of U.S.-Mexico border and 4,000 miles of U.S.-Canadian border can be secured with 18,000 Border Patrol agents, or do you believe that number must increase, and if so, by how much?

ANSWER

As discussed above, the Department's Southwest Border Strategy goes beyond interdiction to directly attack the powerful transnational criminal drug trafficking organizations that are the root cause of the corruption and violence that currently pose a national security threat to Mexico and an organized crime threat to the United States. The Department of Justice has decades of experience in successfully combating such organizations. Focusing its efforts through multi-agency, intelligence-based, prosecutor-led task forces, the Department is leading the way in comprehensive investigations and prosecutions of all aspects of the illegal activity of these criminal organizations – not only drug trafficking, but also money laundering, bulk cash smuggling, human smuggling, firearms trafficking, corruption of public officials, extortion, kidnapping, homicide, and other violent crimes that support their illegal activity. It is only through disrupting and dismantling these drug cartels, identifying and incarcerating their leaders and facilitators, and taking away their profits and assets that law enforcement can have the greatest effect on the Southwest Border threat.

SW BORDER GUNS TRACED

QUESTION: I would like to get a clarification on the recent statements regarding the numbers of guns which are used in violence in Mexico, and which are supposedly from the United States. ATF reports that 90% of the guns seized – and then traced – trace back to the U.S. An important aspect of that observation is that it refers to guns which have been traced.

Can you tell us what percentage of guns recovered from Mexico are NOT traceable?

I think it is approximately 70%, meaning that the vast majority of guns recovered from Mexico are from sources which cannot be traced to the U.S., perhaps from various criminal groups dealing in international, illegal arms sales and smuggling. Please clarify these numbers.

ANSWER

ATF strives to have comprehensive tracing in the United States (US) as well as Mexico and Canada and the Department may rely on the numbers of firearms that have been submitted for tracing as being accurate. Firearms recovered in Mexico and submitted for tracing for the past three years have consistently indicated that over 90% of the firearms have been US sourced and that 5-7% were sourced in foreign countries. The total number of firearms recovered by the Mexican government and not submitted for tracing, as well as the reasons for not submitting them is unknown to the U.S. government. Thus, the Department is not able to verify the numbers referenced in your question. ATF is constantly improving upon our relations and connections with Mexican law enforcement and military authorities, and through these partnerships is getting access to increasingly diverse storage locations for seized firearms in the custody of Mexican authorities. As

these new stocks of firearms are encountered, or become known to us, ATF and our Mexican allies continue efforts to aggressively trace them, and mine the data for use in identifying illegal arms trafficking sources in the US. Additionally ATF continues to work with the Mexican authorities to provide training and promote the importance of tracing all firearms recovered in their country. ATF will also continue to accurately report the known statistical data, and to update percentages of US sourced firearms. The Department of Justice's ultimate goal in any criminal firearm investigation is for ATF to trace the firearm from manufacture or import to the first retail purchaser. While this is not always possible there is a great amount of useful information that ATF can glean from the tracing process such as the source of the firearms, manufacturer, importer or foreign country, the wholesalers and retailers which can provide vital information for crime mapping and resource needs.

TUESDAY, APRIL 28, 2009.

DEPARTMENT OF COMMERCE

WITNESS

GARY LOCKE, SECRETARY OF COMMERCE

OPENING REMARKS

Mr. MOLLOHAN. The hearing will come to order.

Good morning, Secretary Locke. Welcome to the other Washington. You have unique qualifications to tackle the problems that you are inheriting. As Chair of the Subcommittee charged with funding your Department and its several agencies, I look forward to working with you on the increasingly significant challenges facing the Department of Commerce. In fact, the Department faces so many formidable challenges that we will not be able to discuss all the issues facing all of its agencies today. This is not because the committee is uninterested in tackling the issues that beset the smaller agencies. There is simply not enough time in one day to do justice to all the concerns. And today we choose to focus on the most fiscally significant. It is sometimes unfortunately true that the squeaky wheel gets the grease.

From the fiscal behemoth that is Census during its decennial year through the critical research and operations of NOAA, the burgeoning broadband issue, the backlog of intellectual property applications, the challenge of ensuring science and technical rigor for economic expansion, the complexity of international trade and all of its ramifications, and the necessity for economic development, to the smallest individual agency, the Minority Business Development Agency, the Department is challenged by diversity of missions and perceived lack of cohesion. It is this committee's expectation that you, Secretary Locke, will find the common thread among all of the these diverse agencies and align their interests to bring the Department into the 21st century. If we ever needed a unified Department of Commerce, obviously it is now.

The 2010 decennial has been beset by lack of management and oversight, the lack of acquisitions expertise, and lack of transparency by an agency whose culture is perceived as so impenetrable as to be self-defeating. Recent contract modifications have reframed the concerns and renewed some confidence in this agency, but great risks remain; and so much depends on the success of the Bureau's diligent employees to overcome the obstacles that—in many—ways were self-created. It certainly doesn't help that leadership in the form of a new Director is delayed, that there will have been three different Directors in the three years leading up to the decennial, and that a new Secretary must guide the process.

Recently this committee has heard testimony on the state of the climate, and it is disturbing. The Nation, indeed the planet, is at

a crossroads. Scientific consensus exists that humans are altering Earth's climate. Humans are at risk because the climate is affecting the organisms on which we all depend. Carbon dioxide remains in the atmosphere for 1,000 years, and no matter what we do now, a projected ½ to 1 degree further warming will occur due to a lag in the atmosphere. As Dr. Susan Solomon testified, "We can only crank the dial one way, and we have got to decide how far."

There is already 30 percent more CO_2 in the atmosphere than there has been in the past 500,000 years. Temperature increased 1.3 degrees Fahrenheit. More rain is falling as heavy rain. Ocean acidification is becoming a serious threat as the ocean is a carbon sink. The atmosphere is currently at 385 parts per million CO_2 and on its way to 450 parts per million.

As a consequence, the oceans have become 30 percent more acidic already, and another 30 percent change appears likely. The organisms we depend on have not evolved to deal with the increasing acidity. Coral reefs are a good metric, and more will dissolve than evolve by 2050. This negatively affects our fisheries and our coasts, where the vast majority of people live.

Rising sea levels will compound the problem, and this committee heard testimony that sea levels were very likely to rise by 1 meter by 2100 as a result of melting ice sheets. In some areas, given the slope of the coast, that means that seas could move inland by more than half a mile. This could drastically alter the coastline worldwide as beach erosion will be highly sensitive to increasing sea levels and is projected to cost as much as $1 trillion in GDP.

The Nation needs an agency that can provide the data needed for citizens and communities to adapt to these changes and to mitigate them as much as possible. There is only one agency that is capable of providing this leadership role, but it is not structured or funded for this Herculean task. This committee expects you and your Administrator, Dr. Jane Lubchenco, to ensure the creation of a National Climate Service, analogous to the National Weather Service within NOAA, and to do everything in your power to fund it commensurate with its mission. This includes all of NOAA's line offices, not just the NCS, because the agency is uniquely suited and tasked to research, monitor, regulate, produce and archive the data, and to collaborate with other Federal and international agencies, States and local governments in combating these enormous challenges.

However, in order to ensure that both the NCS and the NWS receive all the data they depend on, you and your new Administrator will have to first fix the National Polar Orbiting Satellite System, NPOESS. The agency appears to have had some somewhat more success with the next generation of GOES, GOES–R, although GAO still found some cause for concern, and this committee will rely on you and Dr. Lubchenco to ensure it does not duplicate the messy path of NPOESS.

Underpinning all of these challenges is the need to ensure the science and technical expertise exists and is fostered for future generations; that measurements are reliable so that industry can move forward with innovations to combat climate change and meet energy needs; and that the acquisition and procurement process is

transparent, technically feasible, and does not bankrupt the Nation in the process.

Other critical needs include ensuring a safety culture; modernizing information technology systems to bring them into the 21st century; ensuring the Nation is safe from cyberattack; and maintaining fisheries at sustainable levels so that they provide both sustenance and reliable economies for the communities that depend upon them.

As we all know, we have not yet received the President's complete budget submission. Accordingly, we don't know many of the details of the request. We will be anxious to see those details when the budget is submitted, and we are sure to have additional questions at that time.

The hearing transcript will remain open two weeks after the budget submission so as to provide Members an opportunity to submit any budget-related questions.

At this time, Mr. Secretary, I would like to invite you to make your opening statement. Your recorded statement will be made a part of the record. Before I do that, I call on the Ranking Member, Mr. Wolf, for any opening statement he would like to make.

[Written statement by Chairman Alan Mollohan follows:]

CONGRESSMAN ALAN B. MOLLOHAN, CHAIRMAN

HOUSE APPROPRIATIONS SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE & RELATED AGENCIES

For Immediate Release – April 28, 2009
Contact: David Herring 202-225-4172
david.herring@mail.house.gov

Opening Statement of Chairman Alan B. Mollohan

Secretary of Commerce

Good morning, Secretary Locke. Welcome to the other Washington. You have a fascinating background and unique qualifications to tackle the problems you've inherited. As Chair of the Subcommittee charged with funding your Department and its several agencies, I look forward to working with you on the incredibly significant challenges facing the Department of Commerce.

In fact, the Department faces so many formidable challenges that we will not be able to discuss all the issues facing all its agencies today. This is not because the Committee is uninterested in tackling the issues that beset the smaller agencies. There is simply not enough time in one day to do justice to all the concerns, and today we choose to focus on the most fiscally significant. It is - sometimes unfortunately - true that the squeakiest wheels get the grease.

From the fiscal behemoth that is Census during its Decennial year, through the critical research and operations of NOAA, the burgeoning broadband issue, the backlog of intellectual property applications, the challenge of ensuring science and technical rigorousness for economic expansion, the complexities of international trade and all its ramifications, and the necessity of economic development, to the smallest individual agency, the Minority Business Development Agency, the Department is challenged by a diversity of missions and perceived lack of cohesion. It is this Committee's expectation that you, Secretary Locke, will find the common thread among all these diverse agencies and align their interests to bring the Department into the 21st century. If we ever needed a unified Commerce Department, it is now.

The 2010 Decennial has been beset by a lack of management and oversight, a lack of acquisitions expertise, and a lack of transparency by an agency whose culture is perceived as so impenetrable as to be self-defeating. Recent contract modifications have reframed the concerns and renewed some confidence in this agency, but great risk remains and so much depends on the success of the bureau's diligent employees to overcome the obstacles that in many ways were self-created. It certainly doesn't help that leadership, in the form of a new

Director, is delayed; that there will have been three different Directors in the three years leading up to the Decennial; and that a new Secretary must guide the process. Last year, deck chairs were being moved around on the Titanic. This year, the Committee expects and the Nation depends on you to avoid the icebergs that await.

Recently, this Committee has heard testimony on the state of the climate and it is nothing short of disturbing. The Nation, indeed the planet, is at a crossroads. Scientific consensus exists that humans are altering Earth's climate. Humans are at risk because the climate is affecting the organisms on which we all depend. Carbon dioxide (CO2) remains in the atmosphere for a thousand years. No matter what we do now, a projected one half to one degree further warming will occur due to a lag in the atmosphere. As Dr. Susan Solomon, testified, "we can only crank the dial one way, and we've got to decide how far." There is already 30 percent more CO2 in the atmosphere than there has been for the past 500,000 years. Temperature has increased 1.3 degrees Fahrenheit. More rain is falling as heavy rain. Ocean acidification is becoming a serious threat as the ocean is a carbon sink. The atmosphere is currently at 385 parts per million (ppm) CO2 and on its way to 450ppm. As a consequence, the oceans have become 30 percent more acidic already and another 30 percent change appears likely. The organisms we depend on have not evolved to deal with the increasing acidity. Coral reefs are a good metric, and more will dissolve than evolve by 2050. This negatively affects our fisheries and our coasts, where the vast majority of people live.

Rising sea levels will compound the problem, and this Committee heard testimony that sea levels will very likely rise by one meter by 2100 as a result of melting ice sheets. In some areas, given the slope of the coast, that means the seas could move inland by more than half a mile. This could drastically alter the coastline worldwide as beach erosion will be highly sensitive to increasing sea levels, and is projected to cost as much as one trillion dollars in GDP.

The Nation needs an agency that can provide the data needed for citizens and communities to adapt to these changes and to mitigate them as much as possible. There is only one agency that is capable of providing this leadership role but it is not structured – or funded – for this Herculean task. This Committee expects you and your new Administrator, Dr. Jane Lubchenco, to ensure the creation of a National Climate Service (NCS), analogous to the National Weather Service (NWS), within NOAA, and to do everything in your power to fund it commensurately with its mission. This includes all of NOAA's line offices, not just the NCS, because the agency is uniquely suited – and tasked – to research, monitor, regulate, produce and archive the data, and collaborate with other Federal and international agencies, States, and local communities, in combating these enormous challenges.

However, in order to ensure that both the NCS and the NWS receive all the data they depend on, you and your new Administrator will have to first fix the National Polar Orbiting Satellite System (NPOESS). Ironically, the former Administrator testified last year, and I quote: "I am not leaving the same problem I had when I came in with NPOESS from my successor." That is debatable. He seems to have had somewhat more success with the next generation of Geostationary Orbiting Environmental Satellite (GOES-R), although GAO still found some cause for concern, and this Committee will rely on you and Dr. Lubchenco to ensure it does not duplicate the messy path of NPOESS.

Underpinning all these challenges is the need to ensure the science and technical expertise exists and is fostered for future generations; that measurements are reliable so that industry can move forward with innovations to combat climate change and meet energy needs; and that the acquisition and procurement process is transparent, technically feasible, and does

not bankrupt the Nation in the process. Other critical needs include ensuring a safety culture; modernizing information technology systems to bring them into the 21st century; ensuring the Nation is safe from cyber attack; and maintaining the Nation's fisheries at sustainable levels so that they provide both sustenance and reliable economies for the communities that depend upon them.

You have quite the job cut out for you, Secretary Locke. You must overcome the lack of foresight and planning by your predecessor for the immediate future as well as plan for the Nation's needs beyond your tenure. This Committee expects your commitment to ensure an effective Decennial Census, the launch of a robust, well-funded National Climate Service, and increasing support for science research and science education. Critical to your success will be your ability to secure the resources required by Census, NOAA, and other Commerce agencies to accomplish their roles in support of the continued prosperity of the U.S. economy and to prevent the waste that comes from poor management of major procurements such as Field Data Collection Automation and NPOESS.

As we all know, we have not yet received the President's complete budget submission. Accordingly, we don't know many of the details of the request. We will be anxious to see those details when the budget is submitted and we are sure to have additional questions at that time. The hearing transcript will remain open for two weeks after the budget's submission so as to provide Members an opportunity to submit any budget-related questions.

At this time, I would like to invite you, Secretary Locke, to offer your opening statement, but I would first like to recognize the Ranking Member, Frank Wolf, for any opening statement that he would like to make this morning.

Mr. WOLF. Thank you, Mr. Chairman.

Mr. Secretary, we welcome, welcome you. I think the Chairman has covered a lot of the points. I have a prepared statement and will just submit it for the record.

There are several things that I am really concerned about, though, and the deficit that we are faced with the budget submission and what we are looking at now, the figure was 1.75 trillion. Now, some have said as perhaps it could go to as high as $1.9 trillion. And I know I looked at your bio last night when I was going through the material. You have three young children. I have five children, and I have a number of grandchildren. And I just wonder what we are transferring or passing on to future generations.

While I think a lot of this spending is necessary to a certain degree, and when I was Chairman of this committee, we dramatically increased the spending on sciences. But Congressman Cooper and I have a bill—we have 26 Republicans on it and 26 Democrats—that sets up a bipartisan national commission that puts every spending program, including entitlements and tax policy, on the table. With the deficit projections under this administration will continue through the year 2019, the projection is in that year the deficit will be $712 billion in 2019. No nation, no nation can continue this way.

We had a group a month ago that released a new series of recommendations on education—it was chaired by former Governor Roemer, who you may or may not know; David Abshire, heading the Center for the Study of the Presidency; former Senator Brock—that supported the concept that that Jim Cooper and I have. And at the unveiling of that, Norm Augustine got up and made the comment, he said, in the 16th century the Spaniards thought that they would always be the number one country; in the 17th century, the French believed that they would be number one; and in the 19th century, the British thought that they would be number one. The sun never set on the British Empire, they would say. Well, in the 20th century, we know they did not maintain it. In the 20th century, Augustine makes a very scary prediction that if we don't deal with both these deficits and also with increased areas in dealing on our economy, the U.S. could go the way of those other countries.

The other issue—and there will be some questions as we get into it, and you are the key person, yet I haven't heard the administration say very, very much about it—is our manufacturing base is eroding before our eyes. There is a publication called Manufacturing News. Do you receive Manufacturing News?

Secretary LOCKE. No, I don't.

Mr. WOLF. You ought to get it. Your people can call my office, and we will give you the title, how to get it and get a copy. It comes out about every month.

Our manufacturing base is almost gone. I know you are from the west coast, but if you get on the train in Washington and take it up to New York, you actually go through my old neighborhood in southwest Philadelphia. The factories are all closed. The windows are broken. There is graffiti all over the walls. There is a bridge that leaves Trenton, New Jersey, that goes into Pennsylvania that

has a sign across that says, "Trenton makes. The world takes." Trenton does not make anything anymore. Trenton has a terrific gang problem, and is pretty much, from a manufacturing point, at the end of the case.

I would hope that you could really put together a team to see what you can do there to rejuvenate, if you will, the manufacturing base, because we can no longer be a country that just buys things from other people, we have to begin to make them.

With those two things, let me just say welcome to the committee, and look forward to working with you over the years.

Mr. MOLLOHAN. Secretary Locke, your opening statement.

OPENING REMARKS

Secretary LOCKE. Thank you very much, Chairman Mollohan and Ranking Member Wolf. I am very pleased to join you today to talk about the Department of Commerce. I would like to make a brief opening statement and then, of course, submit written testimony for the record.

It is my top priority to make certain that the Department of Commerce plays an integral role in President Obama's efforts to help America retool and reinvent. The President's budget reflects the Department's broad mandate to strengthen the Nation's economy, promote innovation and environmental stewardship, but I have also challenged our employees to establish the Department of Commerce in the eyes of America as the voice for Main Street businesses and family-wage jobs. And it is our intent to help grow local economies by fostering innovation and opening markets to U.S. products and services.

To that end the President's fiscal year 2010 budget for the Department of Commerce includes some $13.8 billion in discretionary funds. This is an increase of $4.5 billion over the 2009 appropriation of $9.3 billion. Not counting Recovery Act appropriations, this is the large—a very large increase. The large increase is due primarily to the decennial census of some $4.1 billion.

While most of the details of the 2010 request are still under development, I am happy to share highlights, and I look forward to providing the rest in the future and discussing those aspects with you and the other members of the Committee.

This budget contains the resources necessary to complete the 2010 census effectively and on time, counting everyone once, only once, and in the right place. The allocation, combined with the $1 billion that the Congress provided in the Recovery Act, will enable us to hire nearly 1½ million temporary workers. We have also instituted numerous oversight changes in response to findings by the GAO and our own Inspector General.

The request includes more than $1.3 billion for the National Oceanic and Atmospheric Administration satellite programs that capture key weather forecasting and climate data, as well as resources to advance climate and ocean research, and to support implementation of the Magnuson-Stevens Act. Our weather satellite programs have been the focus of much concern by the Congress and a variety of oversight agencies. Progress is being made to implement recommendations by GAO and the Inspector General's Office, and to apply those lessons, particularly with respect to the NPOESS pro-

gram, into the GOES–R program. But there still are significant challenges with respect to the NPOESS satellite program.

The President's plan includes doubling the funding over 10 years for the National Institute of Standards and Technology's research activities that are critical to the Nation's technology infrastructure, as well as $125 million for the Hollings Manufacturing Extension Partnership program and $70 million for the Technology Innovation Program.

The Economic Development Administration will provide some $50 million in grants to support the creation of regional innovation clusters, and use $50 million to create a nationwide network of public/private business incubators to promote entrepreneurial activities in distressed areas. It is also our intent to really lead an effort with respect to bringing back manufacturing and stabilizing manufacturing in the United States.

The President's budget also supports the International Trade Administration's efforts to promote exports and eliminate barriers to the sale of U.S. products and goods abroad, but also continue to give the United States Patent and Trademark Office full access to its fee collections.

I want to thank you for entrusting the Department with nearly $8 billion in Recovery Act funds. We have provided our proposed spend plans and will keep you informed of our progress.

The National Telecommunications and Information Administration will have the biggest challenge, administering some $4.7 billion to improve broadband deployment throughout America.

Besides planning for next year and making sure that we use current resources effectively, I am focused on addressing the key management issues facing the Department of Commerce, including conducting a successful 2010 census, and improving the patent process. We need to substantially reduce the backlog and the time frame by which patents and trademarks are approved. We need to manage our satellite development and acquisition programs, and we need to strengthen our overall information technologies infrastructure within the Department of Commerce, because key technology and many of our information technologies involve and deal with very sensitive issues of concern to national security.

Your support has been and will be critical to our efforts. I appreciate the chance to hear your views on these subjects. I thank you for the opportunity to come before you today, and I look forward to your comments and questions not just today, but over the weeks and months to come. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Secretary.

[Written statement by Commerce Secretary Gary Locke follows:]

WRITTEN STATEMENT ON THE COMMERCE DEPARTMENT'S FY 2010 BUDGET BY COMMERCE SECRETARY GARY LOCKE HOUSE APPROPRIATIONS SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
April 28, 2009

Chairman Mollohan, Ranking Member Wolf, and distinguished Members of the Subcommittee, I am pleased to join you today to talk about the Department of Commerce. It is a privilege to serve the American people and I am grateful for the confidence President Obama has in my ability to lead this great agency. While this is my first opportunity to work with you as Secretary, I realize that the Subcommittee has a critical role in achieving the Department's mission.

The Commerce Department has a broad mandate to strengthen the Nation's economy, and promote innovation and environmental stewardship. The means by which we achieve these goals are vast and varied, and the 37,000 public servants under my watch work daily to achieve them. As announced in February, the FY 2010 President's Budget includes $13.8 billion in discretionary funds for the Department, a major increase over FY 2009 due primarily to the Decennial Census. We look forward to announcing the full details of the President's Budget in the near future.

This budget contains the resources necessary to complete the 2010 Census effectively and on time, with an increase of more than $4 billion. Combined with the $1 billion Congress provided in the American Recovery and Reinvestment Act (ARRA), these resources will enable us to conduct the Nation's largest peacetime mobilization by hiring nearly one and a half million temporary workers. The Census Bureau will also focus extensive advertising and partnership activities on hard-to-reach populations, to encourage a high response rate. All of this will be done with the goal of the most complete and accurate count of the Nation's population to date.

The request provides more than $1.3 billion for satellites that are essential to the National Oceanic and Atmospheric Administration's (NOAA) ability to capture weather forecasting and climate data. Resources are also provided to advance climate and ocean research, and support implementation of the Magnuson-Stevens Act and its requirement to end overfishing by 2011. These resources build upon the $830 million provided in the ARRA and will enable NOAA to meet critical mission needs.

This budget supports the National Institute of Standards and Technology's (NIST) advanced measurement and standards activities that are critical to the Nation's technology infrastructure. The President's plan for investments in science includes doubling research funding within NIST over 10 years. The request includes $125 million for the Hollings Manufacturing Extension Partnership program to enhance the competitiveness of manufacturers by facilitating the adoption of efficient manufacturing processes. The Technology Innovation Program will receive $70 million to invest in high-impact research that will tackle critical national needs and advance innovation. These two programs had been proposed for termination in the FY 2009 President's

Budget. In addition, the ARRA includes $220 million for NIST's scientific research activities and lab equipment and $180 million for construction of NIST facilities.

The Economic Development Administration (EDA) will support economically distressed communities in their efforts to develop strategies for long-term growth with higher-skilled and higher-wage jobs. EDA will provide $50 million in regional planning and matching grants to support the creation of regional innovation clusters. EDA will also use $50 million to create a nationwide network of public-private business incubators to promote entrepreneurial activities in distressed areas. Oversight of the $150 million provided to EDA in the ARRA for economic adjustment assistance and infrastructure funding, with priority for areas experiencing severe job losses, will remain active during FY 2010.

In FY 2010, the National Telecommunications and Information Administration (NTIA) will continue its important work of managing the Federal use of spectrum and performing cutting-edge telecommunications research and engineering, including resolving technical telecommunications issues for the Federal government and private sector. In addition, NTIA will be administering the $4.7 billion provided in the ARRA to expand broadband deployment and adoption, and will soon have completed the coupon program for the transition to digital television funded in the ARRA and the Digital Television Transition and Public Safety Act.

The President's Budget will also fully support the International Trade Administration's efforts to promote exports from small businesses and eliminate barriers to sales of U.S. products, and give the U.S. Patent and Trademark Office full access to its fee collections, which will provide resources to strengthen the Office's ability to encourage innovation and safeguard the value of intellectual property through more efficient and higher quality patent and trademark examinations.

While most of the details of the FY 2010 request are still under development, I would also like to discuss and listen to your perspectives on the key management challenges facing the Department. Our Inspector General has identified several issues for my immediate attention, including overcoming the setbacks experienced in reengineering the 2010 Census, better positioning the Department to address information security risks, effectively managing the development and acquisition of NOAA's environmental satellites, establishing a safety culture at NIST, and ensuring NTIA effectively carries out its responsibilities for the digital transition. I'm pleased to report some progress in those areas, as the Census has entered its address canvassing phase using handheld computers, and NTIA has eliminated its coupon backlog since receiving ARRA funds, for example.

Some challenges are unique to Commerce, and some are common in the federal government and the nation as a whole. The Department has to upgrade its aging infrastructure, and effective management is critical to these efforts. We are very pleased that the Administration plans to use ARRA funds appropriated to the General Services Administration for the next stages in the multi-year renovation of our headquarters, the Herbert C. Hoover Building.

In closing, since its creation the Department of Commerce has played a pivotal role in a wide range of efforts important to the Nation. While we are currently facing challenging economic times domestically and internationally, to quote President Obama "the time has come to usher in a new era of responsibility that lays a new foundation of growth on which we can renew the promise of America." I am excited about leading the Department into that era.

Thank you for the opportunity to come before you today, and for your continuing support of the Department of Commerce and its programs. I look forward to your questions.

Mr. MOLLOHAN. In the first round, we are going to stick to the 5-minute rule and see how many Members come in and perhaps proceed differently after.

NOAA ORGANIC ACT

NOAA was created, Mr. Secretary, in 1970 by consolidating programs from across the government. The consolidation was accomplished under an executive reorganization plan, leaving each program's original authorizing laws in place. Recently several NOAA ocean programs were authorized under the Omnibus Public Lands Act of 2009, Public Law 111–11. The U.S. Commission on Ocean Policy report stated that a NOAA organic act would strengthen the agency and would help to ensure that its structure is consistent with its primary functions of management, prediction, research and education. The Joint Ocean Commission Initiative calls for Congress, quote, to "codify and strengthen NOAA to enhance its mission, improve its structure and better enable it to carry out new and exciting responsibilities."

Does this administration, Mr. Secretary, intend to pursue an organic act for NOAA?

Secretary LOCKE. Chairman Mollohan, I have not yet had a chance to review the recommendations of the Commission on Ocean Policy. I do, in fact, know several of the members on that Commission and consider them very good friends. But I cannot comment and would have to get back to you as to our response to those recommendations.

Mr. MOLLOHAN. If you would.

[The information follows:]

NOAA ORGANIC ACT

At this time, the Administration has not determined whether or how to pursue a NOAA Organic Act. NOAA's Administrator, Dr. Jane Lubchenco, was a member of the Pew Ocean Commission and the Joint Ocean Commission Initiative. I will look to Dr. Lubchenco for recommendations on how to strengthen NOAA to ensure the agency can effectively carry out its mission.

NATIONAL CLIMATE SERVICE

Mr. MOLLOHAN. One of those new and exciting responsibilities should be the creation of the National Climate Service, Mr. Secretary. In fact, Dr. Jane Lubchenco, the new Under Secretary of Commerce for Oceans and Atmosphere and the Administrator of NOAA, has made it one of her priorities.

Cities and States across the Nation are looking for information to help them make decisions on where to build, what type of construction, the required placement of transportation, wildlife corridors, and a myriad of other choices that will be affected by the increase in sea levels and changes in climate, and the world looks to this information and this Service. No single agency can meet all the Nation's need for climate services, but as the world's preeminent source of climate data and information, NOAA is uniquely positioned to coordinate climate information and service across the Federal Government.

Secretary Locke, will you commit to the creation of a National Climate Service within NOAA and to ensure it is appropriately

resourced to provide the Nation with the products and the services it needs to understand, monitor and adapt to climate change?

Secretary LOCKE. Mr. Chairman, I am very supportive of what Dr. Lubchenco, Administrator of NOAA, has proposed by way of National Climate Service. And I think it is a natural extension to have it be part of NOAA, and it is a natural extension of our National Weather Service. And I clearly agree with you that we do need that type of service and entity, because farmers need that information, long-range information, about the impacts of climate change: communities that are affected by flooding; the concern about recreation and wildlife; what now falls as snow in the Cascade Mountains over the next several years in the future could fall as heavy rain, which has devastating impact not just on operations of the mountains and the use of the mountains for recreation, but also the impact on lowland areas.

This country does need a service that provides that data about climate so that businesses, individuals, families, communities can plan and adapt accordingly. Hopefully the country will also make very pronounced efforts to reverse climate change, or at least prevent it from getting worse, but in the meantime we also need this climate service, and I support that.

Mr. MOLLOHAN. Thank you.

Dr. Cicerone, president of the National Academy of Sciences, testified that we need an appropriate national strategy for climate change, and that NOAA should be in the center. He went on to name the big four in climate change: NOAA, NASA, NSF and DOE, with DOI and the USDA contributing.

Given the fact that NOAA, NASA and NSF are all in the same Subcommittee as well as being the top three climate change agencies, should OMB coexamine their budgets to develop synergies and take advantage of these efficiencies?

Secretary LOCKE. Well, I am not familiar with the structure in terms of the committees and as they relate to the Congress, but clearly I think that NOAA does work very well with all of these agencies, especially NASA, already. Again, I believe that there needs to be greater coordination, and I do believe that NOAA would be the appropriate agency to take the lead role with respect to a climate service.

Mr. MOLLOHAN. Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

How would the National Climate Service be set up? Would it be a division of NOAA? How would it be set up?

Secretary LOCKE. No one has any details yet, and, of course, that needs to be coordinated with the White House. And I know that the White House and the President are very much concerned about climate change, and others within the White House have talked about a climate service. And I know that there are many Members of the Congress that are considering legislation.

So we would be more than happy to work with the Members of Congress, along with the White House and OMB, on how a climate service would be established. But I would believe that it would be a part of NOAA, and I would be very supportive of having it be a part of NOAA, an extension of our National Weather Service activities already. What the exact appropriate, most cost-effective, effi-

cient and effective arrangement would be, I have no thoughts on that yet.

COMMERCE SPENDING

Mr. WOLF. With regard to the spending, what is Commerce doing with regard to spending? Are there any programs that you are proposing to eliminate in fiscal year 2010 or any future years?

Secretary LOCKE. Well, I don't have any proposals yet. I do know the President has charged us to be more efficient with the dollars that we do spend. And while I was Governor of the State of Washington, I prided myself in instituting a host of management changes that were able to accomplish our goals in a more cost-effective manner, having lofty goals, but using existing dollars to reorganize and to make our agencies more efficient and more effective, and to provide incentives for agencies to save money.

I have already expressed some of those ideas to OMB and to the President in a Cabinet meeting, and I look forward to working with Members of Congress as well as the administration, OMB on how we can institutionalize budget savings so that there are incentives to save, and the agencies are not penalized for identifying areas for saving, but, in fact, are able to keep some of those dollars and then return some of those dollars back to the Treasury.

Mr. WOLF. You know, the problem may very well be that in certain areas that you are in, there really are programs that you really may want to increase even. It is the entitlement issue, and the disappointment I have had with the Obama administration is they had that entitlement conference, and it just sort of evaporated and went away.

Have you followed what David Walker has said, who was the former GAO, about the economic tsunami off the coast ready to come and swamp us?

Secretary LOCKE. Yes, in fact I attended a conference put on by former Comptroller David Walker talking about the impact of the deficits, and this was about 2 years ago, and how, as you indicated in your opening statement, it is a mortgage on our children and our grandchildren. Of course, the President and the administration are really focused on economic stimulus. We have got so many people who are out of work. I think most of the observers indicate, and the economists have indicated, that in order to get us out of this recession, we have got to spend more.

After accomplishing, hopefully, the economic stimulus and getting people back to work and our economy back on sound footing, we then have to really examine all the spending within the Federal Government. I know the President is committed to that, but we in the Department of Commerce need to look at our functions and decide what programs are effective, what are of a high priority, which are not effective and perhaps could be reduced or eliminated in order to free up dollars for other vital service.

It has always been my belief and motto that regardless of the revenues that an agency or a department or a State or a government may have, we will never be able to do it all. We will never be able to satisfy everyone's wish lists; therefore, we need to establish priorities and focus on effective and efficient programs.

Mr. WOLF. I thought you were reaching for your clock when I saw your hand.

Mr. MOLLOHAN. No, you have another minute.

Mr. WOLF. Well, maybe I will save that question for another minute then. This may take more than a minute. You will bear with me, Mr. Chairman.

PROTECTING COMMERCE COMPUTERS

The Secretary of Commerce's laptop computer was compromised when he went to Europe, when he went to China. Most of the people in his party, the same thing happened. A lot of Members of Congress haven't been aware, but when they go to China, their laptop is compromised, their BlackBerry is compromised, which comes back—my computer was stripped by the Chinese. There were 17 other Members of the House whose computers were stripped including the International Relations Committee. There are cyberattacks directed against a number of government agencies.

What do you have planned with regard to protecting the computers and knowledge and information on the computers that you have in the Department of Commerce? And are you aware of what happened to Secretary Gutierrez?

Secretary LOCKE. Yes, I am aware, and I have had a briefing with our inspector general, as well as some of the key agencies within—the bureaus within the Department of Commerce that are the repositories of very sensitive information dealing with national security, and our trade approaches, and the concerns that we have with respect to, for instance, exports of sensitive material to other countries.

For instance, BIS, within the Department of Commerce, has very antiquated information technology systems for which they cannot even find replacement parts, and so they are truly surviving almost by a thread. It is my intent, as I indicated in the opening statement, to focus our energy on upgrading our technology systems and ensuring that we also have the utmost attention to cybersecurity. That has to be a top priority for the Department of Commerce because of the incidents that you have already referenced.

Mr. WOLF. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

For Members who have just arrived, we are proceeding under the 5-minute rule.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman, and welcome, Secretary Locke. It is good to see you.

Just on the side, I just think that I don't know of anybody as well prepared as you are in terms of your background experience, so we look forward to working with you on the myriad of challenges you have in your office.

CENSUS

I heard that you spoke on the census, and my sense is that the work on the census is going to be very, very important. What I was hoping also was that the emphasis on communities of great need, communities that are difficult to assess have a higher tension, and

because of our financial crisis now and trying to get information on folks would depend a lot on addresses.

So I was wondering what thoughts you may have had on so many people losing their homes, how are you going to be able to get accurate information on our communities, on the census and on the community survey, which goes on as a continuous effort?

The issue of language other than Spanish, Spanish has the sufficient numbers, but we usually look at percentage of a population before we look at the implementation of languages. Given that our communities are varied, and some are larger than others, but the need for communication in this arena is still important. Maybe you can speak a little bit about how you may want—how you may address the language issues with our communities that might be creative and unique.

CLIMATE CHANGE

And the issues around NOAA and climate change, I support all the efforts that you have talked about. And I think that the coordination of the climate issues is going to be paramount in this climate change. So maybe you could talk a little bit about how you think you may be operating at the Cabinet level with the other Secretaries, given that they have issues and arenas they are responsible for, and how you may be working with them to make sure that the issue of climate change is coordinated and is in sync for the administration.

Secretary LOCKE. Thank you very much, Congressman Honda. It is really a pleasure to be appearing before this subcommittee with you as a member of that. And I have always enjoyed our relationship and our partnership over the years in a variety of capacities.

CENSUS

With respect to the census, it is the number one challenge facing the Department right now. It is a monumental undertaking with a lifecycle cost for the entire 2010 census, which started many years ago, and when it finishes in a few years, estimated cost about $15 billion. And as I indicated earlier, we will be hiring almost 1½ million people, or 1.4 million people, temporary workers, to help conduct the census.

Given the challenges we had with respect to the handheld computers, which had to be abandoned about a year or 2 ago, and the cost overruns associated with that and having to rely on pencil and paper for some of the aspects of the census, it will be even more important that we have outreach efforts to those who do not mail back the census forms come April 1, 2010. And so a lot of the people we will be hiring will be going door to door, apartment to apartment, homeless shelters, college dorms to enumerate and have an accurate count of the population of America.

To be successful we have to rely on communities of color and community-based organizations, from churches to nonprofit organizations, to get the word out. Much of the budget calls for advertisements in nontraditional media, and to community organizations and language newspapers emphasizing the importance of the census, and making sure that people know that census forms are available in other languages. We will, in fact, be sending out cen-

sus questionnaires in Spanish to selected households in areas with high Hispanic populations.

But I also believe that we should be affirmatively sending out census questionnaires in other languages, for instance Asian languages; Vietnamese in certain parts of Houston where we know that there is a high concentration of people from Southeast Asia. We should not have to ask, or rely, or expect those families to call in or ask for a census form in another language, because if they can't really read English all that well to begin with, how will they know, how can they read the instructions to ask for a census form in another language? I think we need to be more proactive in that regard.

CLIMATE CHANGE

With respect to NOAA and climate change, I do sit on some committees convened by the White House dealing with climate change. Clearly there will be costs to the American public, to the American taxpayer, and businesses in implementing climate-change measures, but if we don't address climate change, the impact to people and businesses will be even far greater if we allow climate change to remain unabated.

These task forces do have other agencies represented. And so Congress is trying to provide its viewpoint on the impact of businesses, but also committing all the agencies—it is a multiagency task force convened by the White House—to really look at it. But there are many other agencies involved, and Commerce is a key, integral part of that task force, of actually two task forces that I serve on.

Mr. HONDA. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Honda.

Mr. Bonner.

Mr. BONNER. Thank you, Mr. Chairman.

MAGNUSON-STEVENS ACT

Mr. Secretary, I represent Alabama's only coastal district, and I have great concerns concerning the Magnuson-Stevens Act and its requirement to end overfishing by 2011.

While I agree that we need to preserve our valuable resources for future generations, I question whether this is the best time to engage in such strict fishing limits. And I would ask you to consider from where I sit the following: Our commercial seafood sector supports over $490 million in revenues from my home State, as well as some 11,000 jobs for Alabamians. Our recreation seafood sector supports over $630 million in annual revenues for our State, and more than 6,500 jobs for Alabamians.

Before NOAA moves forward on its recommendations of limiting one catch over another, do you look at economic impacts that it will have on communities that are currently struggling just to stay afloat?

Secretary LOCKE. Thank you very much, Congressman Bonner.

These are tough economic times, and let me just say that as Governor of the State of Washington, we had to deal with the prospect of overfishing, and setting limits on catches, and understanding the significant economic impact it had on the entire fishing industry,

and the businesses that depend on the fishing industry, and the families that are impacted as well.

Let me be very clear, I support the Magnuson-Stevens Act. That is an act passed by Congress, and so if any changes have to be made, it must initiate with the Congress itself. But let me just say that if we allow overfishing to continue, we will soon face the prospect of no fishing, because once the stocks are depleted, and if they are fished to the point where they cannot replenish, where the salmon cannot spawn again, and we cannot have recovering or returning salmon or regeneration of various stocks to the point that they can be fished, then we face the prospect of complete elimination of fishing sectors in many parts of the country along our coastal communities. So it is either pay now or face the prospect of no fishing in the future.

I do believe that once NOAA sets limits, that we need to be mindful of the economic impact, and therefore, it is important that we also have economic programs to help the fishing industry cope with those changes, whether it is buyout of their boats, whether it is financial assistance to move into other fields, or engaging the fishing industry to actually help engage or conduct some of the research that is necessary to continue to monitor the fishing stock or the affected industry.

I will note that, for instance, NOAA recently took economic impact into account with respect to the Northeast fisheries when a rule was proposed that would have severely limited the fishery, and so NOAA took that into account and did not impose as strict a fishing restrictions as had been called for by other individuals and various agencies within NOAA, but at the same time provided some economic impact to the extent that we could to the affected industry.

Mr. BONNER. I would appreciate that balanced response as we go forward to this, because, again, I am not disputing the benefits of the act itself, just appreciate hearing from you that economic impact should be a factor, and that we do need to consider how we help these families that have been in many cases involved in this industry for generations, that we not put them at the back of what is already a long unemployment line.

BUY AMERICAN

Could I shift gears real quicklike to Buy American?

Secretary LOCKE. I did not hear that.

Mr. BONNER. If I could, I would like to shift gears to Buy American. Something that you may know, but others in the room may not know, we build cars in Alabama. There has been a big debate in our Nation about the state of the American automobile industry. We build cars in my home State as well. In the last 10 years, we created more than 35,000 new jobs for Americans in the State of Alabama, and we are now the sixth largest automobile-producing State in the Nation. We build Navy ships and superferries, and hopefully if we can get through a little conflict with the Department of Defense, we will be in a position to help build refueling tankers for the Air Force in my home State.

But because of companies who came to Alabama with names like Mercedes and Honda, Airbus, Austal, Thyssenkrupp, we believe we

are poised to recover from this economic downturn perhaps more quickly than some of our sister States. Yet this whole debate on Buy American has come to Congress in the last few weeks and months.

To me, Buy American means just that, that we are buying products that put Americans to work in States like Alabama and Washington, where you lead a very ambitious and successful agenda to sell American products overseas. We think that when you are creating jobs in America and creating products that can then be sold overseas, that that has a good win-win situation.

The President has recognized, and I am paraphrasing here, that Buy American restrictions could violate WTO agreements or in other ways signal some form of protectionism, from his visit to Canada, as well as his trip recently to Europe. And I think he believes that such restrictions would be a mistake in these tough economic times as a potential source of a future international trade war. So my question is to you, what are your thoughts? How do you see the term "Buy American" in terms of what we are trying to accomplish and also what we want to do in terms of putting our focus on the overall economy both here and globally?

Secretary LOCKE. Thank you very much, Congressman Bonner, for that question.

I think all of us want to help promote our companies in our local communities, American companies. They make great products and services, and helping them grow, especially in the manufacturing sector, is key to our economic recovery. And we need to examine all of our national policies, whether it is tax policies to support services that would enable American manufacturing and American companies to grow and prosper. And I think we all want to help our local companies regardless of the nature of the content or the extent of the contact of truly American components.

I think we need to be very, very careful as we try to promote American companies and as we try to stimulate our national economy that we do not engage in protectionism, and the line now between—is getting very blurred between purely protectionist measures and economic stimulus activities. But if we engage in protectionism, whether it starts in another country, once we engage in protectionism, then we will see responses by other countries, and pretty soon we get into a trade war. And oftentimes nobody wins in a trade war, and it can become mutually destructive. So I think we need to be very, very careful.

One of the aspects of the Buy American provisions is that it has an impact especially on the States, because I think under the measure passed by the Congress, the Federal agencies and the Federal programs are not affected where there is an exemption to the Buy American clause if we have agreements, for instance, with other countries, such as WTO agreements and so forth. But the States themselves oftentimes don't have those types of agreements with other countries, and so material that they might be buying as part of the stimulus or Recovery Act, whether it is road construction or technology or what have you, building college campuses and universities, repairing dorms, equipping those dormitories or those laboratories with sophisticated equipment, may run afoul of the

Buy American Act simply because the content is not sufficiently American.

And so I think we need to be very, very careful when we enact some of those policies, but obviously the Congress and the administration are trying, focused on trying to stimulate our economy and trying to get as many American workers gainfully employed as possible. So those are all legitimate objectives. At the same time we did need to be mindful what impact it might have on the States, localities that are receiving these dollars, as well as the repercussions it may have around the world.

Mr. BONNER. Thank you, Mr. Secretary.

Mr. MOLLOHAN. Than you, Mr. Bonner.

Mr. Ruppersberger.

ITAR

Mr. RUPPERSBERGER. Yes. There are two areas I would like to get at, but I think probably will hit one and this afternoon on the other. It is ITAR and NOAA satellites.

You are familiar with ITAR, I am sure, and ITAR developed, I think, when one of our planes went down in China, and there was a lot of information that was received by—it was received by China, to our detriment. ITAR was then put in place, which basically was a regulation, and when Congress passes a law, we better watch what we are doing because it could have negative consequences after a period of time.

And what happened basically because of ITAR regulation, it put a lot of our companies, American companies, at a strong disadvantage for a couple of reasons. First thing, Europe has now been able to develop businesses that are competing with our American businesses because we can't compete with ITAR. And part of the issue also, not only the law, but just our bureaucracy, that we are really behind in allowing our American companies to compete and to approve what they can do and not do as it relates to ITAR.

And it is really getting serious to the point that some American companies may go out of business. Normally the world would buy American parts, but now they can't do it anymore. And it is putting us in a disadvantage in a lot of different areas, especially in our space industry, which we were the strongest in the world.

My question is what do you think of ITAR? How do you think it affects our domestic industries? And I would like to get your thoughts on the matter of what you would like seeing done. It is my understanding that the Commerce Department is attempting to move these ITAR requests quickly, but I also feel that we are going to have to have some kind of major regulation or even a change in Congress on ITAR and how it is affecting our economy and our space industry.

Secretary LOCKE. Thank you very much, Congressman. It is a very, very important question.

The ITAR program is administered primarily by our BIS Bureau, and we have the dual-use export program that is making sure that very sensitive equipment, technology is not used for military purposes by certain countries around the world. And so basically it is a prohibition on the export of military technology, or technology or

equipment that could be used for military purposes, adverse to the United States.

[The information follows:]

The Department of Commerce provided this clarification: The ITAR program is administered by the U.S. Department of State, which controls the export of defense articles, including satellites and many satellite components. The Bureau of Industry and Security (BIS), administers the Export Administration Regulations (EAR), which control strictly commercial and dual-use items.

The problem is that regular pieces of equipment or supplies that could go into military equipment might be readily available in other countries. It could be a bolt, or it could be a screw. And as a result of the restrictions that we have, a lot of companies are losing sales of commonsense items to other countries. And so it is hurting the sales of American goods and products abroad, and those goods are being sold by other countries, to the detriment of American companies.

The National Academy of Sciences has called for a significant review and reform of our export control systems, while still focusing on those components and equipment and items that truly are sensitive and important to the preservation of our military intelligence and our national security. It is my intent to look at that and to convene a task force to see what we can do to speed up the review of those items.

We do have a program called Validated End User, where certain companies, for instance in China, who have demonstrated a track record of receiving American goods and not using them for inappropriate ends, are authorized to receive and to have items sold to them without having to go through the normal individual export license regime. I would point out, for instance, of all the exports, for instance, going to China, only less than 4/10 of one percent are subject to the export control measures. And of that 4/10 of 1 percent, virtually 80 percent of items for which licenses are sought are given and granted. The problem is it is a very lengthy, laborious process, and the process often discourages American companies from trying to make the sale. So we are losing lots of sales opportunities for American companies.

Regardless of the Validated End User Program and the progress in the growing list of companies that have been cleared in other countries to whom we can sell those materials, I still think we should look at reforming the entire system.

Mr. RUPPERSBERGER. Well, my suggestions is this: I think China is really not the issue as much as Europe is the issue. I think administration after administration understands this is a problem, but then they do a task force which takes a long period of time, and then nothing really happens.

I would hope that you would make it a priority. I am going to be making it a priority from my perspective. I also am on the Intelligence Committee, so I understand the sensitivity of some of what we need to do, but we are way out of line, I think, as far as putting us at a competitive disadvantage not just competitively, but also from an intelligence and a defense and national security point of view.

Jurisdiction in this area is also with our International Relations Committee, so it takes Commerce and International Relations to

deal with it. Hopefully, if you have somebody from your staff contact me, and we are going to be making this a very high priority, because I think we have to move quicker than a task force and then we are way behind again. We have had a lot of studies, and I think we know the problem. Maybe we need more resources to speed up the process; that we have people waiting in line for years to determine whether it is ITAR-related or not, and that slows it down, too.

So this should be something, I think, especially in the space area and the parts that we are dealing with space that we need to look at. I am sure my time is up by now, so this afternoon I will talk to you about the NOAA satellite issue.

Secretary LOCKE. Thank you.

Mr. MOLLOHAN. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

CENSUS BOYCOTT

Mr. Chairman, in the interest of full disclosure, before I ask some questions, I have one brother who has been working at the Census Bureau for, I think, close to 30 years, or over 30 years, which is 10 years longer than I have been in Congress. Having said that, let me ask some questions about the Census Bureau.

And thank you for your testimony and for joining us today.

Mr. Secretary, recently a group, especially the National Coalition of Latino Clergy and Christian Leaders, has called for a boycott of the census. I publicly have stated that that is one of the most irresponsible things I have heard, and it does not serve any purpose to tie immigration reform to the census count. I know that the Census Bureau goes out of its way to count everyone living within our borders, and that is the way it should be.

In view of this now, and as we work to try to get them to take back that statement hopefully, what plans are in place to make sure that old folks, regardless of immigration status, are counted?

And unfortunately, you now have added to you this new situation with these folks making that statement. What, if anything, is taking place to deal with that and to make sure that this doesn't happen? And again, I want to just be clear. I think that was horrible, it shouldn't happen, and it makes a very bad point. In fact, one of the arguments pro immigration has always been these folks want to be part of our society, so for this group to say, don't count yourself, runs counter to that statement.

Secretary LOCKE. It is my intention to meet with the leaders of that coalition, and hopefully we will have members of the administration and other community leaders meeting with them as well to emphasize how important it is that everyone be counted. Especially in these tough economic times, it is important that every community receive its fair share of Federal dollars, and we are talking about some $300 billion a year in Federal dollars for education, human services and a variety of programs that flow to these communities. And so it is in their own economic self-interest and the future aspirations of minority communities, Hispanic communities, Latino communities, to be engaged in this census and to be fully counted.

CENSUS AND COMMUNITY GROUPS

Mr. SERRANO. Right. And in addition to that, the ongoing work of the census prior to this controversy does intend to reach out through the churches and community groups to the undocumented community.

Secretary LOCKE. They are, in fact, critical partners to the success of the census. We have to rely on those community-based organizations, faith-based organizations to get the word out, emphasizing how important it is that everyone be counted, and that the challenge is even tougher as the years go by with more and more Americans failing to respond to any survey that comes in the mail, let alone the census survey.

CENSUS AND IMMIGRATION

Mr. SERRANO. Let me ask you—one of the issues is always, well, if I count myself, then people will find out I am here undocumented. And I have always said those are two separate issues. There is an immigration issue, some people call it a problem; then there is the census count, we should count everyone.

Is the Census Bureau empowered to make statements saying you are not going to be—this information is not going over anywhere else, it is just being held here? Are you empowered to say that?

Secretary LOCKE. Yes, we are empowered to say it, and I have been saying it as well. And we need to—our community partners will need to say it, then the media, the newspapers, the TV/radio stations will have to say it as well.

Mr. SERRANO. Let me just say, I thank you for your comments. I feel confident that you will handle this the proper way.

This is a very interesting situation. Even individuals in Congress who are, I would say, harsh on the issue of immigration, undocumented immigration, don't really want these folks not to be counted, because some of the toughest people on immigration are in States where there are a lot of undocumented immigrants, and if they don't get counted, they lose dollars. So this may be one time when even the critics of undocumented immigration, or immigrants in general, may actually be on the same side saying, make sure you get counted.

But I thank you. And as every member of this committee, I stand ready to assist you on all issues, but especially on this very important issue of the next census. Thank you.

Secretary LOCKE. Thank you very much.

Mr. MOLLOHAN. Thank you, Mr. Serrano.

Mr. Fattah.

Mr. Fattah. Thank you, Mr. Chairman.

Mr. Secretary, welcome to the committee. I appreciate your comments and was able to hear them prior to my arrival, on the census; and I also would like to indicate my interest in the work of NOAA and particularly in the life of oceans and what is going on in terms of the research, to some of the challenges facing oceans.

EDUCATION DEFICIT

But I really want to focus my question today on the McKenzie report that just came out on education, the education deficit. And

it said in this report, looking at the challenges that we face in terms of international competition, that we have really lost our way in terms of international competition with other developed countries or wealthy countries. We are really at the bottom in terms of international education disparities, and that this is, in the words of the report, has the economic effect of a permanent recession on our economy, that the GDP growth which would have been the case if we would have just held even since, for instance, the 1980 report, A Nation At Risk. You take Bill Gates', Microsoft which you know well, and Bill Gates says, I can't even hire the people I need to do the work that I need done; and if I can't hire them here, I have to find some other place to hire them.

So I know this is a little, seemingly, off the beaten trail, because you are not the Secretary of Education. But I know you tackled this issue when you were Governor, and now you see it in a broader context and you see our economic competitors are really ratcheting up their educational effort. India has now set aside 50 percent of all seats in higher education institutions to classes of the public that heretofore were not allowed to go to college because they figure, if they get more people rowing, they can do even a better—China has ramped up its undergraduate and engineering programs quite significantly.

So as the Commerce Secretary—and I guess you will have more information once the census is done, but it is apparently very clear across the breadth and width of the country, we have a dearth of Americans, native born, who are pursuing terminal degrees in any of the arts and sciences. We have a significant shortfall now in males pursuing, successfully, college degrees at the undergraduate level, whether African American, white, Hispanic.

I mean, is this a challenge of some significance? I would like you to just suspend a moment—I know the administration has made significant investments and has a great many plans. If you would, comment to the committee about this educational deficit and how it impacts our competitive circumstances, vis-a-vis commerce.

Secretary LOCKE. Thank you very much, Congressman Fattah.

I actually believe that the education agenda is very much a part of the Commerce agenda. And I think those of us who have worked at the local level know just how important a highly educated workforce is to the competitiveness and the viability of American businesses.

The President yesterday gave a speech to the National Academy of Sciences, emphasizing the need for science and math education, emphasizing the need for research and development among companies, emphasizing the need for us to focus on innovation and technology as part of the future of America.

And he gave a very interesting statistic that was very troubling, that America, students—American students rank very far behind other developing countries, and even the developed countries as well as the developing countries, in terms of math and science proficiency—it is; the developing countries have stronger math and science than America—and that the students in those developing countries have a higher achievement in math and science or higher proficiency in math and science than American kids.

As much as we focus on economic recovery, we have got to focus—we have to include as a key component of that the education of our children, and emphasizing math and science and engineering.

The President indicated that when Apollo 10 or one of the—during one of the Apollo flights, that the average age of the people in mission control was 26 years old, 26 years old running our space program. And now we are having a dearth of qualified individuals, Americans, American students, American children into the engineering ranks and accomplishing some of the huge challenges that we face.

And yet we see college-age students forming—creating Google or Microsoft; and so we have got to realize that the jobs of the future are in—high-wage jobs of the future are in some of these exciting technology fields.

The President has committed significant dollars and proposed significant dollars and the Congress has responded with—in the Recovery Act with significant dollars for the Department of Education; and the President has talked about incentives for States to focus on math and science instruction, high academic standards.

It would be very easy for all the States to lower their education standards in order to help meet the No Child Left Behind requirements. And it would be very easy for States to lower academic standards so that more children can graduate from high school and make the parents of the children feel good. But what have we done for their economic future if they are not skilled in critical thinking, reading, writing, math and in science?

So I very much believe that American businesses need to help lead the charge and work with education officials in their respective communities to insist on high academic standards with attention to math and science.

Mr. FATTAH. Let me thank you and thank you for your work you have done in your previous role as Governor. I am quite familiar with the work that was done in Seattle with the business community to create real workplace internships and apprenticeship programs for our children to get a sense of what is available in real life.

But there is more work to be done, and I think that is going to be very hard for us to compete internationally if we don't have the educational achievement level raised. And then what is amazing is that this challenge rests—this disparity rests between our best performing children and our international competitors; and as you know and I know, there are a lot of young people who have not yet been able to demonstrate their best for lack of educational opportunities.

So thank you for your testimony. I look forward to working with you.

Mr. MOLLOHAN. Thank you, Mr. Fattah.

Mr. Culberson.

AMERICA'S COMPETITIVENESS IN THE SCIENCES

Mr. CULBERSON. Thank you, Mr. Chairman. I could not agree more with my friend, Mr. Fattah. This entire Subcommittee, Mr. Secretary, is committed to investing in scientific research and en-

suring that the United States maintains its technological edge. We are all strong supporters of the space program, and as concerned as I know you are and the administration is in the declining number of young people going into the engineering profession, going into the sciences, physics, mathematics, I wanted to ask if you could very quickly tell us a couple of specific things you will do as Secretary of Commerce, very specific things with short-term or long-term results, to help improve America's competitiveness in the sciences, encourage more young people to go into the sciences and help us keep that technological edge that we have always had.

Secretary LOCKE. First of all, I have already been to several States where we have announced Economic Development Administration grants. Just a few weeks ago, 2 weeks ago, I was in Arkansas providing some—announcing some $5 million in grants for economic assistance.

Mr. CULBERSON. To what type of organizations?

Secretary LOCKE. These were to colleges and universities, helping create incubator sites; also some industrial parks, where we are providing some infrastructure. This was part of the disaster relief funds that the Congress appropriated in the wake of the hurricanes and the tornados and the flooding in the Southeast and throughout much of America.

Mr. CULBERSON. Targeted grant money. How about to encourage young people to go into the sciences?

Secretary LOCKE. Right. But in those—at, for instance, the colleges and the universities and even meeting with the local business people, I talked about the need for the business community to really focus on math and science and focus on academic standards, and for the business community to get involved in the education agenda and the education plans within their respective communities.

With respect to Department of Commerce, we also have some funds that we are going to be providing through NIST, the National Institute of Standards and Technology, on fellowships, grants to colleges and universities, promoting more research and development, because we need to have a strong research innovation base throughout America, not just within the Department of Commerce.

Mr. CULBERSON. That is where I was hoping you would be going, is through the investment and research through NIST, which has a terrific track record of investing in peer-reviewed specific research with great benefit.

And if I could, also, I want to be sure that you are aware from the numbers that we have been—become familiar with, over the last several years working on this wonderful subcommittee, that the Chinese have about 200,000 people working in their space program. We have only got about 90,000 in ours. They graduate about 300,000 engineers a year, where we are, in the United States, graduating about 30,000.

So it is an extraordinarily important question. And I appreciate your commitment to NIST. They do wonderful work.

WASHINGTON STATE BUDGET

I wanted to ask, if I could, Mr. Secretary, as Governor of Washington State, did you have, as we have in Texas, a balanced budget requirement in your State constitution?

Secretary LOCKE. Yes, we did. It is actually not in our constitution, but we have various statutes that, in effect, require us to have a balanced budget.

Mr. CULBERSON. I know, as Governor, you dealt with that every year and made recommendations to the legislature. Did you make recommendations to the legislature about where to save money in the budget of Washington State in order to make sure the budget stayed balanced?

Secretary LOCKE. Yes, we did. When we had a very severe recession, what we did was not to raise taxes, but instead institute what we called the "priorities of government" approach, which has been adopted by many other States—Republican Governors, Democratic Governors. It has been written up in a variety of different textbooks.

Mr. CULBERSON. How did that work?

Secretary LOCKE. We went through every item in the State budget. We had people from the outside, different agencies, cross-sections of people, interdisciplinary teams. We set very broad spending parameters in various components or activities of State government, and then basically ranked every single program to determine what was most valuable. And then I and my advisors would sit down and go through these lists and say, we are going to go through items 1 through 15, or this is how much we wanted to spend in this particular area and——

GOVERNMENT SAVINGS

Mr. CULBERSON. Save money on the ones that are of lower priority, sort of the Dave Ramsey approach, I guess, which is—he is a guy I have been paying increasing attention to.

We in the Federal Government, as I know you are aware, are on a path to, frankly, becoming Argentina if we are not careful. Medicare will be the bank—the trust fund of Medicare will be exhausted in 10 years. It is gone, empty, no more Medicare checks. Social Security is on a similar path; we are trying to get the number right now when it is exhausted.

And I don't play favorites by the way. I voted against $2.3 trillion in new spending under President Bush.

I got here in 2001. I voted against the Medicare prescription drug program, the farm bills. I voted against virtually every major spending bill I could under President Bush in order to try to save money and, so far, had to vote against $1.6 trillion in spending just in this new Congress.

And I wanted to ask if you could apply that—I really like that idea, the "priorities of government" approach—to the Department of Commerce. There are bound to be some areas in the Department of Commerce that you can identify for the subcommittee where we could save money.

Do you think you could find 5 percent savings, 10 percent savings, if—if you applied the priorities of government approach to the

Department of Commerce and show us where you could save a nickel on the dollar or a dime on the dollar?

Secretary LOCKE. It is my intent to bring some of those principles to the Department of Commerce. I have only been here 4 weeks. I am still trying to learn the nomenclature, the personnel nomenclature, the financial nomenclature of Washington, D.C., and the Federal Government.

But the President does very much care about efficiency and effectiveness in government programs. He has asked all of us to go through our budgets and find savings. But the States—while we had—most of us have had to have balanced budgets, we also rely very much on the Federal Government to help carry out our programs. And I do believe that in these very, very tough economic times, the way to get out of a recession is, in fact, to spend more.

Mr. CULBERSON. We are borrowing money to pay off borrowed money is the worry.

And I wanted to ask if you could—because I only have a brief amount of time, would you be willing to apply that priorities-of-government approach to the Department of Commerce and tell us on the subcommittee where you think we could find some savings?

Secretary LOCKE. I do intend to bring management efficiencies and changes to the Department of Commerce to identify programs that are perhaps not as effective or efficient as others. I believe that we in all of government should be trying to identify those savings and take those freed-up dollars, for instance, to put into more important or critical programs. As I said at the beginning, it is my belief that regardless of the revenue source, regardless of your type of agency, you will never have enough money to do it all and we need to prioritize.

Mr. CULBERSON. Thank you. Because I know you recognize the urgency of the problem and actions essential.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

NOAA SATELLITE DESIGN LIFE ISSUE

Mr. MOLLOHAN. Secretary Locke, Dr. Cicerone testified before this committee that the fleet of observational satellites needs quick attention. How many NOAA satellites are past their design lives?

Secretary LOCKE. I do not know the exact number of satellites that are beyond their useful life. I think an interesting point, or a corollary to that, is we also have several satellites in the future that are approaching the end of their useful lives, and the challenge is to make sure, whether it is with NPOESS or the GOES–R system, that we have those satellites in place so that there is not a gap in the coverage and the capability of our satellite system.

Mr. MOLLOHAN. That is my question, if you would submit that answer for the record, and what is the risk of data continuity and delivery of NOAA forecasts and other products as a result of this design life issue.

[The information follows:]

SATELLITES

In the NOAA Geostationary Operational Environmental Satellites (GOES) constellation, two of three on-orbit satellites are operating beyond their design life.

NOAA is preparing to launch the GOES–O satellite later this year, which will be available for operational use or to be placed in storage. NOAA is taking steps to avoid risks to data continuity based on a current assessment of the performance of NOAA's on-orbit satellites. However, such continuity is dependent on the success of planned launches and the continued development of the GOES–R series of spacecraft without significant delays.

In the NOAA Polar-orbiting Operational Environmental Satellite (POES) constellation, two of four on-orbit operational satellites are operating beyond their design life. The NOAA–19 spacecraft was launched in February 2009 and is currently undergoing its initial testing post-launch, though all components are operating as expected. The satellite will be placed into service once the tests are complete in the next few months. NOAA's on-orbit and recently launched satellites are performing well and there is no immediate risk to data continuity for NOAA's weather and climate missions. We are concerned about the fragility of the constellation as the tri-agency National Polar-orbiting Operational Environmental Satellite System (NPOESS) satellites are scheduled to be launched in the 2014 timeframe. The continued challenges with developing a key NPOESS sensor are the major cause of this risk to data continuity. NOAA is placing highest priority on the acquisition of this system to mitigate this risk, and is working in collaboration with NASA and the Department of Defense.

NOAA SATELLITES

Mr. MOLLOHAN. Given the projected outyear budgets for NPOESS and GOES–R, existing satellite programs could exceed 30 percent of NOAA's discretionary request as early as 2011 and remain at that level. And this assumes that NOAA's budget reaches 4.5 billion and that funding for the rest of NOAA remains flat. This obviously represents a major funding challenge for NOAA.

Since NOAA has these responsibilities, national priority represented by climate and weather satellites, do you agree that NOAA's funding level should increase accordingly to accommodate this huge percentage out of their budget that satellites are going to represent?

Secretary LOCKE. Because the satellite program is going to be costing more because you have to continue the development and the research until they are finally launched. And the longer it takes, the more we are spending. The various estimates for these programs go up, although we are hoping that the trajectory of those increased costs are flattening out, especially with some of the recommendations, whether the Nunn-McCurdy recommendations, as well as reports by GAO that management changes are being made.

But we still have concerns, and even though some of the past—even though the recommendations of the Nunn-McCurdy process have been incorporated, we are still finding delays, we are still finding increased costs. So that is very troubling because of the impact these increased costs will have on the other key functions of NOAA. So I think that if we—putting the cost of the satellite programs aside, then with some of the increased responsibilities of NOAA, it is going to be a challenge to accomplish that within the dollars that are available to us.

And then, if the increased cost and if the satellite programs continue to increase in cost, then we are stuck with the problem of either cutting back on these other programs, vital programs of NOAA; and that, I think, wouldn't be in the best interest of the country.

Mr. MOLLOHAN. During the 1990s, two fateful decisions were made, first, to converge the civil and defense polar orbiting envi-

ronmental satellite programs and, second, to abandon the long-term mission elements for NASA's EOS.

In the transition to reliance on NOAA's polar orbiting system for continuity and numerous critical climate observations, the ensuing NPOESS implementation has proved to be disappointing in the extreme, with cost overruns that have jeopardized the overall health of NOAA and schedules that left the civil polar satellite system fragile and one satellite failure away from major gaps in the data, particularly for monitoring of climate change.

The difficulty with the tri-agency's executive committee and the management for NPOESS has had a lot of study, a lot of comment. It comes as no surprise that NPOESS is routinely behind schedule and over budget. That is all very well documented, and this committee could have a whole day of hearings on NPOESS and what it means for your budget, what you are going to do to address the concern as you come into this responsibility. And you are the new person on the block, so that puts you in, maybe, a refreshing position to deal with it.

But let me—instead of going through all of that in that kind of detail, let me give you an opportunity to assess the status of these programs, NPOESS and GOES–R, and discuss the management and funding challenges and how you, at this point, early in your tenure here, intend to address them and approach solutions.

Secretary LOCKE. As a Governor, as a manager, I never liked cost overruns. I think that was——

Mr. MOLLOHAN. You are going to be very unhappy as you come into this program.

Secretary LOCKE. And I think that clearly this committee knows much more than I about the tortured history of these satellite programs.

I don't think the current system is effective. I don't think it works. As you indicated, it is a tri-agency ownership or tri-agency management structure; and it is well documented what has happened. And the cost overruns have triggered the Nunn-McCurdy review, which came up with a whole host of recommendations which the agencies have followed.

But that still has not solved the problem. So I think there is really—I have mentioned this to OMB and to others within the administration. I have also mentioned to Secretary Gates my desire to sit down and talk with him. I think it needs to be resolved at a higher level, involving the White House Science and Technology Office, OMB and the Secretaries involved, and I intend to raise this issue.

We need a change. We need a change in the method by which we approach the satellite system. Now, whether or not it can be changed given the contracts that have already been awarded and the way in which NPOESS is now being operated, that is debatable. But certainly, as we look at future satellite systems, I don't think we can repeat this type of management structure.

Thank goodness, or thankfully, a lot of the lessons learned from NPOESS have been incorporated into the management regime for the GOES–R system. But GAO has also pointed out a few items where we can certainly do better, and so I intend to address those and make sure that the recommendations of the GAO are being followed with respect to GOES–R. But the GOES–R satellite system

seems to be much farther along and with better cost controls than NPOESS.

Mr. MOLLOHAN. We understand that the GOES–R schedule for that series of satellites is being pushed out because of some protests. Provide us with a background on that issue and why the protest, and what does that mean for the launch schedule?

Secretary LOCKE. I would have to get back to you in writing or at another time or even perhaps this afternoon with respect to that particular issue, as I am not fully apprised on that.

Mr. MOLLOHAN. That would be fine for the record, or if you are prepared to talk about it this afternoon, that would be good as well. So we will just jump that topic.

[The information follows:]

GOES–R

The GOES–R spacecraft contract was awarded on December 4, 2008, and subsequently protested by Boeing on December 15, 2008. On February 20, 2009, GAO dismissed the GOES–R protest as moot sonce NASA decided on February 17, 2008 to re-evaluate the proposals and make a new selection decision. The Source Evaluation Board (SEB) has reconvened and re-evaluated the proposals as necessary. The new selection decision was made and announced on May 6, 2009.

Mr. MOLLOHAN. Mr. Wolf.

Mr. WOLF. I thank you, Mr. Chairman.

SCHOOL VOUCHERS

Mr. Secretary, I appreciate a number of your comments. I found myself agreeing with most of what you have said, and I have a couple of questions I want to ask you on the census. But before I do—maybe you should have been the Secretary of Education; I agree with your comments. We are now 24th and we are falling behind rapidly; and some the countries we are behind, it is really very, very troubling. And our space program, we are falling behind in many, many areas.

I was disappointed and I want to take this opportunity—not to pressure you on it—but that you may become an advocate for the inconsistency of this administration on the issue of vouchers for children in the District of Columbia schools.

I have a daughter that has been involved in teaching in the inner city who has worked in the inner city for a number of years. Many of those young people who use those voucher programs, it is their way to get out, to break out, to get an education. And I saw the Secretary of Education move to my former congressional district, Arlington, so he could have good schools. But if you are living in an inner city—and my daughter taught in the D.C. schools, too, and there is no education really; fundamentally you are getting beaten up almost every day.

And now this administration wants to take away that voucher of 1,700 kids and then also prohibit any additional ones from coming in. The administration is splitting families up, because there are some families where the one child would be in a voucher program and the other child would be coming into the voucher program the following year and they are being knocked out.

And so I would hope when this comes up in a Cabinet meeting that you would formally speak the way you spoke here and advocate for that. Because it is one thing to say we should improve the

District schools, and I think Superintendent Rhee is—is doing a very good job. But in the interim, don't tell a parent her child should stay in a declining school where they are getting beaten up.

I would hope when this comes up—the administration has been silent, the mayor has been silent, the Washington Post has advocated for it—and I would hope that you would speak out on behalf of those young students, all from the inner city, who are taking advantage of the voucher program.

You don't have to comment on that unless you want to make a comment. But I do agree with your comments about what you said on education.

THE GATHERING STORM

Secondly I would urge you, if you could, to meet with Norm Augustine, who put together the Gathering Storm. Do you know who Norm Augustine is?

Secretary LOCKE. No, I don't.

Mr. WOLF. Well, we will get a copy of it. Norm Augustine is a prominent business leader with Lockheed Martin. He was the author of—the chairman of the report, The Gathering Storm and I will get that to you. But I would urge you to meet with Norm and sort of get some ideas of where maybe we might want to go.

HUMAN AND RELIGIOUS FREEDOM

The third issue before I get to the census is that I was critical of the previous administration for the failures to address and advocate at every opportunity human and religious freedom. In July of this past year, just before the Olympics, I was one that felt the President should not go to the Olympics and said so publicly.

In July, Congressman Smith and I went to China, had a very difficult time getting a visa. It took about 3 weeks. And only at about 10:30 at night the night before did they grant the visa.

We had meetings set up with a lot of religious leaders and, also, some dissidents who were lawyers, who had been given an award by the National Endowment for Democracy. Only one of them who was invited to dinner made it. Every other one was arrested, and the next morning the one who made it to the dinner was arrested. Secretary Rice, who was in town at that time never said a thing. In fact, in a press conference that she had with the Chinese foreign minister, they bantered and discussed what venue would be their favorite venue when the Olympics took place.

And yet you had men that were taken away, beaten. One pastor's son's eye was beaten; whether he lost the eye or not, I am not sure.

In China today—I don't know what faith you are. In China today, there are 30 Catholic bishops in jail. Congressman Chris Smith took Holy Communion from Bishop Su. He has never been seen since. He was seen once, they believed, being transferred from one automobile to another, but we don't know if he is alive or not, simply for granting Holy Communion to Congressman Smith.

In 1989, I was in Beijing Prison No. 1 where they were making socks. These were Tiananmen Square demonstrators, making socks for export to the United States. Tiananmen demonstrators are still in prison today—20 years, still in prison today.

I went to Tibet through a back door. We went in with a trekking group years ago; and what they have done to the Tibetan community—Lhasa is really no longer a Tibetan city. They are persecuting the Uyghurs. There is a woman in my district, Reba Kadeer, whose two children are now in prison, and there are public security police living in an apartment to make sure her daughter doesn't do anything.

I have seen similar trends in this administration. I thought when Secretary Clinton went to Beijing, they missed an opportunity to speak out and advocate for them. I had urged Secretary Gutierrez and everyone in the Bush administration who had a political appointment to attend a house church in China. A number of house church leaders had asked us to attend the house church and said, could you get someone in the administration to attend the house church. So they, in essence, wanted someone to come. It isn't that they were going to be in danger; they felt this would actually protect them.

I would urge you and others in the Department of Commerce, when given the opportunity of going to Beijing, that you worship, even though it may not be exactly your denomination and we don't have to get into what your religion or faith is. Just to stand with them, Sharansky said when people stood with him, advocated for him, his life got better. Solzhenitsyn said the same thing; Yelena Bonner said the same thing. So I would urge that.

Perhaps the Secretary regrets the fact that she missed an opportunity. Because you were in politics before, you were Governor, you have run for office; and it is like someone saying, Gary, I am really for you privately, I just can't be for you publicly.

Well, if we can't stand with the dissidents publicly, then we are really not for them.

So I am hoping you are given an opportunity, and I will share with you the letter that we sent to the Bush people, and I would ask you to consider attending a house church where a pastor wants you to be. If—do you think you might want to do that?

Secretary LOCKE. I will certainly consider it, and if you can give me some of that information, I will welcome it.

Mr. WOLF. I will do that.

ADMINISTRATION OF THE CENSUS

Now for the question. When Senator Gregg was nominated to the Secretary of Commerce, White House officials stated that the Census Bureau will be overseen directly by the White House instead of the Secretary of Commerce.

We need a fair, accurate, trustworthy 2010 census, conducted by career professionals, not a 2010 census managed by political operatives. It was very troubling when I saw that Rahm Emanuel was going to kind of run the census or be operating it.

Three questions:

Do you believe the 2010 census should be managed by experienced professionals who are leaders in the field? And I think I know your answer, but I want to get it on the record.

Two, what role will the White House have in execution of the 2010 census?

Thirdly, if the White House attempted to change the administration of the 2010 census, such as add in a question or change the nonresponse follow-up process, how would that impact the costs and risks associated with the census?

Secretary LOCKE. Congressman, let me just say that when I was asked by the President and the White House to take on the role of Secretary of Commerce, I, in fact, asked about the census, given the matter that it had received in the press. And the President and others in the White House have assured me that we will—that the White House will not be supervising or running the census. The census ultimately reports to me, and of course, I report to the White House and to the President and serve at his pleasure.

But we have thousands of highly professional and dedicated people in the Census Bureau, and it is their job to carry out the census and there will be no political interference.

But what is the role of the White House? Obviously, in every census, under Democratic and Republican administrations, we have always kept the White House and the Members of Congress apprised as to how the census was going, whether cost overruns, management issues, response rates, et cetera, et cetera. We will continue to report the progress of the census to the Members of Congress, Democrats and Republicans, House and Senate, and to the White House.

But it is our intent, and I have been assured by the White House that they have no intention of supervising and running the census, that it is the purview and the province of the Census Bureau, the professionals there, along with the Secretary of Commerce.

STATISTICAL SAMPLING OF THE CENSUS

Mr. WOLF. Thank you. One other question, then. Do you have any plans to use statistical sampling for the 2010 census figures for the purpose of apportioning congressional seats or allocating Federal funding?

Secretary LOCKE. No.

CHINA MATERIAL

Mr. WOLF. Well, I want to thank you very, very much. And I will get the China material to you, plus the names of any of the pastors. And if you feel comfortable, I plan on waiting until all of the political appointees are appointed in the administration and then sending them—and let me just say candidly, no one, no one, no political appointee in the Bush administration took me up on visiting a church.

And so once most of the political appointees are appointed, I plan on sending a letter with the telephone number so that they can—and also with the acquiescence of the people involved that hopefully—it will be so refreshing to have a flooding of people from this administration and government—and, quite frankly, let me just say that I don't know that there are Members of Congress that really go to these services either.

In the days of the Reagan administration, whenever Members of Congress went abroad or members of the administration went abroad, they generally carried a list of the dissidents they advo-

cated; and for someone like you to raise a couple of these cases I think could go a long way.

So I appreciate it. I will get you the material. And thank you for your testimony.

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Mr. Honda.

CONCEPTUAL FRAMEWORK OF DEPARTMENT OF COMMERCE

Mr. HONDA. Thank you, Mr. Chairman. I think many times when we get new jobs and new positions, we generally have a conversation with ourselves, saying something like, geez, I didn't know that. I wish I knew this before or—maybe we should do a better job of teaching our youngsters some of the basics that we start to realize that exist here on the Hill and to run the government.

Seeing the breadth of the responsibilities of the Department of Commerce that includes not only business, trade, but education, science and the other activities, will there be a time when you will be asking your Department to start looking at some of the things that they do and try to develop some sort of a conceptual framework of what it is that—without the title of Department of Commerce, but what the activities are and how they are related and how they can be converted into instructions so that somewhere along the line the education department can take that and sort of convert that into instruction? Because the more that our citizens are informed and cognizant of concepts and responsibilities, the better consumers they become, better consumers of information and better decision-makers they would be.

CLIMATE CHANGE

And with this whole issue of climate change, I don't think there is anything under the sun that isn't affected by some activities of human behavior, whether it is understanding the climate—movement of air, carbon dioxide, water, the chemical processes and all these sorts of things; and then how change in climate might impact on different diseases that may occur because of the climate change, or different geography that might occur, predictable; and the kinds of things that NOAA and NASA and NIST can work on in terms of being better stewards and understand how to make decisions on what we do with our stewardship and our Earth, outside of the economics that we understand that we need to take care of this Earth with the whole idea that Earth first and figure out how to make a living from that later on.

Is there any thought—have you had any thoughts about that or would that be something you would sort of look at in your future and sort of contemplate and see what can be done with that?

ACTIVITIES OF THE DEPARTMENT OF COMMERCE

Secretary LOCKE. Thank you very much, Congressman Honda. Being relatively new to the Department of Commerce, I am nonetheless very, very impressed and amazed at the wide array of resources and information and activities within the Department of Commerce from NOAA to the Census Bureau; and it is not just counting the population every 10 years or doing the American com-

munity survey every year, but all the incredible research that occurs in terms of business transactions, business behavior, consumer activities, consumer spending, what consumers, or Americans and how they spend when they visit other countries to even some of the characteristics of successful businesses over a period of time.

And then, of course, we have all of our trade and economic activities. And we also have National Institute of Standards and Technology, which is really helping set the course for so much of the new technology that Americans take for granted every single day, whether it is cell phone standards to cyber security or even to the testing of sophisticated equipment that companies deploy, setting the standards for what basically will pass the test or pass muster and what doesn't pass muster.

So I really think we have an opportunity to communicate a lot of these activities and this incredible breadth of knowledge to people across America so that they understand a lot of and can take advantage of this research, whether it is from the National Institute of Standards and Technology to some information from the Census Bureau and especially to NOAA.

And I think we really have a challenge to try and impart this information, especially to our schools and children. And it would be great if children could almost view real time, some of the research that is going on, taking place on our NOAA ships or receiving some of the pictures from our NOAA satellites. So that they really have an understanding of the relevance of so many of these bureaus within the Department of Commerce, to them and really can get excited about a lot of this cutting edge activity. I want the people of America to view the Department of Commerce as a department of knowledge, innovation and economic growth.

LONG-TERM IMPACT OF SHORT-TERM ACTIVITIES

Mr. HONDA. It would be important, I think, somehow that—there is a tension, it seems to me, between science, good stewardship and making money; and sometimes we go to the most recent, the most short time line, that is, to make money first and not worry about the impact of how we make that money.

For instance, when we scrape the bottom of the ocean looking for different kinds of foods, we destroy thousands of years of formation that was necessary for the propagation of different species and the balance and sustainability of our planet. So all that seems to be embodied in a lot of things that you do. So it would seem logical that somewhere along the line we would look at all these things and how this is embedded in creating some value that we internalize as a nation, as individuals; and I think that you understand that and this is something that our children and your children would probably be—it would be helpful for them, so that we can sustain the leadership that we have in this country.

I appreciate—perhaps sometime in the near future we can have a more thorough discussion about that.

Secretary LOCKE. Well, thank you, Congressman Honda. I think it is important that Americans—I think Americans are beginning to take a longer view on matters; as the current economic problems of the country have shown, we cannot just focus on short-term results, short-term corollary results and the drive for profit in the

next quarter without thinking of the implications 2 or 3 years down the road.

And I think clearly President Obama is trying to get our country back on sound economic footing, a strong economy creating more jobs, preserving jobs, sensible regulation of the financial market, knowing that without regulation, proper balance, that American consumers, American industries, financial practices can hurt those American families and American businesses.

And the same thing goes to the environment, which is why the President is so committed to climate change, because it is going to cost us a lot more money if we simply allow emissions of greenhouse gases to continue unabated. The devastation to businesses, to communities, to farmers, to recreation, to daily lives with more flooding, severe heat waves, the list goes on. So—the human toll, let alone the political and economic toll will be disastrous, so it is either do something now or suffer the consequences later.

Mr. HONDA. Thank you.

Mr. MOLLOHAN. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

CENSUS AND THE WHITE HOUSE

Secretary Locke, as Governor, you always had a reputation as being a fair man and you always followed the law. And I wondered if I could to follow up on questions that Mr. Wolf asked you about the census.

And, you know, the Department of Commerce has a statutory obligation, Federal law assigns the responsibility for running the census to the Department of Commerce and no other agency; and the law is unambiguous.

We have as—I know Frank is familiar with the book; I haven't read completely myself, Rahm Emanuel's book, The Thumping. When Mr. Emanuel or someone from the White House—because he is going to make a phone call. He is going to make a phone call or ask you verbally.

When he asks you or makes suggestions, assuming that he does—I think he will. When the White House asks you to do one, two and three or attempts to give you specific direction on how to run the census, how will you respond to that?

Secretary LOCKE. I have every confidence that the White House will want the census to be done as accurately as possible, and all within the legal parameters with which we are charged. So I have absolute confidence that there will be no attempts to interfere with the census.

Mr. CULBERSON. So you will not accept any communications from the White House on how to run the census. You will do that entirely on your own, under the law, within the Department of Commerce, without outside interference from anywhere, including the White House?

Secretary LOCKE. As I indicated to Congressman Wolf, the census has always communicated with the White House under Democratic and Republican administrations and to the Members of Congress. We are receiving suggestions on how to run the census from the Members of Congress, and I am sure that we will have ideas from the White House, ideas on how to have more effective out-

reach, how to use the media, paid and free media, to the whole notion of bilingual forms. We are having ideas from a variety of community groups and Members of Congress that we're not using enough bilingual forms.

Mr. CULBERSON. Sure.

And you will make all of those publicly available to the committee and the Congress?

Secretary LOCKE. We are governed by the Freedom of Information Act, and President Obama very much believes in greater transparency.

Let me just say that I intend to supervise the census, and we have chosen a census director who is a trained professional, highly respected in the academic field, who has worked in the Commerce Department, Census Bureau before. And it is my mission to make sure that we run the most accurate and effective census ever.

Now, we have some huge management challenges given the problems that we had with the handhelds. We are on a very, very tight time frame. We are seeing a lower response, census after census, of Americans filling out the census form and sending it back, just as I think academicians will say that participation in surveys is dropping, it is harder and harder——

Mr. CULBERSON. People are not required to fill out all the information. It is a free country. You will just have to count heads, essentially.

And I appreciate your answer. I want to be sure you are running the census in an objective, independent, professional way under the statute without interference from anybody.

Secretary LOCKE. I don't expect interference from anyone, whether the White House or the Congress.

GOVERNMENT SAVINGS

Mr. CULBERSON. That is great. Thank you.

You received at the Department of Commerce a $7.9 billion increase from the Stimulus Act, and your entire annual budget for 2008 was 7.9 billion. There is a dramatic increase in funding this year, of course, primarily due to the needs of the census.

But in light of the economic downturns, severe problems the country is facing as a whole, the fact I mentioned to you earlier that the Medicare bank account is empty, there is no more money for benefits in 10 years, the country's glide path is—we have got record debt and deficit, I want to ask you specifically, would you commit to the subcommittee that you will identify areas where we could save money in the Department of Commerce? And if so, how much?

Secretary LOCKE. I cannot give you——

Mr. CULBERSON. I mean, a percentage. A penny on the dollar. Would you commit to helping us find a penny on the dollar, 1 percent savings?

Secretary LOCKE. I would like to be able to surprise you with how much we are able to save, but having only been there for 4 weeks, or starting my fourth week, I cannot give you a figure.

PRIORITIES OF GOVERNMENT

Mr. CULBERSON. Sure. You are in a great position, though, to apply your budget—what did you call it, the "priorities of government"?

Secretary LOCKE. Priorities of government.

Mr. CULBERSON. It is a great idea. Let me ask you that. Would you commit to apply that principle that you applied as Governor to the budget of the State of Washington, would you apply that to the budget of the Department of Commerce and recommend savings based on that approach to the subcommittee?

Secretary LOCKE. I intend to incorporate the priorities-of-government approach and numerous other government efficiency and accountability measures that I employed in the State of Washington to the Department of Commerce.

Mr. CULBERSON. And make those recommendations to the subcommittee?

Secretary LOCKE. I will be making our recommendations and trying to impose those savings within the Department of Commerce, period.

Mr. CULBERSON. Thank you very much.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. MOLLOHAN. I am glad we got you in here this morning.

BROADBAND DEPLOYMENT

Mr. SCHIFF. I apologize, Mr. Secretary and Mr. Chairman. I had votes in the Judiciary Committee, so I have been running back and forth; I may get called again to vote.

But it is wonderful to see you. We had a chance to meet in Los Angeles some years ago. No reason you would remember that, but it was wonderful to meet you then and nice to see you again here today.

I wanted to ask you a little bit about broadband deployment. And I know in your testimony you mention NTIA is administering the $4.7 billion in surplus funds directed both towards expanding—well, primarily towards expanding broadband Internet access. We all hope that money is spent both quickly and wisely.

Although the U.S. enjoyed an early lead in Internet deployment over the last few years, we have fallen behind our economic competitors in Europe and Asia in the breadth of access, connection, speed and cost. What we call broadband in the U.S. seems rare, slow and expensive to visitors from Japan, Korea or the U.K.

What is your sense of what caused us to lose our edge in this area, and what do we need to do to change it? Plainly we have deployed significant resources. What needs to happen for us to catch up?

Secretary LOCKE. I think in some ways other countries have been able to move faster than the United States only because they have learned from our lessons, and they have been able to simply take advantage of the latest technology and have been able to simply

leapfrog Americans and American telecommunications by watching and seeing what we have done.

So much of our telecommunications infrastructure has really started, first, with copper wire and so many of the changes have been focused on additions to that technology. And so it has been very, very expensive to make improvements off of that basically legacy systems.

But you are already seeing in various parts of the United States where we are using cellular and satellite technology and microwave technology where we are able to leapfrog or transverse large distances without having to lay copper or fiber-optic cable. Using that cellular technology and satellite and microwave technology, you receive the signal and then you can deploy fiber-optic cables and so forth.

And that is what other countries have started to do, so they have in some ways benefited from total absence of telecommunications and not been burdened by some of the older technology that we have had, which was natural, which was state of the art at that time, and then basically been able to pick and choose from this current technology and say, wow, we can transverse mountains and huge valleys using this technology.

But I think that we are seeing Americans change their entire habits. I mean, so many people just have cell phones now and really aren't using handhelds or copper wire. Or they are using portable phones, walking around their entire house with a portable phone.

So the whole state of technology is changing so rapidly, and clearly with the President's initiative on broadband, he wants the most advanced telecommunications brought to every person and every community and every business in America.

So we are excited about this possibility and this opportunity and this challenge; and we are working with the stakeholders, in a very transparent fashion, of telecommunications companies, academic communities, political leaders, mayors, governors, religious leaders exactly on how this $4.7 billion within Commerce will be deployed, working with the FCC and the Department of Agriculture as well.

Mr. SCHIFF. One of the downside risks that is going to come along with the broader deployment of broadband affects an industry in my district greatly, and that is the entertainment industry. The music industry has been decimated by illegal downloads. The more you have broadband coverage, the more you can download films which require a lot more bandwidth.

PROTECTING INTELLECTUAL PROPERTY

Are there steps the Commerce Department is contemplating taking to try to protect the intellectual property that is being stolen so rampantly and will be stolen even more, potentially, as the technology improves?

Secretary LOCKE. Clearly, the issue of intellectual property is of major concern to the industry and it certainly is to us within the Department of Commerce, because as we go around the world, urging other countries to increase their efforts at the protection of intellectual property, we have to be able to point to what we are doing here in our own country as well.

And I recently met with the motion picture industry that was meeting here in Washington, D.C., and we talked specifically about these issues. When some of the movies already are available over the Internet, even before they are released to the general public, that is of concern. And it is a disincentive for investment in a variety of industries, not just the entertainment industry. But it is—if people cannot receive a return on their investment because of piracy and intellectual property violations, whether it is drugs, whether it is in machinery, whether it is in ideas, whether it is in entertainment, all around the world as well as here in America, then is a disincentive to that type of investment, and it is depriving people, companies, of income and taking away jobs.

So it is an issue that is going to require a whole host of policymakers to get engaged in, Members of Congress, the administration, the industry and all sectors of business.

Mr. SCHIFF. Thank you, Mr. Secretary.

And if I may make one last point, Mr. Chairman, on this subject—and I don't even know, it may be in the theaters now or may not still be out yet. But Wolverine, the new X-Men film, was out, being illegally pirated, before its theatrical release. And obviously that can cost millions of dollars to the creators of that intellectual property.

And I always think the old paradigm of the American industry was the auto industry, which we have seen having tremendous problems. The new paradigm is in the intellectual property area, not just content, but things like software and other intellectual property.

If there were cars being stolen off the GM lot or off the Ford lot, and those automakers were losing millions because there were cars being stolen off the lot, and that was contributing to the demise of that industry, we would be jumping on that with a vengeance. Well, cars are being stolen off the lots of Warner Brothers and Disney and Dreamworks and all the other studios by having their films stolen before they are out the gate.

So I appreciate it, all your efforts, and look forward to working with you on these issues.

Secretary LOCKE. Thank you.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Schiff.

Mr. Serrano.

Mr. SERRANO. I was——

Mr. MOLLOHAN. Were you anticipating our adjourning for lunch and coming back at 2:00?

Mr. SERRANO. No.

Mr. MOLLOHAN. Are you going to be back here this afternoon?

Mr. SERRANO. I am not sure. I have one further question.

Mr. MOLLOHAN. Okay. Mr. Serrano.

Mr. SERRANO. Mr. Schiff covered the area that I wanted to cover. And I just know that you said your Department—Department of Commerce is working with the FCC because they had recommendations that they had made on the 4.7 billion. So that will be a close relationship, I hope.

CUBA

I just wanted to ask you a question about Commerce and Cuba. The President, to my joy, has made some comments and started some things and put some things in place that may begin to change certainly our relationship with Cuba.

As you know, we sell items to Cuba—agriculture, medicine. But the problem in the past administration was that we then—what is allowed to be done, people made it difficult for it to get done. And so getting a license was difficult; humanitarian shipments were difficult.

My question is also a statement. I would hope that would change, that within the law what is allowed to be done with Cuba is done with Cuba, and that people don't take at the Department, as they did before the law, and say, yeah, but that was a bad policy Congress passed, so we are going to try to get around it; and made it very difficult—very, very difficult to carry out what is allowed by law.

Mr. SERRANO. What is your take on that whole issue with dealing with Cuba and what the law allows now in sales and licensing and so on?

Secretary LOCKE. The President has embarked on a significant change in the relations between the United States and Cuba. We now have an opportunity to permit and encourage more travel and trade between Cuba and the United States. It is my belief that trade, more tourism, more visits can facilitate reform and modernization as well as democratization of countries; that the more people from the United States travel to Cuba or any other country, the more visitors from another country to the United States, the more commerce that is conducted; the more opportunities for other people of other countries to witness firsthand the benefits of our diversity, our freedoms, our democratic way of life. And I believe that that exposure hastens the appetite—or whets the appetite and hastens the development of democratic principles in that other country.

We in the Department of Commerce will vigorously carry out the President's initiatives, and we will want to help facilitate his objectives.

Mr. SERRANO. I appreciate your comments. I must say, however, that the role of the Commerce Department should not be that of trying to bring changes in Cuba, as we don't do the same with China or with other places; we just deal with them. And while that may be the end result, and that is always good, the role should be, the one role I want the Commerce Department to play, is to know that there are some laws in place that the last administration Commerce Department made difficult to work within and that we stay there.

I don't dispute with you, perhaps, your personal desires to see change in Cuba, but I think that that is the problem that we have had in the past, a lot of folks' personal situation, including the last Commerce Secretary, who had a personal stake in what happened in Cuba, since he was Cuban American, although I stopped trying to embarrass him, which was not my intent, after the first hearing that he came every year, because he had, when he was the head

of Kellogg's, said that we should deal with Cuba and trade everything we could. And as Commerce Secretary he made another statement, but I only did that once to remind him of his comment, as people remind me of mine on a constant level.

Anyway, my whole intent is to get you to say publicly what you have said, that what the President wants to do is to get closer, and we should get closer. Whether or not that changes, well, I could give you a list of countries in the Middle East that we don't demand that from while we deal with them. But I thank you for your comments, and I stand ready to support you in all your work.

Secretary LOCKE. Thank you, sir.

Mr. MOLLOHAN. Thank you, Mr. Serrano. We look forward to you being back this afternoon, in any event.

Mr. SERRANO. Thank you, Mr. Chairman. I will make every attempt to be back this afternoon.

Mr. MOLLOHAN. I know. You are very good about that.

Mr. Secretary, we are going to adjourn, and we will reassemble—recess and be back at 2 o'clock.

Mr. MOLLOHAN. Hearing is in recess.

Secretary LOCKE. Thank you.

Mr. MOLLOHAN. The hearing will come to order. Mr. Secretary, I hope you had a good lunch and maybe a walk out in that beautiful sunshine. A great day it is out there. But you probably ran downtown and worked for 2 hours.

Secretary LOCKE. Well, I am not used to this Washington, D.C., weather compared to the other Washington.

Mr. MOLLOHAN. Oh, I will bet.

Mr. WOLF. How many umbrellas do you own?

Secretary LOCKE. Actually I don't like umbrellas either so—they are always breaking, and I am afraid they are going to poke people in the eye or in the head, so I just wear a parka over my suit coat in Seattle.

STATUS OF THE CENSUS

Mr. MOLLOHAN. Mr. Secretary, there were some questions with regard to census. We are just going to ask you a few. If you would like to give us any more detail about the status of how you see the census at this point, and give us some assurances with regard to time lines. If there is anything you can add to your testimony that you have already given with regard to the census, this is extremely important.

You come to this job and assume the responsibilities of an agency that just did an absolutely miserable job with the census up to this time from contractor oversight to the performance of those who were in charge of this process. And I think they would really acknowledge that and actually did acknowledge that sitting right there at that table. So what was not done well and not done right in a previous regime, you have to assume the product and to make it right.

So if you would talk to us about the status of it, how you see it going forward, give us some assurance that you are meeting every time line, and we are going to be ready to do a bang-up job on the census that is going to make everybody proud, we would appreciate it.

Secretary LOCKE. Thank you again, Chairman Mollohan and Ranking Member Wolf.

Regarding the census, there have been numerous changes that have been made, numerous procedures that have been instituted. Let me just be very brief about it and answer any further questions you might have.

There have been leadership changes as a result of the debacle surrounding the handheld computers, where large funds of money were actually given out to the contractor for very little performance.

We have adjusted the field data automation contract so that we have—we are doing more items in house, and we also have a different contractor on some of the systems.

We have implemented, in response to the GAO report, a high-risk improvement plan to address the points raised by the GAO report. There are, for instance, monthly status reports to the Department of Commerce Secretary's office, as well as OMB, and then within the Census Bureau, they have weekly reports, and they have almost like a situation room where they are monitoring all the key items, and key management functions, and issues, and time frames, and projects within the decennial census.

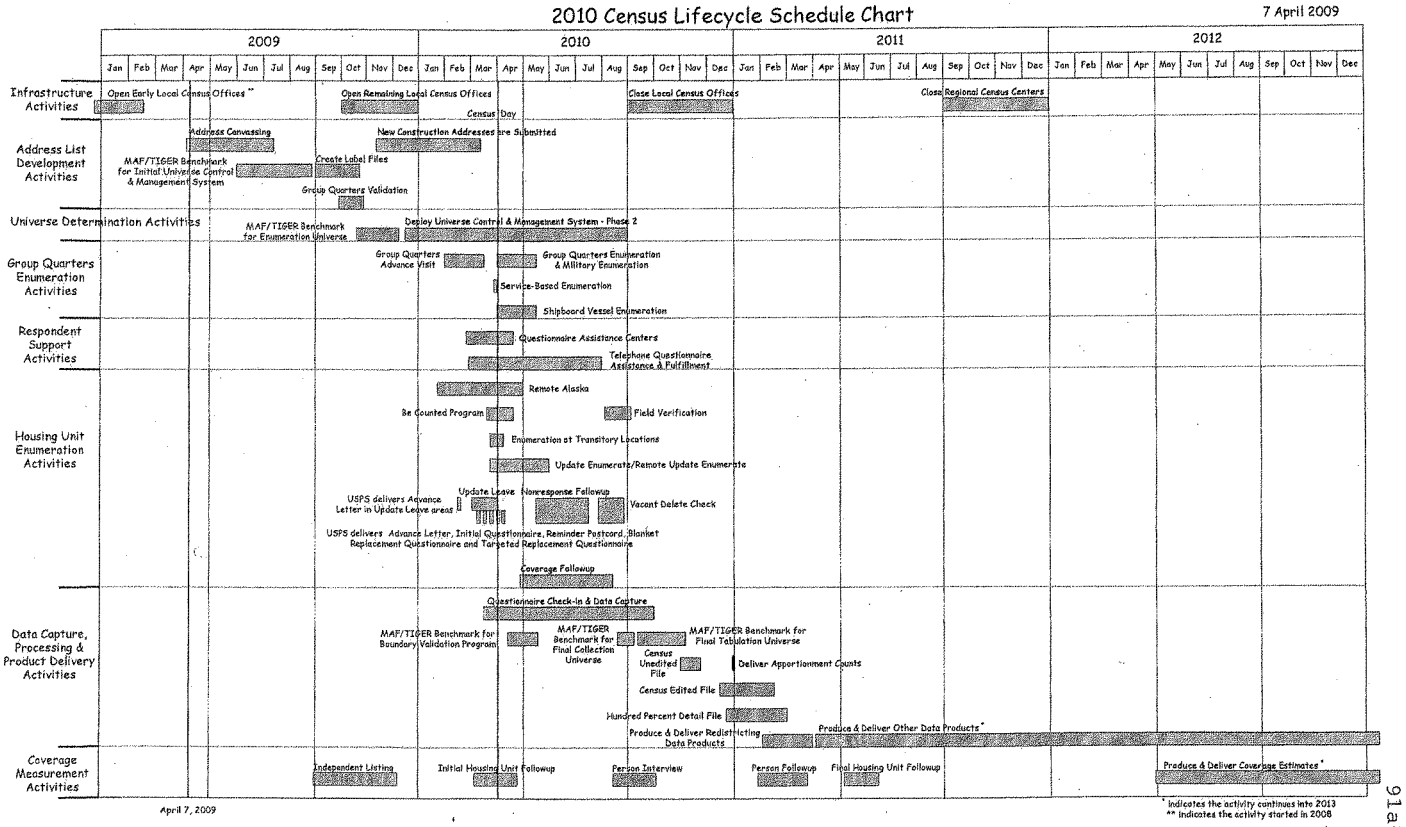
We have already received some reports that, for instance, the verification of addresses is proceeding on time, actually a little bit ahead of schedule and within budget. Because the Census Bureau has abandoned the handheld computers for the enumeration that were to be used by people going around door to door, they have instead reinstituted a paper and pencil program, and as a result they have not been able to fully test all of their systems. They were hoping for a full dress rehearsal this past year, but that has not occurred. And so they are testing various systems in an abbreviated fashion, in a scaled-down version. And, of course, the time frames for responding to any deficiencies that might be identified in those field tests are very, very—the time schedule or the response time is very small and very narrow. But so far things are proceeding on course with no major problems identified. So we are basically keeping our fingers crossed.

But we have an enormous challenge ahead of hiring over at least another million people next spring to serve as enumerators, to go door to door and to get the response that we need for those who are not sending in the questionnaires back to the Census Bureau. But so far we are watching it very, very carefully, and, in fact, we will be bringing on almost a SWOT team of people to get an independent assessment of exactly the status of the Census Bureau operations surrounding the decennial census. And we are bringing people from outside, private sector, people experienced in census, and have a thorough, independent review just to make sure that things are on track.

Mr. MOLLOHAN. Would you submit for the record a time line, your targets for accomplishing each stage of the census, and then obviously the implementation date so we can just get a sense of what you have to do between now and implementation and how close you are to meeting a time schedule?

Secretary LOCKE. Yes, be happy to submit that.

[The information follows:]


2010 Census Lifecycle Schedule Chart
7 April 2009
2009
2010
2011
2012
Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec
Infrastructure Activities
Open Early Local Census Offices **
Open Remaining Local Census Offices
Census Day
Close Local Census Offices
Close Regional Census Centers
Address List Development Activities
Address Canvassing
New Construction Addresses are Submitted
MAF/TIGER Benchmark for Initial Universe Control & Management System
Create Label Files
Group Quarters Validation
Universe Determination Activities
MAF/TIGER Benchmark for Enumeration Universe
Deploy Universe Control & Management System - Phase 2
Group Quarters Enumeration Activities
Group Quarters Advance Visit
Group Quarters Enumeration & Military Enumeration
Service-Based Enumeration
Shipboard Vessel Enumeration
Respondent Support Activities
Questionnaire Assistance Centers
Telephone Questionnaire Assistance & Fulfillment
Housing Unit Enumeration Activities
Remote Alaska
Be Counted Program
Field Verification
Enumeration at Transitory Locations
Update Enumerate/Remote Update Enumerate
USPS delivers Advance Letter in Update Leave areas
Update Leave
Nonresponse Followup
Vacant Delete Check
USPS delivers Advance Letter, Initial Questionnaire, Reminder Postcard, Blanket Replacement Questionnaire and Targeted Replacement Questionnaire
Coverage Followup
Data Capture, Processing & Product Delivery Activities
Questionnaire Check-in & Data Capture
MAF/TIGER Benchmark for Boundary Validation Program
MAF/TIGER Benchmark for Final Collection Universe
MAF/TIGER Benchmark for Final Tabulation Universe
Census Unedited File
Deliver Apportionment Counts
Census Edited File
Hundred Percent Detail File
Produce & Deliver Other Data Products *
Produce & Deliver Redistricting Data Products
Coverage Measurement Activities
Independent Listing
Initial Housing Unit Followup
Person Interview
Person Followup
Final Housing Unit Followup
Produce & Deliver Coverage Estimates *
April 7, 2009
* Indicates the activity continues into 2013
** Indicates the activity started in 2008

2010 Census Lifecycle Schedule

Run Date: 5/4/09

Activity Name	Original Duration	2010 Baseline Start	2010 Baseline Finish	Start	Finish
1 Infrastructure	942d	1/2/08	12/30/11	1/2/08 A	9/30/11
Census Day	1d	4/1/10	4/1/10	4/1/10	4/1/10
Open Regional Census Centers	21d	1/2/08	1/31/08	1/2/08 A	4/7/08 A
Open Early Local Census Offices	0d	10/1/08	2/17/09	10/3/08 A	3/24/09 A
Open Remaining Local Census Offices	84d	8/31/09	12/31/09	7/28/09	11/25/09
Close Local Census Offices	82d	9/1/10	12/30/10	8/26/10	12/23/10
Close Regional Census Centers	82d	9/1/11	12/30/11	6/7/11	9/30/11
2 Address List Development	416d	7/25/08	3/12/10	8/8/08 A	3/25/10
MAF/TIGER Benchmark for Address Canvassing	69d	7/25/08	10/31/08	8/8/08 A	10/24/08 A
Address Canvassing	67d	4/6/09	7/10/09	3/30/09 A	7/2/09
MAF/TIGER Benchmark for Initial Universe Control & Management System	73d	5/15/09	8/27/09	5/22/09	9/3/09
Create Label Files	37d	9/1/09	10/22/09	8/26/09	10/19/09
Group Quarters Validation	22d	9/28/09	10/23/09	10/1/09	10/27/09
New Construction Addresses are Submitted	81d	11/12/09	3/12/10	11/27/09	3/25/10
3 Universe Determination	199d	10/19/09	8/30/10	10/15/09	7/30/10
MAF/TIGER Benchmark for Enumeration Universe	34d	10/19/09	12/7/09	10/15/09	12/3/09
Deploy Universe Control and Management System - Phase 2	179d	12/14/09	8/30/10	11/13/09	7/30/10
4 Group Quarters Enumeration	70d	2/1/10	5/21/10	1/30/10	5/10/10
Group Quarters Advance Visit	34d	2/1/10	3/19/10	2/1/10	3/19/10
Group Quarters Enumeration & Military Enumeration	44d	4/1/10	5/21/10	1/30/10	3/23/10
Service-Based Enumeration	3d	3/29/10	3/31/10	3/30/10	4/1/10
Shipboard Vessel Enumeration	32d	4/1/10	5/14/10	3/26/10	5/10/10
5 Respondent Support	156d	2/25/10	7/30/10	1/14/10	8/25/10
Questionnaire Assistance Centers	36d	2/26/10	4/19/10	1/14/10	3/8/10
Telephone Questionnaire Assistance & Fulfillment	110d	2/25/10	7/30/10	3/23/10	8/25/10
6 Housing Unit Enumeration	219d	1/25/10	9/3/10	10/20/09	9/2/10
Remote Alaska	45d	1/25/10	4/30/10	2/2/10	3/26/10
Be Counted Program	22d	3/19/10	4/19/10	3/16/10	4/14/10

Data Date 5/5/09

2010 Census Lifecycle Schedule

Run Date: 5/4/09

Activity Name	Original Duration	2010 Baseline Start	2010 Baseline Finish	Start	Finish
1 Infrastructure	942d	1/2/08	12/30/11	1/2/08 A	9/30/11
Census Day	1d	4/1/10	4/1/10	4/1/10	4/1/10
Open Regional Census Centers	21d	1/2/08	1/31/08	1/2/08 A	4/7/08 A
Open Early Local Census Offices	0d	10/1/08	2/17/09	10/3/08 A	3/24/09 A
Open Remaining Local Census Offices	84d	8/31/09	12/31/09	7/28/09	11/25/09
Close Local Census Offices	82d	9/1/10	12/30/10	8/26/10	12/23/10
Close Regional Census Centers	82d	9/1/11	12/30/11	6/7/11	9/30/11
2 Address List Development	416d	7/25/08	3/12/10	8/8/08 A	3/25/10
MAF/TIGER Benchmark for Address Canvassing	69d	7/25/08	10/31/08	8/8/08 A	10/24/08 A
Address Canvassing	67d	4/6/09	7/10/09	3/30/09 A	7/2/09
MAF/TIGER Benchmark for Initial Universe Control & Management System	73d	5/15/09	8/27/09	5/22/09	9/3/09
Create Label Files	37d	9/1/09	10/22/09	8/26/09	10/19/09
Group Quarters Validation	22d	9/28/09	10/23/09	10/1/09	10/27/09
New Construction Addresses are Submitted	81d	11/12/09	3/12/10	11/27/09	3/25/10
3 Universe Determination	199d	10/19/09	8/30/10	10/15/09	7/30/10
MAF/TIGER Benchmark for Enumeration Universe	34d	10/19/09	12/7/09	10/15/09	12/3/09
Deploy Universe Control and Management System - Phase 2	179d	12/14/09	8/30/10	11/13/09	7/30/10
4 Group Quarters Enumeration	70d	2/1/10	5/21/10	1/30/10	5/10/10
Group Quarters Advance Visit	34d	2/1/10	3/19/10	2/1/10	3/19/10
Group Quarters Enumeration & Military Enumeration	44d	4/1/10	5/21/10	1/30/10	3/23/10
Service-Based Enumeration	3d	3/29/10	3/31/10	3/30/10	4/1/10
Shipboard Vessel Enumeration	32d	4/1/10	5/14/10	3/26/10	5/10/10
5 Respondent Support	156d	2/25/10	7/30/10	1/14/10	8/25/10
Questionnaire Assistance Centers	36d	2/26/10	4/19/10	1/14/10	3/8/10
Telephone Questionnaire Assistance & Fulfillment	110d	2/25/10	7/30/10	3/23/10	8/25/10
6 Housing Unit Enumeration	219d	1/25/10	9/3/10	10/20/09	9/2/10
Remote Alaska	45d	1/25/10	4/30/10	2/2/10	3/26/10
Be Counted Program	22d	3/19/10	4/19/10	3/16/10	4/14/10

Data Date 5/5/09

2010 Census Lifecycle Schedule

Run Date: 5/4/09

Activity Name	Original Duration	2010 Baseline Start	2010 Baseline Finish	Start	Finish
Person Followup	42d	1/28/11	3/19/11	1/6/11	2/25/11
Final Housing Unit Followup	35d	5/5/11	6/15/11	3/4/11	4/13/11
Produce & Deliver Coverage Estimates	62d	7/31/12	11/30/12	3/30/13	6/11/13

Data Date 5/5/09

Mr. MOLLOHAN. When will the Bureau thread-test the paper-based operations control system?

Secretary LOCKE. I am sorry, what was that?

Mr. MOLLOHAN. When will, if you know—and if you don't, you can submit it for the record—will the Bureau thread-test the paper-based operations control system?

Secretary LOCKE. We will have to get that to you.

[The information follows:]

THREAD TESTING OF PAPER-BASED OPERATIONS CONTROL SYSTEM

Thread testing of the Paper-Based Operations Control System begins with the thread test for Non-Response Follow-up. That test is underway running from April 20, 2009 through June 1, 2009. Subsequent tests will follow.

HANDHELDS

Mr. MOLLOHAN. How are the handhelds working?

Secretary LOCKE. The handhelds are actually working for the limited purpose now of helping verify addresses and entering it into the GPS system so that we have a more accurate determination as to which legislative district or where a particular household will fall or a particular address will fall. So actually that is proceeding well.

I think we have had demonstration projects for Members of Congress and some of the staff. I have actually had that shown to me as well. And the handhelds even incorporate such things as the time entry for the field workers so that we can accurately record their hours for payroll purposes. And they can actually communicate back to the field offices if they have any questions. So I have talked to one of the staff members, one of the paid individuals who is conducting this, and they like it, and it is getting positive reviews out in the field.

Mr. MOLLOHAN. We have a number of fairly detailed questions with regard to the census that we will submit, Mr. Secretary, for the record, so that you can respond to them.

Secretary LOCKE. Okay.

INFORMATION SECURITY

Mr. MOLLOHAN. Department-wide security issues, Mr. Secretary. The Inspector General reports that the Department has reported information security as a material weakness every year since 2001 despite additional expenditures to mitigate the problem. Securing systems from cyberthreats is the most difficult piece of the challenge. Incorporation of wireless and other technologies to support operations and workplace flexibilities invite new risks to the Department which you must anticipate and mitigate.

The IG has found a number of problems and several notable security incidents. This includes security personnel with an inadequate grasp on the Department's IT security policy, NIST standards, and guidance and security technology. The Department has apparently cited a lack of resources as a major impediment. Besides the fact of what you have requested for those resources, will you commit to providing this committee with a clear, focused request for IT security funding that lays out the requirements and the results expected, and give us your assessment of this problem?

Secretary LOCKE. I would be happy to supply that in writing as well.

[The information follows:]

IT Security

IT Security continues to be one of the Department's highest priorities. Since the material weakness was first reported in 2001 we have implemented several initiatives to improve the Department's overall security posture. The Office of Inspector General (OIG) noted that our efforts were hampered by a focus on completing system certification and accreditations (C&A) instead of improving their quality. The C&A process provides the underpinnings of a sound IT security posture by identifying critical system weaknesses and helping to establish mitigation strategies and priorities. Investments can then be focused on balancing competing resource demands for improving the effectiveness of the overall C&A process against cyber security operational priorities that address known vulnerabilities and areas needing enhancement. In sharing the same vision to strengthen the Department's security posture, the OCIO/OIG jointly developed a strategy to incorporate realistic milestones, take measurable steps, and build consistent and repeatable C&A practices.

Another IT security challenge that the Department faces is the emerging cyber security threats impacting most Federal agencies. Secure IT infrastructure and proactive cyber security are the Department's highest priorities. Due to recent malicious cyber attacks against Federal agencies, we have invested significant resources to deploy operational security and continuity of operation (COOP) capabilities. The Department's CIO community reviewed critical IT initiatives and through consensus prioritized those considered most critical. Cyber security operational enhancement and capability initiatives received highest priorities. To mitigate the emerging security threats, the Department has upgraded headquarter security operations center (SOC) to include near real-time vulnerability detection, sensitive data loss prevention, and continuous monitoring.

Although the Department and its operating units have reallocated their resources to focus on IT security, significantly more are needed for:

- Cyber threat enhancements;
- Security operations and computer incidents response capability; and,
- Trusted Internet Connection (TIC).

The Department is planning to consolidate and centralize its management of classified systems and emergency networks to ensure consistent application of national security rules across Commerce and compliance with the guidelines set forth by the Committee for National Security Systems and the National Communications System. To do so effectively, the OCIO is proposing to develop a common infrastructure to satisfy these requirements while reducing unnecessary duplication; centralizing management and oversight of these systems; and minimizing operations and maintenance costs.

Additional funds will position the Department to:

- Improve IT Security capabilities across dispersed operating unit COOP sites. For example, beginning in FY 2010 the OCIO has requested funds to deploy communications capabilities required for Cabinet-level departments and agencies as well as those bureaus that support National Essential Functions (NEF). This initiative would extend the minimum communications capabilities to the Commerce COOP site, the COOP sites for BIS and NOAA and a distant Commerce reconstitution site to provide for geographic disparity.

- Develop a comprehensive cyber security plan to detect malicious cyber attacks and enhance readiness capabilities. This IT security initiative is needed to protect Commerce and U.S. Government intellectual property; to implement continuous monitoring and reporting of network activity; to provide comprehensive situational awareness capability; and to provide secure (classified) cyber security, counter-terrorism, and national emergency operations information between Commerce equities, the Department of Homeland Security (DHS), Federal, state and local law enforcement officials, the intelligence community, and the national command structure during times of national emergency.

- Integrate multiple internet connections through TIC portals to reduce exposure to Internet based cyber attacks. The Department of Commerce is developing a plan that will reduce its direct Internet connections to approximately six (6) authorized TIC access providers over the next four years.

Overall, costs for these IT security initiatives at the Departmental level will increase from a base of $5.5 million in FY 2009 to approximately $14.4 million in FY 2010. If the requested funding is approved, we're confident the C&A material weakness corrective action plan and the IT security operational initiatives will enable the Department to continue its critical missions securely in today's challenging environment.

Secretary LOCKE. I just want to indicate that I met with the Inspector General of the Department of Commerce, and we have gone over the issues about information security. For instance, the budget request for the Bureau of Industry and Security recognizes the need for that overhaul.

In my earlier comments this morning when I talked about some of the systems, servers and other pieces of equipment for which there are no replacement parts, I was referring to the Bureau of Industry and Security. And there I would like to find a way in which we can accelerate the replacement of the information technology there.

And when Representative Culberson was asking about trying to achieve savings within the Department of Commerce, it is my hope that if we were able to find savings in other departments, agencies or bureaus within the Department of Commerce, we would be able to move that in the areas that most need it, whether it is in satellite for NOAA or into the technology needs and cybersecurity needs within the Department of Commerce without having to wait for future years and to wait for future appropriations or funds in order to accomplish that.

BROADBAND ACCESS

Mr. MOLLOHAN. Well, we stand ready to work with you on that, Mr. Secretary, and I know you will let us know what your resource needs are as you deal with that issue.

The American Recovery and Reinvestment Act provided in our title of the bill $4.7 billion for broadband, and I believe 2.5 in Agriculture. As we talked previously, West Virginia unfortunately is overrepresenting the rural areas of the Nation possibly with regard to inadequate or no broadband access.

As the Department fashions its guidelines with regard to the expenditures of these funds, what steps are you taking to ensure that individual States with particular inadequacies in this area are not overlooked as these funds are expended, and that they achieve one of the goals, and that is to bring broadband access in areas where it is inadequate or doesn't exist?

Secretary LOCKE. That is one of the objectives of the broadband dollars that have been appropriated or provided under the Recovery Act, and it is a clear priority for the President to make sure that both rural and urban areas, served, underserved and——

Mr. MOLLOHAN. Not served.

Secretary LOCKE [continuing]. And not served are addressed.

We are working very closely with the Department of Agriculture and the FCC in trying to formulate general policies and criteria that would be used across the country, and to make sure that when all is said and done, that we can actually point to a significant achievement of specific policies, and goals, and objectives for the deployment of these broadband dollars.

We have been very, very transparent in seeking the input, ideas from all sectors, Members of the Congress to other Federal agencies, to the Governors, to the mayors, the private-sector academia. And so we are hoping to put together those general principals by which we would give out these grants, and hope to have those principles clearly enunciated and published by early summer, and hope

that the first grants will flow in the early fall of 2009. But trying to develop some policy and principles that will target the rural areas is a priority for us.

COMMUNICATION BETWEEN STATES AND FEDERAL GOVERNMENT OVER BROADBAND

Mr. MOLLOHAN. Mr. Secretary, I had a broadband symposium or meeting, if you will, at which the West Virginia Secretary of Agriculture, a very capable woman, attended—was a panel member. I was impressed by her knowledge of communication from West Virginia, the needs from West Virginia, and specifically because we were talking about broadband, broadband.

I did get the sense, however, that she was waiting. She was waiting for something to come down from the Federal Government. And that unnerved me a little bit because I had hoped that there would be more interaction between the State and the Federal Government, even at this point. For example, she didn't know whether she was going to be issued a check and told, do broadband in West Virginia, which she said, I hope that doesn't happen, in words to that effect. Or whether she was going to be asked to come up with some comprehensive plan, or whether the Federal Government was going to work with the States and then work with nonprofits or work with different sectors. So she is really at a loss.

And with the Federal Government going forward with this rulemaking, or whatever procedure is going to come forward with these guidelines, at least based upon my sense of listening to her and observing her at this hearing, I didn't have a sense that the State was really prepared to be really proactive when the right time came, didn't know where they were going. So it means they are going to have a learning curve after all this comes forward.

You may not be able to comment on this, but what interaction is going on with the States? The States are going to be huge players in this. I guess you are going to work through the States. Is that your sense of it primarily, or are you going to work through the States and individual entities throughout the country?

Secretary LOCKE. Mr. Chairman, I can't give you a definitive answer because no decisions have yet been made, and there are a whole host of recommendations and ideas on how to distribute the $4.7 billion within Congress and, as you say, over $2 billion in the Department of Agriculture. We are coordinating with the FCC and the Department of Agriculture.

The Department of Commerce has deployed a very transparent process in seeking input and ideas, and everything is on the Internet so that everyone in the world can see the ideas and the suggestions offered by the telecommunications companies and different sectors within telecommunications. They all have different ideas, to the cable companies, to the Governors, to the mayors and all the different interest groups.

Mr. MOLLOHAN. No, I understood your testimony, and that is what you said before. I guess I am simply trying to anticipate or trying to head off a disappointment in this area. There is a lot of money, there is a lot of need out there, there is a lot of not having access, a lot of gaps out there, and if at the end of the day we have not really strategically developed a plan, looking at West Virginia,

that makes a difference, that is going to be a very sad thing, and an opportunity—a real opportunity missed.

This is a lot more—I don't have to tell you, you are from—you know how to do it up there, and you know how important this is for economic development and also, most importantly, for areas that are naturally resource-dependent for economic diversification. It is the infrastructure we need to do that, and I am intent on, to the extent possible, following this with the hope that the Federal agencies and good people who have responsibility for fashioning these rules, and the State of West Virginia, are strategic and results-oriented with regard to its being implemented in West Virginia.

Secretary LOCKE. I share your concern, Mr. Chairman, because for us the measure of success is not simply distributing the dollars in a timely fashion, but really making sure that at the end of the day that significant policy objectives have been advanced so that we can truly say that for the dollars expended, the American public businesses in urban, rural areas, underserved, unserved areas have truly benefited from the distribution of dollars.

We have to be very, strategic in how we deploy these dollars to make sure that we are getting true bang for the buck and that we are leveraging whatever successes we have already achieved.

Mr. MOLLOHAN. It is terribly complicated. Thank you, Mr. Secretary.

Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

CENSUS PARTENERSHIPS

Welcome back, Mr. Secretary. It is a series of different subjects, but on the census, before we left, there was one more I wanted to ask you. The Census Bureau is partnering with thousands of national and local organizations to promote participation in the 2010 census. I personally have serious concerns that you are partnering with a group like ACORN. I think they have been convicted of crimes, and I think it is a very bad group. I would like to get your comments about that, and are there other groups on there of a similar nature?

Secretary LOCKE. Mr. Wolf, Congressman Wolf, with respect to ACORN, let me first indicate how the Census Bureau is approaching partnerships with other organizations. At no time will Department of Commerce or Census Bureau be contracting out with any organization to carry out any functions of the Census Bureau in terms of partnerships. We will not be providing grants to nonprofit groups to do outreach or coordination or anything like that.

We invite all partnership groups or partners in the community to help us spread the word. And we will, for instance, use our printed material and distribute to them for them to pass out. But we are in no way subcontracting out the hiring of people or personnel to go door to door. We insist on full authority to hire the people that we think are qualified.

Now, if organizations want to encourage their members and others in the community to come and apply for a job with the Census Bureau, to knock on the doors, that is fine. We will do the screening, and we will do the testing. We are not bound by their sugges-

tions. And so we are not using them as subcontractors to provide people to us, nor are we subcontracting work out to them.

Mr. WOLF. But why would you even participate with a group like ACORN?

Secretary LOCKE. Well, first of all—

Mr. WOLF. They fabricated lists. You are in the Census Bureau. Quite frankly, anything that ACORN is connected with, the American people will have a difficult time believing is credible. And so why would you even involve yourself in something with a group like this that has such a bad reputation?

Secretary LOCKE. If ACORN is willing to take our brochures, and pass it out to families in their communities, and hold meetings and pass out brochures, encouraging people to mail in the response when they get it in the mail, then that is the type of help that is legitimate, that is legal that we would support.

Mr. WOLF. Well, that is a troubling answer, because would you do it with a convicted felon, a group of people that have been convicted felons? Would you do it with a group that wanted to overthrow the United States? Would you do it with a group that has a history of abusing women? Let's say there was a group that had a history of abusing women, and they just wanted to participate, and they said, we will participate with you, but we will take your people. Would you do that?

Secretary LOCKE. No, we would not.

Mr. WOLF. Would you do that?

Secretary LOCKE. No, we would not, sir.

Mr. WOLF. Well, then I ask you to go back and give us a written report and take a look at some of things that ACORN has been involved in. I mean, that question really raises questions then about the ability to do the census right. If you have a group like ACORN, then it is going to be flawed, it is going to be questioned, people are going to have problems with it.

Secretary LOCKE. I would be more than willing to talk with you about this issue.

Mr. WOLF. Thank you.

HUMAN RIGHTS TRAINING

Several years ago as Chairman of this Subcommittee, I included language requiring that ITA employees receive training on human rights, the rule of law and corporate responsibility. Unfortunately it is my understanding that this training has not been continued after that year—I guess that is what happens when you leave the committee—and that the new ITA——

Mr. MOLLOHAN. I didn't hear that.

Mr. WOLF. I said this program has not been continued, this training. I said perhaps, parenthetically, that is what happens when you leave.

Given that the Department's commercial service currently has 120 offices in China, far more than any other country, it is a missed opportunity to better prepare our officers to be aware of abuses and advocate for human rights.

We have also been told by the staff you actually have a carrier for NEIT. It is a question would you start retraining it now? Would you look at having people in your commercial program both with

regard to China and Vietnam and any other country you think may be appropriate to have some training and understanding, perhaps have an afternoon where you bring in Harry Wu, who was in prison for 18 years, bring in Ray Berkadir, bring in a Protestant pastor, bring in the Cardinal Kung Foundation so that your commercial people can hear from people who have direct knowledge of this. But one, will you start the program up, and would you consider starting it up with a carrier with the excess money that you currently have?

Secretary LOCKE. Well, you mentioned this program to me just before this afternoon's hearing commenced, and I was not aware of this program.

Mr. WOLF. No, I didn't expect you—

Secretary LOCKE. But I would like to look into it and find out more about it. And I can report back to you our response in terms of providing some sort of training or reinstituting this training program.

[The information follows:]

TRAINING ON HUMAN RIGHTS

Beginning in FY 2003, Congress directed ITA to use $500,000 to develop a human rights training program to address a concern that ITA's efforts to increase trade were conducted without consideration of the impact of U.S. global business expansion on human rights. To ensure that our employees included information on human rights as part of their counseling for U.S. exporters, the U.S. and Foreign Commercial Service's (US&FCS) Office of Professional Development built a comprehensive training program in coordination with ITA. Designed with the input of Commercial Officers, outside experts, NGOs, and the State Department, the training provided Commercial Service staff with the tools to incorporate the promotion of human rights, rule of law, and corporate responsibility into their daily work when counseling U.S. businesses.

This training program began implementation for Commercial Officers in FY 2003. In FY 2005, the training initiative was expanded to include Commercial Specialists and Domestic Trade Specialists. ITA has incorporated Human Rights training in the employee professional development plans and at the beginning of FY 2009 almost all Commercial Service officers and the majority of the staff have been trained. As we bring on new employees, we are committed to ensuring that they too receive human rights training as a part of their ongoing professional development.

The International Trade Administration recognizes the importance of human rights, rule of law, and corporate responsibility and the role they play in international trade. We have trained almost all Commercial Service officers and the majority of staff in this important area and are committed to including human rights training in the ongoing professional development of new officers and staff. In addition, we are exploring cost-effective technology solutions to deliver the training in the future to ensure that the training is available to all employees on a continuous basis.

Mr. WOLF. Yeah, I think it would be good. I mean, why wouldn't we do it? I mean, why wouldn't we want to sensitize? I mean, here we actually had a situation where I picked socks up off the line in Beijing prison number 1. Those socks were being manufactured for export to the West. I mean, here you had Tiananmen Square demonstrators making socks so people could buy them here in the West.

And it would seem to me that your people ought to know what is going on, also in Vietnam. I mean, I think they are persecuting the Catholic Church, they are persecuting Buddhists, and they are having a very, very difficult time. So I really can't really understand why—and, again, it is not your fault—why we would not do that.

EXPORT CONTROL LAWS

As Commerce Secretary what will you do to ensure that our export control laws are aggressively enforced in order to prevent dual-use technologies from leaving the United States and going to develop advanced military equipment in China, build a nuclear bomb in Iran, or assist terrorists in creating a weapon of mass destruction?

Secretary LOCKE. Dual-use export falls under the jurisdiction of the Bureau of Industry and Security, and the National Academy of Sciences has come out with a series of recommendations on how to improve that operation. There are certain items that obviously many people feel should not be the subject of regulation that would then free up resources to really focus on true threats and other materials that are the subject of national security concern, and so that we have the right emphasis and can be more vigilant in particular areas.

I very much am willing to look at that and to see what we can do to reform that process to really direct our personnel and focus our efforts on those issues and items that clearly are of concern to our national security interest.

INFORMATION SECURITY

But we need to be very, very careful with the technology that we have and the equipment and the products made in the United States that they not fall in the wrong hands or are used for military purposes, especially where it could be adverse to the United States' interests. And so we take those responsibilities seriously.

That is also an area, for instance, where our information technology is vulnerable and antiquated. It is the very same agency within the Department of Commerce that has complained that it has information technology for which there are no replacement parts. And obviously, in order to be cybersecure, BIS has shut off access to the Internet to make sure that their systems are secure. Those are the programs that we need to watch very, very carefully. If we are able we will free up dollars in other operations, redeploy them and address some of the cybersecurity issues.

Mr. WOLF. How long has that been a problem with regard to that Bureau?

Secretary LOCKE. I think it has been ongoing for many, many years. And I received a report from the Inspector General saying—and even from the Acting Under Secretary, at BIS, complaining about this and expressing concern that it has been going on for perhaps 7 or 8 years. And they have been wanting more dollars devoted to beefing up their information systems and addressing the issue of cybersecurity, especially in an area, at a Bureau that deals with such sensitive issues such as military technology.

Mr. WOLF. Well, I agree.

THE JASON PROGRAM

The last question I have, are you aware of The Jason Program, do you know Dr. Ballard?

Secretary LOCKE. No.

Mr. WOLF. I thought you would have known Dr. Ballard.

Secretary LOCKE. No.

Mr. WOLF. I would encourage you to look into The Jason Program. The committee has funded The Jason Program over the years. Dr. Ballard is the scientist who discovered the Titanic, and he has an educational program with regard to the oceans, and it is thoroughly exciting. And a lot of our schools out in northern Virginia participate in The Jason Program. I had the opportunity, they asked me to come one night to introduce Dr. Ballard, and I had another event to go to. And I said, by the way, it is the last game of the World Series, so I really don't think we will get a crowd, but I will come. The auditorium was packed, and they were there listening to Dr. Ballard talk about the oceans and the sciences. And so it is an educational program in a lot of schools.

I would urge you to, one, try to find out a little bit about it, and maybe if Dr. Ballard comes into town, sit down with him. I believe he has a place up in Woods Hole in Massachusetts. But it is a program of sciences with regard to the oceans and teaching young people math, science, physics, chemistry, and biology.

For some years we will put the program in, and when the budget comes up from—what was in the budget last year? We had to add it in, and every time the administration would testify, they would say it is a great program, we think it is a great program, but then when the budget would come up, it would not be in. Sometimes—and I know you will not do this—sometimes the administration plays games. They know there are programs that the Congress will probably put in. They want those programs, but they won't put it in knowing someone up there on Capitol Hill may very well put it in.

Now to really care about the math, and science, and physics, and chemistry, and biology and oceans and scientists for young people and education, The Jason Program offers a lot. So I hope you take a look at that, and if you are interested, let Dr. Ballard know the next time he is in town to come by and see you.

Secretary LOCKE. Thank you.

Mr. MOLLOHAN. Thank you.

Mr. RUPPERSBERGER.

SATELLITE INDUSTRY

Mr. RUPPERSBERGER. The two issues I want to get into, that is the satellite issues and also the issue of cyber security. We in this country have been having a difficult time in the last maybe 10 years of maintaining our efficiency and where we were years ago in the space industry. I think when Sputnik came about by the Russians, we responded as a country by putting a man on the moon in 12 years. We have a difficult time in our overhead architecture to even get a major satellite up in 12 years, and there are a lot of reasons for that. You basically don't have a lot of jurisdiction, but your jurisdiction in NOAA where you work with NASA is important, so you have some responsibility there.

I am Chairman of a technical tactical committee on Intelligence which overseas the whole overhead architecture. And we had a huge investigation or really hearings and tabletops, bringing the entire industry in, both the Director of National Intelligence and the Department of Defense and also the major contractors, com-

mercial contractors. One of the things that came out of that report was that one of the reasons we have been having problems, a lot is in acquisition and setting the specifications, getting people with an expertise in the area of acquisition.

But another reason was the fact that a lot of the research that needed to be done to put up the satellite was—was the research and development were done after the contracts were let out. And I think that in order to maintain our dominance from a national security point of view, but also what our satellite programs do in the commercial sector, what they do for NOAA, we need to maintain and keep moving ahead in that regard.

My question to you is basically do you understand there are issues in the satellite industry and in the space industry? From your perspective, where would your priorities be as far as resource?

And one other thing if you could address. We can't afford to build satellites for Department of Defense, intel and NASA and think we have the money to do everything. Now, we are going to keep doing all of them, but we need to really work more in a collaborative mode with DOD, with intel, and especially in sharing some of the classified areas that we really don't need to be classified with NOAA and with NASA. So if you can respond to that issue, I would appreciate it, where you think you are going from your perspective. And if it is too complicated, just get back to you me afterwards on this issue so I could work with your staff.

ITAR

I also want to get back—and this is very high priority to me is ITAR, and I want to make sure that we work together to resolve this ITAR. We can't wait any longer for ITAR. We are having serious issues involving or national security, but our business and whatever. So I think we really have to work on that, too.

SATELLITE PROGRAMS IN NOAA

Secretary LOCKE. Thank you very much, Congressman. I would like to perhaps sit down with you privately and individually to learn more about some of these issues. I can only say that I believe that the NPOESS satellite program for NOAA suffers from a triagency management structure that simply does not work.

And the fact is that, with respect to the contracting, as you said, a lot of the research and development is performed after the contracts have been signed, because the contracts are really for entities or organizations, whether private sector, to develop the instruments, once the scientists have figured out what it is that they want collected and what type of information they want collected 20 or 30 years from now. None of those instruments exist now.

And so we are basically saying as President Kennedy challenged the Nation to put a man on the moon by the end of the decade, we are basically asking the scientific community and the contracting community to come up with these instruments to measure and to do various tasks for which there are no things, they are not off-the-shelf that you can then just stick on a satellite and put them up into space.

So the contract calls for the research and development of items in a very general and broad sense for which people really don't

have a firm estimate of the cost or how long it is going to take to do. And so the cost overruns occur when it takes more time to do it than anyone ever envisioned. It is taking long, and it is more complex, and as a result budgets either skyrocket, or the number of instruments get scaled back or both.

Also I think there is an issue as to how we supervise the subcontractors, and whether that is done effectively and efficiently. In some cases we found perhaps it is better to have NASA actually being the overseer of the project, as opposed to a private contractor overseeing a subcontractor.

So I think we need to reexamine all the different models, find out what really works and what does not work. Because it is amazing that it is taking us so long to get the satellites up and running.

Mr. RUPPERSBERGER. Another area, too, is the commercial satellite, which, because Europe has not had the money that we have had, they very effectively have used commercial satellites, which usually you can get maybe a lot more satellites for the money. They are on time and on budget, or they don't get paid. And that is something that I think we all need to look at in that regard, too.

There is a report that our committee rendered, that the President has now and the administration has now, and I should have my staff person to get it to you all and look at it.

I think one of the things about research and development, even before a contract is let out, we need to do that before it goes out; in other words, have the research and development there. You have program management issues. You have people who are putting together the acquisition who don't have experience. So there are a lot of issues that we have to deal with that are very important.

CYBER SECURITY

The other is cyber. Cyber is probably one of the most important issues from a national security point of view that we are going to deal with in the future. We are way behind the eight ball, other than some areas that I can't discuss, but basically cyber can affect everything that we do in this country. We know that we have—and I can say this is not classified, it has been out there—our Pentagon has been cyberattacked, NASA has been cyberattacked. And when you get cyberattacked, there is probably millions if not billions of dollars of research and development that, say, a China or Russia, somebody can obtain that information that we have done, and they can pick up what we need to do. But it goes way beyond that.

We rely, we are probably—we are the strongest country in the world and one of the main reasons we control the skies. Yet China and Russia are that close to us. And yet from a cyber point of view, these attacks can come through a grid system; a grid system as far as energy or electricity or whatever, can be done. They can go and they can attack a bank. You and some of the experts in this area, basically if you have a senior citizen in South Dakota who has a server and deals with a community bank, and that community bank deals with Bank of America, the bad guys can go in through that one server and probably affect an ATM system of Bank of America generally. When Russia went in to fight Georgia just this last summer, they cyberattacked first from a banking, a grid. So this is a very serious issue that we have to move quickly.

The good news is President Obama understands this. He was briefed with McCain and President Bush last year where this really came to the forefront. He has agreed to put money in the right place. He has Melissa Hathaway, who he is working with on his side, and then General Alexander is probably one of the best technicians that we have in the United States military. And so there are good people that are in place, but it is just not about the people.

A lot of people right now think that NSA listens to their phone calls, which is not true at all. It is unfortunately sometimes the way the media takes something, moves something out. This is as far as what people think. But cyber, we do not own the Internet. The United States does not own the Internet. It is very relevant and very important that, I think, from your perspective in a commercial, that Microsoft, all these businesses that are global are dealing with the cyber issue. There has to be a buy-in from the business community, from the government community, and from the average American citizen who has a computer that we need to do this.

So if you could really focus on the cyber initiative and maybe stand up some people in your organization, because a lot of this is going to have to do with global companies, and we need to have all of them in the tent, because there is going to be billions of dollars' worth of money, and the government cannot pay for all of that. Business has to be a part of this.

Secretary LOCKE. I thoroughly agree. And you indicated Ms. Hathaway is helping conduct that review on behalf of the President, and I believe that the various executive agencies will be meeting shortly to discuss that report and to have that report.

Mr. RUPPERSBERGER. Do you see from your perspective and your mission that you have a role there also? I think you have a major role.

Secretary LOCKE. Oh, very much so. And the whole issue of the impact on commerce, the impact to businesses, small and medium-size businesses, to our financial institutions, as you indicated, to our power grid system on which everything depends. And as the President has declared, we all need to really step up to the issue of cybersecurity not only within our agencies, but for the entire country as a whole, and commercial enterprises and financial enterprises, power grid systems, water supply systems, medical systems, everything. I mean, it is very easy for a person, a teenager, from some other country just to start hacking into and destroying——

Mr. RUPPERSBERGER. It could be al Qaeda, it could be a hacker.

Secretary LOCKE. Or an organization of terrorist intent.

Mr. RUPPERSBERGER. Thanks.

Mr. MOLLOHAN. Thank you, Mr. Ruppersberger.

PACIFIC COAST SALMON RECOVERY FUND

Secretary Locke, as a former Governor of Washington, you likely are very familiar with the Pacific Coast Salmon Recovery Fund. In fact, the State of Washington received, I believe, approximately 17 percent of those funds for this program.

Last year we heard testimony from the previous NOAA Administrator, a fine Administrator, Retired Vice Admiral Conrad Lautenbacher, who testified that the PCSRF had been funded to the tune of, quote, "many millions of dollars," end of quote, over the previous 6 or 7 years. And in his opinion, quote, "It is time to start weaning the States off of some of these grants. They have had time to adjust to them and the time to build recovery plans."

Do you agree with that statement in whole or in part, and if not, why not?

Secretary LOCKE. I am not familiar with those comments or his recommendations or his assessment. I do know that a lot of effort has gone into addressing the endangered and threatened salmon runs on the west coast, in the North Pacific all the way from Alaska down to northern California, and we constantly face additional challenges.

In fact, there appears to be another run of salmon that are threatened, and the Governors of both California and Oregon are asking for economic assistance because it appears that the scientists are recommending a complete shutdown of a fishery in the Klamath Basin area. That will have profound economic impact.

It is important that we set time frames and that we have measurable goals with respect to the actions by which we can judge the actions at the local level. We cannot just continue to support endless study after study; there has to be action plans. We need to be monitoring the local governments and the communities with respect to their progress on those action plans, and if they are not making progress, they need to adjust those action plans.

So I think it really is a case-by-case basis. I do believe, however, that as we look at endangered runs in the north Atlantic to the Gulf Coast States, that as, I think, one of the other Congressmen indicated earlier, that we need to be very mindful of the economic impact to the restrictions that we impose based on the science. We have to be grounded by the science, but then we also need to recognize the economic toll and the economic impact of restricting fisheries.

Mr. MOLLOHAN. Well, let me explain a little bit more the focus of my question. This Pacific Coast Salmon Recovery Fund is requested in previous years to the tune of about $35 million. In the 2009 request, it was $35 million. There is considerable support, parochial support, in the Congress for this program. Programmatically we have increased it to 60-, 70-, 80-, 90-million. Last year, I think, after conference this fund was—we funded it to the tune of $90 million. That is a lot of money.

That money, as I understand it, goes for remediation of spawning areas, helping the salmon get up to where they spawn. And the program has been going on, as Admiral Lautenbacher indicated, for a long time now, a great number of years, and many millions of dollars spent on it. And I think it is worth a review because it is so much money.

This committee really does want to address the problem and the issue, and I am just wondering if repairing so many culverts or opening so many dams or so many run-arounds, how much of that we can do, because I don't see the goals being achieved. I see there still being continuing problems. There are some that say, look, you

can remediate, continue to do that, if that is your strategy, but you have to be equally or maybe more concerned about the increasing acidification of the oceans where the salmon swim. So I just encourage you to look at that program.

And I also wonder about the equity of these areas being so designated and salmon being the only species involved here. I just commend it to your consideration as you come forward, because we are looking at because it is so much money. Again, there is tremendous support for it in the Congress. We understand its justification, but we think we ought to be more strategic and maybe more scientific about it. Are we really addressing the problem by spending these tremendous amounts of money on inland remediation?

Secretary LOCKE. I thoroughly agree with you. There is always room for an analysis and evaluation of the effectiveness of the programs. The measure of a program should not be the dollars spent, but what we are getting for it.

ECONOMIC DEVELOPMENT ADMINISTRATION

Mr. MOLLOHAN. The Economic Development Administration, Mr. Secretary. It is an agency that I am pretty familiar with. Tell me what your attitude is with regard to the Economic Development Administration; to what extent do you anticipate the Department of Commerce supporting it? And what is going to be your emphasis with regard to programs that they manage?

Secretary LOCKE. Well, I think that the role of the Economic Development Administration is more critical now than ever before, given the tough economic times that our country is in. And the President has proposed in the 2010 budget delineating out of the funds that have been proposed some $50 million for the creation of regional innovation clusters that really would build on the strengths and the vision of communities. And that is up to each community working with their public-private partnerships, their colleges, universities, and really focusing on their strengths and trying to build on those strengths.

Another $50 million would be designated for public-private business incubators to encourage that entrepreneurial activity, especially in economically distressed areas. Of course, the Congress put some $150 million in additional funds for the Economic Development Administration as part of the Recovery Act, especially for communities experiencing very severe job losses, and so we are very excited about that; and, of course, with some of the money that was provided, several hundreds of millions of dollars provided, in the aftermath of various natural disasters in the recent couple of years, again to target those areas to help them address and mitigate against those natural disasters, but also to help rebuild some of their industries.

So I look forward to the opportunity to administer this. Right now it is administered through regional offices on a competitive basis all across the country. They do incredible leveraging of dollars. I think for every $1 that is provided by the Federal agency, we are actually getting some $14 in economic benefit working in partnership with economic development associations, colleges, universities, State programs, State dollars, the private sector. Federal dollars provide sometimes that last critical piece of funding that

makes the project viable. And so this program is very, very valuable and very much needed.

Mr. MOLLOHAN. I would encourage you to, as you interact with the Economic Development Administration and its new leadership, encourage it to have an economic diversification focus, because really in those areas that are dependent on traditional industries, if they are not going to be focusing on diversification, they need to be incentivized to focus on diversification, because they are going to be in for tough competition if they are just going to continue to try to pursue those sectors of the economy on which they relied forever.

In the Economic Development Administration I think that is a simple redirection, perhaps only in part. But if that were made a part of every grant submitted, to what extent does this contribute to economic diversification, you would, in my judgment, help facilitate in the long-term improvement in standard of living that we are looking for.

REGIONAL INNOVATION CLUSTERS AND PUBLIC-PRIVATE INCUBATORS

Please talk to me a little bit about regional innovation clusters and public-private incubators. Are there models for these two suggestions out there across the country? And otherwise talk a little bit more about them for us.

Secretary LOCKE. Actually there has been a great deal of interest in the academic community and in the business development community about, first of all, public-private business incubators. We see a lot of those supported by the States using the colleges and universities, where the private sector can rent very inexpensive space in a college engineering facility and have access to other staff and laboratories where they can actually help perfect their ideas and their innovations, their products, and take advantage of the expertise that is also available, offered, let's say, in that public-private partnership to really help entrepreneurs to perfect their ideas, to make it more commercially available.

Mr. MOLLOHAN. Do you have any examples of where that is occurring for the record? Could you submit——

Secretary LOCKE. Well, actually there are some at the University of Washington, in my home State of Washington. And I believe that there are numerous examples, but, yes, we can get you a list of some of that.

[The information follows:]

HISTORY OF EDA'S INVESTMENTS IN BUSINESS INCUBATORS AND REGIONAL INNOVATION CLUSTERS

The Economic Development Administration (EDA) has a long, successful history supporting business incubator projects throughout the nation. Since 1995, EDA has invested approximately $348 million in 321 business incubator projects. Grantees estimate that these projects have created 61,428 jobs and have generated $4.8 billion in private investment. A complete list of those investments has been included for your review. This list will be maintained in the Subcommittee's files.

Similarly, EDA has long recognized the power of the regional cluster approach to economic development. Since the early 1990s, EDA has taken steps to conduct practitioner accessible research on regionalism, business and occupational clusters, their importance to regional economies, and ties to innovation and entrepreneurism. In addition, EDA has sought to fund economic development projects at the local and regional levels that support the development of clusters and cluster-based economic development initiatives. Such projects have highlighted EDA's emphasis on expand-

ing regional competitiveness, promoting business clusters as a series of coordinated economic development activities related to a comprehensive economic development strategy for a given region.

For example, in FY 2008, EDA funded a $154,000 Local Technical Assistance investment to the Center for Advanced Technology and Information (CATI) to replicate the successful CATI technology transfer model in up to three other mid-sized Midwestern regions attempting to infuse innovation and technology into existing manufacturing companies as a way to compete globally as well as to instill a mechanism for more value-added entrepreneurship by linking underutilized intellectual property. The Midwest region is a growing cluster for developing new technologies and ideas, generating one-third of the nation's new intellectual property and approximately 30 percent of all the private and public research and development, but less than 12 percent of all equity capital has been attracted to the area, meaning that there is underutilized intellectual property which requires an aggressive process for transferring to entrepreneurs and existing companies capable of commercialization.

Furthermore, EDA has supported significant research efforts on the topic of regional innovation clusters over the past two decades. These studies include:

—Cluster Based Economic Development: A Key to Regional Competitiveness—Report (1997)

—Innovative Local Economic Development Programs—Report (1999)

—A Governor's Guide to Cluster-Based Economic Development—Report (2002)

—Rural Knowledge Clusters: The Challenge of Rural Economic Prosperity (2002)

—Universities and the Development of Industry Clusters—Report (2004)

—Competitiveness in Rural U.S. Regions: Learning and Research Agenda—Report (2004)

—Unlocking Rural Competitiveness: The Role of Regional Clusters—Report & Interactive Website (2006)

—Know Your Region Project—Curriculum & Interactive Website (2006)

Date: 5/5/09

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
AL	1995	PW	040104116	Univ of AL-Birmingham	Const Incubator Facility	Birmingham, AL	$1,000,000	$4,978,600	0	$3,200,000
AL		PW	040104042	Shoals Entrepreneurial	Exp Bus Incubator	Florence, AL	$225,000	$450,000	0	$560,000
CA		PW	070104084	Vermont Slauson EDC	Renovation OF Building	Los Angeles -CA	$350,000	$500,000	0	$150,000
CO		PW	050102758	Trinidad City of	Construct Water/sewer	Trinidad,Co	$345,100	$493,000	0	$1,250,000
LA		PW	080102936	Jefferson Par Ed and Pd	Renov Incubator Bldg	Harvey -LA	$245,000	$490,000	360	$500,000
LA		PW	080102941	LA State Univ & A&m Coll	Business Incubator Expan	Baton Rouge -LA	$259,800	$433,000	100	$60,000
ND		PW	050102753	Leeds, ND	Construct Building	Leeds, ND	$600,000	$1,000,000	0	$13,000,000
SD		PW	050102763	Lakota Fund	Incubator Project	Kyle, SD	$1,000,000	$1,250,000	0	$700,000
TN		PW	041104027	Tennessee State Univ	Exp Bus Incubation Ctr	Nashville, TN	$1,120,000	$1,400,000	0	$0
WV		PW	010103392	WV Hi-Tech Consortium	Inovation/incubator Ctr.	Fairmont -WV	$1,440,000	$1,800,000	0	$10,000,000
AL		EA	044904097	Calhoun County EOC	Dev Bus Incubator:Id PK	Anniston, AL	$1,012,500	$1,350,000	0	$0
AR		EA	083902957	Shirley Cmty Srv & Dev C	Estab. Mushroom Industry	Shirley -AR	$494,760	$787,405	110	$0
CA		EA	074904062	Chula Vista, City of	Environmental Alliance/p	Chula Vista -CA	$2,000,000	$2,667,218	0	$0
CA		EA	074904064	Vallejo, City of	Business Incubator Feas/	Vallejo -CA	$175,000	$233,335	0	$0
GA		EA	041969035	Albany City of	Const Ind Incubator	Dougherty County, GA	$1,000,000	$1,350,000	0	$0
MO		EA	054902736	St Louis City of	Defense Dislocation	St. Louis, MO	$3,750,000	$5,000,000	0	$0
NY		EA	014903423	Dutchess County EDC	Bldg Rehab/equip	Poughkeepsie (Town Of	$1,240,000	$1,792,000	0	$0
OH		EA	064902771	Hamilton Cnty Dev C/Cnty	Implementation Grant/DOD	Norwood, OH	$775,000	$1,403,500	0	$480,000
PA		EA	014903503	Bucks County EDC	Incub Bldg,TA,RLF/Defen	Warminster -PA	$2,000,000	$2,700,000	0	$0
WV		EA	013903483	Marshall Univ Research	Tech. Asst./Env. Incub.	Huntington -WV	$800,000	$1,100,000	0	$0
Subtotals for FY = 1995					20 projects		$19,832,160	$31,178,058	570	$29,900,000
DC	1996	TA	010611133	District of Columbia	Small Business Incubator	Washington -DC	$133,456	$314,139	0	$0
HI		TA	070603632	Hawaii, State of	Feas/s Hawaii Incubators	Hilo -HI	$30,000	$50,000	0	$0
US		TA	990607414	University of Michigan	Incubat Impact-Loc Econ	US	$295,918	$295,918	0	$0
AK		PW	070103628	Kenai Peninsula Bor EDD	Business Incubator	Kenai -AK	$1,000,000	$1,280,000	0	$7,000,000
AL		PW	[illegible]	Ctr Entrepreneurial Dev	Bldg:Incubator Facility	Montgomery, AL	$1,380,552	$2,330,552	156	$0
MN		PW	060102778	Crookston City of	Small Business Incubator	Crookston, MN	$360,000	$778,830	0	$0
NM		PW	080103026	Farmington City of	Business Incubation Ctr	Farmington -NM	$1,000,000	$1,500,000	94	$4,361,000
PA		PW	011103501	Philadelphia Enterprise	Small Business Incubator	Philadelphia -PA	$1,100,000	$1,672,000	0	$15,000,000
SD		PW	050102932	Brookings, SD	Small Business Incubator	Brookings, SD	$500,000	$1,525,000	0	$2,500,000
CA		EA	074904111	Beckman Institute	Photonic Incubator	Irvine -CA	$1,000,000	$2,604,450	200	$3,000,000
CT		EA	014903517	Univ of Connecticut	Precision Mfg. Center	Storrs -CT	$2,000,000	$2,666,668	300	$0

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
VA	1996	EA	014903561	New River Valley DC	Incubator,Multi-Bldg	Radford -VA	$3,200,000	$4,597,000	360	$0
WA		EA	074903585	Bremerton, Port of	Infrastructure/incubator	Bremerton -WA	$850,000	$2,196,893	49	$173,000
	Subtotals for FY = 1996				13 projects		$12,849,926	$21,811,450	1,159	$32,034,000
MT	1997	TA	050602989	Montana State U North	North Bus Internet Incub	Havre, MT	$14,500	$24,024	0	$0
AL		PW	040104180(	Ctr Entrepreneurial Dev	O/r:Bldg:Incubator Fac	Montgomery, AL	$110,000	$205,000	0	$0
FL		PW	040104251	Life Skills Fdtn, Inc	Small Bus Incubator	Tampa, FL	$700,000	$1,698,573	0	$8,500,000
ID		PW	070103388(	Idaho Univ of	Incubator Building	Caldwell -ID	$275,000	$475,000	0	$17,500,000
MA		PW	010103600	Stcc Assistance Corp.	Center For Entrepreneurs	Springfield -MA	$990,000	$2,011,000	0	$0
MD		PW	010103665	Maryland Econ Dev Corp	Renovations/incubator	Baltimore -MD	$1,000,000	$2,000,000	120	$0
NY		PW	010103687	Buffalo EDC/Erie Cnt IDA	Business Incubator	Buffalo -NY	$1,000,000	$2,150,000	0	$2,000,000
NY		PW	010103628	Southern Tier West	Business Resource/incub	Salamanca -NY	$1,000,000	$2,000,000	0	$3,000,000
OH		PW	060102820	Dayton City of	Business Incubator Fac	Dayton, OH	$1,164,500	$1,864,000	0	$700,000
OK		PW	080103092	Durant City of Rural Ent	Business Incubator	Durant -OK	$750,000	$1,368,300	0	$0
PR		PW	010103589	Jayuya Municipality of	Multitenant Indust. Bldg	Jayuya -PR	$700,000	$875,000	0	$0
TX		PW	080103113	Houston City of	Renov Bldg Busi Incub	Houston -TX	$1,110,000	$1,850,000	427	$0
CA		EA	074903727	Alameda Reuse&Redev Auth	Incubator Implementation	Alameda -CA	$159,605	$212,806	0	$0
GA		EA	044904242	Augusta/Richmond Cnty	Const Bus Incubator Bldg	Augusta, GA	$1,100,000	$1,500,000	0	$0
ID		EA	073903629	Butte, County of	Bus. Development Ctr	Arco -ID	$605,000	$1,080,500	65	$250,000
NC		EA	041957002	Tabor City Town of	Const Bus Incubator	Columbus County, NC	$436,773	$873,547	423	$623,000
NC		EA	041957005	Raleigh City of	Const Bus Incubator Bldg	Wake County, NC	$500,000	$1,336,500	0	$0
NH		EA	014903683	Univ of New Hampshire	Tech Bldg Infras	Durham (Town Of) -N	$1,000,000	$1,334,000	0	$0
TX		EA	084903099	Marshall City of	Exp SM Busi Incubatr	Marshall -TX	$1,000,000	$1,350,000	150	$0
	Subtotals for FY = 1997				19 projects		$13,615,378	$24,208,250	1,185	$32,573,000
CO	1998	TA	050602996	San Juan Cnty Hist Soc	Business Incubator Proj.	Silverton, CO	$21,000	$28,000	0	$0
OH		TA	060602941	Washington County Cic	Feas/s Bus Incubator	Marietta -OH	$22,000	$29,333	0	$0
UT		TA	050603056	Mountainland EDD	Small Business Incubator	Provo, UT	$25,000	$34,000	0	$0
GA		PW	040104342	Crisp/Dooly Joint Dev AU	Const Bus Incubator Bldg	Cordele, GA	$1,160,000	$1,935,000	0	$0
IA		PW	050103138	Waterloo City of	Renovate Bldg	Waterloo, IA	$275,000	$458,334	0	$500,000
NY		PW	010103755	Schenectady County	Cons Small Business Cntr	Schenectady -NY	$676,500	$1,285,800	0	$1,000,000
OH		PW	060102898	Youngstown Edison Incuba	Incubator Renovation	Youngstown -OH	$498,000	$830,000	0	$0
PA		PW	010103782	Altoona-Blair CDC	Construct Incubator Bldg	Altoona -PA	$900,000	$2,471,000	125	$0

Date: 5/5/09

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
TN	1998	PW	040104362	TN BD of Regents	Business Incubator	Cleveland, TN	$427,000	$808,250	0	$56,417
TX		PW	080103170	EL Paso City of	Business Incubator	EL Paso -TX	$1,200,000	$1,500,000	0	$0
VA		PW	010103647	Mtn. Emp. Reg. Bus., Inc	Construct Incubator Bldg	Duffield -VA	$300,000	$700,000	0	$0
VA		PW	010103772	Alleghany Highlands EDA	Construct Incubator Bldg	Covington -VA	$600,000	$1,300,000	50	$0
CA		EA	074903787	L.A. Prosper	Sewn Products Incubator	Los Angeles -CA	$400,000	$533,334	0	$0
CA		EA	074903845	Cal Poly Pomona Foundatn	Incubator Pomona Techctr	Pomona -CA	$1,820,000	$2,683,000	80	$0
CA		EA	074903796	Fame Assist Corp	Business Incubator	Los Angeles -CA	$1,800,000	$2,467,000	220	$0
CA		EA	074903799	EL Monte, City of	Int'l Bus. Incubator	EL Monte -CA	$1,000,000	$1,515,151	225	$0
CA		EA	074903727(	Alameda Reuse&Redev Auth	Incubator Implementation	Alameda -CA	$350,000	$467,123	0	$0
CA		EA	074903825	Charo Community Dev Corp	Business Incubator	Los Angeles -CA	$750,000	$1,000,000	0	$0
CO		EA	054903013	Fitzsimons Redev Auth	Construct Building	Aurora, CO	$3,750,000	$5,000,000	0	$0
GU		EA	074903801	University of Guam	Plan For Bus Incubator	Mangilao -GU	$199,999	$199,999	0	$0
MN		EA	061959003	East Grand Forks City of	Imp Grt/refurbish Bldg	East Grand Forks -MI	$1,249,736	$1,562,169	100	$0
TX		EA	084903189	San Antonio City of	Business Incubator	San Antonio -TX	$693,000	$933,333	0	$0
Subtotals for FY = 1998					22 projects		$18,117,235	$27,740,826	800	$1,556,417
CA	1999	PW	070103930	Arvin, City of	Incubator Small Business	Arvin -CA	$550,000	$952,305	0	$0
CA		PW	070103850	Marina, City of	Business Incubator	Marina -CA	$2,000,000	$2,857,000	0	$0
FL		PW	041104392	Gainesville City of	Tech Bus Incubator	Alachua County, FL	$1,440,000	$1,800,000	0	$0
GA		PW	040104402	S Dekalb Bus Incubator	Incubatr Pur/renov,Tel S	Decatur, GA	$575,000	$1,150,000	0	$0
GA		PW	040104407	Two Thousand Opportuniti	Incubator Bus Program	Columbus, GA	$210,000	$672,000	0	$3,000,000
HI		PW	070103960	Pacific Gateway Center	Incubator Commcl Kitchen	Honolulu -HI	$1,290,825	$2,803,825	0	$0
HI		PW	070103965	Hawaii,Univ Of-Hilo	Incubator Small Business	Hilo -HI	$625,000	$2,085,000	0	$0
MS		PW	040104441	Batesville City of	Const Bus Incubator	Panola County, MS	$319,000	$456,200	0	$0
MS		PW	040104445	Grenada City of	Const Bus Incubator	Grenada County, MS	$298,000	$458,900	0	$0
MS		PW	040104403	Oxford City of	NW MS Incubator Network	Lafayette County, MS	$600,000	$1,200,000	0	$0
OH		PW	060102894	Shorebank Enterprise Grp	Incubator Bldg Expasion	Cleveland -OH	$668,500	$1,341,754	0	$1,526,439
PA		PW	010103877	Dubois Area EC Dev Corp	Construct Incubator Bldg	Sandy (Township Of) -P	$575,000	$1,125,000	75	$0
PR		PW	010103827	Vega Baja Mun of	Multi-Tenant Ind Bldg	Vega Baja -PR	$1,000,000	$1,250,000	0	$120,000
TN		PW	040104418	Memphis Incubator	Renov Bus Incubator	Shelby County, TN	$1,555,000	$3,110,000	185	$70,000
VA		PW	010103824	Pittsylvania Cnty/Danvil	Construct Incubator Bldg	Danville -VA	$1,000,000	$2,426,500	100	$0
VA		PW	010103888	Richmond IDA of	Rehabilitate Building	Richmond -VA	$775,000	$2,350,500	100	$0
WI		PW	060102974	Platteville Bus. Inc.	Business Incubator	Platteville -WI	$411,300	$685,500	0	$0

Date: 5/5/09

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
WV	1999	PW	010103841	Greenbrier Valley EDC	Incubator Bldg/ind. Site	Lewisburg -WV	$960,000	$1,720,000	135	$500,000
AR		EA	087903272	Cossatot Technical Clg	Ren Bldg for Incubator	Multi	$466,000	$666,000	40	$68,000
CA		EA	074903977	Sacramento Housing/Redev	McClellan Tech Incubator	Sacramento -CA	$600,000	$1,261,585	0	$0
CA		EA	074903936	Alameda Reuse&Redev Auth	Mentoring Plan Incubator	Alameda -CA	$425,000	$567,900	300	$15,000,000
CA		EA	074903907	Esperanza Comty Housing	Renovation Existing Bldg	Los Angeles -CA	$1,081,000	$1,441,000	73	$98,000
CO		EA	054903155	Fitzsimons Redev Auth	Construct Building	Aurora, CO	$2,250,000	$3,000,000	0	$0
NJ		EA	014903816	New Jersey Inst of Tech	Small Business Incubator	Newark -NJ	$1,800,000	$5,340,000	0	$0
NM		EA	084903293	Santa Fe Business Incuba	Construct Business Incub	Santa Fe	$1,100,000	$2,090,000	0	$0
WV		EA	017903949	Marshall Univ Research	Tech. Asst For Incubator	Huntington -WV	$300,000	$430,000	0	$0
Subtotals for FY = 1999					26 projects		$22,874,625	$43,240,969	1,008	$20,382,439
HI	2000	TA	070603995	University of Arizona	Polycul. Incubator Study	Kaunakakai	$26,774	$37,110	0	
US		TA	990607464	Rutgers The State Univ	Tech Incubation Assessmt	Multi State [City]	$12,557	$19,589	0	
FL		PW	040104576	Town of Century	Building Renovation	Century, FL	$546,500	$724,500	73	$0
FL		PW	040104729	Gainesville City of	Business Incubator	Gainesville, FL	$270,000	$811,800	0	
ND		PW	050103351	Valley City	Construct Building	Valley City, ND	$550,000	$1,757,000	59	$1,870,000
NJ		PW	010107321	Millville City of	Aviation Hangar/Incubatr	Millville	$1,620,000	$3,770,000	160	$250,000
NY		PW	010107381	GrJamaica Dev C	High-Technology Incubato	Queens	$1,140,000	$3,600,000	125	
PR		PW	010103929	Yabucoa Municipality of	Multi-tenant Indus Bldg	Yabucoa	$1,000,000	$1,268,000	125	$1,000,000
TX		PW	080103392	UT-Brownsville (TSC)	Internat Innov Cntr	Brownsville	$1,000,000	$1,260,000	75	$1,400,000
VA		PW	010107300	Martinsville IDA	Building renovation	Martinsville	$700,000	$1,200,000	235	$2,000,000
CA		EA	076904870	San Benito County EDC	Develop incubator plan	Hollister	$95,000	$130,000	0	
CA		EA	074904850	TELACU	Industrial Park Imps.	East Los Angeles	$1,000,000	$2,000,000	177	$2,000,000
VA		EA	014907298	New River Valley DC	Building construction.	Radford	$2,000,000	$3,350,000	115	$10,000,000
VA		EA	017907202	Cumberland Plateau PDC	Renovate training bldg	Lebanon	$500,000	$800,000	100	$2,000,000
WI		EA	067904449	Ashland Area Dev Corp	Dev Business Incubator	Ashland	$530,000	$796,000	150	$0
Subtotals for FY = 2000					15 projects		$10,990,831	$21,523,999	1,394	$20,520,000
AR	2001	PW	080103565	Phillips Comm Coll	Business incubator proje	Helena	$450,000	$578,550	0	
AR		PW	080103518	Univ of Arkansas Med Sci	Incubator facility	Little Rock	$1,650,000	$2,750,000	0	
CA		PW	070105015	Coachella, City of	Bus/Indus Incubator Bldg	Coachella	$1,100,000	$2,200,000	40	$600,000
CA		PW	070105123	City of El Centro	Incubator	El Centro	$1,290,000	$1,790,000	50	$100,000
CA		PW	070104894	Homeboy	Bakery/Incubator	Los Angeles	$1,550,000	$2,688,444	81	$1,138,444

Date: 5/5/09

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
CO	2001	PW	050103543	San Juan Cnty Hist. Soc	Cnstrt Bus. Incubator	Silverton, CO	$603,100	$794,100	43	$300,000
FL		PW	040104945	Bay County SBI	Business Incubator	Lynn Haven, FL	$180,000	$300,000	34	
HI		PW	070105033	Filipino Community Cente	Filipino Comunity Center	Honolulu	$1,125,000	$2,250,000	100	$500,000
HI		PW	070105044	Lokahi Pacific	Incubator small business	Wailuku	$375,000	$928,025	30	$900,000
HI		PW	070103960(	Pacific Gateway Center	Incub Coml Kitchn Ovrrn	Honolulu	$500,000	$1,086,957	35	$100,000
ID		PW	070105011	Salmon City of	Incubator-Business Ctr	Salmon	$1,543,000	$2,205,000	230	
ID		PW	070104923	Boise State University	Incubator Building	Nampa	$1,990,000	$3,317,000	150	$5,000,000
LA		PW	080102950(	Univ of New Orleans	Research and Tech Park	New Orleans	$57,507	$57,507	0	$100,000,000
MD		PW	010107352	Maryland Econ Dev Corp	renovate incubator bldg	Baltimore	$1,075,000	$2,437,000	150	$1,000,000
MI		PW	060104502	Finlandia University	Business Incubator	Hancock	$1,000,000	$2,179,000	55	
MI		PW	060104479	Alcona County EDC	Small Bus Incubator	Harrisville	$293,000	$419,000	32	$50,000
MN		PW	060104577	Duluth City of	Construct manufact bldg	Duluth	$3,450,600	$5,751,000	675	$2,000,000
MO		PW	050103623	Center for Emerging Tech	Parking Lot & Furnishing	St. Louis, MO	$520,000	$1,104,600	240	$8,000,000
MS		PW	040104878	MSU Research & Tech Corp	Construct Tech Bus Incub	Oktibbeha, MS	$1,500,000	$3,150,000	100	
MT		PW	050103610	Great Falls Bus Imp Dist	Renovate Building	Great Falls	$558,000	$930,000	38	$360,000
MT		PW	050103527	MonTec	Renovate Building	Missoula, MT	$1,500,000	$2,862,500	0	
NM		PW	080103293(	Santa Fe Business Incuba	Incubator/Phase II Suppl	Santa Fe	$250,000	$416,667	0	
NY		PW	010107464	Cornell Ag/Food Tech Pk	Engineering Design	Geneva	$448,200	$747,000	0	
OH		PW	060104595	Mansfield-Richland Incub	Incubator renovation	Mansfield	$819,356	$1,170,514	94	$1,505,000
OH		PW	060104525	Ohio University	Construction-Busi Incuba	Athens	$1,422,588	$5,350,000	465	
RI		PW	010107427	Providence City of	Building Rehabilitation	Providence	$1,000,000	$2,057,552	115	$3,000,000
UT		PW	050103617	Snow College Foundation	Renovate Bldg	Ephraim	$584,000	$754,000	150	$200,000
VT		PW	010107513	NE VT Dev Association	Incubator/ resource Ctr	St. Johnsbury	$1,000,000	$1,665,000	175	$2,500,000
WI		PW	060104593	Northwest Reg Plan Comm	building conversion	Iron River	$752,000	$1,075,000	42	
CA		EA	074905125	Rancho Santiago	Digital Media Incubator	City of Orange	$1,587,789	$4,349,789	150	$100,000
CA		EA	077904908	Marina, City of	Incubator Services	Marina	$271,300	$451,550	2	
CA		EA	074905075	CSU Hayward Foundation	Incubator/Foreign Trade	Alameda	$150,000	$306,057	0	
NC		EA	047955014	Pride of Kinston, Inc.	Business Incubator	Kinston, NC	$1,050,000	$1,400,000	140	
NJ		EA	017955007	Passaic County C C	Flood Mitigation	Paterson	$600,000	$750,000	150	
NJ		EA	017955014	Somerset Cnty Cult Arts	Flood Mitigation	Bound Brook	$2,400,000	$3,000,000	100	$5,000,000
OH		EA	064904571	Ohio State University	Incubator/Training Bldg	Piketon	$1,920,000	$3,090,000	160	
OR		EA	077905042	Greater Newport CoC	Incubator Study	Newport	$34,500	$61,500	0	
WA		EA	077904955	Pasco, City of	Kitchen Incubator	Pasco	$390,000	$487,700	45	$25,000

Date: 5/5/09

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
WA	2001	EA	077904965	Trico Econ Dev District	Bus/Incubator	Colville	$880,000	$1,100,000	110	$220,000
Subtotals for FY = 2001					39 projects		$37,869,940	$68,011,012	3,981	$132,598,444
TX	2002	TA	080603757	UT Arlington	Technology incubator	Arlington	$150,000	$200,000	0	
AK		PW	070105250	Valdez Fisheries Dev	Business Incubator	Valdez	$432,000	$540,000	488	$1,000,000
AL		PW	040105086	Shoals Entrepreneurial	HighTech Incubator Renov	Florence	$630,000	$1,037,500	101	$220,000
CA		PW	070105226	E-Business Dev Inc	Small Business Incubator	Garden Grove	$2,475,000	$4,950,000	500	$2,200,000
CA		PW	070105274	ACET	Incubator bio-technology	Alameda	$6,440,000	$8,400,000	6,000	$950,000,000
FL		PW	040104987	Fresh Ministries	Construction of Facility	Jacksonville, FL	$850,000	$1,700,000	150	
HI		PW	070105270	Research Corp of U of HI	Incubator & training fac	Honolulu	$3,000,000	$6,000,000	400	$230,000,000
ID		PW	070105111	Mackay, City of	Mackey Business Ctr.	Mackay	$960,000	$1,525,000	140	
IL		PW	060104699	Pulaski County	Const bus incubator	Mound City	$710,000	$906,000	115	$2,000,000
ME		PW	010107687	RVGC	Precision Manf Incubator	Mexico	$1,300,000	$1,867,000	155	$1,540,000
MI		PW	060104694	Michigan Tech University	Tech Dev. Complex	Houghton	$2,470,000	$3,530,000	28	$2,100,000
MI		PW	060104692	Mexicantown CDC	Const Business Incubator	Detroit	$2,000,000	$3,715,499	180	$130,000
NC		PW	040105109	Alleghany County	Bldg Renov to telecenter	Sparta, NC	$1,000,000	$1,906,000	343	$800,000
NJ		PW	010107681	NJ Econ Dev Authority	Rehab Ind Leasehold Imp	Camden	$1,000,000	$1,500,000	200	$3,000,000
NM		PW	080103683	Bernalillo County	Small bus incubator	Albuquerque	$900,000	$1,770,000	95	$30,000
NY		PW	010107772	Syracuse City of	Technology Bus Incubator	Syracuse	$750,000	$2,841,689	275	$14,785,000
NY		PW	010107621	Downstate Technology	Multi-tenant Building	Kings	$1,500,000	$3,000,000	150	$20,000,000
OK		PW	080103755	OK City Comm Coll	OK City Enterprise Ctr	Oklahoma City	$1,500,000	$1,875,000	250	$200,000,000
PA		PW	010107648	Grtr Wilkes-Barre Indl F	incubator bldg	Luzerne	$2,000,000	$4,985,000	300	$7,500,000
PA		PW	010107676	Capital Region EDC	incubator bldg	Carlisle	$685,000	$1,435,000	50	$3,000,000
TN		PW	040104418(	MISI	Sm Bus Incubator	Memphis, TN	$419,000	$698,780	0	
TX		PW	080103700	West TX A&M Univ	Incubator/Accelerat Bldg	Amarillo	$1,000,000	$1,667,500	210	$500,000
VA		PW	010107685	Virginia TFI	Building construction	Blacksburg	$2,000,000	$5,900,000	245	$212,000,000
VA		PW	010107654	Virginia Highlands SBI	Small BusinessIncubator	Abingdon	$1,500,000	$5,000,000	200	$10,100,000
VA		PW	010107702	Crossroads REI	Acquire/Renovate Bldg	Galax	$2,000,000	$5,500,000	200	$9,000,000
WI		PW	060104721	Benton Village of	Bus Park & Bus Incubator	Benton	$833,000	$1,190,000	175	$19,100,000
AR		EA	087903754	Univ AR at Pine Bluff	BAC/Busn Incubator	Pine Bluff	$1,500,000	$2,143,000	48	$20,000,000
TN		EA	047905035	Holston Business Group	tech based bus incubator	Rogersville, TN	$546,000	$910,000	100	$3,000,000
Subtotals for FY = 2002					28 projects		$40,550,000	$76,692,968	11,098	$1,712,005,000

Date: 5/5/09

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
AZ	2003	PW	070105426	City of Flagstaff	High tech Incubator	Flagstaff	$2,576,384	$3,680,549	200	$25,000,000
CA		PW	070105187	Contra Cost Econ. Part.	Bio-Science Incubator	Richmond and San Pab	$2,142,000	$4,285,000	620	$32,000,000
CA		PW	070105262	CVBI	Business Incubator	Fresno	$1,886,000	$2,357,500	608	$2,000,000
HI		PW	070105336	Maui ED Board	Incubator Bldg High-Tech	Kihei	$2,000,000	$6,330,118	200	$5,450,000
IN		PW	060104801	Anderson Redev Comm	Const. Bus Dev Center	Anderson	$1,603,000	$4,210,000	450	$4,500,000
KY		PW	040105212	Murray State University	Business Incubator	Murray, KY	$1,000,000	$3,000,000	135	$0
KY		PW	040105213	WKU	Small Business Incubator	Bowling Green, KY	$851,000	$1,702,000	85	$220,000
LA		PW	080103771	Alexandria City of	Business incubator	Alexandria	$900,000	$1,440,500	100	$6,900,000
MA		PW	010107812	New Bedford City of	New Bedford Incubator	New Bedford	$1,000,000	$1,706,665	75	$3,600,000
MS		PW	040105329	Oxford, City of	bus. incub. expansion	Oxford	$500,000	$850,000	42	$594,000
MT		PW	050103818	MonTec	Renovate Building	Missoula	$702,540	$1,170,900	115	$6,000,000
NJ		PW	010107808	NJCU	Rehab Business Incubator	Jersey City	$1,500,000	$2,902,000	100	$5,280,562
NY		PW	010107845	Cornell Ag/Food Tech Pk	Cons. & Infrast.	Geneva	$2,800,000	$4,700,000	600	$24,000,000
NY		PW	010107839	Newburgh IDA	Med Inc Bld/Park	Newburgh	$1,750,000	$2,550,000	690	$10,000,000
OH		PW	060104826	Akron City of	Renovate Ind Incubator	Akron	$1,775,000	$4,464,833	330	$9,000,000
PA		PW	010107704	Centre County IDC	building expansion	State College	$1,210,000	$2,838,500	125	$50,000,000
PA		PW	010107804	Pottsville Redev. Auth.	incubator bldg	Pottsville	$400,000	$794,000	200	$6,000,000
TX		PW	080103834	Univ of TX at Arlington	Technology Incubator	Arlington	$1,400,000	$1,750,000	750	$400,000
VT		PW	010107799	VTC	Technology Incubator	Randolph	$830,000	$1,660,000	60	$500,000
TX		EA	087903770	Austin Comm Dev Corp	Food mfg incub study	Austin	$150,000	$187,500	0	$0
Subtotals for FY = 2003					20 projects		$26,975,924	$52,580,065	5,485	$191,444,562
AZ	2004	PW	070105572	Chicanos Por La Causa	Comm/Prof/Incub Bldgs	Phoenix	$2,000,000	$4,145,500	1,240	$189,000,000
GA		PW	040105378	Carroll Tomorrow	Bussiness Incubator	Carrollton	$648,000	$1,080,000	119	$15,771,720
HI		PW	070105384	Waipahu	Incubator-training centr	Waipahu	$1,250,000	$2,590,000	240	$400,000
IL		PW	060104930	Heartland Commerce EDF	Bioscienc/Tech Incubator	Peoria	$2,000,000	$7,300,000	2,000	$44,000,000
KY		PW	040105405	Community Ventures Corp.	Small Business Incubator	Lexington-Fayette	$350,000	$1,200,000	60	$7,000,000
LA		PW	080103873	Bio Res Found of NW LA	BioSpace Bus Incub wtlab	Shreveport	$1,250,000	$10,500,000	175	$25,000,000
LA		PW	080103874	LSU System R&TF	Wet-lab Bus Incubator	Baton Rouge	$1,250,000	$2,083,334	500	$130,000,000
MO		PW	050104062	CORTEX	Engineering/Design/Prpty	St. Louis	$2,900,000	$6,500,000	4,100	$400,000,000
MO		PW	050104057	IDA of Dent County	Construct Building	Salem	$800,000	$1,224,000	60	$22,258,000
MS		PW	040105439	Lee County	Small bus. incubator	Tupelo	$1,625,000	$2,600,000	281	$9,207,650
ND		PW	050104065	UND Cntr for Innovation	Phase II Cnstr Incubator	Grand Forks	$750,000	$1,400,000	420	$14,000,000

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
NH	2004	PW	010107966	North Country Council	Regional Technology Cent	Lebanon	$2,600,000	$4,800,000	120	$16,900,000
NV		PW	070105466	Urban Chamber	Incubator/Bus Center	Las Vegas	$2,000,000	$3,110,000	300	$150,000
NY		PW	010108029	CUNY	Design Incubator	Long Island City	$1,000,000	$2,000,000	200	$20,000,000
PA		PW	010107960	Slibco	bldg expansion	Scranton	$750,000	$3,558,000	150	$16,500,000
PR		PW	010107970	Caguas	Multi-Tenant Bldg	Caguas	$1,900,000	$2,715,000	420	$36,000,000
TN		PW	040105487	ETSU	Incubator	Johnson City, TN	$1,000,000	$1,728,000	160	$25,000,000
WA		PW	070105473	SIRTI	Incubator building	Spokane	$3,000,000	$6,026,000	1,250	$90,000,000
WA		PW	070105351	Oracle	Incubator	Seattle	$1,500,000	$3,000,000	224	$1,600,000
WI		PW	060104892	Northeast Wi Tech Col	Business Incubator/BAC	Green Bay	$2,500,000	$5,000,000	822	$62,806,875
CO		EA	057903967	CSTI	Expand Incubator	Colorado Springs	$190,000	$380,500	117	$5,500,000
HI		EA	077905532	High Tec Dev Corp	Virtual incubator	Honolulu	$300,000	$600,000	0	
Subtotals for FY = 2004					22 projects		$31,563,000	$73,540,334	12,958	$1,131,094,245
CO	2005	TA	050604176	NBIA	Incubator/Pract Training	Athens	$20,700	$20,700	0	
CA		PW	070105638	The Enterprise Network	Incubator Building Rehab	San Jose	$2,000,000	$4,000,000	1,410	$31,000,000
FL		PW	040105504	TRDA	Business Incubator	Titusville, FL	$1,000,000	$3,269,000	135	$850,000
IN		PW	060104964	Cmty Education Coalition	Bldg/Train Ctr Incubator	Connersville	$1,437,862	$2,396,436	371	$10,500,000
MI		PW	060104949	Central Michigan Univ	Nanotech Incubation fac	Mount Pleasant	$2,152,000	$4,304,000	807	$61,550,000
MO		PW	050104102	Missouri Innovation Cent	Cnstrct Tech Incubator	Columbia	$2,500,000	$8,100,000	1,737	$105,000,000
MO		PW	050104103	Joplin Chmbr Foundation	Building Renovation	Joplin	$600,000	$1,200,000	400	$13,500,000
MS		PW	040105648	IDA of Neshoba County	small business incubator	Philadelphia, Mississipp	$584,000	$1,168,000	70	$3,000,000
ND		PW	050104218	NDSU RTP	Construct Incubator	Fargo	$1,750,000	$5,451,467	125	$5,000,000
NY		PW	010108116	ACES	Incubator Expansion	Albany	$1,880,000	$2,686,000	154	$25,300,000
NY		PW	010108139	Downstate Technology	Biotech Incubator	Brooklyn	$1,500,000	$3,100,000	50	$20,000,000
OH		PW	060104972	ACEnet	Const Bus Incubator	Nelsonville	$1,337,100	$2,228,500	500	$30,000,000
OK		PW	080103963	Cameron University	Construct CETES	Lawton	$900,000	$2,200,000	500	$20,000,000
SD		PW	050103948	Rapid City Area EDF	Construct Incubator	Rapid City	$750,000	$2,350,000	185	$2,295,000
TN		PW	040105525	University of Tennessee	High Tech Incubator	Knoxville, Tennessee	$1,250,000	$2,500,000	388	$27,000,000
TX		PW	080103997	Biotech Mfg Center of TX	Incubator/Trng Facility	Athens	$800,000	$1,634,000	325	$8,095,000
WY		PW	050104098	University of Wyoming	Construct Incubator	Laramie	$1,600,000	$6,400,000	400	$18,000,000
MD		EA	017908204	TEDCO	Incubation Network Asst	Multi City	$325,000	$650,000	75	$5,000,000
NE		EA	057904191	Norfolk EDF	Purchase Building	Norfolk, NE	$600,000	$1,250,600	400	$4,911,280
NM		EA	087903999	WESST	Mixed-use Incubator	Albuquerque	$300,000	$375,000	150	$7,500,000

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
PA	2005	EA	017908133	ESU Center for Research	bldg construction	East Stroudsburg	$1,200,000	$3,622,500	565	$53,700,000
PA		EA	017908234	Ben Franklin TP NEPA	Incubator Tech Asst	Multi City	$85,490	$170,980	0	
WA		EA	077905656	Col-Pac	Virtual Incubator Study	Montesano	$30,000	$60,000	0	
WA		EA	077905702	Tri-Cities Entprse Cntr	Isotope Incubator Study	Richland	$25,000	$60,000	0	
Subtotals for FY = 2005					24 projects		$24,627,152	$59,197,183	8,747	$452,201,280
FL	2006	PW	040105706	Ft. Myers	Business Incubator	Fort Myers, FL	$1,500,000	$3,212,974	179	$12,000,000
LA		PW	080104087	New Orleans BIC	wetlab incubator	New Orleans	$1,250,000	$2,100,000	200	$20,000,000
MI		PW	060105069	Finlandia University	Business Incubator Renov	Hancock	$952,800	$1,588,000	484	$23,042,544
MI		PW	060105073	Kettering University	Expand Bus. Incubator	Flint	$1,620,000	$2,700,000	394	$82,120,000
MO		PW	050104357	St. Patrick Center	Training Cntr/Incubator	St. Louis	$3,500,000	$5,000,000	387	$22,000,000
MO		PW	050104329	Missouri Western State	Design & Engineering	St. Joseph	$75,000	$150,000	300	$56,250
MT		PW	050104248	Lake County CDC	Cnstrt Agri Incubator	Ronan	$1,000,000	$2,230,000	75	$7,488,000
NC		PW	040105761	UCP Development Corp.	Incubator Renovation	City of Wilson, N.C.	$630,000	$1,260,000	100	$3,000,000
NH		PW	010107966(	North Country Council	Regional Technology Ctr.	Lebanon	$550,000	$1,100,000	50	$7,000,000
NJ		PW	010108306	Rutgers State University	Food Inovation Center	Bridgeton	$2,000,000	$4,900,000	1,000	$30,000,000
NM		PW	080104075	San Juan Jr College Dist	Busn Incubator	Farmington	$175,000	$400,000	160	$3,500,000
NM		PW	080104127	Española Valley FA Ctr	Purch & Renov Incubator	Española	$250,000	$550,000	15	$57,000
NM		PW	080104126	WESST Corp.	SB Incubator Facility	Albuquerque	$1,250,000	$2,952,860	150	$1,000,000
PA		PW	010108364	University City Sci Ctr	Pilot production bldg	Philadelphia	$1,000,000	$2,694,000	150	$75,000,000
SD		PW	050104307	SDSU Growth Partnership	Innovation Campus	Brookings	$2,500,000	$5,306,000	300	$70,000,000
TN		PW	040105763	ARTE Center, Inc.	Incubator-Bldg Acquisit	Nashville, TN	$1,200,000	$3,000,000	267	$16,000,000
WA		PW	070105840	William Factory SBI	Business Incubator	Tacoma	$2,000,000	$4,500,000	400	$5,000,000
WI		PW	060105095	Chippewa Valley Tech Col	Technology Incubator	Eau Claire	$1,500,000	$5,546,300	650	$30,000,000
KS		PL	058604346	Quest Center	Business Incubator Plan	Hutchinson	$25,000	$61,000	0	
MO		PL	058704345	KCALSI	Biotech Incubator Plan	Kansas City	$30,000	$60,000	0	
MT		PL	058604341	Tech Venture Ctr Inc	Tech Incubator Plan	Bozeman	$40,000	$80,000	0	
CA		EA	077905768	Santa Cruz, City of	Plan Tech Incubator	Santa Cruz	$325,150	$464,500	0	
NY		EA	017908395	BERC	Rehab of Building	Buffalo	$300,000	$827,000	33	$1,000,000
Subtotals for FY = 2006					23 projects		$23,672,950	$50,682,634	5,294	$408,263,794
AS	2007	PW	070105975	American Samoa	Market/Incubator Bldg	Pago Pago	$2,104,800	$2,631,000	190	$300,000
CA		PW	070105976	El Monte	Bldg Renovation	El Monte	$2,452,000	$8,000,000	200	$11,698,000

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
CA	2007	PW	070105998	Desert Alliance	Mecca Retail Center	Coachella	$2,400,000	$7,370,550	442	$34,000,000
CO		PW	050104363	CSTI	Building Acquisition	Colorado Springs	$452,750	$905,500	436	$10,000,000
IN		PW	060105230	Scottsburg City of	Tech Inov Entrp Center	Scottsburg	$1,400,000	$3,797,170	186	$18,000,000
MD		PW	010108543	MIST	Inc Bldg Improvements	Pocomoke City	$200,000	$400,000	40	$10,000,000
MD		PW	010108536	East Baltimore Dev. Inc.	Fit-Out of Wet Lab Incub	Baltimore	$2,000,000	$5,000,000	400	$8,000,000
MI		PW	060104949(	Central Michigan Univ	Nanotech Incubator OR	Mount Pleasant	$133,100	$1,546,000	0	$0
MO		PW	050104362	Missouri Western State	Cnstrct Tech Incubator	St. Joseph	$2,500,000	$5,044,516	300	$56,250,000
MO		PW	057804510	Joplin Chmbr Foundation	Performance Award	Joplin	$58,000	$58,000	0	
NJ		PW	010108448	Rutgers	Fit-Out of Wet Lab Incub	Camden	$1,500,000	$3,000,000	255	$17,000,000
NY		PW	010108449	ITC	Renovation of Bldg	Canandaigua	$3,000,000	$6,400,000	200	$130,000,000
OH		PW	060105224	University of Toledo	Construct Incubator	Toledo	$2,000,000	$4,000,000	400	$80,000,000
PA		PW	010108421	Corp For Owner-Oper Proj	bldg construction	Beaver Falls	$2,000,000	$5,410,000	130	$6,000,000
PA		PW	010108484	Juniata College	Business Incubator	Huntingdon	$752,000	$1,504,000	100	$3,000,000
PA		PW	010108446	Cameron Cnty Ind Dev Aut	Multi-tenant facility	Emporium	$300,000	$600,000	68	$2,000,000
SD		PW	050104476	SD Technology Center	Incubator Expansion	Sioux Falls	$1,240,000	$2,700,000	136	$27,000,000
TX		PW	080104168	Accion Texas Inc	bldg purchs & renovatn	Laredo	$720,000	$900,000	300	$180,000
AK		EA	076906075	Anchorage Land Trust	Arts Incubator Plan	Anchorage	$56,000	$112,000	0	
IL		EA	067905228	Pembroke Township	Bldg Renovation	Hopkins Park	$1,600,000	$2,350,000	110	$190,000
MI		EA	067905253	Starting Block, Inc.	Shared Kitchen/Incubator	Hart	$210,341	$460,341	150	$600,000
NM		EA	087904166	BNSL	BNSL program expansion	Anthony	$600,000	$857,130	0	
TX		EA	087904195	Raymondville City of	SkillsTrng/DL/SmBusIncub	Raymondville	$1,250,000	$1,696,714	0	$203,000
Subtotals for FY = 2007					23 projects		$28,928,991	$64,742,921	4,043	$414,421,000
FL	2008	TA	040606090	Southwest FL Reg PL Cncl	Incubator Feasibility	Multi City	$30,000	$60,000	0	$0
IA		TA	050604606	Southeast Iowa RPC	Bus Incubator study	Burlington	$15,000	$30,000	0	
TN		TA	040606087	NBIA	Incubator Training	Multi City	$10,000	$29,500	0	
MI		RE	990607535	Univ of Michigan	Business Incubator Study	Ann Arbor	$250,000	$311,971	0	
AZ		PW	070106152	San Carlos Apache Tribe	Incubator building	San Carlos	$1,217,000	$1,521,300	34	$304,300
AZ		PW	070106187	EmbryRiddleAeronauticalU	Incubator-Research Bldg	Prescott	$1,934,000	$3,882,840	321	$15,000,000
DC		PW	010108674	District of Columbia	Historic Bldg Restore	Washington	$2,000,000	$4,000,000	51	$0
KS		PW	050104564	UK Medical Research Inst	BioMedical Incubator	Kansas City	$3,000,000	$6,250,000	300	$44,000,000
KY		PW	040106095	Kentucky Highland Invest	Business Incubator	London, KY	$1,080,000	$1,830,000	127	$6,000,000
MI		PW	060105321	Mi Tech Enterprise Corp	Smart Zone Incubator	Houghton	$3,020,000	$6,220,000	355	$5,100,000

EDA Investments for Incubator Buildings, FY 1995 to Present, by FY and Program

ST	FY	Prg	Project No.	Appl Short Name	Project Short Descrip	Project Location	EDA $	Total Proj $	Jobs	Priv Investment
MN	2008	PW	060105299	Long Prairie City of	Construct Bus Incub Bldg	Long Prairie	$646,900	$1,293,800	60	$3,870,000
MT		PW	050104625	Ravalli County EDA	Entrepreneurship Center	Hamilton	$1,621,440	$3,242,880	253	$11,812,500
NE		PW	050104531	McCook EDC	Technology Center	McCook	$1,578,500	$3,157,000	52	$24,800,000
SC		PW	040106063	Univ of South Carolina	Technology Incubator	Columbia, S.C.	$1,000,000	$2,087,227	113	$500,000
UT		PW	050104666	CEDO	Business Incubator	Orem	$1,500,000	$3,150,000	300	$35,000,000
VI		PW	010108681	RTPark	Research & Tech Park	Saint Croix	$3,500,000	$7,500,000	300	$10,000,000
WV		PW	010108530	Greenbrier Valley EDC	Tech center improvements	Lewisburg	$1,000,000	$2,000,000	375	$26,000,000
WY		PW	050104575	Wind River Development	Entrepreneur Center	Fort Washakie	$1,781,272	$4,256,076	200	$20,000,000
CA		EA	077906188	City of Lake Elsinore	Technology Incubator	Lake Elsinore	$2,669,623	$5,339,240	180	$654,530
FL		EA	047906096	FL IHMC	research center	Ocala	$958,300	$1,440,791	100	$2,500,000
HI		EA	077906132	City/Cnty Honolulu	Oahu Tech Cntr Plan	Honolulu	$150,000	$300,000	0	
IL		EA	066905340	Carthage City of	Incubator Fac. Feas/S	Carthage	$15,000	$30,000	0	
WA		EA	077906296	Port of Bremerton	Clean Tech Incubator	Bremerton, WA	$2,583,244	$5,166,488	585	$25,000,000
WY		EA	056904612	Casper College	Incubator business plan	Casper	$50,000	$100,000	0	
Subtotals for FY = 2008					24 projects		$31,610,279	$63,199,113	3,706	$230,541,330
AR	2009	EA	087904345	Arkansas State Univ	Coml. Innovation Center	Jonesboro	$1,750,000	$2,334,000	0	$0
AR		EA	087904367	UAFS	Regional E&I Res Center	Fort Smith	$2,000,000	$2,750,000	0	$0
CO		EA	057904728	Clean Tech 2010	Feasibility Study	Denver	$75,000	$150,000	0	
Subtotals for FY = 2009					3 projects		$3,825,000	$5,234,000	0	$0
Report Totals					321 projects		$347,903,391	$683,583,782	61,428	$4,809,535,511

Secretary LOCKE. Jonathan Salit, who used to work at Commerce Department, has written extensively on this and even, I think, testified in front of various committees here in the House of Representatives about the notion and the benefits of regional clusters as well as business incubators.

The whole notion of the regional clusters is to build on the natural strengths of a community, instead of just giving out dollars willy-nilly and for any project that comes along, but to really try and capitalize on the aspirations, the natural geographic workforce, strengths of a region, some of their core industries to begin with, not at the expense of diversifying, as you pointed out. But if an area is well known for biotechnology, what is that entire region doing to bring other businesses into biotechnology or biomedical research? And are the grants working truly in partnership with the colleges and universities to train people into life sciences at all levels of salary and employment?

Mr. MOLLOHAN. That would be relatively easy to do if the area has a tradition of biotechnology. I could see where that could happen easily.

Secretary LOCKE. It might be in other areas. It might be focusing on tourism. Another area of the country might be focusing on aerospace or automotive industry whether it is in the South or you name it. It is not to prejudge, but to say have you as a region really thought about what you believe to be your economic future or a component of your economic future, and do you have a lot of forces that are already aligned that perhaps with some Federal assistance, incentivize and promote even greater collaboration for whatever it is that the community and the regional economic leaders have focused on.

Mr. MOLLOHAN. And all regions have some strengths.

Secretary LOCKE. Yes.

Mr. MOLLOHAN. But if you are going to diversify, then sometimes you have to help create the strength and then create the cluster. How would the Economic Development Administration promote a regional innovation cluster? What would be the steps, the facilitating steps, and resources made available by the Economic Development Administration?

Secretary LOCKE. It would be grants along the lines of our current programs where we receive applications. We would judge the application based on the type of partnerships that are being envisioned and looking at the totality of support. Obviously if there are private-sector funds, that means that there is private-sector interest and validation on the ideas and the priorities or the emphases that are put on, let's say, by the local government, the State government or the region. But knowing that not every region has, in fact—is prepared to identify what they want to be or do over the next several years, then there is funding also proposed just for planning. And to bring all those economic development, you know, the counties, the cities, the State economic development people, the nonprofit, the college and universities, and the private sector together so they can start creating that vision for their communities.

Mr. MOLLOHAN. Are these block grants? Are these grants applied for directly to the Economic Development Administration?

Secretary LOCKE. These would be grants that would be applied to directly to the Economic Development Administration.

Mr. MOLLOHAN. And managed at the regional basis, regional level?

Secretary LOCKE. It would be, I believe, our intent to have them administered and the decisions made at the regional levels, by the regional offices scattered throughout the country.

PTO

Mr. MOLLOHAN. Mr. Secretary, as a wholly fee-supported Agency, USPTO's funding is not based on the requirements necessary to complete the work, and the Agency's ability to operate is affected by the economic crisis. Fewer applications are filed and more patent holders decline to maintain their patents.

Would you agree that the decision to transform USPTO into a wholly fee-supported agency does not appear to be working?

Secretary LOCKE. I think clearly there are challenges with the fee-supported concept and especially with applications declining and the backlog increasing. We may have to look at another model.

But clearly, number one, we should not be diverting the fees generated within the Patent and Trademark Office to other purposes. They need steady funding; they may need, in fact, an extra infusion of funds down the road to reduce that backlog and to make significant changes, such as improvements in technology, so that we can truly get the average processing time of patents down to what I think is an acceptable level.

The average now is anywhere from 27 to 28 months for first action review, and that is an average because some patents are very simple and take very little time. So that means other patents that are more complex can take anywhere from 4 to 5 years. And I think that is completely unacceptable, especially for a country that prides itself on innovation and the need to get products, new ideas, and new medicines, out to market and commercialized.

Mr. MOLLOHAN. What is your goal?

Secretary LOCKE. I would love it if we could say the average time frame is less than a year.

Mr. MOLLOHAN. You think that is achievable?

Secretary LOCKE. We are hopefully about to announce a new director for the Patent and Trademark Office. We want to work with all the stakeholders, including the employees, the professionals there, on creative ways of using technology, and basically start from scratch and rebuild and reinvent how we process patent applications.

DIGITAL TELEVISION TRANSITION

Mr. MOLLOHAN. On April the 2nd, the Wall Street Journal—we are winding down here, Mr. Secretary—the Wall Street Journal reported that 11 percent of local TV stations planned to change their broadcast areas. Is it possible, even with a converter box and a powerful rooftop antenna, some people may still not receive their local TV stations?

Secretary LOCKE. We are working very hard on that, Mr. Chairman; and I am proud to say that the backlog for request for cou-

pons has been eliminated and all requests for coupons are being processed within a week.

And I note that in the various large media markets, I think about the top 100 media markets, roughly at least 95, 97 percent of the households are ready and will not be affected by the changeover come June 12th.

But there are some pockets around the country where we would like to have the numbers higher in terms of the households ready to receive this new digital transmission. And so we are really revamping and stepping up our advertising, working with the FCC to get the word out.

Too many seniors and others simply don't know what an analog versus a digital television is, and the commercials that say the countdown has begun does not really tell them whether they are affected and what to do. And so we need to modify our announcements, our publicity campaign, working with the TV stations who are doing a lot of public service announcements. It is in their economic interest to make sure people can receive their broadcasts, so we are trying to get the word out.

But we have made considerable progress, and I think the country is much better prepared than it was several months ago. And I thank the Members of the Congress and the President for the delay and the extra funding to get the publicity out and provide those converter coupons.

But in some of the markets where they have made the change, they have noticed that in the past, with analog, your reception may not be great because of distance or because of geography, but you were getting a signal. The problem with digital is that it is a very abrupt—it is basically all or nothing, and so there is no grey area of a less-than-desirable, less-than-high-quality picture. Some individuals may end up with no picture.

And so there have been some complaints about that—for instance in the Denver area, which made the transition about 3 weeks ago—but very few, very few. So that is something that the FCC and we are looking at and working with the stations to address.

Mr. MOLLOHAN. Well, we wish you luck in that. As the complaint center of last resort, I can tell you Members of Congress hope you resolve these issues before they get to us.

Mr. Wolf.

TELEWORK

Mr. WOLF. Thank you, Mr. Chairman. One final issue. The Patent and Trademark Office is one of the premier agencies in the government with regard to using telework. The committee over the years has had language encouraging, mandating telework. Can you tell us your views with regard to telework?

Secretary LOCKE. I think it is a great idea. It is one of the successes—the great successes, and is a great example for other Federal agencies. So much of the work actually done in the trademark area is done by telecommuting or telework; and I actually would like to take the success in the Trademark Division and move it over to the patent area as well.

And, in fact, other agencies, especially as we face traffic congestion, it helps to cut down on congestion, pollution, and reduces the

overhead costs of government by not having to provide offices for everyone. I think it is an innovative way in which the private sector is moving, and we in government should also try to follow that same model.

Mr. WOLF. Also, in continuity of government, should there be that need, would you submit for the record how the various agencies of the Department of Commerce, or do we know, EDA, et cetera, what percentage each agency has with regard to how many are teleworking?

Secretary LOCKE. Yes, we can try to get you that information.

[The information follows:]

Department of Commerce
Telework Statistics
(As of December 31, 2008)

Bureau	Total # of Employees*	Telework at Least 3 Days Per Week	% of Bureau Total	Telework 1 or 2 Days Per Week**	% of Bureau Total	Telework Fully Integrated With COOP	# Needed to Maintain Essential Functions and Who Can Telework
BEA	470	1	0.21	20	5.0	No	N/A
Census	16,270	0	0	84	0.51	No	127/127
ITA	1,361	21	1.5	103	7.56	Yes	21/21
NIST	2,888	5	0.17	643	22.26	Yes	40/40
NTIA	265	1	0.37	35	13.2	Yes	52/40
NOAA	12,834	53	0.41	617	4.80	Yes	72/72
MBDA	80	4	5.0	3	3.75	No	9/9
OIG	114	1	0.87	27	23.68	Yes	5/5
OS	848	4	0.47	34	4.0	Yes	100/80
PTO	9,642	1,944	20.16	2,406	24.95	Yes	14/14
Total	44,772	2,034	4.54%	3,972	8.86%		

* Includes full and part-time employees
** Includes ad-hoc and regularly scheduled telework

Bureaus:
BEA - Bureau of Economic Analysis
ITA - International Trade Administration
NIST - National Institute of Standards and Administration
NTIA - National Telecommunications and Information Administration
NOAA - National Oceanic and Atmospheric Administration
MBDA - Minority Business Development Agency
OIG - Office of Inspector General
OS - Office of the Secretary
PTO - Patent and Trademark Office

Note: Within the Department of Commerce, the Bureau of Industry and Security and the Economics and Statistics Administration do not offer telework programs to its employees. The Economic Development Administration (EDA) did not participate in telework in 2008 since they did not have a formal plan in place. EDA has since developed a plan, successfully negotiated with the union, and is currently implementing the plan in 2009. EDA reports that they have 223 positions eligible to participate in telework and five positions are considered ineligible for telework.

Mr. WOLF. Thank you, Mr. Secretary.
Thank you, Mr. Chairman.

CLOSING REMARKS

Mr. MOLLOHAN. Mr. Secretary, thank you very much for your appearance today. Again, congratulations on your appointment to this very important position at this very crucial time in our Nation's history. This Committee stands ready to work with you in solving and confronting the diverse challenges that your agency deals with.

We look forward to the budget in detail. We will probably have questions, the Committee and members of the Committee, after it is submitted. We will hold the record open for a couple of weeks after that for that purpose.

And do you have any comments in summary or in closing that you would like to make?

CLOSING REMARKS

Secretary LOCKE. Thank you very much, Mr. Chairman, for the time and the courtesy for engaging in this dialogue.

And clearly we need to work with you and the members of your Committee on these tough issues, whether it is cyber security, whether it is economic development, math and science instruction, human rights issues in other countries, and to just elevating science and technology, not just in the programs administered by the Departments, in Congress but also by the entire Federal Government.

The charge of the Department of Commerce is very, very broad. And we are trying to make it even more relevant to the people of America, the medium- and small-size businesses, the Main Street businesses of America; and we have much to offer those entities, large and small.

We need to make sure that people know that the Department of Commerce is truly one of a repository of knowledge, a source for innovation and, ultimately, a source for job creation. And that is what it is all about.

So I thank you and look forward to the opportunity to work with you.

Mr. MOLLOHAN. Thank you, Mr. Secretary.
The hearing is adjourned.

QUESTIONS SUBMITTED BY REPRESENTATIVE MOLLOHAN

NOAA Organic Act

QUESTION: NOAA was created in 1970 by consolidating programs from across the government. The consolidation was accomplished under an executive reorganization plan, leaving each program's original authorizing laws in place. Recently, several NOAA ocean programs were authorized under the Omnibus Public Lands Act of 2009, P.L. 111-11.

A U.S. Commission on Ocean Policy report stated that a NOAA organic act would strengthen the agency and would help to ensure that its structure is consistent with its primary functions of management, prediction, research and education.

The Joint Ocean Commission Initiative calls for Congress "to codify and strengthen NOAA to enhance its mission, improve its structure, and better enable it to carry out new and exciting responsibilities." Does this Administration intend to pursue an organic act for NOAA?

ANSWER: At this time, the Administration has not determined whether or how to pursue a NOAA Organic Act. NOAA's Administrator, Dr. Jane Lubchenco, was a member of the Pew Ocean Commission and the Joint Ocean Commission Initiative. I will look to Dr. Lunchenco for recommendations on how to strengthen NOAA to ensure the agency can effectively carry out its mission.

Creation of a National Climate Service

QUESTION: One of those new and exciting responsibilities should be the creation of a National Climate Service. In fact, Dr. Jane Lubchenco, the new Under Secretary of Commerce for Oceans and Atmosphere and the Administrator of NOAA, has made it one of her priorities.

Cities and States across the Nation are looking for information to help them make decisions on where to build, what type of construction codes to require, placement of transportation and wildlife corridors, and a myriad of other choices that will be affected by the increases in sea level rise, and changes in precipitation and severe weather.

No single agency can meet all of the nation's needs for climate services. But as the world's preeminent source for climate data and information, NOAA is uniquely positioned to coordinate climate information and services across the federal government.

Secretary Locke, will you commit to the creation of a National Climate Service within NOAA, and to ensure it is appropriately resourced in order to provide the

Nation with the products and services it needs to understand, monitor, and adapt to climate change?

ANSWER: I am very supportive of what Dr. Lubchenco, Administrator of NOAA, has proposed by way of a National Climate Service. The public-private partnership that makes today's National Weather Service so successful provides a useful model to emulate. This country needs a service to provide data about climate so that businesses, individuals, families, and communities can plan and adapt accordingly. To ensure that climate information and services are available to meet this requirement, the Nation needs an authoritative and reliable source of climate information to support decision-making, and NOAA has a particularly important role to play in meeting this need.

The creation of a National Climate Service within NOAA is one of several options that the Administration is considering. However, no single agency can meet all of the nation's needs for climate services. The design of a National Climate Service must therefore be based on a process that engages the various federal agencies that currently provide these services to the public. This process must be interdisciplinary, user-focused, regionally-representative, and include analysis of strengths and gaps in existing capacities. In her May 5, 2009, testimony on "Developing the National Climate Service" before the House Subcommittee on Science and Technology, Dr. Lubchenco indicated that a critical design consideration that must be addressed in these processes is the best arrangement for federal agencies to work in partnership to maximize delivery of climate services to the nation. As such, it would be appropriate for the White House Office of Science and Technology Policy (OSTP) to lead an interagency process to analyze the capacities of the various agencies and the possible design options for the creation of a National Climate Service. This effort would complement the broader interagency effort being led by the Council on Environmental Quality, OSTP and NOAA to prepare a federal adaptation strategy to help the federal government, along with state, local and private actors, increase their resilience to a changing climate.

I believe that the Department of Commerce and NOAA are well positioned to help lead this effort by building on NOAA's existing capabilities, partnerships and networks to deliver an evolving suite of climate information and services. I look forward to working with this Committee and our partners to move forward in this critical area.

QUESTION: Dr. Cicerone, President of the National Academy of Sciences, testified that we need an appropriate national strategy for climate change and that NOAA should be in the center. He went on to name the big four in climate change: NOAA, NASA, NSF, and DOE, with DOI and USDA contributing. Given the fact that NOAA, NASA and NSF are all in the same Subcommittee as well as being the top three climate change agencies, should OMB co-examine their budgets to develop synergies and take advantage of efficiencies?

ANSWER: Meeting the climate challenge will require an unprecedented level of coordination among Federal agencies as well as with nongovernmental partners to provide high quality climate information and services that are user-friendly, responsive,

and relevant. A broad range of capabilities for providing climate information currently exists in Federal agencies and various other organizations. To be successful, we must find ways to maximize use of these capabilities.

NOAA'S Role With Respect To International Agreements

QUESTION: We are on the verge of international agreements with no strategy to monitor climate change. Should NOAA be part of this strategy, and if so, should it be in a leadership role in developing partnerships and coordinating communications? Should it be at the helm with respect to data management?

ANSWER: NOAA should play a central role providing the scientific information needed to evaluate whether greenhouse gas emission reductions reported at the regional and global spatial scales are consistent with what is observed in the atmosphere. The Agency has a fifty-year track record of characterizing a baseline for atmospheric composition, is supporting EPA's development of greenhouse gas emission inventories, and is setting up a distinct greenhouse gas information system using "top down measurements" by monitoring the atmosphere and determining the distribution and trends of CO2 on global and continental scales . This will compliment EPA's inventories from estimates of emissions from point sources, mostly done be self-reporting and a number of measurements at the source, which constitutes "bottom up" measurements. NOAA, along with other agencies, such as DOE and its labs and NASA, can provide timely analyses on the impacts of the proposed regulatory action by evaluating reported emissions at the aggregated level, assessing the effectiveness of offsets with the USDA, and characterizing the impacts of emission-reduction efforts across sectors and regions of the Nation and the world in conjunction with EPA.

NOAA also leads or plays a key role for the US in a number of multilateral efforts to monitor climate and provides other essential Earth observations that should be considered integral components of a strategy. These include:

- The Global Climate Observing System (GCOS), an established international framework for monitoring climate change that has been in place since 1992 at the World Meteorological Organization. NOAA, with the Department of State, has been a strong supporter of GCOS both in international negotiations as part of UNFCCC and in implementing the monitoring systems. For example, in the ocean component of GCOS, NOAA has contributed about half of the existing global *in-situ* measurements. With regard to data management, NOAA's National Climatic Data Center is a GCOS Lead Center for a range of atmospheric variables.

- The Group on Earth Observations (GEO) is coordinating efforts to build a Global Earth Observation System of Systems, or GEOSS. This 'system of systems' links together existing and planned observing systems around the world and supports the development of new systems where gaps currently exist. It promotes common technical standards so that data from the thousands of different

instruments can be combined into coherent data sets. The Group on Earth Observations is a strong advocate for sustained and coordinated climate observing systems and supports an ambitious and multidisciplinary effort to minimize and adapt to the societal and environmental impacts of climate variability and change. NOAA led US participation from GEO's inception in 2002 until last year and continues to be actively engaged, especially on climate monitoring issues.

From the satellite side of climate monitoring, NOAA currently chairs the Committee on Earth Observing Satellite's (CEOS) Strategic Implementation Team. The work of CEOS spans the full scope of activities required for proper international coordination of Earth observation programs and the maximum utilization of their data, ranging from the development of detailed technical standards for data product exchange to the establishment of high-level interagency agreements on common data principles. NOAA and NASA satellites are vital contributions to measurements of climate from space.

Modeling Needs to Inform Climate Change

QUESTION: Anthropogenic climate change has begun and will pose a significant challenge to the inventiveness and adaptability of the U.S. economy and citizens. There is a broad consensus that within the Federal government, NOAA should provide leadership in climate science and the provision of climate data records, seasonal to centennial forecasts, and meeting the overall requirements for information to inform climate change policy and adaptation decisions. As a former governor, what reliance did you have on NOAA and are there capabilities you wished they'd had to better support your government of the State of Washington?

ANSWER: NOAA's activities in the Pacific Northwest and, particularly, in the State of Washington formed the backbone of many of natural resources and economic decisions. During my tenure as Governor, two major climate events stand out: the El Nino event of 1997-1998, which impacted salmon population and hydropower, and the worst western drought in 50 years (2000-2001). During these events:

- NOAA provided operational, sustained weather, climate, and ocean observing networks by which it monitored changes in the ocean, coasts, and atmosphere
- NOAA provided critical weather and climate forecasts and key regional predictions
- NOAA initiated a growing number of collaborative efforts with other Federal agencies to produce more effective decision-support tools for managing drought

Further, the integration of information about oceanic, atmospheric, ecological, and hydrologic processes gathered from NOAA-funded monitoring, forecasting, and observational systems has led to a clearer, more authoritative understanding of "natural" versus human-caused fluctuations in Pacific salmon population, especially as related to the Pacific Decadal Oscillation. This has been a most contentious issue in the Northwest.

NOAA provides credible and authoritative information on such critical issues as how rising sea levels and ocean temperatures may affect state coasts and harbors, how the state hydropower resources and energy demand might change, whether drought will exacerbate threats to forests from insects and wildfire, and what threats the state's waterways and salmon may face in the future. Under my tenure as Governor, these activities continued to play important roles in how the state plans for, mitigates, and manages environmental and economic impacts.

QUESTION: Do you agree that key improvements are still needed in modeling how climate change affects climactic factors, including storm tracks, storm intensity, heat waves, hurricanes, drought, and heavy rainfall?

ANSWER: Current climate models are suitable for assessing climate change impacts averaged over global and continental scales; however, we still need regional- and local-scale improvements in understanding how climate change affects other climactic factors, including storm tracks, storm intensity, heat waves, hurricanes, drought, and heavy rainfall. While climate change is a global issue, its expression at regional and local scales is more frequently responsible for decision-making in society.

Further advancements will improve climate-related mitigation and adaptation decisions at these more local levels. Such advances will come from a mix of activities, including: sustained and systematic observations, field and laboratory experiments, model development, and integrated climate assessments as well as continued development of improved higher-resolution global climate models, increased computational capacity, and extensive climate model experiments. In particular, improved climate model resolution will increase the value of geographically specific climate projections for decision makers in government, business, and the general population.

QUESTION: Do you agree that we need to understand the loss of sea ice currently being observed in the Arctic, and the feedback between warming and the carbon and nitrogen cycles?

ANSWER: Yes, we need to understand sea-ice loss in terms of area changes, thickness decreases, rate of ice-loss, and the causal factors. In particular, we need to determine the extent to which these are attributable to anthropogenic emissions (e.g., long-lived greenhouse gases, pollution particulates) and such naturally prevalent physical factors as variations in the sub-surface ocean circulation, precipitation, and Arctic surface-wind patterns. A synthesis of observations, modeling, and research will enable us to project with greater confidence the fate of the Arctic sea-ice in future decades. Further, the warming of the Arctic is a significant factor affecting the geochemical cycles of carbon and nitrogen, which in turn, can influence the carbon budget.

We also need to pay attention in the Arctic to the role of soot, also known as black carbon. Airborne soot can lead to atmospheric warming, and soot deposited on ice can lead to more rapid melting. We need to learn the origin of the soot in the Arctic, its transport mechanisms, and its abundance in, on, and above the ice. Also, as marine

transportation in the Arctic increases in coming decades, we could emit soot directly in the Arctic. Therefore, quantification of soot from marine transport would aid predictions of future soot levels and associated impacts on the Arctic.

NOAA has taken some small steps in quantifying soot emissions and transport to the Arctic. NOAA had a major field study called ARCPAC (Aerosol, Radiation, and Cloud Processes affecting Arctic Climate) in April 2008 to investigate this issue. Data from this study are being analyzed.

QUESTION: Do you agree that we need to understand the extent to which manmade aerosol particles influence clouds and rainfall?

ANSWER: Yes. Aerosols (suspensions of microscopic solid or liquid particles in air) are currently the least understood driver of climate change. Yet, we do know that these tiny particles profoundly affect Earth's climate by modifying cloud content, distribution, and properties, such as brightness. Aerosols may change the amount, timing, and location of rain and snow. Not surprisingly, much of the current uncertainty in the expected global temperature response resulting from various climate change agents is at least partly due to uncertainty about aerosol properties and distribution and their effects on clouds. Understanding and quantifying the role of aerosols in climate change is sorely needed for judicious policy decisions and are being addressed by NOAA through various activities.

QUESTION: Now that the Recovery Act has provided the computing power to accomplish these modeling needs, what additional resources does NOAA need to ensure these critical modeling capabilities are established?

ANSWER: The added resources from the Recovery Act for climate-related high-performance computing and climate data records will increase NOAA's climate computing capacity fivefold. This will enable simulations, projections, and predictions of the climate over the 21st century at unprecedented resolution and complexity. NOAA and other agencies will target opportunities for higher spatial resolution models with the enhanced capacity from the Recovery Act funding, focusing on the shorter, multi-decadal runs for the IPCC assessment and for studies of impacts in the United States as well as globally.

QUESTION: In your experience, what happens when a government agency is expected to deliver critical services, but has a reputation for being unable to secure the required funding to accomplish its mission, and as a government executive and political leader, how do you fix such a problem?

ANSWER: The responses to a number of questions in this request highlight the excellent work that Commerce Department employees do with the resources that are available. The FY 2010 President's Budget provides sufficient resources for the Department to accomplish its mission.

Climate Data Records

QUESTION: Over the next decade, the volume of NOAA's satellite data will increase substantially from the implementation of the new more sophisticated satellites such as GOES-R and NPOESS. New higher resolution and multi-ensemble simulations of the Earth system and coupled ocean-atmosphere climate models will generate petabytes of data. To strengthen the use of satellite observations in understanding, predicting and monitoring climate change, data systems must be expanded beyond their current implementation of simple data warehouses. Do you agree that these data will be critical for informed decision making for climate change adaptation and mitigation policies and practices, and that it is important to provide understandable and trustworthy climate data records for future generations?

ANSWER: Yes, I do agree that proper quality controlled and quality assured scientific data is important to support informed decision making to implement climate change adaptation and mitigation policies and practices. As such, NOAA and the Department are working hard to ensure the long-term preservation of these digital data by expanding information technology, accessibility and data stewardship efforts. Funding the President's request for NOAA's Data Centers and Information Service and the Climate Data Records will provide the needed support to accomplish this task.

QUESTION: Do you agree that in order to provide these data for decision makers, storage and access capability of NOAA's data management infrastructure will need to be enhanced for adequate integration of these additional large array data sets, as well as other multi-disciplinary data generated across all of NOAA?

ANSWER: Yes, I agree that NOAA's data management infrastructure must provide the means to support the data needs of its users. NOAA is involved in developing and implementing the Comprehensive Large Array-data Stewardship System (CLASS) which will allow NOAA the ability to serve multiple data sets from various observational systems.

Non-Satellite Observational Requirements

QUESTION: Satellites are not the only means of observing the environment. Buoys, aircraft, in situ measurements, and research measurement campaigns monitor the climate and provide validation of satellite measurements. Do you agree that there should be a national strategy and investment in observational measurements, including satellites, surface drifting and tropical moored buoys, Argo floats, tide gage stations, ocean reference stations, and aircraft along with land-based systems to monitor ecosystems and hydrological conditions?

ANSWER: Yes, I agree that there should be a national strategy and investment plan that encompasses the full spectrum of environmental sensor systems required to accurately

monitor and assess the planet's climate and ecosystem changes. NOAA is working with other federal agencies to develop the appropriate framework to achieve this goal.

QUESTION: If so, what should it be?

ANSWER: The national strategy should build on past and current investments in efforts such as the Integrated Ocean Observing System (IOOS), Global Ocean Observing System (GOOS), and overall the Global Earth Observing System of Systems (GEOSS), an international effort to interconnect key environmental systems and information globally.

The U.S. Group on Earth Observations (GEO) is coordinating efforts to build a Global Earth Observation System of Systems, or GEOSS. This 'system of systems' links together existing and planned observing systems around the world and supports the development of new systems where gaps currently exist. It promotes common technical standards so that data from the thousands of different instruments can be combined into coherent data sets. The Group on Earth Observations is a strong advocate for sustained and coordinated climate observing systems and supports an ambitious and multidisciplinary effort to minimize and adapt to the societal and environmental impacts of climate variability and change. NOAA led US participation from GEO's inception in 2002 until last year and continues to be actively engaged, especially on climate monitoring issues.

QUESTION: In your opinion, are the assimilation techniques and scientific analysis of ocean and ecosystem data are also important components of the observing system, and why?

ANSWER: Yes, data assimilation and analyses are important components because the observing system and the manner in which the observations it collects are used are intrinsically linked. The assimilation techniques and analysis methods are important in that they help define the requirements for the observing system and it is those techniques where the value to society of the observations is realized.

QUESTION: Should there be a national strategy for international cooperation, and is it reasonable to rely on foreign partners to supply observations essential for U.S. operational requirements as well as climate change measurements?

ANSWER: Yes. It is reasonable to rely on foreign partners to supply observations essential for U.S. operational requirements as well as climate change measurements. This has been demonstrated over the past 10 years by NOAA's cooperative international implementation of the Global Component of IOOS. A global observing system by definition crosses international boundaries with potential for both benefits and responsibilities to be shared by many Nations. All of NOAA's contributions to implementation of the global ocean climate observing system are being managed in cooperation with the World Meteorological Organization (WMO) and the Intergovernmental Oceanographic Commission (IOC) of United Nations Educational, Scientific, and Cultural Organization (UNESCO). Working through the Joint WMO/IOC

Technical Commission for Oceanography and Marine Meteorology (JCOMM), NOAA's investments in the global ocean observing system are approximately doubled. NOAA presently supports 48% of the global system, while other Nations and agencies support 52%. JCOMM provides the international/intergovernmental forum for Nations working together to agree on standards, best practices, cooperative deployment of platforms, and data processing, which allow the observations collected by each participating country to be used by all others with confidence. NOAA has been a leader in working with foreign partners to develop JCOMM into the primary enabling organization for cooperative implementation of the global ocean observing system.

NOAA Satellites Status, Budget and Structure

QUESTION: Dr. Cicerone testified before this Committee that the fleet of observational satellites needs quick attention. How many of NOAA's satellites are past their design lives?

ANSWER: In the NOAA Geostationary Operational Environmental Satellites (GOES) constellation, two of three on-orbit satellites are operating beyond their design life. NOAA is preparing to launch the GOES-O satellite later this year, which will be available for operational use or to be placed in storage.

In the NOAA Polar-orbiting Operational Environmental Satellite (POES) constellation, two of four on-orbit operational satellites are operating beyond their design life. The NOAA-19 spacecraft was launched in February 2009 and is currently undergoing its initial testing post-launch, though all components are operating as expected. The satellite will be placed into service once the tests are complete in the next few months.

QUESTION: What is the risk to data continuity and delivery of NOAA forecasts and other products?

ANSWER: For its geostationary satellites, NOAA is taking steps to avoid risks to data continuity based on a current assessment of the performance of NOAA's on-orbit satellites. However, such continuity is dependent on the success of planned launches and the continued development of the GOES-R series of spacecraft without significant delays.

For its polar-orbiting satellites, NOAA's on-orbit and recently launched satellites are performing well and there is no immediate risk to data continuity for NOAA's weather and climate missions. We are concerned about the fragility of the constellation as the tri-agency National Polar-orbiting Operational Environmental Satellite System (NPOESS) satellites are scheduled to be launched in the 2013 timeframe. The continued challenges with developing a key NPOESS sensor are the major cause of this risk to data continuity. NOAA is placing highest priority on the acquisition of this system to mitigate this risk, and is working in collaboration with NASA and the Department of Defense.

QUESTION: Given the projected out-year budgets for NPOESS and GOES-R – which come from the 2009 President's budget, since we don't yet have the request

for 2010, and do not reflect any increases resulting from programmatic delays – existing satellite programs could exceed 30% of NOAA's discretionary request as early as 2011 and remain at that level. This assumes that NOAA's budget reaches $4.5 billion and that funding for the rest of NOAA remains flat. Since NOAA is responsible for the national priority represented by climate and weather satellites, do you agree that NOAA's funding level should increase accordingly?

ANSWER: Investing in NOAA's future satellite systems is a critical national priority and one that will pay countless dividends once operational. The FY 2010 President's budget fully supports NOAA's satellites. The budget also provides targeted new investments in other priority NOAA mission areas such as Magnuson-Stevens implementation and hurricane forecasting improvement.

QUESTION: In the 1990's, two fateful decisions were made -- first to converge the civil and defense polar-orbiting environmental satellite programs and second, to abandon the long-term mission elements of NASA's EOS and transition to reliance on NOAA's polar orbiting system for continuity in numerous critical climate observations. The ensuing NPOESS implementation has proven to be a disaster with cost overruns that have jeopardized the overall health of NOAA and schedule delays that have left the civil polar satellite system fragile and one satellite failure, whether at launch or in orbit, away from major gaps in essential data, particularly for the monitoring of climate change. As the new guy who bears no responsibility for the on-going NPOESS mess, will you commit to this Subcommittee to involve yourself directly in the reexamination of management of current and future polar environmental and geostationary satellite systems and to coming forward with timely recommendations that recognize the true costs, work to control these costs through proven effective management techniques and structures, and prevent any future situation where we play dice with the critical observations needed for wise government and efficiency in our economy?

ANSWER: As I indicated in my testimony before the Committee, managing the development and acquisition of NOAA's environmental satellites is one of my top management priorities. I intend to remain involved with the oversight and management of these programs with the assistance of the Under Secretary of Commerce for Oceans and Atmosphere and I look forward to working with the Congress to see that these critical national assets are delivered to the nation as efficiently and cost-effectively as possible.

NPOESS: Tri-Agency Difficulties

QUESTION: NOAA , NASA and DoD make up the tri-agency Executive Committee (ExComm) for NPOESS. While NOAA and DoD split costs 50/50, it appears that NOAA is riding a bucking bronco and hanging on for dear life. DoD has a large satellite program of its own, and NPOESS overruns are relatively insignificant. However, those same overruns represent major challenges to NOAA, whose entire budget is less than 1% of DoD's annual funding. In addition, the

structure of the agencies' budgeting is at odds, with NOAA on a one-year budget and DoD typically on a five-year plan. DoD also has so many satellites under development that it can afford to plan on what is essentially a 50% confidence level in costs and schedule. NOAA, as a civilian agency with fewer projects to ride funding ebbs and flows, should be planning to an 80% confidence level. Unfortunately, the Defense Cost Analysis Improvement Group (CAIG) develops the budget.

It comes as no surprise then that NPOESS is routinely behind schedule and over budget. The program has already come through the Nunn-McCurdy process. NOAA lost out there, too, as critical climate sensors were eliminated to reduce costs. Even with respect to critical requirements, the agencies don't agree. Instead of a nimble, adaptable satellite system that provides that Nation with defense, weather, and climate change data, we have an enormous, sensor-laden bus that has been repeatedly delayed by the problems of just one sensor, the Visible/Infrared Imaging Radiometer Suite (VIIRS).

Would you agree Secretary Locke that the program as currently comprised was a laudable though misguided effort but practically, an unworkable and costly risk?

ANSWER: The NPOESS program has been challenging to manage and provides "lessons learned" for future multi-agency technology acquisition projects. The Obama Administration has stated it believes the government must be better stewards of taxpayer dollars. As such, I am directing the Under Secretary of Commerce for Oceans and Atmosphere to develop and implement a strategy to get the program back on track. I will be tracking this closely and plan to get this program back on track to serve more efficiently the critical environmental information needs of the nation.

NPOESS Preparatory Project

QUESTION: As a result of the VIIRS delays, the NPOESS Prepatory Project (NPP), originally expected to launch in June 2010, is now slated to launch in January 2011. Designed as a test for VIIRS and other new capabilities, NPP will now be thrust into an operational weather forecasting role to ensure continuity of data. However, the new launch date assumes no other delays or problems. What happens if there is a failure on launch?

ANSWER: NOAA has a contingency plan in the event there is a failure of any of its operational systems. This plan depends on using existing NOAA satellite assets, leveraging data from NASA and Department of Defense environmental satellites, and forging partnerships with international space agencies to acquire data needed to support NOAA's operational weather and climate mission. NOAA is also investigating opportunities to fly a mission with a legacy sensor in the event VIIRS continues to experience developmental challenges.

QUESTION: What contingency plans exist?

ANSWER: NOAA's contingency plan uses existing NOAA satellite assets, leverages data from NASA and Department of Defense environmental satellites, and forges partnerships with international space agencies to acquire data needed to support NOAA's operational weather and climate mission.

QUESTION: In fact, the new launch date for NPOESS C1, of May 2014, (dictated by the problems with VIIRS) also assumes no other delays or problems, so there is not an alternative ready should NPP fail on launch or within its infancy, nor is there an alternative should C1 fail. Will the first VIIRS that is launching on NPP meet its design specifications, particularly in the areas important to ocean color measurement?

ANSWER: The VIIRS instrument being developed for the NPP satellite is being built to meet its design specifications and the 22 Environmental Data Records that it was designed to provide. The VIIRS instrument on NPP will not meet the specifications for ocean color and NOAA is working with the ocean community to address this issue. However, the VIIRS for the first NPOESS satellite, C1, is expected to provide ocean color measurements according to specification. NOAA is also pursuing partnerships with other space agencies around the world to access data from international satellites to ensure the ocean color community has access to the data it needs.

QUESTION: Should MODIS EOS-Aqua measurements cease to be available prior to the launching of a full performance VIIRS instrument will there will be a gap in the ocean color climate data record?

ANSWER: If the AQUA mission failed, the ocean color community would have access to SeaWiFS data, which is a NASA sensor being flown on a commercial satellite mission. NOAA is pursuing partnerships with other space agencies around the world to access data from international satellites to ensure the ocean color community has access to the data it needs.

QUESTION: Wouldn't it have been better for NOAA to rely on a copy of proven technology (perhaps improved incrementally and conservatively) to ensure continuity of data and reduce risk?

ANSWER: In hindsight, it may have been more advantageous to use proven technology; however, VIIRS will provide higher resolution and more accurate measurements than currently available from heritage instruments. We believe that once the instrument challenges have been worked through, VIIRS will provide significant advances in weather and climate monitoring such as increased imagery capabilities, data availability, and data access.

Long Term Considerations for Satellites as a National Priority

QUESTION: Do you agree that the Nation needs a long-term national plan, updated on a regular basis?

ANSWER: Yes, I agree the Nation needs a long-term national plan for satellites and the crucial environmental information that comes from them. Nascent work to accomplish this goal has been on-going among NOAA, NASA, the Department of Defense and the U.S. Geological Survey within the USGEO, in conjunction with the Office of Science and Technology Policy and the Office of Management and Budget. This effort identified priorities and options for recovery of climate sensors demanifested under the 2006 NPOESS program restructure. All involved agree that a long-term national plan is vital to ensure continuity of space-borne observations while at the same time providing strategic direction to examine our Nation's satellite investment opportunities.

QUESTION: Should NOAA rely on NASA to build and launch all civilian Earth observing satellites while NOAA focuses on processing the data and using them in models and in other ways to produce predictions and information products?

ANSWER: NOAA and NASA have been collaborating for nearly 40 years on satellite development for weather and environmental monitoring and NOAA intends to continue to do so in the future. The missions of the two agencies are complementary. However, NOAA also works with other national and international partners on a number of Earth observing missions such as Jason-2 and MetOp, both international missions with European partners focused on sea level rise and weather data, respectively. This diversification has enabled NOAA to leverage the respective strengths of all its partners to maximize the suite of environmental satellite data sources available.

QUESTION: Should serious consideration be given to smaller missions using multiple small satellites flying in a constellation?

ANSWER: NOAA has and continues to give serious consideration to all the options available for effectively and efficiently meeting our Nation's environmental data needs.

QUESTION: Should serious consideration be given to the purchase of commercial data?

ANSWER: NOAA has purchased data from commercial sources for several of its data requirements. For example, NOAA has purchased ocean color data from Orbital Science Corporation's SeaWiFS satellite to meet its ocean color needs. NOAA has purchased Synthetic Aperture Radar data from commercial sources for a number of years to meet its requirement for ice mapping in polar regions at the National Ice Center. NOAA will continue to assess its data needs against commercially available capabilities to supplement its data needs.

Independent Review Team Findings for NPOESS

QUESTION: An independent review team (commissioned by the Tri-agency Executive Committee) reviewed the NPOESS program at a management structure level and found that the overall risk to the program was increasing; VIIRS is or has burned down the program reserves, which put the spacecraft for C1 on the critical path; and the schedule has slipped at least 7 months for NPP and at least 14 months for C1. This is a slip from a schedule put in place just one year ago and from a DoD perspective, is a breach in the acquisition baseline and requires notification.

Among their conclusions, the IRT found that overall, the program as structured has a low probability of success, and the overall constellation itself is fragile. There are no spares unless C3 and C4 are accelerated on a program that has yet to prove itself.

Furthermore, the current cost and schedule relies on everything working perfectly, which is irrational in the extreme. As a result, the nation could face observation gaps of years instead of months.

The program is not operated for continuity, which is at great risk. Instead it is driven by costs. Because the Defense CAIG develops the cost estimate, there is not much margin built in and not enough funding in the program to do what needs to be done thereby forcing program management to take increased risks by deferring critical work.

The IRT recommends that NPOESS be housed in a satellite acquisition program and points out that the PEO, established following Nunn-McCurdy, does not fulfill this need.

The IRT found that the program does not have the right overall management structure, in part at least because the DoD decision maker does not attend the ExComm meetings and tends to second guess their decisions.

The IRT found that there are no other options than to stick with the current contractors, and we must simply make this situation work as best as we can. This is reminiscent of the Census handheld issue, and rankles both Congress and taxpayers alike. One likes to think that if one is unhappy with a current service provider, one can take their business elsewhere. Unfortunately, that is apparently not true in this case, and it feels a little like a Bank of America credit card holder with a balance and a notice that their rates are increasing next month.

What are you prepared to do to resolve these national problems, restore the public's trust, and ensure the continuity of weather and climate data that the Nation relies on for its economic prosperity?

ANSWER: The NPOESS program has been challenging to manage and provides "lessons learned" for future multi-agency technology acquisition projects. I am directing the Under Secretary of Commerce for Oceans and Atmosphere to develop and implement a strategy to get the program back on track. I will be tracking this closely and plan to get this program back on track to more efficiently serve the critical environmental information needs of the Nation.

I understand the EXCOM will heed the recommendations of the Independent Review Team and take decisive action to fix the fundamental issues that have afflicted the program. In so doing, I am confident we can put NPOESS back on track to ensure the Nation reaps the benefits that NPOESS will ultimately provide.

QUESTION: We have been given to understand that NOAA is scheduled to meet with the White House to discuss options and describe costing differences and where the program should be housed/what acquisition authority. Will you be involved at the meeting?

ANSWER: No, I will not be at the meeting. The Under Secretary of Commerce and I share the same desire to get the NPOESS program back on track. I have directed the Under Secretary of Commerce for Oceans and Atmosphere to work with the White House, along with NASA and DOD, to develop and implement a strategy to address some of the longstanding funding and acquisition issues that have plagued the program. I will also work with my counterpart at DoD, Secretary Gates to resolve these issues.

QUESTION: Has it taken place yet?

ANSWER: Preliminary meetings have occurred, though discussions are ongoing.

QUESTION: Will NASA be involved in the discussions as well?

ANSWER: Yes. NASA remains an important player in this Tri-agency program.

QUESTION: DoD is talking divorce. Given the conflicts in operational needs, funding availability, and management style, do you agree that this bears serious consideration?

ANSWER: NPOESS is a national priority by fulfilling weather and climate needs. In order to meet these requirements, commitment to the program's goals by all three agencies is necessary to achieve success.

QUESTION: Would co-examining budgets assist in eliminating some of the problem?

ANSWER: I am unsure of the concept of co-examining budgets.

QUESTION: OMB has the benefit of reviewing a five year budget for NOAA's satellite programs. Do you think this would be helpful to the Committee?

ANSWER: NOAA's five year budget profiles for programs in the Procurement, Acquisition, and Construction (PAC) are provided to Congress in the annual President's Budget request and made available to the Committees on Appropriations.

QUESTION: The Committee understands that the program has benefited from NASA's expertise in procuring satellites. NOAA is not a satellite agency, but it does need to be an educated consumer, look for beneficial partnerships, and set guidelines. Is it important for NOAA and NASA to continue to partner?

ANSWER: NOAA is a satellite agency and takes great pride in having successfully operated environmental satellites for almost 40 years in support of its operational weather, climate, and environmental monitoring mission. The missions of the two agencies are complementary. NOAA has successfully benefitted from a long and fruitful partnership with NASA and its expertise in procuring satellites. NOAA believes this mutually-beneficial relationship is vital to current and future satellite acquisition efforts, and is important to continue.

NPOESS Contracting Issues

QUESTION: Things have gotten so bad at Raytheon - the contractor responsible for VIIRS - that NASA assigned a team to babysit the VIIRS working group. What does this say about DoD acquisition management?

ANSWER: As outlined in the Tri-agency agreement, DoD retains responsibility for the contract but NOAA is responsible for managing the program. All parties were in agreement that additional oversight of the VIIRS subcontractor was necessary. NASA provided a highly experienced satellite manager and DoD in cooperation with the prime contractor executed the necessary contract modifications.

QUESTION: Given the delays and funds spent as a result of delays caused by VIIRS, how much will the three VIIRS instruments – intended for NPP, C1 and C2 - cost us now?

ANSWER: The current VIIRS cost estimate for NPP, C1 and C2 is $954 million. NOAA expects this estimate may increase given the ongoing challenges with VIIRS development. An additional $157 million was spent prior to the 2002 contract award on NPOESS risk reduction to further the VIIRS technology prior to the acquisition process.

QUESTION: How much above the original contract?

ANSWER: The original January 2003 cost estimate for the VIIRS instrument was $180 million ($337 million inclusive of the NPOESS risk reduction efforts completed prior to contract award).

QUESTION: What are the contract incentives?

ANSWER: The NPOESS contract fee structure includes a 3% base fee (automatically provided to the contractor), with an objective incentive fee structure (2.5% cost, 3.5% schedule, and 3.0% technical milestones) (awarded based on the completion of specific milestones), and a subjective 1.5% award fee (awarded based on the subjective determination of performance by the fee determining official) for an aggregate 13.5% total available fee.

QUESTION: Were the award fees based on cost and schedule?

ANSWER: Yes. Of the total available fee, 6% of the amount was based on incentive fees dependent on the contractor's completion of specific cost and schedule milestones.

QUESTION: What was the philosophy behind the NPOESS contract?

ANSWER: The philosophy of the NPOESS contract at the time of award in August 2002 was that the contractor and the government would share equal responsibility for the success or failure of the contract. This philosophy was implemented using a model that relies on a prime contractor for primary technical management of all elements of the system. However, as learned through the implementation of this program, this philosophy has been found to provide inadequate oversight of contractors, which has led to repeated cost and schedule overruns.

QUESTION: Who is now handling sensor management for NPOESS?

ANSWER: The NPOESS prime contractor is responsible for managing the subcontractors that are building the various NPOESS sensors. The tri-agency NPOESS program office oversees the NPOESS prime contractor. During the past few years, NOAA has pushed for more aggressive government oversight of the VIIRS contractor and received agreement from DoD to place a government Program Manager on-site in September 2008.

QUESTION: Is it DoD or NASA?

ANSWER: The Tri-agency (NOAA, Air Force, NASA) NPOESS program office oversees the NPOESS prime contractor. The NPOESS prime contractor is responsible for managing the subcontractors that are building the various NPOESS sensors. DoD remains the lead acquisition authority for NPOESS, which means they control the contract with the prime contractor.

QUESTION: NOAA is anticipating the purchase of an AVHRR, built by ITT, as an insurance policy should VIIRS not perform well enough to ride on C1. ITT claims they can address the obsolescence issues for a fixed price of $18 million per

instrument. What is the difference between VIIRS and an improved AVHRR and why is VIIRS worth all this additional time and money?

ANSWER: While AVHRR performs comparably to VIIRS in observation of a key environmental parameter, sea surface temperature, its performance falls far short of VIIRS in twenty other key environmental parameters that have been agreed on by the three agencies as critical to the program. Some of these parameters include cloud detection and properties, aerosols, land products, ice and snow products. Many of these are crucial to the continued provision and improvement of weather and climate models central to the environmental predictions provided by NOAA.

QUESTION: How much is NPOESS really going to cost? A recent article estimated $500-600 million above the previous estimate. This is a program that has already gone through Nunn-McCurdy and been rebasedlined.

ANSWER: The NPOESS program office is currently updating the program's schedule and costs to include in an edited Acquisition Program Baseline (APB). The APB will be agreed upon by the three agencies in the program. A final estimate for NPOESS is not possible until the on-going cost estimating process is completed. NOAA believes that costs will increase since the schedule has been delayed due to continued problems with the development of VIIRS

Critical Path for NPOESS C1

QUESTION: As a result of problems with VIIRS, funding was diverted from the C1 bus and now it is on the critical path. Describe the situation with respect to the CriS instrument; will it have to return to thermal vac?

ANSWER: Following the successful completion of CrIS acceptance testing, a review of the parts showed a need to replace several components on two of the circuit cards. This work is ongoing and has not been affected by any funding restrictions. A tiger team is assessing the need for CrIS to return to thermal vacuum testing.

QUESTION: Is all of C1 now on a critical path?

ANSWER: No. The critical path includes the build of the spacecraft structure and continues through the Integrated flight Test.

QUESTION: Will the Recovery Act funding assist in resolving this issue in FY 2009?

ANSWER: Yes, additional funding will reduce risk in the spacecraft structure and engineering test bed schedules.

QUESTION: Will any amount of funding allow C1 to launch in FY 2013?

ANSWER: No. The earliest C1 could be launched is the end of CY 2013.

QUESTION: Have you been briefed on the parametric cost estimate that was scheduled to be ready early in April?

ANSWER: I have not been briefed on this cost estimate since I understand it is not yet complete, but I have asked to be kept apprised of the cost issues with this program.

QUESTION: Would it be helpful for DoD to get funding in the supplemental for NPOESS?

ANSWER: It is my understanding that the supplemental is intended to fund costs of Iraq, Afghanistan, Pakistan, and Pandemic Flu.

QUESTION: What is the new schedule for NPP, NPOESS C1 and C2?

ANSWER: The NPOESS program office is developing an updated Acquisition Program Baseline schedule which will be agreed upon by the three agencies in the program. However, the EXCOM has not approved this schedule. During the EXCOM review, NOAA will critically examine the underlying assumptions and the confidences in this schedule.

The NPOESS program office is basing the updated schedule on the current best estimate: the NPOESS Preparatory Program launch would be delayed 7 months to Jan 2011; the C1 (first NPOESS launch) would be delayed 14 months to Mar 2014; and the C2 (second NPOESS launch) would be delayed 5 months to May 2016.

QUESTION: There is a decision point in FY 2010 for C3 and C4. Can you explain the conflict between DoD acquisition rules and NOAA's ability to fully fund upfront?

ANSWER: The current plan is to secure a waiver to allow incremental funding by DoD to match the NOAA approach.

QUESTION: To maintain continuity, the work on satellite programs beyond C3 and C4 should be beginning now. Has this work begun?

ANSWER: Yes. NOAA has initiated early planning work with its interagency and European partners.

QUESTION: The agency relies on contractors with expertise in building satellites and producing improved copies. What can NOAA due to ensure this expertise is maintained?

ANSWER: NOAA's view is that contractors can best plan for and source the talent needed to support complex government technology procurements through predictable and stable funding and active government involvement through the life cycle of the technology development.

Industrial Policy Questions

QUESTION: Optical engineering requires a ten year apprenticeship and it is apparently getting considerably more difficult to convince young people to come into the profession. What, if anything, can NOAA do to ensure that there is some continuity within this profession since NOAA will continue to need imagers into the foreseeable future and likely beyond it?

ANSWER: NOAA sponsors a wide range of scholarship, internship and fellowship programs to support students getting degrees in sciences related to NOAA's mission. Optical engineering is one of those sciences. NOAA's student opportunity programs have had a significant impact on the number and diversity of students earning undergraduate and graduate degrees in the NOAA related sciences. Information about these programs can be found at the following website: http://www.oesd.noaa.gov/noaa_student_opps.html.

QUESTION: How do we encourage young talent to pursue this type of profession if they are not reached and influenced at a young age?

ANSWER: Exciting people about science at a young age has been shown to be an important factor in students choosing to major in science and become scientists. Financial support and good job prospects might be effective tactics for older recruits.

QUESTION: If not NOAA, who?

ANSWER: Optical engineering is an important science to NOAA. It underpins our ability to design and build optical instruments for our satellites as well as land based applications. Optical engineering is important to many agencies, for example, NASA, NSF, and DOD.

Geostationary Orbiting Environmental Satellites Status

QUESTION: This Committee understands that the schedule for the GOES-R series of satellites is being pushed out as a result of a Boeing protest. Please provide us with some background on the issue.

ANSWER: The GOES-R spacecraft contract was awarded on December 4, 2008, and subsequently protested by Boeing on December 15, 2008. On February 20, 2009, GAO dismissed the GOES-R protest since NASA decided on February 17, 2008 to re-evaluate the proposals and make a new selection decision. On May 7, 2009, NOAA and NASA announced Lockheed Martin Space Systems Co. had been selected to build two GOES-R series satellites.

QUESTION: Why is Boeing protesting?

ANSWER: NOAA cannot speculate as to why Boeing protested.

QUESTION: What does this do to the launch schedule?

ANSWER: The projected launch date is based on the time it will take to build the spacecraft. NASA's experience estimates the time required to build this type of satellite system is 72 months, which means the schedule is on a day for day slip, impacting the planned launch date of April 2015. However, once the spacecraft contract is underway, NOAA will be able to estimate a new launch date.

QUESTION: In effect, you are saying that the launch date of April 2015 is at risk?

ANSWER: Yes, the delay in getting the spacecraft contract moving forward may impact the projected launch date of April 2015.

QUESTION: When will the ground source selection for GOES-R be awarded?

ANSWER: The Ground Source Selection is expected to be awarded in June 2009.

QUESTION: This runs counter to NOAA's policy of having a backup satellite in orbit at all times. Could this delay lead to gaps in satellite coverage if NOAA experiences problems with its current operational satellites before a backup satellite is in orbit?

ANSWER: The delay will increase the risk of NOAA not having two operational GOES satellites (GOES-East and GOES-West) in orbit at the same time. If the situation occurs where the failure reduces the constellation to only one satellite, NOAA will implement arrangements made with the international community (primarily EUMETSAT) where we could borrow their on-orbit spare, if needed, to maintain our continuity.

QUESTION: How does this affect costs?

ANSWER: The current delay in awarding the spacecraft contract is not expected to affect the overall lifecycle cost of the GOES-R Program.

QUESTION: Early last year there appeared to be a battery issue with GOES-11. Has that been resolved?

ANSWER: NOAA has successfully managed the GOES-11 battery issue during the spring and fall eclipse seasons. GOES-11 continues to provide operational support as GOES-West, and we continue to monitor the situation.

QUESTION: Recently, GOES-O was successfully launched. What is its current status?

ANSWER: GOES-O was scheduled to be launched on April 28, 2009, but has been postponed for approximately two months because of a problem with this and other similar launch vehicles. The GOES-O satellite is in storage near the launch site in Cape Canaveral, FL, awaiting resolution of the issue. We will keep you informed as a new launch date is scheduled.

QUESTION: When will GOES-P be launched?

ANSWER: GOES-P will be launched approximately one year after GOES-O has been launched.

QUESTION: Is it otherwise ready to go?

ANSWER: GOES-O is presently ready for launch at the launch site awaiting repair of the launch vehicle. GOES-P is in storage at the contractor facility.

QUESTION: What is the expected life of GOES satellites?

ANSWER: The GOES-11 & 12 spacecraft each have a design life of 7 years. On-orbit projected life is based on a periodic assessment of instrument performance, spacecraft health, and remaining spacecraft fuel. Based on current estimates, GOES-11 is expected to remain operational through 2011. GOES-12 is expected to remain operational at minimum through the end of 2009.

The GOES-N series (GOES-13, O & P) has a design life of ten years each, which includes on-orbit storage and operational mission life. The primary instruments, including the imager and the sounder, have a design life of five years. GOES-13 was launched in mid-2006 and has not been placed into operational use. We do not yet have historical experience to make a determination of the projected operational life of the GOES-N series.

GOES-R Sensor Issues

QUESTION: In September 2006, NOAA reduced the scope and technical complexity of the GOES-R program because of an expectation that total costs, originally estimated at $6.2 billion, could reach $11.4 billion. NOAA reduced the number of satellites from four to two and cancelled plans for developing the Hyperspectral Environmental Suite.

The Hyperspectral Environmental Suite was considered to be critical because it would provide data for key weather products. It was considered technically complex, but it was originally planned to meet requirements for products that are currently produced by GOES satellites, including temperature and moisture profiles

at different atmospheric levels, as well as new technically advanced products such as ocean color.

NOAA and the science community still need these products for improving the accuracy of severe weather warnings and enhancing the science of climate, environmental, and oceanic observations. What is the current status of the plan for addressing these requirements?

ANSWER: The Hyperspectral Environmental Suite (HES) was a concept that NOAA explored to meet our requirements for geostationary temperature and water vapor profiles, and coastal ocean color measurements. In the past, NOAA has relied on NASA to prove new technology and science on its research satellites prior to NOAA flying operational sensors to maintain continuity. But neither NASA nor any other agency has flown an advanced sounder or a coastal waters imager on a geostationary satellite. In the absence of a proven capability, HES was initially funded to do an early risk-reduction design for such a capability. However, the cost and risk to develop and acquire instruments with this capability were too high for NOAA's operational mission.

NOAA removed the HES from GOES-R when it was determined to be unfeasible to produce because the instrument was too technologically advanced and would not allow NOAA to stay within existing budget and schedule constraints. Once removed, NOAA established a plan to have the Advanced Baseline Imager (ABI) provide products that are comparable to current products, so that current operational requirements can continue to be met. NOAA's strategy is to explore all alternatives ranging from alternate sensors for GOES-R, to commercial and international partnership options.

QUESTION: The Advanced Baseline Imager (ABI), also considered critical, has experienced technical issues leading to cost overruns and schedule delays. Are there sufficient funding reserves?

ANSWER: Yes, the GOES-R Program maintains adequate cost and schedule reserves to cover the cost variances and schedule delays that have been experienced to date. The technical issues facing ABI are consistent with early development of an instrument of this complexity.

QUESTION: Please update us on the current status of the ABI.

ANSWER: The ABI contractor is currently integrating the parts of the ABI sensor into an initial prototype model that will be used for testing to inform the final design of the sensor. The testing of the prototype model is expected to begin in the third quarter of FY 2009.

QUESTION: Selected program requirements were removed from the baseline program to mitigate the risk that costs will rise and these requirements are being treated as options that could be exercised if funds allow. This includes aircraft icing threat, turbulence and visibility, which are new products and not currently being

produced by legacy GOES satellites, so continuity is not an issue. Have plans been developed or a timeline created with respect to addressing these requirements?

ANSWER: The environmental products mentioned above are part of a suite of products that are expected to be treated as an option as part of the ground contract award. At this time, we believe a decision will be made on this at the time of the preliminary design review for the ground contract, which will provide the best confidence to inform the cost and design issues associated with this decision.

GAO Report on GOES-R

QUESTION: GAO, in its April 2009 report on the GOES-R satellites, found that the assumed inflation rates used for the ground segment were overly optimistic and could lead to a shortfall of millions of dollars. Did the agency use the DoD's inflation rates, or NASA's historical experiences?

ANSWER: NOAA used rates from NASA and DoD for different portions of the program. The DoD inflation rates were used for the ground segment and NASA inflation rates were used for the flight segment.

QUESTION: Doesn't NOAA risk losing the expertise of building the GOES-R series by canceling the following two satellites?

ANSWER: The follow-on satellites, GOES-T and GOES-U, are options on the spacecraft contract. Should a decision be made to exercise the options for GOES-T and GOES-U NOAA will request the necessary budget adjustment.

QUESTION: Should that decision be reconsidered? After all, the first two satellites are the most expensive – the last two should just be copies and therefore significantly less expensive.

ANSWER: NOAA has retained the option to purchase two spacecrafts that will result in a less expensive per unit cost.

QUESTION: NOAA will need the next two satellites, correct?

ANSWER: The follow-on to GOES-R and GOES-S will need to be available for launch in 2019 and 2024 respectively.

QUESTION: What is the thinking here?

ANSWER: The basis for this is the predicted operational life of the GOES-R series satellites. In order to maintain the two on-orbit satellite continuity with one on-orbit spare, we will need to launch follow-on missions in 2019 and 2024.

QUESTION: Is there a desire to spend more funds to provide another quantum leap in technology?

ANSWER: At present, no decisions have been made to insert new technologies in the GOES constellation beyond that planned for GOES-R.

QUESTION: Secretary Locke, will you commit to staying involved with the GOES-R program, providing appropriate funding levels, and ensuring that this program does not become another NPOESS travesty?

ANSWER: Yes, I intend to remain involved in the overall management of the NOAA satellite programs and will work closely with the Under Secretary of Commerce for Oceans and Atmosphere to ensure that the appropriate management and funding is made available to these important systems.

NOAA Science Research Budget & Balance Between Internal & External Research

QUESTION: The growth in the U.S. economy beyond that caused by population growth has been shown to relate directly to scientific research and technology – to innovation. Mr. Secretary, you have within your portfolio two important research agencies – NIST and NOAA. The need to double the budget of NIST has been well recognized on a bipartisan basis. This Subcommittee has received testimony affirming that a comparable investment should be made in the 14% of NOAA's budget that is devoted to research.

The authors of the *Gathering Storm* report testified that it discussed only those programs that fit within its centerpiece issue – energy. As a result, NOAA and NASA were left out of the discussion. The time factor – 90 days to write the report – resulted in the inadvertent omission of NOAA and NASA with respect to increases for research and education.

In fact, NOAA's important functions – that save lives –are dependent on basic research.

Please give us your views on economic prosperity and science and technology and the need to invest in NOAA research.

ANSWER: Our future economic prosperity will be based upon science and technology, and the research conducted by NOAA will definitely contribute to that prosperity.

In the decades and century to come, we will experience extraordinary changes in our world's oceans and atmosphere, with consequences that may dramatically change the way we live our lives. Reducing uncertainty, whether in predicting future climate, severe weather, or changes in our ecosystems, requires a solid understanding of the Earth as an interdependent system of ocean, air, and land.

Through the preeminent research conducted and sponsored by NOAA's Office of Oceanic and Atmospheric Research (OAR), as well as other line offices, we render knowledge and technology that drive products and services designed to reduce those risks. Ultimately, these products and services prevent loss of human life, improve management of natural resources, build understanding of the Earth-system, and strengthen the economy. As we look to the future, NOAA will tackle a number of large societal challenges. Perhaps the greatest is climate change. Defining the nature of climate change, and its potential impacts, is foremost in our research agenda. Our scientists will build on the CM2.1 climate model, which has become recognized as one of the best climate models in the world, to help anticipate more accurately future societal needs.

Americans rely on weather forecasts and warnings that save lives and protect property. Technologies transitioned from NOAA research labs and programs into weather forecast offices across the Nation are the backbone of today's weather services. Though our weather forecasting capabilities have improved dramatically over the past two decades, the public expects even more accurate forecasts and earlier warnings. As part of the proposed 10-year Hurricane Forecast Improvement Project (HFIP), NOAA researchers will apply expert science to support better predictions of hurricane intensity. Over the next few years, the NEXRAD Doppler radar system will upgrade to a dual-polarized radar system to detect different types of precipitation better.

Recognizing that air safety relies on accurate and timely weather predictions, NOAA is engaged in developing a single national NextGen Network Enabled Weather system (NNEW) for the Federal Aviation Administration (FAA). NNEW will be a conduit to tens of thousands of weather observations and forecasts updated in real-time explicitly for the FAA to reduce delays and accidents in commercial aviation.

Drought and flooding likely will intensify as a result of global warming. This impacts our ability to produce food and manage water resources. The NOAA-led National Integrated Drought Information System (NIDIS), a collaboration between numerous Federal agencies and state governments, promises to provide vital information for community planners and decision makers.

Marine life, from microscopic life forms at the bottom of the food web to larger species such as coral, shellfish, and commercial fisheries, will be affected by "ocean acidification." Commercial fisheries may suffer further economic loss. NOAA researchers are at the forefront of studying and monitoring this marker of climate change. Currently, a lone buoy equipped with sensors measures the extent of acidification in the Gulf of Alaska. NOAA is working to provide more and better sensors, technologies for studying impacts on physiology and ecosystems, and improving ecological models, predictions, and forecasts.

All NOAA research is grounded in observation data. Unmanned Aircraft Systems (UAS) will revolutionize NOAA's ability to monitor the global environment, improve predictive services, and enhance homeland security. UAS will fill critical observation gaps and

benefit climate change research, weather and water resources forecasting, ecosystem monitoring and management, and coastal mapping.

The preeminent contributions of NOAA scientists and our partners have built the knowledge base, tools, products, and services through which we better understand and address the dynamics of our changing planet. NOAA will remain a world leader in understanding our oceans, atmosphere, and climate – and how they impact our health, our economy, and our future.

QUESTION: However, research makes up just 14% of NOAA's budget, versus approximately 20% for satellites in the FY 2009 budget. Do you agree that the research budget for NOAA should be doubled, similar to the administration's intent for NIST?

ANSWER: NOAA has a diverse mission ranging from managing fisheries to predicting severe weather. Research is a key underpinning of all of NOAA's products and services, and NOAA will continue to work within the Administration and with Congress to ensure that vital research and observational needs are addressed and funded at levels adequate to achieving NOAA's diverse mission. NOAA's research and observational components are both critical to NOAA's success.

For an applied research agency such as NOAA, the requisite funding levels for research are more a function of determining what is needed in order to accomplish the mission than establishing an arbitrary percentage target (e.g., doubling the research budget).

QUESTION: Currently, satellite funding is approximately 20% of the FY 2009 budget. This is projected to rise to as much as 30% of NOAA's budget as early as 2011. Should research funding increase accordingly?

ANSWER: Again, the appropriate level of the research budget in NOAA needs to be determined on the basis of a balanced approach to agency mission requirements and not an arbitrary percentage.

QUESTION: If research increases accordingly, will NOAA's overall budget increase significantly to accommodate both satellites and research, or will other mission areas be forced to suffer?

ANSWER: Although NOAA must compare and prioritize its funding requests for its wide diversity of critical mission requirements, NOAA is committed to ensuring a sufficient investment necessary to successfully carry out each of the missions with which it has been entrusted.

QUESTION: Currently, NOAA is on a 70/30 balance between in-house and external research. Dr. Cicerone testified that some internal NOAA labs are "amazing." Dr. Susan Avery testified that the goal has been 50/50 over many administrations, and that a balanced mix of internal and external labs provides

unique complimentary characteristics. What is the goal for the balance of internal versus external research for this administration?

ANSWER: NOAA values the importance of its external partners in the conduct of its research. Extramural research partners complement NOAA's intramural research by providing expanded scientific, economic, and technical expertise and sources of new knowledge and technologies. NOAA's research partners help NOAA maintain its international leadership in environmental research. Research partners include academic institutions, other Federal agencies, the private sector, non-profit organizations, state, local, and tribal governments, and the international community.

The 70/30 intramural/extramural split referenced above is the average split recorded for all of NOAA each year in its R&D reports to the National Science Foundation and to the Office of Management and Budget. NOAA has committed itself to maintaining the 50/50 intramural/extramural split in its total budget increase each year. This is because a significant part of OAR's budget goes toward outreach activities and R&D equipment requirements, neither of which is counted in the NOAA R&D reported totals. The work to achieve these two R&D-related purposes is conducted largely through grant awards to our external partners.

About half of its total reported R&D each year is for operationally related research conducted directly within NOAA's operational components. Because of its more immediate connection to internal mission services, most of this R&D tends to be conducted on an intramural basis. The other half of NOAA's R&D is conducted within NOAA's research component, the Office of Oceanic & Atmospheric Research (OAR), also known as "NOAA Research." OAR-conducted R&D tends to be longer term, more fundamental, and more focused on future, next-generation NOAA services as opposed to fine-tuning NOAA's current services.

QUESTION: Dr. Avery testified that maintaining the current level of research funding puts at risk the research and supporting observations, as well as innovation and creativity. Will we see an increase for research in the 2010 budget?

ANSWER: There are increases for research in NOAA's FY 2010 budget request. The FY 2010 President's budget requests a balanced set of research priorities for research and supporting observations, consistent with the priorities and mission of the agency. The Nation and world need an effective global-observing and data-management system to support science-based modeling that leads to a better understanding of global Earth systems and regional ecosystems. NOAA operates a broad array of observing systems at scales ranging from local to global and is active in contributing to the Global Earth Observing System of Systems (GEOSS) through its contributions to the U.S. Integrated Earth Observation System. NOAA observing systems collect data on over 500 different types of environmental variables, many of which are directly relevant to research into environmental systems processes. These observing systems include satellites in polar and geostationary orbits; moored and drifting buoys; globally distributed atmospheric observatories; ground-based radars and weather stations; and observations and surveys

from ships, submersibles, and aircraft. NOAA approved an integrated observing systems and data management target architecture in 2006 to ensure information from these myriad systems are combined effectively to support the needs of both the research community and decision makers.

QUESTION: Will it be dedicated for internal labs or will there be increased funding for external research as well?

ANSWER: Although NOAA likely will continue to fund more of its short-term, operationally focused research in-house, the Agency is committed to continue its current split of funding for longer-term, more future-focused research on approximately a 50/50 intramural/extramural basis.

Ocean Research

QUESTION: The Omnibus Public Lands Management Act became Public Law 111-11 on March 30, 2009. The Public Lands Act authorized a number of existing and new NOAA programs, including an Integrated Ocean Observing Program Office, a coastal observing network, and an ocean acidification program. These include elements of interdisciplinary research, long-term monitoring, identification and development of adaptation strategies and techniques, educational and national public outreach activities, coordination with regional programs and international ocean science bodies, and competitive, merit based grants for critical research projects.

The Nation needs these programs – and more importantly, the programs need to be robust and well managed. This Committee heard testimony recently that the atmosphere has reached 385 parts per million (ppm) CO2 and are headed to 450 ppm. The oceans are a carbon sink and are increasing in acidity as a result. Many, if not most of the organisms we depend on in the marine and coastal waters have not evolved to deal with these conditions. More coral reefs will be dissolving, rather than evolving, by 2050. Even survivors will have reduced resources and thus will be more susceptible to predation.

Currently, the US investment in ocean research is low and spread out.

Given that life in the ocean will shift and affect those species we depend on by wreaking negative effects on fisheries, shoreline protection, and biodiversity, not to mention the devastation to coral reefs, is NOAA committed to full funding, working closely with both NASA, NSF and other agencies, and expanding the ocean research programs recently authorized?

ANSWER: The Omnibus Public Lands Act (PL 111-11) includes authorizing legislation for activities and programs to be implemented by NOAA:

- Integrated Coastal and Ocean Observation Systems Act of 2009
- Ocean and Coastal Mapping and Integration Act of 2009

- Coastal and Estuarine Land Conservation Program Act
- Federal Ocean Acidification Research And Monitoring Act of 2009
- Ocean Exploration and the NOAA Undersea Research Program Act of 2009

The legislation addresses critical needs of the nation, and NOAA is taking steps to begin implementing each of the relevant sections. In addition, the FY 2010 President's Request includes funding to address some activities authorized in Public Law 111-11.

NOAA continues to request funds for the Integrated Ocean Observing System including $21.1M for national and regional activities in the FY 2010 President's Request. The Request also includes $5.5M to address ocean acidification, and $27.8M for ocean exploration and undersea research. In addition, the Request includes $15M for the Coastal and Estuarine Land Conservation Program (CELCP).

NOAA will continue to work with our partners, including NASA and NSF to implement these important programs.

QUESTION: Was the ocean community well served by the decadal survey?

ANSWER: The ocean community was not a primary focus of the National Research Council (NRC) Decadal Survey. In the Decadal Survey the NRC was focused more on technology development and process-oriented studies, and less on the systematic observations that must be collected by a series of similar satellites over the decades-long time scales required to address oceanic variability. The NRC report also spread the issues pertaining to oceans across its seven thematic panels (climate, weather, hazards, water, etc) and did not address them as an integral whole. NOAA is sympathetic to the views stated in a community letter to the Decadal Survey co-chairs signed by 753 scientists, *...satellite missions to acquire essential ocean observations have not to date been adequately addressed by the thematic panels;* at best, this statement was only partially addressed.

QUESTION: The FY 2009 omnibus directed NOAA to clarify funding for external research. What steps is NOAA taking to follow that direction?

ANSWER: The FY 2009 Omnibus Appropriation included direction that the competitive research funding for the National Centers for Coastal Ocean Science (NCCOS) should be used for externally-based research. NOAA is following this direction and has defined "external" for NCCOS Competitive Research activities as follows:
1. An "externally based research" project is a project that involves a Principal Investigator from a non-federal entity (i.e., state, tribal, or local scientist, academic, non-governmental organization scientist, or private sector scientist), and none of the project's funds are used to finance Federal labor and benefits costs. All new projects awarded in FY 2009 will follow this definition.
2. All multi-year projects initiated in prior fiscal years and continuing into FY 2009, including those with non external recipients, may continue to be supported.

Pacific Coast Salmon Recovery Fund

QUESTION: Secretary Locke, as the former Governor of Washington, you are likely very familiar with the Pacific Coast Salmon Recovery Fund (PCSRF). In fact, the State of Washington receives approximately 17% of all federal funds for this program. What is your experience of the program?

ANSWER: In my time as Governor of Washington, the PCSRF was an important component of the State's efforts to recover Endangered Species Act-listed salmon as well as improving habitats for those salmon species that are not ESA listed but still important for Tribal treaty rights.

QUESTION: Is it necessary?

ANSWER: The Pacific Coastal Salmon Recovery Fund (PCSRF) was established in FY 2000 to protect, restore, and conserve Pacific Salmon and steelhead populations and their habits. This goal remains valid today and in keeping with the Administration's commitment to protecting America's natural resources, the 2010 budget includes $50.0M for the PCSRF.

QUESTION: What do the funds accomplish?

ANSWER: A large share of PCSRF funds is focused on habitat improvements – a key factor limiting the recovery of salmon along the West Coast. Since the inception of the program in 2000, the program has protected, created or restored over 650,000 acres of habitat, and has removed blockages to restore access to over 4,200 miles of streams. Planning, research, monitoring, and education also account for significant shares.

QUESTION: Are we seeing improvement relative to the extraordinary amount of funds spent?

ANSWER: Yes, the overall status of ESA-listed salmon in the Northwest has improved since they were listed, with 13 of the 28 listed species at stable or increasing levels. We have been able to restore salmon to streams where they have not occurred for several years. While we are seeing improvements, continued pressure on salmon habitat pressure exists. It will take continued focus on habitat improvements to reach full recovery.

QUESTION: How is progress measured?

ANSWER: Progress is measured by a series of short, mid, and long term performance measures. NOAA worked with its State and Tribal partners in 2003 to develop a detailed performance measurement system for the program. Examples of the performance measures include miles of instream habitat treated, acres of wetland habitat created, number of stream barriers removed, miles of stream monitored, and estuarine acres acquired and/or protected.

QUESTION: Habitat restoration in the freshwater stage cannot make up for ocean acidification and other marine challenges facing salmon. Wouldn't some of these grant funds be better applied to ocean acidification and other research?

ANSWER: The impacts of climate change and ocean acidification in the marine environment are critical challenges, and the Budget includes new funding to study these issues, including $5.5 million specifically for ocean acidification research. However, habitat restoration grants are a critical way to restore the ecosystem resiliency in the freshwater environment which will allow the species to better adjust to changing ocean conditions over the short and long term.

QUESTION: Have the funds of the PCSRF been allocated to focus on endangered and threatened salmon species, thus achieving the goals of the program?

ANSWER: The goals of the program have historically included both ESA-listed and non-ESA-listed salmon. In some of the early years, in particular, funds were used for activities that this Administration would view as inappropriate, such as marketing support. However, since 2007 NOAA has worked to increase the program's focus on using the funds for ESA-listed species. While the PCSRF is achieving improvements, a considerable amount of additional work is required to fully recover Pacific Salmon. Within NOAA, the FY 2010 President's Budget request includes $158.6 M for Pacific salmon research, recovery and management. This includes $50.0M for the PCSRF, as well as funds to support hatchery activities under the Mitchell Act and funds to implement U.S. commitments in the Pacific salmon Treaty. In addition, the Administration's request includes $11.0M for a competitive species recovery grants program for which recovery projects addressing ESA-listed salmon species would be eligible. Salmon species account for approximately half of all endangered species under NOAA's jurisdiction.

QUESTION: Is fixing every culvert the best use of federal funding? Once recovery plans have been created shouldn't individual communities and their States take more responsibility for funding of the more localized benefits?

ANSWER: Restoration of fish passage is one of the least expensive and most direct ways we can improve habitat for Pacific Salmon. These fish blockages occur on Federal, Tribal, State, and private lands. Pacific salmon are a resource of National significance and their recovery will require the work of all parties in the Region, including the Federal government. Through PCSRF, NOAA requires a 33% match for State participants. However, the participating states have often exceeded this requirement. Through the life of the program the states have provided $410M in direct match to the program, well in excess of 60%.

QUESTION: Why aren't Pacific Salmon under the new catch share program? How are rights for harvest determined?

ANSWER: The harvest regime for salmon is a complex mixture involving the federal government, up to five states, over two dozen tribes, and two countries. All of these management entities work under a legal framework of federal, state, and tribal laws and regulations, including, at the federal level, the Magnuson-Stevens Act, the Endangered Species Act, the Marine Mammal Protection Act, the Pacific Salmon Treaty, and various Treaties with the tribes. Every year, based on the best available scientific information on the status of west coast salmon stocks, the federal government, the states, and the tribes determine the allocation of stocks among fishermen, both commercial and recreational, from the states and the tribes.

As the nation's primary steward of marine resources, NOAA has been a strong proponent of catch shares because of their demonstrated ability to provide for improved conservation of fish stocks. There are some aspects to salmon biology that make implementing catch shares more challenging than for other fisheries. For example, healthy salmon stocks often mix offshore with stocks that are listed under the Endangered Species Act and/or subject to tribal treaties. Nevertheless, as a fishery management strategy, catch shares could be beneficial and warrant continued exploration.

QUESTION: Last year, this committee heard testimony that there was $120 million for research and management activities for salmon in the budget, in addition to the PCSRF. In April 2008, the previous NOAA Administrator, Retired Vice Admiral Conrad Lautenbacher, Jr., testified that the PCSRF had been funded to the tune of "many hundreds of millions of dollars" over the previous six or seven years, and in his opinion, "it is time to start weaning the States off of some of these grants and allow them to work these habitat projects. They have had time to adjust to them and the time to build recovery plans." Do you agree with the former Administrator?

ANSWER: The FY 2010 President's Budget request includes $158.6M for Pacific salmon research, recovery and management. This includes $50.0M for PCSRF, as well as funds to support hatchery activities under the Mitchell Act and funds to implement U.S. commitments in the Pacific salmon Treaty.

QUESTION: If not, why not?

ANSWER: We recognize that the conservation and recovery of Pacific salmon and other listed species will take considerable effort, and given these challenging economic times, it is unrealistic to expect that state and local efforts can be maintained without significant Federal investment.

Grants to States and Tribes to recover threatened and endangered species are stimulative in nature and help maintain jobs in rural, coastal and tribal communities, some of the areas with the highest unemployment in the country. Reductions in grants to fund these important actions would be counterproductive to recovery and would also reduce jobs in these communities. In addition, these funds are used to conduct consultations with other federal agencies under the Endangered Species Act.

QUESTION: Retired Vice Admiral Lautenbacher explained that the funds are spent to improve wetlands, improve water quality issues including the creation of buffer zones, some dam removal, and to assist Indian tribes with their responsibilities. "It gets wide distribution to all the people who need to worry about basically habitat improvement and protection for Salmon from California to Alaska and Idaho."

Quite frankly, these purposes sound identical to those of Endangered Species Act (ESA) section 6 grants; and habitat restoration, including the Community based restoration program and Open Rivers. In fact, according to the Retired Vice Admiral, the goal of the Open Rivers program is to improve habitat for anadromous fish from Maine around to Alaska.

Why shouldn't all salmon projects compete in the same pools of funding, along with other threatened and endangered species?

ANSWER: With some of the points you make in mind, the FY 2010 President's Budget proposes a $10.0M increase to a nationwide species recovery grant program. This initial investment funds the program at $11.0M. States and Tribes with ESA listed salmon and steelhead populations may apply for these funds for salmon recovery projects similar to those funded through the PCSRF. Note that Section 6 of the ESA does not give NOAA authority to grant funds to Tribes. However, Tribes would be eligible for funds from the Species Recovery Grants program under current authorities such as the Fish and Wildlife Coordination Act.

QUESTION: What legislative restrictions, if any, make this difficult?

ANSWER: There are currently no legislative restrictions that hinder NOAA from managing grants for endangered species recovery, or habitat as one grant program.

QUESTION: Provide a brief history of the Salmon Treaty with Canada and explain what funds are needed and where in the budget they are located.

ANSWER: Adult salmon returning to Washington migrate through both U.S. and Canadian waters and are harvested by fishermen from both countries. The 1985 Pacific Salmon Treaty, developed through cooperation by the U.S. and Canadian federal governments, tribes, state governments, and sport and commercial fishing groups, helps fulfill conservation goals and the right of each country to reap the benefits of its own fisheries enhancement efforts. The treaty is implemented by the eight-member bilateral Pacific Salmon Commission (PSC), which includes representatives of federal, state and tribal governments. The PSC does not regulate salmon fisheries, but provides regulatory advice and recommendations, and a forum for the two countries to reach agreement on mutual fisheries issues.

The Pacific Salmon Treaty budget within NOAA can be broken into three main components: Base activities to manage the Treaty, funds for implementation of the Chinook agreement, and funds to Alaska to compensate for lost fishing revenues as a result of the recent 2008 agreement. These funds are located within the Fisheries Research and Management – Pacific Salmon Management line item. NOAA is requesting a $16.5M increase for the Pacific Salmon Treaty over the FY 2009 omnibus level to help pay for the recently completed agreements. Another $15 million is provided in the Department of State budget for payments to Canada.

QUESTION: The Committee is aware of the historical and cultural significance of Pacific Salmon, but it is also an industry that is subsidized heavily by the federal government.

Are we handling the salmon problem correctly – should we continue with the current program - or should we redesign the structure to provide a more equitable balance and a more pragmatic approach?

ANSWER: The Administration is currently reviewing its approach to conservation and recovery of salmon up and down the West coast. We have invested a considerable amount of effort in these species since they were ESA listed and it is time to evaluate our efforts and readjust as necessary. The decline of salmon populations took decades and was due to a myriad of factors. Recovery will be a challenge given the potential for increased development, population growth, pressures on water use, and the impacts of climate change. Recovery will require States to conserve existing high-quality habitat, improve degraded habitat and the viability of the stocks, and manage harvest and hatcheries to ensure they are in line with recovery objectives. Recovery will take a strong effort and sacrifice by many, but is also achievable in many areas. I encourage Congress to work with us to make recovery a reality.

Wild Atlantic Salmon

QUESTION: European and North American populations of Atlantic salmon intermix during their at-sea stage, where they share similar summer feeding grounds off Greenland. Are U.S. fisherman allowed to catch wild Atlantic salmon?

ANSWER: No, fishing for Atlantic salmon in U.S. waters is prohibited under the Atlantic Salmon Fishery Management Plan.

QUESTION: Are Europeans?

ANSWER: There is an internal use only fishery for Atlantic salmon off Greenland. This fishery operates on the mixed stock composed of stocks from U.S., Canada, and Europe. U.S. salmon are part of this mixed stock and therefore are captured in this fishery, although they make up a very small portion of the mixed stock. In addition, there is a small fishery off the coast of St. Pierre and Miquelon, French islands near Newfoundland.

Limited genetic results indicate that that the vast majority of fish captured by this fishery are of Canadian origin.

QUESTION: Does NOAA have a working relationship with the Europeans with respect to wild salmon?

ANSWER: Yes. The U.S. is a signatory to the Convention for the Conservation of Salmon in the North Atlantic Ocean. The purpose of this Convention is to promote the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic Ocean through international cooperation. It created the North Atlantic Salmon Conservation Organization (NASCO). Members of NASCO include: Canada, Denmark (in respect of the Faroe Islands and Greenland), European Union, Iceland, Norway, Russian Federation and the United States. NASCO meets annually to foster coordination on Atlantic salmon management and to set regulatory measures for the fisheries in Greenland and the Faroe Islands.

QUESTION: Is a treaty, similar to that the US has with Canada, contemplated or already in existence?

ANSWER: As noted above, there already is an international Convention for Atlantic salmon management.

QUESTION: If not, why not?

ANSWER: As noted above, there already is an international Convention for Atlantic salmon management.

Funding for NOAA's Traditional Missions

QUESTION: From 2004-2008, NOAA's Operations, research and facilities budget has remained essentially flat, at $3.9 billion. Given the breadth of NOAA's responsibilities in these areas and inflation, this is actually a reduction in funding. Even assuming efficiencies were realized, it is clear the Nation has actually seen a reduction in services in NOAA's traditional mission areas. At the same time, satellite funding has steadily increased.

What is NOAA and Department of Commerce leadership doing to ensure that the full scope of NOAA's responsibilities receives appropriate attention and funding?

ANSWER: The NOAA and the Department work closely with the key stakeholders within the Administration such as the Office of Management and Budget, the Office of Science and Technology Policy, the Council on Environmental Policy to ensure that NOAA's missions and responsibilities are fully accounted for in Administration planning and resource decisions. The FY 2010 President's Budget request is $110 million over the amount provided for NOAA in the Omnibus Appropriations Act, 2009. With additional funding provided in the American Recovery and Reinvestment Act of 2009, NOAA will

be able to make major advances in habitat conservation, hydrographic surveying, climate computer modeling, and address significant, long-term infrastructure needs.

QUESTION: How much funding is required in FY 2010 to end overfishing as specified by the Magnuson-Stevens Act?

ANSWER: The President's Budget requests a total of $98.3 million in FY2010 to implement the 2007 amendments to the Magnuson-Stevens Act, an increase of $56.5 million over the FY 2009 omnibus. Within this request, $18.6 million will support the transition of fisheries to catch-share management where a council has determined that a catch-share management scheme is appropriate.

Included in this increase is $12.0 million to implement Annual Catch Limits (ACLs) and Accountability Measures (AMs) established by the Regional Fisheries Management Councils and the Secretary of Commerce to end and prevent overfishing by 2011. These funds will be used by the regions and NMFS' Atlantic Highly Migratory Species Division to establish and monitor ACLs and AMs and analyze data nationwide.

The FY 2010 request also includes an increase of $4.0 million to provide the eight Regional Fishery Management Councils with the additional resources necessary to set, evaluate, and revise annual catch limits (ACLs) and accountability measures (AMs) and to develop amendments to their Fishery Management Plans that implement ACLs and AMs.

Other increases include $4.8 million for recreational and commercial fisheries data collection, $9.9 million to update fish stock assessments to support implementation of ACLs, $3.0 million to implement the international requirements of the Magnuson-Stevens, $1.0 million to support for the Deep Sea Coral Research and Technology Program, $5.0 million to increase observer coverage in fisheries, $7.6 million for enforcement programs, $3.3 million for socioeconomic research, and $6.0 million for cooperative research with fishermen.

National Institute of Standards and Technology Safety and Maintenance

QUESTION: The most significant issue facing NIST is the June 2008 plutonium spill at its Boulder, Colorado laboratory. The spill raised serious concerns about NIST's ability to perform state-of-the-art research with radioactive and other dangerous materials while protecting the safety of workers and the community at large.

Safety must be a clearly delineated function with the organizational structure. Will you commit today, to ensuring that NIST establishes a safety management system or protocols?

ANSWER: Yes. The health and safety of the people who come to work each day at the Department of Commerce is my top priority. Since the plutonium spill last June, I know

that NIST management has been working diligently to systematically strengthen its safety management. NIST has moved to elevate safety within the organization. NIST has made a number of changes including taking steps to ensure that the safety division reports to the director, overhauling safety reporting and training, and is recruiting for a top safety official to manage safety at NIST. I will continue to monitor the safety program at NIST to ensure that it strongly supports the safety of NIST employees.

QUESTION: Would you submit, for the record, the steps that have been taken so far and the outline of any efforts still needed to systematically integrate a management process for analyzing and preparing for risks associated with radioactive materials research, for ensuring personnel are appropriately trained, and for responding to related emergencies?

ANSWER: NIST has taking a number of steps to improve safety, such as:

- Supporting a Department of Energy special review of safety at the NIST Boulder laboratories, resulting in a number of safety improvements including improved inventory and handling procedures for hazardous materials;
- Adopting a consistent approach to identifying and controlling hazards;
- Increasing substantially its funding for safety-related programs, equipment, and facilities projects;
- Clarifying roles and responsibilities for safety at all levels of management;
- Creating a new executive-level position which now directly oversees NIST safety support operations in both Gaithersburg and Boulder;
- Moving a laboratory-director position to Boulder to establish line-management responsibility for the safety of all laboratory activities in Boulder; and
- Conducting comprehensive safety reviews of each NIST laboratory down to the level of individual projects.

Looking forward, NIST is adopting the best practices of national labs with excellent safety records, and plans to benchmark its safety record with these labs as well as with private industry. NIST is also working to make safety a part of the work culture and to communicate about safety issues to internal staff.

QUESTION: Have there been any health problems associated with the spill?

ANSWER: No. To protect the medical privacy of the affected individuals, I can not discuss individual cases, but none of the personnel tested for internal exposure to plutonium as a result of the June 2008 incident is expected to experience any health impacts.

QUESTION: The Recovery Act provided funds for NIST facility maintenance and repair requirements, which should significantly decrease the backlog. It is unclear whether or not the plutonium spill was exacerbated by maintenance issues, but the

Inspector General has reported that many of the items on the repair backlog relate to safety.

Will you commit to ensuring that facility maintenance and repair are consistent features of the budget submissions in light of this incident?

ANSWER: Yes, NIST management has gone back and reviewed budgets based on facility maintenance needs. The FY 2009 spend plan and the FY2010 request both provide strong levels of funding for facility maintenance and repairs sufficient to address the backlog of projects.

Doubling the Budget and Core Competencies

QUESTION: Following the *Rising Above the Gathering Storm* report, there has been a bipartisan effort to double the budgets of NIST, NSF, and DOE Office of Science. The President's budget provides significant increases for NIST in addition to funding provided in the Recovery Act.

What steps can the Department take to ensure that NIST's funding increases and concomitant employment is sustainable over the long term?

ANSWER: The President's FY2010 budget and the America COMPETES Act (PL 110-69) both recognize that NIST is strategically positioned to help the nation improve its innovation performance and respond effectively and efficiently to energy, environmental, and other challenges where scientific discoveries and technological advances can contribute significantly to solutions.

NIST's planning efforts will ensure that it grows in an intelligent and thoughtful way and that new resources build on existing core competencies, initiate focused new efforts, and strengthen key facilities in order to assure that NIST has the flexibility necessary to address critical national priorities now and in well into the future.

QUESTION: How can the Department ensure that NIST's capacity is not exceeded?

ANSWER: The Department reviews the NIST budget annually to ensure that it includes all necessary resources to support NIST's work. In conjunction with that activity, NIST also works annually to produce a three-year programmatic planning document. The document is designed to provide a forward planning path for NIST, identifying programmatic priorities. As a result of the budget formulation and programmatic planning processes, and the complimentary nature of those two exercises, NIST believes itself to be in a strong position to ensure that it has the direction and capacity to meet its scientific and programmatic challenges.

QUESTION: In testimony before the subcommittee, Dr. James Serum described NIST as "an unbelievably conservative organization with the ability to respond quickly." He recommended that funding be prioritized based on core competencies and the significance of the contribution as measured by its effect on national economic competitiveness.

What will you do to ensure that NIST has core competencies in the climate change arena?

ANSWER: NIST is actively engaged in many of the strategic working groups, committees and workshops taking place in the climate change research community. NIST's role is to support other Federal agencies, the academic research community and industry by providing the measurement science, national and international traceability, data, and standards for climate change. The requirements for such measurements are defined through our collaborations with Federal agencies and other climate change research programs. NIST intends to continue to fulfill its role to support the Federal agencies and industries engaged in climate change monitoring and verification to address the demand for increased data accuracy.

QUESTION: Other areas that Dr. Serum felt were critical include the energy grid and technologies, as well as quantum physics. Does the 2010 budget include funding for these areas and what is the administration doing to ensure these areas become core competencies for NIST?

ANSWER: NIST's FY 2010 budget request is designed to boost the nation's innovation capacity and long-term economic performance. The request includes 11 initiatives that will expand ongoing work and start new projects in NIST laboratories targeting critical national priorities in the area of energy, environment, healthcare, physical infrastructure, and information technology/cybersecurity. These funds will support work on a number of energy-related issues including: Smart Grid; measurements to support advanced solar energy and storage devices; and measurements to support the development of net-zero energy and high performance green buildings. The FY 2010 budget will also expand NIST's ongoing programs in the area of quantum science.

QUESTION: This Committee also heard testimony that in order for the internet to be a reliable source for the distribution of educational materials, the internet needs to be secured.

What core competencies does NIST have in this area?

ANSWER: NIST has authorities under the Federal Information Security Management Act of 2002 (FISMA) (PL 107-347), the Cyber Security Research and Development Act of 2002 (PL 107-305) and the Computer Security Act of 1987 (PL 100-235) that authorize our research. NIST has expertise and organic capabilities in the following aspects of internet security:

- Internet Protocols
- Internet Management
- Internet Security Protocols (IETF Security Co-chair)
- Cryptographic Confidentiality and Integrity Technologies (Algorithms, Applications, Key Management, Cryptanalysis)
- Quantum Systems Security Issues and Mechanisms
- Internet Security Standards and Guidelines (Federal, National Consensus, and International Consensus)
- Security Standards Conformance Testing and Validation
- End User and Network Identification, Authentication, and Access Control Technologies
- Security Attributes of Virtual Machines
- Trustworthy Software
- Identity Management
- Security Metrics for Networked Systems
- Network and End User Product Assurance
- Usability and Reliability of Security Mechanisms
- Information Security Education and Training

QUESTION: What projects is NIST working on?

ANSWER: NIST is currently working on the following projects that foster internet security:

- System- and Network-level Risk Management Standards, Measurement, and Processes
- Sector-specific Cyber Risk Mitigation Technologies (e.g., Health IT, Smart Grid, Voting)
- Cyber Product Security Assurance Standards, Measurement, and Processes
- Identification, Authentication, and Authorization Technologies
- Cryptographic Modernization

Competitive Programs in the FY 2010 Budget

QUESTION: In FY 2008, this Committee directed the creation of a new competitive construction grant program for research science buildings. I understand that the TIP program employees took this project on with the assistance of NIST's internal construction employees and have done a wonderful job. The program received 93 applications in its first call for proposals. These awards create construction jobs and then improve science research, likely providing for additional permanent high paying positions. The Recovery Act added significant funds for the FY 2009 competition, as well as allowing NIST to fund additional meritorious proposals from the FY 2008 competition.

What do you think of the program, Secretary Locke?

ANSWER: As evidenced by the number of applications received in the first solicitation the program has been well received by the university community. The additional funding provided by the FY 2009 appropriation and the Recovery Act will challenge NIST's ability to administer the program. Because of the challenges associated with this program, NIST has established a plan to dedicate staff for the administration of the program in order to provide the requisite management of the proposal review and selection process as well as post-award project management. I am confident NIST will meet these challenges.

QUESTION: Will this Administration support it within future budgets?

ANSWER: For FY 2010, the Administration did not request additional funding. The FY 2009 and Recovery Act appropriations will provide sufficient funding levels to hold new competitions for projects during FY 2009 and FY 2010.

QUESTION: The President's budget includes the authorized level of $125 million for the Manufacturing Extension Partnership (MEP). But there are many groups that are requesting that Congress significantly increase this program above the President's request level. Dr. Serum was complimentary about the MEP but said he did not recommend additional funding.

Do you agree with his assessment?

ANSWER: The President's budget recommends $125M for MEP, an increase of $15M over the FY 2009 enacted level, as part of the President's plan to double MEP funding between 2008 and 2015. MEP has helped create and protect over 50,000 jobs by improving efficiency, implementing new technologies and strengthening growth in U.S.-based manufacturers. With the FY 2010 budget request, MEP will focus on (1) increasing manufacturers' adoption and application of renewable energy technologies and the development of new products, and (2) supporting energy efficient production and reducing manufacturers' environmental impact and related costs by promoting the development of new, environmentally-focused materials, products and processes to gain entry into new markets.

QUESTION: Will you commit to discussing this issue in depth with Dr. Serum and the rest of the NIST Advisory Board to ensure that the MEP program is not expanded beyond its abilities to utilize the funds in an appropriate manner?

ANSWER: It is my understanding that the NIST Advisory Board (the Visiting Committee on Advanced Technology – VCAT) meets with the Secretary of Commerce to discuss their annual findings and I intend to continue that tradition. It is also my understanding that, under the COMPETES Act (PL 110-69), the MEP program formally established an external advisory board that makes recommendations to ensure that the program utilizes federal funds in an appropriate manner.

The most recent MEP Advisory Board annual report is available at: http://www.mep.nist.gov/documents. This report identifies actions the program can undertake to enable small manufacturers to successfully address and implement changes in technology and the business environment in the future.

QUESTION: By contrast, Dr. Serum recommended additional funding for the Technology Innovation Program (TIP) as it advances high risk technologies and innovation. The President's budget maintains the current funding level of $70 million.

Does this Administration intend to increase the funding for TIP over time?

ANSWER: Yes. The FY 2010 President's Budget provides $70 million to TIP (an increase of $5 million over the FY 2009 enacted level) as part of the President's plan to increase funding for TIP to $100 million by 2015.

NIST Education

QUESTION: This subcommittee heard testimony from Dr. Bill Nye, the Science Guy, that people develop their passions before the age of 10, generally. But he said that elementary science education is lacking and that teachers are ill prepared to teach the topic and lack enthusiasm for it. What is NIST doing to inspire kids by the age of 10?

ANSWER: NIST sponsors several activities that involve younger children, including volunteer programs at local elementary schools, special Saturday morning science classes (Adventures in Science), special NIST tours, and presentations in schools by NIST staff. Special one-day events, such as Take Our Daughters and Sons to Work Day and "Science: Get Psyched!" provide kids with opportunities to interact with NIST scientists both in large group presentations, and also in smaller more hands-on modules. NIST also provides educational materials for kids on standards and measurements.

QUESTION: What is NIST doing to inspire their teachers?

ANSWER: The specific activity that NIST offers is the NIST Summer Institute for Middle School Science Teachers, an annual hands-on two-week workshop held at NIST. Participants are provided with resources and instructional tools for teaching science, with an emphasis on the measurement science used at NIST, and there are opportunities for networking between NIST scientists and teachers to provide long-term resources for teachers and their students. Teachers are also included in the NIST tours that are offered for the K-12 students, and the NIST chapter of Sigma Xi sponsors a Yearly Teacher Award for an outstanding teacher in science.

QUESTION: What is NIST doing to influence local school districts with regard to education?

ANSWER: NIST has a mentoring program (Adopt-A-School) with local schools, and also works with local school districts to provide information about NIST's research through tours and classroom presentations. NIST and Montgomery County Public Schools (MCPS) signed a memorandum of understanding in 2007 aimed at enhancing pre-college STEM education via collaborative programs. The end goal of such programs is to assist graduates of MCPS schools to have the necessary science, technology, engineering and mathematics (STEM) skills to successfully compete in a global economy. The NIST Summer Institute for Middle School Science Teachers also contributes ideas and hands-on activities that the science teachers bring back to their classrooms to add to their curriculum, and the pilot Summer Institute program came out of the MOU with MCPS, which is now being expanded to other school districts.

QUESTION: Does NIST provide employees with the opportunity to contribute during work hours?

ANSWER: Yes, through the mentoring program with local schools, and also by providing tours and giving classroom presentations.

QUESTION: What kind of educational programs does NIST provide for kids K-12?

ANSWER: NIST has several educational programs that address kids K-12. Ongoing programs include the Adventures in Science program that runs from October to April on Saturdays, and Adopt-A-School, where NIST staff can volunteer to local school districts in several capacities, including tutoring, presentations, and mentoring. There are also several large one-day events that take place at NIST, such as Take Our Daughters and Sons to Work Day (both campuses) and the "Science: Get Psyched!" at the Gaithersburg campus. Individually, NIST staff often act as mentors for high school interns and also for individual science projects varying from those for local science fairs to those submitted for the nationwide Intel Science Talent Search. The NIST Chapter of the Sigma Xi also sponsors a Measurement Science Award for High School Students' Science Fair Projects.

QUESTION: One test is worth 1000 expert opinions. Do NIST's educational programs allow kids to get hands on?

ANSWER: Yes, the Adventures in Science program promotes science learning with hands-on activities. In addition, over 200 kids come each year to visit the labs during Take Your Daughters and Sons to Work Day, and also for the Girl Scout "Science: Get Psyched!", both of which provide opportunities for hands-on activities.

QUESTION: What kind of opportunities could NIST provide as high school lab experiences?

ANSWER: High school students have the opportunity to apply for internships across the NIST laboratories. They also can receive mentoring for science projects, again ranging from local science fairs to the Intel Science Talent Search.

QUESTION: NIST should be at the forefront of ensuring the next generation of scientists and engineers. What kind of education programs does NIST provide for University students? Graduate students? Post-docs?

ANSWER: NIST provides opportunities for undergraduate students, graduate students and postdoctoral associates to engage in world-class research at NIST's unique research facilities.

Undergraduate Students. The Summer Undergraduate Research Fellowship (SURF) program is a 12-week program where students apply through their universities and if chosen, can participate in research projects from areas across NIST's laboratories in Gaithersburg and Boulder. In addition, NIST participates in the DHS Summer Internship program to promote research areas of interest to DHS.

Graduate and Post Doc Students. NIST partners with different universities and provides facilities and mentors for numerous graduate students and postdocs in both formal and informal collaborations. The formal collaborations include NIST's joint institutes: JILA (with University of Colorado); University of Maryland Biotechnology Institute (with University of Maryland); Hollings Marine Laboratory (with College of Charleston, The Medical University of South Carolina, NOAA and South Carolina Department of Natural Resources); and the Joint Quantum Institute (with University of Maryland). There is also a University of Maryland Chemical Physics Program, a joint graduate program in the Atomic, Molecular and Optical Sciences, and the NIST-University of Maryland Dolphous E. Milligan Graduate Student Fellowship Award in chemistry. There are also additional strong collaborations with several universities (*e.g.*, University of Albany's College for Nanoscale Science and Engineering, University of Maryland, Baltimore Campus, and several collaborations outside the Joint Institutes with University of Maryland, College Park and University of Colorado).

Post Docs. The largest NIST postdoctoral program is the NIST NRC Postdoctoral Research Associateship Program, which has a 55-year history of excellence in identifying and recruiting world-class postdoctoral scientists and engineers to work at NIST. An outgrowth of this program is the NIH/NIBIB/NIST NRC Joint Postdoctoral Research Associateship program, emphasizing interdisciplinary research at the interface of the biological and physical sciences. Outstanding international scientists and engineers have the opportunity to do collaborative graduate and postdoctoral research work at NIST through NIST's Foreign Guest Researcher program.

All Levels. The NIST-Boulder campus offers the Professional Research Experience Program (PREP), which through awards to their institutions provides fellowships to qualified applicants and provides valuable laboratory experience to undergraduate students, graduate students, and postdocs.

QUESTION: Teachers?

ANSWER: For middle school science teachers, NIST provides the Summer Institute, as previously described. For teachers in general, including university professors, there are possibilities for collaborations with specific NIST researchers, depending on available resources. In addition, more formally, appointments are possible through various funding sources using the Intergovernmental Personnel Act (IPA), again dependent on available resources.

QUESTION: How much funding was dedicated to these programs in FY 2008 and 2009; how much is planned for FY 2010?

ANSWER:

FY 2008: $11.09M
FY 2009: $11.20M
FY 2010: $11.21M

Note: Many of the educational programs are supported by individual NIST staff members contributing their time, either during work hours (with supervisor approval) and/or after-hours to organize or participate in these events.

QUESTION: Do NIST's educational programs leverage personnel and information across all NIST core competencies and research labs?

ANSWER: Yes, for example, the SURF program, PREP, and the NIST NRC postdoctoral programs all leverage resources in the NIST operating units.

QUESTION: Is NIST involved in STEM education programs?

ANSWER: Yes, NIST is involved in science, technology, engineering and mathematics (STEM) education programs. These programs include - SURF, the NIST-NRC postdoctoral programs, and the Summer Institute for Middle School Science Teachers.

QUESTION: If not, should it be?

ANSWER: N/A

QUESTION: If so, how much funding was dedicated to such programs in FY 2008 and 2009; how much is planned for FY 2010?

ANSWER:

FY 2008: $11.09M
FY 2009: $11.20M
FY 2010: $11.21M

This funding is the same as above because NIST considers all of its educational programs as part of one STEM program.

Economic Development Administration FY 2010 President's Budget

QUESTION: The President's budget provides funding for the EDA at current levels. However, the budget proposes to set aside nearly half of the funding for two new types of programs.

First, the creation of regional innovation clusters with the goal of boosting job creation and economic growth; and second, the public-private business incubators intended to encourage entrepreneurial activity in economically distressed areas. Both of these programs would receive $50 million annually under the proposed budget.

Describe the concepts in detail.

ANSWER:

Regional Innovation Clusters
In FY 2010, EDA will boost the nation's competitiveness by catalyzing increased Regional Innovation Cluster activity in U.S. regions through a two-part approach. EDA will create a research and information center to begin mapping the geography of clusters, initiate a registry of cluster initiatives and programs, and conduct research on cluster dynamics, cluster initiative and initiative program impacts, and best practices. EDA will also provide grants to support cluster initiative programs and activities nationwide.

Through its Economic Development Assistance Programs, EDA will provide grants to support cluster initiative programs and activities that will:

- Promote early-stage cluster initiative activities to begin cluster initiative planning, asset mapping, feasibility and implementation studies.
- Fund the activities of specific regional cluster initiatives including, but not limited to, cluster-focused activities to support worker training and skill development, research and development, technology adoption, commercialization, marketing and business growth.

Public-Private Business Incubators
Research has shown that business incubators promote regional development and accelerate the successful development of entrepreneurial companies by providing an array of business support resources and services. Building on this empirical evidence, EDA will expand on its existing efforts to fund business incubators and provide increased

technical assistance to create of a nationwide network of incubators that can facilitate the sharing of best practices and assist entrepreneurs to commercialize their ideas.

QUESTION: Since EDA's goals already include job creation and economic growth in economically distressed areas, how are regional innovation clusters and business incubators different from the current EDA programs?

ANSWER: EDA's Regional Innovation Cluster and business incubator initiatives will build upon the bureau's demonstrated record of success in implementing cluster-based economic development, as well as promoting innovation and entrepreneurship. EDA anticipates that the funding proposed in the President's FY 2010 budget will help the bureau expand its ongoing efforts to invest in areas that have the potential to create higher wage, higher skill jobs in distressed communities and to achieve greater leverage from those existing programs.

EDA's research and experience indicate that the regional cluster orientation produces more diverse, stable, and resilient economic outcomes. Our research also suggests that incubators can be the most effective and efficient investments EDA makes, producing jobs that leverage regional competitive advantages and transforming innovations into value added goods and services.

QUESTION: How will this the affect the process and the types of grants awarded?

ANSWER: The process and types of grants awarded to support regional clusters and business incubators will be very similar to EDA's existing methodology. For Regional Innovation Clusters, EDA will fund research to map and track cluster dynamics across the country. EDA will also award grants to implement cluster development. Business incubator grants will be awarded by the same criteria as in years past; however, additional funding will be available for technical assistance to create incubator networks to share best practices and facilitate collaborative interactions among complementary incubators and client firms.

QUESTION: Will funding still be distributed to the regions on a formula basis and allow for competitive grants on the regional level?

ANSWER: EDA will award funds as competitive grants through its six regional offices. Headquarters will be responsible for developing the contours of the program by drafting the announcement of federal funding opportunity. Headquarters will also coordinate and oversee the process.

QUESTION: Would the regional innovation or business incubator funding be provided as block grants?

ANSWER: No.

QUESTION: How will these new programs result affect the Public Works funding or other types of specified funding, such as planning or technical assistance grants?

ANSWER: In EDA's FY 2010 budget proposal, the majority of the bureau's funding will shift to its Economic Adjustment Assistance (EA) program. The EA program provides a flexible portfolio of investment assistance to communities facing the most severe of economic crises, namely a major change in the area's structural economic base. Through this program, EDA can fund traditional "brick and mortar" infrastructure improvements, as well as a broad array of technical assistance. The mix of infrastructure and technical assistance available through the EA program allows EDA to be more responsive to contemporary economic conditions and the unique situations of individual communities. Additionally, EDA anticipates an increase in its technical assistance grants as the bureau begins implementing the regional cluster and business incubator network initiatives.

A core amount of funding will be reserved for EDA's Public Works program which is strictly used for physical infrastructure improvements. EDA also expects funding for its planning program to stay at the same level as in previous years.

FY 2009 Disaster Funding

QUESTION: The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 directed $400 million in funds to EDA. The previous administration seemed determined to provide sizeable block grants to particular states. EDA history has proven that creates more work for EDA, requires duplicative efforts on the part of the State or local government receiving the funds, and encourages the wasteful spending on projects that aren't within EDA guidelines. Congress has made it clear that it expects EDA to distribute these funds using its regular processes.

Provide a status of these funds for the record.

ANSWER: In distributing the $500 million in supplemental disaster appropriations allocated to EDA in 2008, the bureau has employed its traditional competitive grant award process and has not awarded any block grants to states. With this additional funding, EDA has assumed the role of secondary responder and is working closely with disaster-affected communities to help rebuild their economic bases. The supplemental appropriations will be spent on economic adjustment projects in FEMA public assistance designated counties.

EDA's regional offices are currently developing, reviewing, and awarding applications for projects submitted under the two supplemental disaster appropriations. As of May 1, 2009, EDA estimates that $348,695,907 is currently in process. Of this total, projects totaling $32,276,555 have received final approval; projects estimated at $26,400,000 are under final review; projects estimated at $ 96,814,773 are in regional office processing;

projects estimated at $106,320,438 have been invited for further consideration; and, projects estimated at $86,884,141 are in the preliminary review and development stages.

EDA Regional Vacancies

QUESTION: There is another area of concern within EDA to which I would like to draw your attention. There have been reports that EDA headquarters have not been filling vacancies out in the regions, despite full funding of salaries and expenses. Some of these territories are large, the economy is challenging, and as a result the representatives are spread pretty thin.

Will you commit to me today to look into this issue and ensure that EDA regions are appropriately staffed for the workload they are facing?

ANSWER: EDA is anxious to expand capacity throughout the organization, particularly in the regional offices. EDA has been filling all vacancies as quickly as possible and as funding becomes available. EDA will continue to look at the issue and regularly evaluate workloads across the bureau.

QUESTION: Will you commit to ensuring that headquarters has the expertise to understand the issues the regional offices are facing in order to increase application and award processing efficiency?

ANSWER: EDA headquarters staff has been working to build its capacity to provide additional support necessary to increase the support services it provides to the six regional offices, including increasing available legal, IT, accounting, and program support. Headquarters strives to maintain an ongoing dialog and open communication with the regional offices to best support an efficient and effective grant making process.

Nomination Schedule for Assistant Secretary of Commerce for Economic Development

QUESTION: Are you close to making a nomination for Assistant Secretary of Commerce for Economic Development?

ANSWER: The Administration is filling all appointments as expeditiously as possible. Once an Assistant Secretary is nominated, EDA staff will work diligently to ensure the new Assistant Secretary is fully briefed and up to speed quickly.

International Trade Administration

QUESTION: In the Senate Commerce, Justice, Science and Related Agencies Subcommittee hearing last week, you were asked what ITA can do to assist U.S.

barriers. You replied that the Department could break down the silos between Commerce agencies.

Will you explain what that means?

ANSWER: Within Commerce, we have a diverse set of programs and tools for promoting the competitiveness of U.S. industry. For example, International Trade Administration (ITA) programs are focused on global competitiveness, exporting and opening markets; Economic Development Administration programs are focused on domestic economic development; and the National Institute of Standards and Technology focuses on enhancing industry's ability to innovate. We can do a better job of identifying synergies across these programs as a means to build our exporting capacity.

I think we have a great opportunity to integrate exporting better into our entire suite of industry-focused programs to help create a stronger exporting culture in communities that are touched by the Department's programs. In addition, I plan on using the Trade Promotion Coordinating Committee as a vehicle to expand export promotion efforts across the federal government, drawing on the resources of agencies focused on economic development or industrial infrastructure, such as the Departments of Transportation, Energy, and Labor.

These agencies work directly with communities and industry groups and have programs in place that could be utilized to increase national awareness about export opportunities.

QUESTION: Which agencies can assist ITA in its role and in what new ways can they work together?

ANSWER: I plan to increase coordination among ITA and the core business-related agencies within the Department including the Bureau of Industry and Security, the Patent and Trademark Office, the National Institute of Standards and Technology, and the Economic Development Administration. Each of these agencies counsels companies on issues related to enhancing business opportunities. I think all of these agencies can incorporate elements of export promotion in their activities. The goal would be to enhance job creation through expanding our exports.

My plan is to ensure that all of these agencies are looking for the possible export dimension to their work with their communities. This would not take the place of their core focus but rather make sure they see the potential export opportunities they could bring to their constituencies.

QUESTION: Does this concept include efficiencies that will reduce fiscal requirements?

ANSWER: We will look for ways to improve efficiencies. However, ITA's primary focus will be to help more companies succeed in exporting, including working more often

and in better ways with other federal agencies, state governments, and other public and private-sector partners.

Foreign Commercial Service

QUESTION: There is a Conference of the Parties (COP) in Copenhagen in December 2009.

What is the purpose of COP? Will this Administration be a party within the COP?

ANSWER: The fifteenth meeting of the Conference of the Parties (COP-15) to the UN Framework Convention on Climate Change (UNFCCC) will be held in Copenhagen in December. This COP is planned to be a critical meeting culminating two years of international negotiations to agree on actions governing long-term goals, greenhouse gas mitigation, adaptation to climate impacts, and financing and technology issues to advance the response to climate change. The United States is a Party to the UNFCCC. The negotiations are proceeding on two tracks: one for those who have ratified the Kyoto Protocol and the other for those who, like the U.S., have ratified the overarching UNFCCC, and will cover actions to be undertaken after 2012. Although final decisions have not been made regarding the delegation to COP15, the Department of State is beginning to constitute the U.S. delegation and the Department of Commerce and NOAA will likely be represented.

QUESTION: I understand that there will be a Bright Green Exhibition and Conference that takes place concurrently. Will you explain the purpose of this trade fair and the U.S. Foreign Commercial Service's role?

ANSWER: Bright Green is a trade fair hosted by the Confederation of Danish Industry and is the only full-scale trade event in coordination with the fifteenth meeting of the Conference of the Parties (COP-15) to the UN Framework Convention on Climate Change. It is expected there will be some 15,000 international visitors and delegates for the COP-15, and 2,000 accredited NGOs and journalists. Bright Green offers an opportunity for industry from around the world to exhibit their technologies to address greenhouse gas mitigation. The U.S. and Foreign Commercial Service (US&FCS) is actively recruiting and arranging U.S. industry participation in this trade event. We believe this is a significant opportunity to demonstrate U.S. industry leadership on clean energy, and energy efficiency products and services. Demand is already high for the December 12-13 event and we expect small, medium and large U.S. energy and energy efficiency companies to participate along with major U.S. trade associations. The program is being accomplished in cooperation with the State Department, the U.S. Embassy, and the Department of Energy.

QUESTION: There have been reports of a shortfall within ITA, more specifically, within the Foreign Commercial Service in FY 2009.

Is this true?

ANSWER: While the US&FCS has had modest budgetary growth over the last five years, it has effectively and efficiently managed costs to continue providing high quality export promotion services.

QUESTION: How much is the shortfall?

ANSWER: See question 183.

QUESTION: Has the agency resolved the issue, because the Committee has not received any requests for reprogramming?

ANSWER: Yes. ITA has taken aggressive actions to manage its costs while continuing to provide high quality service to U.S. businesses that are currently exporting or are considering exporting.

QUESTION: Will the Administration address this issue in its FY 2010 request?

ANSWER: The FY 2010 request includes full funding of inflationary adjustments to the FY 2009 base funding level. It also includes an additional $5.2 million to expand our presence in critical emerging markets in Africa, Eastern Europe and Asia.

QUESTION: Is there a shortage of foreign officers?

ANSWER: We believe that with the expansion of overseas presence in our request, we will have an appropriate level of foreign officers in FY 2010.

QUESTION: What is a full complement of foreign officers, and how many are currently on board?

ANSWER: Today, ITA has 233 Foreign Commercial Officers on board. The FY 2010 request includes an additional $5.2 million to add up to eight Foreign Commercial Officers (as well as 22 locally engaged staffers) over the next two years in critical emerging markets in Africa, Eastern Europe and Asia.

QUESTION: How do foreign officers contribute to U.S. prosperity?

ANSWER: Foreign Commercial Officers work in 77 foreign markets and in the U.S. to promote U.S. exports and protect U.S. commercial interests abroad. Through business counseling, market intelligence, business matchmaking services, trade missions, government-to-government commercial diplomacy, and other customized business solutions, ITA helps maintain and create more higher-paying and better jobs in the United States.

GAO Report on Export Promotion Fees

QUESTION: GAO recently released a report on Export Promotion. GAO found that the Department needs better information to evaluate its fee-based programs and customers. Because the agency routinely requests legislative exemption from having to recover full costs through its fees and attempts to recover only a portion of the full cost of its export promotion services, the Committee is disturbed to learn that the Commercial Service (CS), which is reportedly suffering a shortfall in funds, has not supported or documented its methodology and assumptions used to determine costs, nor can it ensure that its cost information is consistent and reliable and in accordance with government standards.

As GAO points out, complete and accurate full cost information would assist CS and Congress in making decisions about resource allocations, evaluating program performance, and improving program efficiency.

Because the legislative exemption must be carried every year to be effective, please respond for the record as to the steps CS is taking to act on GAO's recommendations, and a thorough written explanation why Congress should continue this exemption in FY 2010.

ANSWER: ITA participated with the GAO in the development of the March 2009 report and we generally agree with the findings and have incorporated the recommendations into agency planning for system and process improvements. While we agree that more exact activity-based cost accounting information would improve the pricing data for each product, it should be noted that a specific pricing structure for each of our 230 unique worldwide offices would present us with an out-of-proportion administrative burden and confuse customers.

ITA maintains special discounts for small- and medium-sized exporters (SMEs) that need our assistance to begin exporting for the first time, to enter a new market, or to expand exports in existing markets. In May 2008, ITA adopted a new user fee schedule with the goal of ensuring that services oriented toward individual firms remain affordable to SMEs while at the same time moving toward greater cost recovery for some services. The primary elements of the user fee schedule are:

- Establishes a simplified fee schedule with worldwide fees for standardized services;
- Provides companies that have not exported with a reduced fee for their first service;
- Increases fees for large companies based on full-cost recovery; and,
- Maintains fees for SMEs at levels that are affordable.

OMB accepted this new fee structure and provided ITA with an exemption to A-25 for FY 2009. We anticipate the exemption to be continued in FY 2010 and we are not seeking a legislative exemption.

As part of our overall process improvement efforts and in response to the GAO recommendations, ITA has taken steps to ensure that accurate cost information is used

when setting user fees. These steps include moving to a new accounting system with greater levels of cost visibility, updating our client information system to track better the type and amount of work we are doing for customers, and continuously monitoring fee collections and expenditures on a location-by-location basis to ensure that collected funds are used appropriately.

Import Administration

QUESTION: One of the functions of the Department is to investigate antidumping (AD) and countervailing duty cases (CVD) in the Import Administration (IA) division of ITA. Petitions of parties alleging harm must be filed at both ITA and the International Trade Commission (ITC).

For the past 12 years, ITC has accepted public filings electronically. This greatly reduces the need for paper filings, which is good for the environment and greatly increases productivity. The Court of International Trade and the Court of Appeals for the Federal Circuit, the two federal courts which review appeals of Commerce Department decisions, have also had electronic filing for over a decade.

However, the Department does not accept electronic filing.

What is the cost to set up a public electronic filing system for AD/CVD cases at the Department? Be sure to include any concerns with instituting such a system, for instance, the security weakness that the IG has reported within the Department.

ANSWER: ITA's Import Administration (IA) began work on a Document Records and Management System (DRMS) in 2008, following a pilot project in 2007. The DRMS will allow for U.S. domestic industry and other interested parties to file AD/CVD petitions and related documents electronically. The system will increase productivity and yield savings by reducing paper storage space costs. The DRMS will also provide for off-site electronic back-up of mission-critical records essential to administration of the AD/CVD laws. IA recently completed the formal planning phase of the construction of the DRMS. The software construction phase of the project will begin in June 2009, with specialized contract business analysts and programmers using Oracle Stellent software as a content management solution for an enterprise-wide DRMS solution. When completed, this system will allow IA to release documents to outside interested parties and authorized applicants using a secure delivery system. Public documents will be made available to all parties from the ITA website; thus, greatly increasing IA's transparency and efficiency in serving the public. In the planning phase, IA consulted key stakeholders including the law firms which represent both petitioners and respondents in AD/CVD cases, the International Trade Commission and the Court of International Trade.

While preliminary cost projections have been developed for software construction, other systems-related costs including hardware, staffing, training for both internal and external

users are under development. IA will provide comprehensive cost estimates as soon as practical.

The security of all information submitted during the administration of an AD or CVD proceeding is of paramount importance to the Department, regardless of how it is submitted to the Department. The adequate security of all information submitted by and made available to parties using an electronic system has been of primary concern during the design of the system.

QUESTION: How would that affect the security of the applicants filing?

ANSWER: ITA will take great care to design an electronic filing system that will ensure that the submissions by all outside parties are protected from unauthorized disclosure. ITA is using the National Institute of Standard and Technology's guidelines in planning the security measures for its electronic document system.

QUESTION: What is the Department's process for assisting petitioners with AD/CVD petitions? Include any materials petitioners are asked to complete.

ANSWER: ITA's IA has established the AD/CVD Petition Counseling and Analysis Unit (PCAU), which has a dedicated staff of professionals who are available to assist U.S. companies in a myriad of ways with respect to the U.S. unfair trade laws. Some examples of how the PCAU assists petitioners with AD/CVD petitions include:

- Helping companies to understand U.S. unfair trade laws dealing with dumping and unfair foreign government subsidies, and the process of filing a petition requesting the initiation of an investigation;
- Providing guidance to potential petitioners to assist them in determining what types of information will be required in order to pursue action against an industry suspected of unfair trade practices;
- Assisting potential petitioners in ensuring their petition is in compliance with statutory initiation standards; and
- Providing small businesses with publicly available tariff and trade data from the U.S. Department of Commerce, the U.S. Treasury, and the U.S. International Trade Commission.

There is no specific form a potential petitioner must complete in order to file a successful petition. However, all petitions must supply the information required by statute. The PCAU maintains a website that outlines these requirements and is available to assist potential petitioners in understanding them (http://ia.ita.doc.gov/pcp/pcp-index.html).

QUESTION: How many personnel are assigned to assist petitioners?

ANSWER: The PCAU currently has five individuals dedicated to assisting petitioners.

QUESTION: Have consultations on the process been solicited?

ANSWER: In FY 2007 and FY 2008, more than 440 initial and follow-up petition counseling sessions were conducted with a wide variety of firms, including numerous small- and medium-sized businesses. In FY 2009 to date, we have conducted over 150 counseling sessions.

QUESTION: What were the results?

ANSWER: It is important to note that counseling sessions do not always lead to petitions officially being filed. In fact, our counseling will sometimes lead a company to realize that the filing of an AD and/or CVD petition is not in its best interest, or to determine that its commercial difficulties are more appropriately addressed through other means. It is also important to note that for virtually every petition successfully filed, the petitioner has received some form of counseling from IA. For FY 2007 and FY 2008, there were 64 successful AD/CVD initiations. For the current fiscal year, there have been nine successful initiations.

QUESTION: Last week, the Department issued an antidumping order on imports of certain circular welded carbon quality steel line pipe from China as a result of an ITC determination that a U.S. industry is materially injured or threatened with material injury by reason of such imports sold in the U.S. at less than fair value.

Provide details on the antidumping order.

ANSWER: On May 6, 2009, the International Trade Commission notified the Department of Commerce of its affirmative final determination of material injury to a U.S. industry in the investigation on circular welded carbon quality steel line pipe (welded line pipe) from China. As a result, Commerce issued an antidumping duty order which was published in the Federal Register on May 13, 2009. Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all unliquidated entries of welded line pipe from China as of November 6, 2008, the date on which Commerce published its preliminary determination. CBP will also require collection of cash deposits ranging from 73.44 percent to 101.10 percent of the value of the imported merchandise.

QUESTION: Generally, should China be treated the same as other trading partners with respect to equipment purchased with government subsidies over a useful life of 15 years? Specifically, speak to the Department's decision on Oil Country Tubular Goods, used in the energy sector and exported to the U.S. over the past 3 to 5 years at increasing rates.

ANSWER: In general, Commerce allocates government subsidies over the useful life of assets for the industry under investigation; for countervailing duty (CVD) investigations of steel products, that average useful life is usually 15 years. With respect to China's non-market economy, Commerce determined that it is appropriate to identify a uniform date from which it will identify and measure subsidies for the purposes of the CVD law.

Commerce adopted December 11, 2001, the date on which China became a member of the WTO, as that date. This date was selected because of the reforms in China's economy in the years leading up to its WTO accession and the linkage between those reforms and China's WTO membership. The changes in China's economy that were brought about by those reforms permit Commerce to determine whether countervailable subsidies were being bestowed on Chinese producers.

In Commerce's recently initiated CVD investigation on Oil Country Tubular Goods from China, the petitioners have raised the issue that Commerce should investigate subsidies before December 11, 2001. Commerce will carefully consider all comments raised by petitioners on this issue.

Bureau of the Census Paper-Based Non Response Follow Up

QUESTION: Because of the problems encountered with the Field Data Collection Automation (FDCA) contract, the decision was made last April to return to a paper-based Non Response Follow Up (NRFU). This resulted in an unprecedented level of risk because the decision was made so late in the process.

The switch to paper will require additional field staff and support personnel, more time and funding to hire and train, and modifications to other plans and operations. Despite the bureau's familiarity with the paper-based NRFU, it will need to be integrated with the automated systems, some of which have been developed by the FDCA contractor and some by Census – and the integration has not yet been tested.

When will the bureau 'thread test' the Paper-Based Operations Control System (PBOCS)?

ANSWER: There are multiple components that make-up the PBOCS.

PBOCS Thread Test Schedule		
Operation	**Begin Thread Testing**	**End Thread Testing**
NRFU	April 20, 2009	June 1, 2009
Group Quarters Enumeration	April 20, 2009	June 1, 2009
Enumeration of Transitory Locations	September 17, 2009	October 20, 2009
Field Verification	May 11, 2010	May 24, 2010

QUESTION: This is not an end-to-end test of the entire decennial operation; instead it is a model flow of processes and information through to headquarters, right?

ANSWER: Correct, the thread test is not an end-to-end test of the entire decennial program; however, we are leveraging and integrating, both upstream and downstream of the PBOCS, with the 2008 Dress Rehearsal production systems and data sources which were completed as originally scheduled in 2008. This then exercises the Census

developed PBOCS' core data integrity, necessary data interfaces, and its ability to support required user products and processes within the flows, which will make up the 2010 system and operational landscape.

QUESTION: What will this step accomplish?

ANSWER: This integrated test will validate the design of the PBOCS, its necessary interactions with other systems, and the core functionality critical for the conduct of the NRFU and other enumeration operations. The test provides the opportunity for system users, with direct support from system designers, to validate that the core functionality works and necessary products are available as required, as well as to identify areas needing refinement, as PBOCS enters its production build of the 2010 NRFU OCS.

QUESTION: What contingencies are in place should the PBOCS integration fail?

ANSWER: Given its leveraging of the actual, production dress rehearsal, the NRFU Thread test will be used to determine how well this design and initial build of PBOCS does integrate with other planned Census systems in advance of its production build and implementation. While there is no specific alternative system to deploy should the PBOCS integration fail, the results and lessons learned from the NRFU Thread Test will drive further refinement of requirements, development, and testing of the production build.

PBOCS is a contingency implementation utilizing the Agile programming methodology. We are building the production PBOCS in three releases each in support of a group of discrete enumeration operations, starting with those occurring earliest and ending with the later. Within each release there are several iterations or intervals (about 3 weeks each) during which the result of that portion of the build is validated and scrubbed of defects before proceeding with the next dependent iteration within the overall release. Given the project time constraints, the PBOCS effort will utilize a Test Driven Development lifecycle approach for its support of the Census 2010 production. This approach ensures all functional requirement test scenarios are covered during the development cycle to minimize the time required for rework. Once PBOCS completes unit, systems, and integration testing; outlier (real world scenarios), user acceptance, and performance testing will be accomplished without distraction of functional defects. Additionally during the production operation, manual workarounds will be established if a needed product (such as a specific report) is not available.

Address Canvassing

QUESTION: Background - Address canvassing entails verifying, updating, or deleting addresses; adding missing addresses; updating streets on the TIGER maps; and geocoding every structure by assigning GPS coordinates with a handheld device.

TIGER – Topologically Integrated Geographic Encoding and Referencing – a digital map.

Address canvassing began in early April. This process ensures the address list for the census is as accurate as possible.

How are the handhelds working?

ANSWER: The handheld computers are working well, and the Census Bureau is pleased how the operation is proceeding. However, we have experienced several issues that required immediate resolution. Corrective steps were put in place, and work is continuing on or ahead of schedule. For example, on March 18th it was discovered that HHCs deployed to Early Local Census Offices without Sprint cellular coverage were unable to transmit in dial-up mode. This was something for which Harris did not specifically test. Harris re-burned a subset of SD cards, which were deployed to affected areas and installed in HHCs. This solution resolved the issue and field operations remained on schedule. An additional example is provided below (see response to question pertaining to performance problems). We continue to monitor the status of the operation very closely.

QUESTION: Are there any performance problems?

ANSWER: Overall, handheld computer (HHC) performance has met or exceeded our goals for Address Canvassing field work. Yes, we did experience a performance problem with the handheld computers. Employees conducting the Quality Control reported that during the Dependent Quality Check (DQC) processing on the handheld computers (HHCs) was taking long periods of time. A solution was identified and a patch was distributed to a select group of users in order to test the solution. Users who received the patch reported improved performance. As a result, the nationwide deployment of the patch was initiated on 4/28/09. Initial results indicate that this patch has addressed the performance issues. We will continue to monitor the situation.

QUESTION: What are the cost and quality implications?

ANSWER: At this point, we do not believe that either of the issues above had an impact on the quality of the data collected in the Address Canvassing operation. With regard to the cost of the Quality Control (QC) performance problem, the productivity of our QC listers suffered. They were not able to complete their assignments in a timely manner. With regard to the re-burning of the SD cards, the Harris costs incurred were approximately $700,000. We are still assessing the field costs associated with the replacement of SD cards; the field costs will include labor hours of Early Local Census Office staff time.

QUESTION: Are training efforts effective in overcoming these problems, and have they been instituted systematically?

ANSWER: We have had no instances of HHC performance issues that have required training efforts. All problems to date have been resolved via software patches, and in one instance, the distribution of the re-burned SD cards. These resolutions have allowed listers to conduct their activities as they were initially trained. However, there have been instances where we have provided additional information/clarification to the RCCs for dissemination among the field staff. No formal training has been conducted in the dissemination of the information.

QUESTION: Has it been difficult to staff the early Local Census Offices or find address canvassers?

ANSWER: In general, we were very successful in our recruiting efforts to staff the early Local Census Offices and to find address canvassers. We met and exceeded our recruitment goals.

QUESTION: What has the initial response been to address canvassers in the field?

ANSWER: In general, canvassers are well received and/or hardly noticed. There have been a few isolated instances where canvassers have not been so well received.

QUESTION: Have any been injured or threatened?

ANSWER: During Address Canvassing operations, there have been two motor vehicle fatalities. In the first case, an Idaho address canvasser lost control of her car in slushy road conditions and was struck by ongoing traffic; in the second case, which occurred in Illinois, a canvasser had pulled off the road to use her handheld device, but was nevertheless struck and fatally injured by a tractor trailer. There was also a third serious motor vehicle accident in which a rural Nebraska canvasser was struck by a train as his vehicle crossed a railroad track. That individual has been hospitalized for several weeks and, at last report, was on life support. The Census Bureau is actively investigating all of these accidents.

A total of five address canvassers have reported assaults. Three individuals have been threatened by a firearm or shot at. Two of theses cases occurred in Georgia, and the other in North Carolina. In Los Angeles, a canvasser was threatened by a gang member who also attempted to punch him; another, also in Los Angeles, was threatened with a knife. Finally, a canvasser in the Philadelphia Region was pushed by a respondent. Each of these employees was advised to file a report of the assault to local law enforcement officials.

In general, slips, trips, and falls account for the vast majority of address canvassing accidents. Motor vehicle accidents and dog bites are the two other leading causes of injuries. Advice for avoiding each of these types of accidents is given extensive coverage in address canvassing employee handbooks and is a topic in every address canvasser's new employee training.

QUESTION: While there is some local print coverage of address canvassing, there is no national media explanation of why Census workers are in the field now, which is causing some confusion and consternation.

Why was the decision made not to make some national appearances – say on the morning news shows – to explain why address canvassing is necessary and what citizens and local communities can expect?

ANSWER: The Census Bureau decided to focus its resources on participation in the Census itself, where public cooperation is absolutely critical to success, as opposed to Address Canvassing, where public awareness and cooperation facilitate the job but are not required. However, there have been efforts to inform the public about the address canvassing operation, including print and radio outreach at the national level which yielded stories with USA Today, and NPR to name just a few. A press release and both English and Spanish fact sheets were distributed nationally. An English and Spanish fact sheet was also sent out for Puerto Rico. In addition, the Public Information Office at headquarters produced and posted a video on how the handheld computers operate. The office also produced and distributed to Field staff 30-second public service announcements on address canvassing in English and Spanish. Because the address canvassing is a local operation, it was decided from a strategic standpoint that this is where the media outreach efforts should be focused. To date, there have been at least 536 (print, radio, television and online) stories across the country about the operation.

QUESTION: With regard to address canvassing performance and quality issues:

How will we know that Address Canvassing is proceeding successfully?

ANSWER: To date, performance is at an acceptable level. Please see response below for a report on our progress against goals.

With regard to quality, the Address Canvassing operation has an independent Quality Control staff responsible for checking the work of the production listers and to ensure that the work completed by the production lister reflects ground truth. Quality Control listers check a sample of a production lister's work in each Assignment Area and also verify that all addresses identified by the production lister as not existing or as a duplicate of another address, in fact do not exist.

Also with regard to quality, as assignment areas complete the quality control phase of the operation, they are transmitted to the Census Bureau's Geography Division. The data received by Geography Division are run through acceptance edits to ensure that they meet specified requirements with regard to content and valid values. We have also requested a preliminary extract of our Census Evaluations and Experiments Data. We will examine this preliminary extract and compare to data received by Geography Division for consistency and completeness.

QUESTION: When will solid performance measures on cost and schedule be available?

ANSWER: Current cost estimates are available on a daily basis from our Decennial Cost and Progress system. We monitor the costs incurred against the planned spending for the operation. As of April 30, 2009 our direct field costs to date are approximately $313 million or 84% of the budgeted $371.4 million. In addition, we have established weekly progress goals for the Address Canvassing operation. The established goals are set as of the close of business each Wednesday for the duration of the operation. As of April 29, 2009, our goals were to have 34% of our Assignment Areas completed through the production phase of the operation and 19% of the Assignment Areas completed through the Quality Control phase. Our actuals were 72% and 49%, respectively.

In addition to the $371.4 million above, our budget for the Large Block Address Canvassing operation is $14,533,329. As of 4/28/09, we have spent $8,613,599 or 59.3% of the budget. As of 4/28/09, we completed the Large Block production listing for approximately 99.5 percent of the total workload and the Quality Control (QC) is 98.1% percent complete.

QUESTION: When will Census complete its quality assessment of Address Canvassing operations?

ANSWER: The Address Canvassing Quality Profile, which reports on results from the QC operation, is scheduled to be complete by the end of November 2010. The Address Canvassing Assessment, which is a broad review on the entire Address Canvassing operation, is scheduled for completion in August of 2010 and an assessment of the Address Canvassing automation is scheduled for February 2011.

QUESTION: What significant national or local problems have been identified, and what is the contingency plan for correcting the problems?

ANSWER: We have not identified any systemic national or widespread local problems. We have identified listers that did not adhere to their field procedures, but these are infrequent enough to be considered anomalies in contrast to a generally consistent execution of protocols. Reports include instances where listers have not collected the GPS coordinate for a structure in the prescribed location, have not knocked on every door to ask about additional living quarters at the address, or have not driven down all roads in rural areas. We have taken steps to reiterate to the field staff the importance of following the defined field procedures. It should be noted that we expect some temporary field employees to not follow procedures accurately, which is why we have an aggressive quality assurance procedure that requires a second field worker to review a sample of every assignment area canvassed in the nation. If the QC Lister finds errors, the assignment area is completely recanvassed to make sure the completed work is accurate.

In addition, we have had a number of reports from Quality Control listers being unable to add addresses missing from the address list. To address this situation, we have issued

instructions to the Quality Control staff to capture details about these occurrences and submit that information to their Early Local Census Office. We will use this information in subsequent 2010 Census operations.

Flooding along the Red River will likely impact our ability to access certain areas to conduct Address Canvassing as early as planned. Initial assessments from the Denver and Kansas City regions identified a potential 156,000 addresses in flood-impacted areas. We do believe we will gain access to these areas and will take actions to complete the Address Canvassing operation. Dealing with natural disasters is an identified program-level risk. The Risk Review Board approved the contingency strategy for this risk and the full contingency plan is in development. In accordance with the strategy, a rapid response team is developing an operational approach to conducting Ad Can or an alternative solution to assure good coverage of the addresses in these areas on our address list.

QUESTION: What would trigger the Address Canvassing contingency plan?

ANSWER: Our contingency planning efforts have shifted focus from plans to replace the Address Canvassing operation now underway, to focus on a county-level review of the Address Canvassing results to determine if special efforts are needed in selected areas.

QUESTION: What impact will there be on the schedule of other operations, including the printing of forms and their timely delivery?

ANSWER: If the review of county-level data indicates the need for special efforts, any activities implemented would be limited in scope in order to keep subsequent operations on schedule.

QUESTION: How much more would it cost?

ANSWER: Until the completion of Address Canvassing and the county-level review, we won't know if contingency efforts will be necessary, and if so, their scope. However, contingency planning efforts are ongoing. As part of that effort, we are assessing the potential cost impacts, but do not have estimates available at this time.

Field Data Collection Automation Contract

QUESTION: How is the Field Data Collection Automation (FDCA) contractor performing?

ANSWER: Characterizing the FDCA contractor's "performance," will (and legally must) take place at regular intervals, and through the procedures, established in the FDCA contract.

The FDCA contractor deployed IT equipment and software to Early Local Census Offices (ELCOs) and field staff (e.g. Listers and Crew Leaders—for use during Address Canvassing (AC)). The AC operation began on time. As automation issues are identified and reported through the Census Bureau's help desk, the FDCA contractor will continue to analyze and resolve problems that may affect AC operations.

QUESTION: Are there any lingering issues and do you expect further or significant contract modifications or cost growth?

ANSWER: We do not anticipate sizable contract modifications/cost growth at this time. Both the FDCA contractor and the Census Bureau regularly assess cost risks or threats that may arise during peak operations.

QUESTION: How is the bureau ensuring that the contractor is incentivized to effectively support the 2010 decennial census and maximize value to the taxpayer?

ANSWER: In 2008, the Census Bureau re-scoped the FDCA contract in order to reduce overall operational risk. The re-negotiated contract also contains an incentive fee structure tied to objective criteria.

Other Decennial Issues

QUESTION: How are the internal control systems operating? Have any significant problems surfaced?

ANSWER: The Associate Director for Decennial Census installed a new management team and processes to oversee the internal control of the decennial contracts and programs. At this time, all contracts are on schedule and within tolerance for earned value metrics.

QUESTION: Are there any other decennial contracts at risk of cost growth or schedule delay?

ANSWER: Earned value management reports on all of the decennial contracts are showing on time and within budget. We are not aware of any specific risks to contract cost or schedule growth against current requirements and contract baselines, but we have a risk management process in place to identify risks and regularly monitor key program, contract, and system risks.

QUESTION: Please describe the HELP desk management contract issue; is it resolved or are further actions required?

ANSWER: Help Desk support for Dress Rehearsal Address Canvassing (DRAC) operations in 2007 was provided and managed by the FDCA contractor. The DRAC Help Desk was insufficiently sized and ineffective. To remedy this situation for 2010 production operations, including the Address Canvassing operation currently underway,

the Census Bureau decided to leverage in-house operational management expertise and experience (Help Desk services were provided and managed in-house during the 2000 Census). Accordingly, Help Desk *management* was de-scoped when the FDCA contract was re-negotiated in 2008, although certain support activities (e.g., providing software developers familiar with contractor-developed code to resolve software problems) are still furnished by the FDCA contractor. After a period of transition, a Census Bureau-managed Help Desk was successfully brought online well in advance of Address Canvassing fieldwork. The Census Bureau-managed Decennial Operations Technical Support (DOTS) solution is appropriately sized and providing effective support. We will maintain this solution throughout the 2010 census operations (though at a reduced scale, as most 2010 field operations are paper-based), including Census Coverage Measurement. While some operational issues have been identified during the Address Canvassing help desk operations, they have been resolved and the help desk is currently operating smoothly.

QUESTION: Are there ongoing issues with federal standards for security documentation?

ANSWER: While there have been some challenges in applying NIST standards to an evolving architecture for Field Automation, there are no overall security documentation issues with our major contracts at this time. Work on security documentation continues as required and expected, with the most recent delivery of documentation received at the end of March in connection with the Field Data Collection Automation contract. The Census Information Technology Security Office is reviewing this documentation and expects to complete its review in May.

QUESTION: What are the major risks for census operations other than Address Canvassing?

ANSWER: The Census Bureau has developed a risk register identifying 24 program level risks. These major risks include late design changes, major natural disaster's effect on population, 2010 operational and system failures, housing unit duplicates and misses at unexpected levels, falling behind schedule on key milestones, and contract management issues.

QUESTION: What actions are being taken to manage these risks and what are your contingency plans for dealing with them?

ANSWER: The Risk Review Board meets weekly to monitor and discuss risk issues. We have final mitigation plans in place for 18 of the 24 risks. The six remaining plans are in draft form and should be finalized by May 19.

Contingency strategies exist for all risks and we are in the process of developing contingency plans for six of the risks and determining which of the remaining risks need formal contingency plans.

QUESTION: Is the delay in selection and confirmation of the new Census Director and the lack of continuity in directors over the past couple of years adding risk to the 2010 Decennial?

ANSWER: A director has been nominated. We would like to have the new Census Director confirmed and in place as soon as possible. Meanwhile, a core of permanent professional staff with many years of experience is utilizing its expertise to carry our critical tasks forward.

QUESTION: What program management and organizational structures are in place to ensure decision-making processes are completed in a timely fashion?

ANSWER: As described in the 2010 Census Program Management Plan, the guiding principles for 2010 Census governance and decision-making are two-fold. First, an Operations Center concept of operations is introduced at an appropriate time during preparations for the 2010 Census. Now in effect, this ensures that clear, direct, decision-making occurs at all governance levels, supported by weekly status reports to provide program visibility on progress and issues. Second, decision-making is to occur at the lowest possible level. That is, issues will not be escalated unless they cannot be resolved by a good faith effort at a lower level. As a quality check and to ensure effective communication, all decisions should be reported to the next governance level.

The Director and Deputy are responsible for the very highest-level of decision-making that substantially affect budget, program success, or policy.

The Decennial Leadership Group (DLG) consists of Senior Executive Staff responsible for the highest level of decision-making and oversight. This includes the Associate Director and the Assistant Director for the Decennial Census Programs, the Associate Director for Field Operations, and the Chiefs of Decennial Management Division (DMD) and Field Division (FLD). Other Associate Directors and Division Chiefs will be included in decision-making meetings on an as-needed basis, depending on the issue to be discussed. The Associate Director for Decennial Census Programs is the Chair of the DLG and is the 2010 Census Program Manager.

The Census Integration Group (CIG) is the primary governance group. The DMD Chief chairs the CIG. It is composed of Division Chiefs of all key involved divisions, as well as a substantial number of important contributing divisions and offices. The CIG operates as the 2010 Census Change Control Board and the 2010 Census Risk Review Board. In addition to these internal management and organizational structures, the 2010 Census regularly reports to the Department of Commerce (DOC) and the Office of Management and Budget (OMB). The Census Bureau conducts a regular briefing of the 2010 Census Monthly Status Report to DOC and OMB the first Tuesday of every month. In recent months, this briefing has also been presented to staffs of both the House and Senate Appropriations Committees.

QUESTION: What actions have been instituted to ensure future acquisitions avoid costs surprises, cost growth, and waste of taxpayer funds?

ANSWER: Over the past year the Census Bureau Director and senior management implemented the numerous measures to ensure effective management of IT projects. Included in these plans were making changes in key leadership positions to address the need for more effective IT management and improved IT management processes and established milestones and metrics to ensure that senior management can track progress towards meeting stated actions/goals.

In addition to these measures implemented for critical Decennial Census IT projects, the Census Bureau's Deputy Director established the Office of the Senior Advisor for Project Management to implement policies and procedures for the review, authorization, and monitoring of major Census Bureau investments. This office facilitates and manages the review of new initiatives and ongoing programs for the Census Investment Review Board, which consists of senior Census Bureau program executives. The office was also chartered to develop and implement standardized program/project management practices within the Bureau. It is led by a senior executive with project management and subject matter expert staff assigned to major programs.

Finally, all major Census Bureau programs and investments continue to be reviewed by the Commerce Department Investment Review Board. At these meetings, the Census Bureau has to produce evidence and documentation that it is adhering to IT project management best practices. The board is made up of Departmental officers and CIOs from other bureaus. It evaluates Census' adherence to IT project management best practices and approves investment on that basis.

QUESTION: Does this include changes to the insular culture of Census, including hiring external management with expertise in successfully running complex programs and system acquisitions, or in implementing contemporary private sector management methods?

ANSWER: The Census Bureau has retained Kenneth Prewitt (who is the current Carnegie Professor of Public Affairs at the School of International and Public Affairs at Columbia University and was formerly director of the Census Bureau, director of the National Opinion Research Center, president of the Social Science Research Council, and senior vice president of the Rockefeller Foundation) and John H. Thompson (who is the current President of the National Opinion Research Center and was formerly the Deputy Director of the Census Bureau) as short-term consultants. Mr. Prewitt and Mr. Thompson will provide advice and recommendations to the Director and Deputy Director of the Census Bureau. These consultants have been tasked with providing an up-to-date risk assessment of potential vulnerabilities and the state of readiness of the 2010 decennial census.

Additionally, the Census Bureau has instituted a new management approach that strengthens planning and oversight relative to risk management; issue identification,

product testing, communications, and budget/cost management. The formal management processes are documented in the 2010 Census *Project Management Plan*, which was issued January 26, 2009. Having and using this plan ensures program coordination and establishes clear lines of authority and mechanisms that enable leadership to focus on problems as they arise. This plan fully documents a number of processes, including the process for managing requirements changes. This approach also ensures that there is a defined process and framework to coordinate among the key Census Bureau divisions involved in the decennial program, including Decennial Management Division, Field Division, and the Geography Division.

Along with developing this plan, the Census Bureau has increased the intensity and pace of senior management involvement, including daily status assessments and problem resolution sessions chaired by the Associate Director for the Decennial Census, weekly status assessment meetings with the Director and Deputy Director, and periodic reviews by the MITRE Corporation and other expert consultants.

Immigration and Social Issues

QUESTION: In the run-up to previous censuses, the federal government has eased up on immigration raids and other intimidating forms of immigration enforcement in an effort to cut down on the number of people who are afraid to be counted.

Will this Administration expect the same cooperation from other agencies, such as the Department of Homeland Security?

ANSWER: The Census Bureau has not asked any agency to alter its enforcement activities. We, however, are committed to ensuring an accurate count of every person in the United States and are developing partnerships with a wide range of organizations, including organizations with credibility and trust among immigrant communities. We hope to leverage these organizations to reach to these hard-to-count communities and assure them that the census is safe and confidential.

QUESTION: There are reports that some Hispanic advocacy groups are calling for a boycott of the 2010 Census unless immigration laws are changed. The census does not ask whether people are here illegally, but these groups fear that high numbers of Hispanic residents reported within certain areas may trigger immigration enforcement crack downs after the results are made public.

Is there a solution to this conundrum or will cities simply be forced to absorb the financial effects of an undercount?

ANSWER: The Census Bureau shares the Committee's concerns about the potential for a boycott and is working with its partners to educate immigrant communities about the census: we do not collect information about immigration status; all answers are confidential by law; and census data are used by state and local governments, as well as the federal government, for a range of purposes, including schools, roads, healthcare, and

other emergency services that are used by everyone and contribute to the well being of local communities.

Our objective is to work with our partners, including community organizations and local governments, not only to encourage participation, but also to ensure that we are aware of unique local circumstances in order to ensure an accurate count and to reduce potential undercounts.

QUESTION: Same-sex marriages are legal in some states, but the bureau, citing the Defense of Marriage Act prohibits the federal government from recognizing same-sex marriages.

How would these marriages be counted?

ANSWER: The Census Bureau procedures used to count and tabulate relationship data for federal purposes are guided by and comply with legal requirements of the Defense of Marriage Act of 1996 (Public Law 104-199), which contains specific definitions of "marriage" and "spouse." Under these requirements, respondents in a same-sex marriage would fall under the category unmarried partner on the 2010 Census form and be counted as such. Further, if a person responds in the "spouse" category and is the same sex as the householder, the individual will be allocated as an "unmarried partner".

It is important to note, however, that the accurate and thorough depiction of the demographic characteristics of our society is among the core missions of the Census Bureau, and an essential service to the public that enables policymakers to more fully understand the composition of our society. For these reasons, we continue to conduct extensive research into the complex and multifaceted issues surrounding the subject of household relationships. We are currently researching data on same-sex couples and reported these findings at the recent annual meeting of the Population Association of America in Detroit, Michigan on April 30, 2009.

QUESTION: How are states and local officials, some of whom use the data to plan for programs and services, reacting?

ANSWER: We have received some inquiries and have responded by describing our approach for the tabulation of same-sex households for the 2010 Census, which is consistent with the approach, used in 2000 and is publicly documented (see *Technical Note on Same-Sex Unmarried Partner Data From the 1990 and 2000 Censuses;* http://www.census.gov/population/www/cen2000/samesex/index.html).

Group Counts

QUESTION: FDCA problems have distracted the bureau and everyone else from other issues that need attention, such as the enumeration of traditionally difficult groups and settings, including the homeless; military bases; American Indian reservations; and group quarters.

Has the bureau developed and tested possible improvements?

ANSWER: Based upon lessons learned in Census 2000 and the 2010 Census Research and Development Program, improvements have been designed for these operations and will be implemented in 2010. Some of these improvements were tested during the research and development program. Other planned improvements were scheduled to be tested in the 2008 Census Dress Rehearsal. However, several issues resulted in many of these operations being removed from the Dress Rehearsal.

People Experiencing Homelessness:

The Service-Based Enumeration (SBE) will be conducted at service locations to provide an opportunity for people experiencing homelessness to be included in the census. SBE facilities include: domestic violence shelters, emergency and transitional shelters (with sleeping facilities) for people experiencing homelessness, soup kitchens, regularly scheduled mobile food vans, and targeted non-sheltered outdoor locations. The enumeration at SBE locations will be conducted over a three-day period (compared to a one-day period in 2000) which will allow the service providers more flexibility in conducting this operation. The Individual Census Record (ICR) is the data collection instrument to be used at each SBE facility during enumeration that facility.

Although the Census Bureau will attempt to enumerate the specific types of SBE locations (e.g., shelters for people experiencing homelessness) on the pre-designated day, service providers will be given the flexibility for their facility to be enumerated on any one of the three days during the enumeration period. This flexibility will not be offered to targeted non-sheltered outdoor locations. While it is imperative that the Census Bureau implements the SBE operation, it is important to understand that the results from the SBE operation (consistent with Census 2000 when we worked with stakeholders and advocates) do not provide a count of the population experiencing homelessness, nor do the results provide a count of the population who use those services at any geographic level. This is consistent with our efforts in Census 2000 when we worked with stakeholders.

Currently, the Census Bureau is assessing its procedures to identify targeted non-sheltered outdoor locations. As part of our overall efforts to improve the frame of GQs for 2010, we have made a number of improvements in how we will identify possible locations to conduct this enumeration. We also will use or partnership program to work at the local level to ensure we have as complete a list as possible of places we should visit during these efforts. Some additional enhancements may be implemented to facilitate the identification of outdoor locations to be enumerated based upon economic conditions.

Military Installations:

Improvements to the enumeration of people residing on military installations will be implemented including the formation of a Joint Military Working Group that is

comprised of representatives of the military branches, the Defense Manpower Data Center and the Census Bureau. The working group is charged with facilitating access and cooperation at military installations for the conduct of the census operations. The working group was formed earlier in the decade compared to Census 2000 to develop the overall strategy to ensure a successful enumeration of military installations.

Additionally, we changed the military enumeration of group quarters from unit enumeration (i.e., place of work) to a Group Quarters (barrack) enumeration (i.e. place of living quarters). In 2000, active duty personnel living in housing units were enumerated at both their housing unit and at their military unit. It was costly to enumerate them twice and then unduplicate them in the census. In the 2010 Census, service members in housing units will be enumerated once as part of the housing unit enumeration and members in Group Quarters (GQ) will be enumerated during the GQ Enumeration.

American Indian Reservations:

We have implemented a training program for tribal government liaisons and a Tribal Governments Liaison Program handbook for Tribes and Urban AIAN populations that provides guidance and suggestions for outreach and promotional activities. The following is a list of some of the activities that Tribal Government Liaisons can do to increase awareness and community participation in the 2010 Census.
1. Support outreach and promotional activities at special events and powwows.
2. Encourage tribal members to use the tribe's complete official name when responding to the "enrolled or principal tribe" question on the 2010 questionnaire.
3. Establish Tribal Complete Count Committees. A Complete Count Committee consists of community volunteers who help promote the census in the local area.
4. Identify appropriate media outlets to spread the word about the 2010 Census.
5. Distribute 2010 Census promotional materials.
6. Inform tribal members about census jobs on tribal lands and help them understand how to apply for these jobs.
7. Help Census Bureau staff understand and be responsive to tribal culture and language factors on tribal lands.

The Census Bureau and the twelve Census Bureau Regional Offices encourage tribal leaders to appoint Tribal Government Liaisons in preparation for the 2010 Census. The Tribal Government Liaison is the main contact between the Census Bureau and tribal leaders. Tribal Government Liaisons receive census updates from Census Bureau staff and can then share this information with their tribal leaders. The Tribal Governments Liaison Program (TGLP) increases the involvement of tribal governments in the planning and implementation of the 2010 decennial census and helps support census activities in tribal communities.

Group Quarters:

The Census Bureau conducted an extensive research and testing program to update and validate the GQ definitions to be used in the 2010 Census. As a result of this research,

the GQ definitions have been revised to help better define and distinguish group quarters from housing units and to ensure that the definitions can be recognized by industry professionals and Bureau staff.

Rather than develop the inventory of group quarters independently of developing the inventory of housing units (as was done in Census 2000 and prior censuses, and which led to problems of overlap, gaps, and inconsistencies in geographic coding), a major change for 2010 is to develop a single integrated inventory of all living quarters (both housing units and group quarters) within the MAF. Thus, one aspect of Address Canvassing is to identify all places people could live, and to code them either as Housing Units or Other Living Quarters (OLQ). Then, during the Group Quarters Validation operation this Fall, specially trained staff will visit all the OLQs and make a determination in each case of the specific Group Quarters type, and to collect some preliminary information that will be useful for the actual Group Quarters Enumeration next Spring.

Additionally, field quality control operations are added for the 2010 Census Group Quarters Enumeration operation to check for data falsification and enumerator's understanding of procedures. The design of this QC program is based upon the QC design for other existing operations and that design was tested and implemented in Census 2000 as well as the 2004 and 2006 Census Tests.

QUESTION: Will the actual decennial count be the proving ground for these operations?

ANSWER: The Census Bureau has conducted a robust research and testing program leading up to the 2010 Census. Many of these improvements to operations have been conducted during the testing cycle. However, we will conduct an assessment of all of the improvements that are implemented and continue to look for ways to improve census operations.

Additionally, for all 2010 Census Operations, there is now a separate staff to oversee and implement quality control operations at both headquarters and the field. This allows for a separate staff to devote their attention specifically to quality control operations and concerns.

Fingerprinting

QUESTION: The decision to fingerprint was made only recently, so there are significant risks in implementing the program.

Who will be fingerprinted, and at what stage of the process?

ANSWER: All temporary decennial field staff hired in the RCCs, ELCOs, and LCOs are fingerprinted when they report to training.

QUESTION: What problems have been encountered with the process to date?

ANSWER: To expedite the scanning of the fingerprint cards, Census uses an adhesive label with a barcode that corresponds to the employee number. This is used in lieu of writing personal identifiers on the fingerprint card. There were some problems in the field with misplacement of the labels on the fingerprint card and with the scanners reading the barcode. The impact of these problems has been reduced by reiterating administrative procedures, reinforcing training, and newly designed labels.

QUESTION: Are there training issues?

ANSWER: No specific training issues were identified. The training has met the level and quality anticipated. We believe we need to improve training for future operations, particularly with respect to obtaining more legible prints, if the decision is made to continue with fingerprinting for FY 2010 operations. This will be particularly critical for our largest recruiting and hiring effort next year—Nonresponse Followup. The Census Bureau plans to evaluate the results of the Address Canvassing effort to inform if or how best to conduct fingerprinting in 2010.

QUESTION: What contingencies are in place?

ANSWER: We will continue to allow employees to work as a result of prior clearance through the Name Chec process which involves providing biographical data on each applicant and comparing the data to the FBI Name Indices at time of application. If applicants do not clear the Name Chec process, they will not be hired.

If employees that did not have classifiable fingerprints are rehired for another operation, they will be reprinted at training and their fingerprints will be resubmitted to the FBI for clearance processing.

QUESTION: Have there been any delays in FBI processing?

ANSWER: No. We are currently experiencing 24-hour turnaround, sometimes faster.

QUESTION: What contingencies are in place in the event of major delays in processing?

ANSWER: We will continue to allow our employees, who have cleared through the Name Chec process, to work until fingerprint results are received.

QUESTION: We heard some astronomical figures quoted last year – as much as $400 million. How much is set aside for FY 2009?

ANSWER: The fingerprinting budget for FY 2009 is $44.0 million.

QUESTION: Should we expect a program four times that size in FY 2010, given the increased number of enumerators needed for NRFU?

ANSWER: No, many of the costs for fingerprinting in FY 2009 were up-front costs (e.g. Scanners and fingerprint kits). Costs for these items will be significantly less for FY 2010. The estimated cost for fingerprinting in 2010 is $101.4 million. The funding for fingerprinting in 2010 is in the contingency framework.

American Community Survey

QUESTION: The 2000 Census used a short form to collect basic information used for reapportionment and redistricting. However, approximately 1 in 6 households received a long form.

The American Community Survey (ACS) has replaced the decennial census "long form." It collects detailed information on characteristics of the population and housing from a small sample of addresses each month. These data are critical and used for research in diverse fields, from demography and economics to public health and policy, family formulation and dissolution, fertility, morbidity and mortality. The data will be published for the first time in 2010.

The ACS was originally sold as a better collection of data on social characteristics, as Census data gets old after five years. Despite the cost advantage to having the long form built into the Decennial, the ACS was supposed to be cost neutral. But early on, the sample size of the ACS was apparently decreased to reduce costs.

Now, according to the Association of Population Centers, an independent group of universities and research centers, the ACS has only half the reliability of the long form data obtained in the 2000 Census. This is because the size of the sample is so small that ten years of data is needed in order to get the accuracy of the intended five years.

I'm no statistician, and I assume you are not either, Secretary Locke.

Will you look into this issue, make sure that the incoming Director is fully informed of the details, and commit to maintaining the integrity of Census data while ensuring that taxpayer funds are not wasted?

ANSWER: The Census Bureau's implementation of the American Community Survey (ACS) has ushered in the most substantial change in the decennial census in many decades. It is a nationwide, continuous survey designed to provide communities with timely demographic, housing, social, and economic data every year. The ACS has eliminated the need for a decennial census long form in 2010 by collecting long-form-type information throughout the decade. Data from the ACS provide, for the first time, a continuous stream of updated information for states and local areas and has already revolutionized the way the Nation uses data to understand its communities.

The plan for the ACS has always been that by spreading the "long form" sample across the decade, it is possible to provide updated information for all sizes of geographic areas and population groups. The Census Bureau spent considerable resources and time consulting with stakeholders and the data user community at large on this basic premise of the ACS "continuous" sample strategy. These stakeholders understood and accepted the relatively moderate increase in the sampling error (particularly in smaller demographic categories in smaller geographic areas) as a reasonable trade-off so as to profit from the ability to update 5-year estimates every year and thereby gain a better understanding of the direction of change and relative differences among small groups and geographic areas.

It will take five years of data collection to accumulate a large enough sample to produce data for the smallest communities, those with populations under 20,000. Once that sample is collected, though, the Census Bureau will be able to release five-year estimates every year for all communities down to the census tract and block group level. Late in 2010, the Census Bureau will release 2005 – 2009 ACS estimates for all geographic areas as small as census tracts and block groups, based on five years worth of data collection.

The Census 2000 long form went to about 1 in every 6 households, or about 20 million households. The ACS sample size of approximately 3 million addresses per year, even over 5 years, is smaller than that of the Census 2000 long-form sample. As a result the sampling error of the ACS 5-year estimates is larger than that of the Census 2000 long form data. However, the more critical factor is the overall quality of the ACS 5-year data. Total quality is affected by factors such as household non-response, item non-response or the completeness of answers provided by respondents, and survey coverage. Coverage refers to the survey's ability to measure the characteristics of the target population by making sure every person in the universe has a chance to be included in sample. The level of non-sampling error in the ACS estimates is smaller due to improved response rates, less missing data, and a permanent interviewing staff using automated data collection instruments. The smaller level of non-sampling errors in the ACS offset the somewhat larger sampling error resulting in a quality level that is comparable to that of the Census 2000 long form estimates.

QUESTION: Is Census if favor of increasing the sample size?

ANSWER: Any increase to the sample size of a survey improves the statistical reliability of the data. At its current size, the ACS is the largest continuous survey that has ever been conducted by the Federal Government, and is a major innovation in the Federal statistical system. An increase to the sample size of the ACS cannot be accomplished within current funding levels. Presently, the Census Bureau's budget reflects a balance between the need for sufficient dollars to accomplish the 2010 Census and other mission critical programs with the need for high-quality estimates of the characteristics of the population from the ACS.

QUESTION: Please describe how often the data will be published and what resources it will take to ensure that the ACS provides the taxpayers with the reliability and sample size needed to accomplish its original purpose.

ANSWER: The Census Bureau each year publishes both 1-year and 3-year ACS estimates for all areas with populations of greater than 20,000. The first 5-year ACS estimates will be released starting in 2010 for all small towns and communities, down to the census tract and block group level. All ACS data (1-year, 3-year, and 5-year estimates), will be updated annually. Thus, even the smallest communities, regardless of size, will be able to obtain annual ACS data based on 5-year estimates, within current resources. The Census Bureau will continue to assess the reliability of ACS data, particularly as the five-year estimates become available, to ensure the data meets the Census Bureau's high data quality standards.

QUESTION: It seems there is some confusion among citizens about the difference between the ACS and the Decennial.

Has there been a concerted media effort to explain the concept behind the ACS and the need to complete the forms?

ANSWER: We recognize that as the 2010 Census approaches, the public may be confused about the 2010 Census and other Census Bureau surveys, including the ACS. We have briefed media periodically, and are developing respondent and interviewer materials to help clarify for the public the differences between these programs. The ACS is a part of the overall decennial census program and therefore is included in briefings and other meetings about the 2010 Census. Although the ACS program does not include a media advertising component (in fact, few, if any, Federal surveys do), the Census Bureau staff work closely with a variety of stakeholders.

The Census Bureau has a robust program of education, training and outreach to assist users of ACS data. The Census Bureau recognizes that users of ACS data have varied backgrounds, educations, and experiences. They need different kinds of explanations and guidance to understand ACS data products. To address this diversity, the Census Bureau worked closely with a group of experts to develop a series of handbooks, each of which is designed to instruct and provide guidance to a particular audience. For example, the *ACS Compass Products* include a handbook designed specifically for the media, one designed for Federal Agencies, one designed for Congress, and one designed for researchers.

QUESTION: How many people simply refuse to fill out the forms and what is the bureau's response?

ANSWER: The refusal rate for the ACS is very low, particularly when compared to other surveys. The high ACS response rate is due to the Census Bureau's use of best practices in survey data collection methods. ACS forms are mailed every month to a random sample of addresses in each county. If a household does not respond in six weeks, Census Bureau staff will attempt to contact the respondent by telephone to

complete the survey. Finally, a sample of the remaining non-respondents is visited by Census Bureau staff for an in-person interview.

Households and group quarters facilities that receive the ACS are required by law to respond. The Census Bureau's interviewing staff is trained to gain cooperation by convincing respondents of the importance of participation.

QUESTION: What significant changes have occurred to the Decennial operating plan since the beginning of the fiscal year?

ANSWER: The FY 2009 Budget Amendment requested additional funding for the 2010 Census related to the decision to revert to paper based operations for all major field operations except for Address Canvassing. This Amendment included $200 million in contingency funds to address uncertainties in operations for this fiscal year. To date, those contingency funds have been used to address additional funding requirements for Address Canvassing ($30.6 million), the Field Data Collection Automation contract ($46.6 million), items descoped from the FDCA contract and taken over by the Census Bureau ($73.1 million), and Fingerprinting requirements for the large numbers of temporary staff hired this year ($12.2 million).

The American Recovery and Reinvestment Act also provided additional funds in FY 2009 primarily for the Advertising and the Partnership programs to help with the enumeration of hard to count populations.

QUESTION: What factors, other than the ARRA, have caused these changes?

ANSWER: At the time of the submission of the FY 2009 Budget Amendment there were still uncertainties related to Address Canvassing, the FDCA contract, and the Fingerprinting program. To cover such uncertainties, we requested risk mitigation contingency funds in the Amendment (which were listed as discrete elements in the justification).

QUESTION: For components that have not significantly changed, are there significant current or projected variances between obligations and expenditures and the operating plan?

ANSWER: Other than the changes described above, there are two significant current variances. First, the Communications contract has been reporting a significant positive variance since March. We expect the obligations to catch up with the operating plan in May once the upfront media market is obligated. Second, the Address Canvassing operation is projected to experience a shortfall from the current operating plan. Additional allocations from contingency funds will make this operation whole.

QUESTION: If so, what are the causes? For example, are there inaccurate budget or schedule estimates?

ANSWER: For the Communications contract, it has taken longer than expected to get agreement on the upfront media market obligation. The amount is not in question. For Address Canvassing, the shortfall is due to higher than expected training costs due to lower than expected no-show and attrition rates in the training sessions (we attribute this to the economy) and a higher than expected workload in the QC operations for delete verifications.

QUESTION: If there is a schedule variance, what impact is expected on subsequent operations?

ANSWER: There are none.

Recovery Act Funding

QUESTION: The ARRA provided $1 billion for Census, including up to $250 million for partnership and outreach efforts to minority communities and hard-to-reach populations.

The proposed spend plan provides $30 million to expand the Coverage Follow-up operation, where telephone interviewers re-contact households to verify data that may have been erroneously omitted or included in error on the initial census form.

How is a determination made that a survey response requires a coverage follow-up call?

ANSWER: The Coverage Followup is a telephone interview designed to improve coverage in the census by determining if anyone has been missed or counted more than once, based on the completed census form. Since Census 2000 the Census Bureau has tested different ways to identify households for followup. Based on this research, the Census Bureau plans to re-contact households based on their responses to their census form or interview who meet at least one of the following conditions:

- Large household – a household who, due to form limitations, is unable to provide all of the information for everyone in the household. For example, on the English Mailout/Mailback form a large household is defined as having more than six people since the form only allows for complete information to be collected for six people.
- Count discrepancy – a household that provided conflicting information about the number of people who live in the household. This is based on looking at the number provided in Question 1 on the mailout/mailback form compared to the number of people for whom demographic information is provided.
- Undercount Coverage Question category – a household that marks specific categories in the undercount coverage question indicating that there were additional people staying at the household who were not included on the form. The categories included in followup are "People staying at the housing unit temporarily" and "Relatives, such as adult children, cousins, or in-laws."

- Overcount Coverage Question category – a household that has at least one person who sometimes lives or stays somewhere else as indicated in specific categories in the overcount coverage question. The categories included in followup are "in college housing," "in jail or prison," "in a nursing home," and "in the military."
- Administrative Records – a household that has been identified, using Administrative Records, as missing someone from their census count. Note that no information contained in the Administrative Records is shared with respondents.

QUESTION: Why is it necessary to expand this operation?

ANSWER: Expanding this operation improves the accuracy and count of the census. It allows for an additional 1.1 million households to be included in the followup operation. Although our base plan for CFU included calling all of the cases that were most likely to result in a household roster change, the stimulus allowed us to expand the number of calls to include an additional category of cases that have been shown in testing to be effective at improving coverage but with slightly lower effectiveness than the higher priority cases originally selected.

QUESTION: The proposed spend plan provides $120 million for the partnership program. What are the criteria for this program?

ANSWER: The partnership program is focused on working with third party agents/trusted community leaders to help reach and motivate hard to count (HTC) populations (groups that the Census Bureau might have difficulty reaching through other means) – in an effort to encourage participation in the census. The basic selection criteria for identifying and securing a partner agreement involves determining if the organization has strong reach and authenticity with HTC populations they serve and if the selection of such an organization would present substantive negative implications for the Census Bureau.

QUESTION: How does this program operate?

ANSWER: The program operates by hiring a temporary workforce throughout the Census Bureau's 12 regions that understand the HTC populations in their region, and have the skills to either create networks or utilize existing networks to reach these HTC populations. Once established, the networks serve as the link for providing critical information about the census, including how to participate, the confidentiality of information, and job availability. Partner organizations also become strong advocates among their constituents to urge full participation in the 2010 Census.

QUESTION: What do partnership specialists do?

ANSWER: Partnership specialists work at the community level to enlist the help of local officials, organizations, and businesses (partners) to help inform and engage their constituents to participate in the census. This includes such activities as helping foster the

formation of local Complete Count Committees composed of local stakeholders, providing informational materials to partners, working with organizations and businesses to donate space for job testing and training, and working with organizations to translate promotional materials into languages that may not be provided by the Census Bureau. Partnership specialists engage all of their efforts and expertise in community organizing to reach the HTC populations – again people who may not be reached by other means, and/or may feel there are barriers to their participation whether it be ability to speak English, legal status, or something else.

QUESTION: What are the funds used for?

ANSWER: The Recovery Act Funding will be used to bolster the base partnership staffing level of 680 persons by hiring approximately 2,000 additional persons that work as partnership staff. Also, additional materials will be provided in support of the program.

QUESTION: Are funds provided to outside organizations?

ANSWER: The Census Bureau does not provide funding to outside organizations. However, the Bureau does have a Partner Support Program that allows partner organization that serve HTC populations to request specialized promotional materials that will help them promote participation in the census among their constituents. The Census Bureau procures these materials and provides them to the organization. For instance the Bureau may print posters for a partner organization about an upcoming census event the organization is sponsoring, such as a census rally or community meeting. The partner support program is funded from base appropriations and not Recovery Act Funding.

QUESTION: How will the bureau determine where and how to spend the $100 million proposed in the spend plan for additional media purchases?

ANSWER: Funds from the Recovery Act for the 2010 Census Integrated Communications Campaign will primarily be used to increase our direct paid media purchases to increase the effectiveness of our efforts to reach the hardest to count populations, particularly through the local media outlets that they use the most. The remaining funds will be used to expand other aspects of the campaign that focus on the hard-to-count populations. Specifically we plan to spend the funds on the following:

Paid Advertising (including media buys and labor)	$	80,000
Partnership Support (additional targeted materials)		2,000
Public Relations (including a census road tour)		15,000
Census in Schools (expanding the base program)		3,000

TOTAL $ 100,000
Note: Of the 80 million in Paid Media funding, we plan to allocate $43 million to local ad buys directed towards hard to count populations.

Outside Organizations

QUESTION: Describe the role of organizations that partner with Census to encourage citizens to complete the survey.
What criteria does the agency apply in deciding to work with a particular organization?

ANSWER: The partnership program is focused on working with third party agents/trusted community leaders to help reach and motivate hard to count (HTC) populations (groups that the Bureau might have difficulty reaching through other means) – in an effort to encourage participation in the census. The program operates by hiring a temporary workforce throughout the Census Bureau's 12 regions that understand the HTC populations in their region and have the skills to either create networks or utilize existing networks to reach these HTC populations. Once established, the networks serve as the link for providing critical information about the census, including how to participate, the confidentiality of information, and job availability. Partner organizations also become strong advocates among their constituents to urge full participation in the 2010 Census.

The basic selection criteria for identifying and securing a partner agreement involves determining if the organization has strong reach and authenticity with HTC populations they serve and whether selection of such an organization presents substantive negative implications for the Census Bureau.

QUESTION: Does the agency pay for the organization's assistance?

ANSWER: No. The Census Bureau does not pay or provide funding to outside organizations. However, the Bureau does have a Partner Support Program that allows partner organization that serve HTC populations to request specialized promotional materials that will help them promote participation in the census among their constituents, as described in an earlier answer.

QUESTION: Are any policy decisions made based on the agency's input?

ANSWER: No. Partner organizations are not Census Bureau employees and have no role in conducting or directing Decennial Census operations.

U.S. Patent and Trademark Office Fee Collection Decreases

QUESTION: Recently, the U.S. Patent and Trademark Office (USPTO) projected a decrease, from the FY 2009 President's budget, of $173.8 million in patent filing and maintenance fees. This has resulted in an excess appropriation of $23 million, which

could have been spent on other programs within the Commerce, Justice, Science and Related Agencies Committee.

In response, the USPTO has implemented a number of fiscal savings, including a reduction in the number of patent examiners it intended to hire in FY 2009, from 1,200 to 600.

While this will save $15 million in the current fiscal year, it will also reportedly increase the backlog of applications by 6,000; decrease the number of patents issued by 1,300; and decrease fee collections by $3.3 million. These effects may significantly aggregate in future years. For example, reductions in fee collections now also mean reduced fees collected in the out years. In addition, pendency will increase by 4 months by 2014.

As a wholly fee-supported agency, USPTO's funding is not based on the requirements necessary to complete the work, and the agency's ability to operate is affected by the economic crisis. Fewer applications are filed and more patent holders decline to maintain their patents. Secretary Locke, would you agree that the decision to transform USPTO into a wholly fee-supported agency does not appear to be working?

ANSWER: The decision to transform USPTO into a whole fee-supported agency has worked, and is working. The fact that the USPTO needs to make adjustments in a year that has been extraordinary for the economy as a whole does not mean that the basic mechanism for funding the agency is not appropriate. For almost 20 years now (since 1990), the USPTO has been funded wholly by fees collected for its products and services. That funding mechanism, to the extent that the USPTO has been appropriated its fee receipts, has allowed the agency to grow in keeping with the expanded role that innovation plays in the US economy. Since fee funding was introduced in 1990, USPTO patent filings have increased every year except the dot-com bust year of 2003, when filings were flat, and this year. The fact that the USPTO was funded out of user fees has generally meant that USPTO did not need to compete with other agencies for taxpayer dollars because increases in capacity were fully offset by increased revenue and, conversely, decreases in fee receipts do not impact the amount of general fund revenue available for government programs. It is true that this year the USPTO needed to adjust its expansion plans in view of unprecedented economic turmoil. While recent economic events have caused a noticeable falloff in patent fee receipts, the decline is proving to be relatively modest, as actual collections in 2009 and 2010 are projected to be higher than 2008, albeit only slightly. A single-year need for course correction should not be taken as suggesting that the underlying model for funding the agency is unsound.

Also, while decreased filing decreases revenue, which limits hiring and consequently impacts the backlog when analyzed in isolation, our current projections for the average length of time between a filings and completion of a final review has decreased compared to projections in contained in the 2009 President's Budget.

Finally, while the fee-support model has proved resilient, USPTO is still evaluating ways to optimize operations to promote innovation and effective intellectual property protection system, as well as ensuring the long-term stability of operations. We look forward to working with the committee to reach these goals.

QUESTION: Will an increase in patent filing and maintenance fees resolve the problem?

ANSWER: An increase in particular fees – such as patent filing and maintenance fees – may or may not provide the USPTO with increased income. This is because changes in fees may actually motivate changes in filing behavior, so that an increase in fees might actually decrease the number of filings in a particular fee category. The USPTO is currently evaluating ways to optimize the agency's size, operations and fee structure to promote innovation and an effective intellectual property protection system, as well as ensuring the long-term stability of operations. As future options are evaluated, I look forward to working closely with the Committee towards solutions.

QUESTION: Is there support from the relevant stakeholders for such increases?

ANSWER: Patent owners and applicants continue to express support for the USPTO having access to all of the fees it collects. In the recent past, stakeholders expressed support for increases to USPTO fees, with the assurance that the collections remain available and fully accessible to fund USPTO operations. However, in the current economic environment, we should be cognizant of the impacts fee increases could have on firms experiencing that effects of the current economic downturn.

Backlog of Applications

QUESTION: GAO released a report on USPTO hiring efforts in September 2007, finding that the agency based its projected annual hiring estimates on the basis of available funding levels and not on the existing backlog or expected patent application workload. Attrition is further complicating matters, as USPTO expects to lose 600-620 examiners this year despite the implementation of performance bonuses, flexible work schedules, and a telework program.

What steps should be taken to reverse these trends?

ANSWER: USPTO has taken a number of steps to reduce its attrition rate for new hires. USPTO introduced a university approach to training new examiners, improved the quality of new examiners through more targeted hiring, and offers competitive recruitment/retention bonuses. With a focused effort to reduce attrition since the GAO report, the first year attrition rate of 15.6 percent dropped in FY 2008 to 12.9 percent, which represents a 30 percent decline. The average attrition rate for patent examiners with less than three years experience was 15.5 percent when the GAO report was released. Currently, the rate has dropped nearly 21 percent to 12.3 percent. Notably, the

average attrition rate for patent examiners with greater than three years experience is currently 2.2 percent.

Pass Thru Budget Authority

QUESTION: We were surprised to learn recently that the USPTO has pass thru budget authority with respect to the Department of Commerce. Will this be true on your watch, as well?

ANSWER: The Department supports the USPTO's "pass-thru budget authority", which was established as part of the American Inventors Protection Act of 1999 ("AIPA") and accompanies USPTO's status as a performance-based organization. The AIPA establishes a structure that makes the USPTO accountable for use of its funds and which emphasizes the principle of accountability through clear performance measures, goals, and efficient spending of fees. While the AIPLA provides for a special relationship between USPTO and the Departmental structure, my staff and I still provide active oversight of USPTO operations.

For example, I appoint the members of the Patent Public Advisory Committee (PPAC) and the Trademark Public Advisory Committee (TPAC), which provide USPTO third party input from the trademark and patent communities. The USPTO seeks the views of both PPAC and TPAC before submitting budget proposals to the Office of Management and Budget, or before changing or proposing to change any fees or regulations that are subject to public notice and comment.

In addition to appointing the PPAC and TPAC Members, I appoint the Deputy Under Secretary and Deputy Director of the USPTO. Further, the Under Secretary and Director reports directly to me. Also, my office receives the PTO budget at the same time it is submitted to OMB and on a quarterly basis I receive updates and review PTO's performance goals and any significant issues relating to PTO operations.

Finally, by statute the Commissioners for Patents and Trademarks are appointed by me and report to me. They have formal written annual performance agreements with me, which include measurable organizational and individual goals.

QUESTION: What oversight role could the Department have performed to avert the fee collection crisis that we learned about in mid- March?

ANSWER: From October 1, 2008 through December 31, 2008, as I understand it, the USPTO's patent fee collections were on target with this revised operating plan. In January 2009, the USPTO began seeing a decline in patent fee revenue. Based on briefings I have received, the USPTO did not know whether this January 2009 downturn was an anomaly, or the start of a trend. Other intellectual-property offices, as well as the domestic patent community, indicated that they believed patent application filings would drop significantly in 2009, possibly by 10% or more over the previous year. These forecasts from other offices and from users themselves concerned the USPTO, since they

did not comport with the much more modest decline seen in January. However, when fee collections declined again in February 2009 compared to monthly projections, the USPTO decided it was prudent to alert the Department, OMB, and Congress of the possibility that fee collections could decline precipitously in FY 2009, given the experience of other nation's intellectual property offices. Fortunately, patent fee collections for March and April 2009 appear to indicate that the USPTO's own, more modest reduction estimates, are holding true.

Since FY 2009 fee collections are at a level significantly below those originally projected in the FY 2009 President's Budget, the USPTO appears to have correctly assessed the scope of the downturn and has taken appropriate and prudent cost-savings actions to offset the reduction in income while still maintaining effective agency operations. This however may have an impact on production.

Beyond the current cost-savings actions, the USPTO is evaluating ways to optimize its size, operations and fee structure, all in a manner that provides long-term stability, and promotes innovation and an effective intellectual-property protection system. I expect the USPTO to provide recommendations that identify the tools necessary for it to manage effectively during periods of economic fluctuation, while striving to achieve stretch goals and fulfilling its statutory mission.

QUESTION: What is the Department's position on dismantling the 'fence' between patent fees and trademark fees?

ANSWER: The same section of the American Inventors Protection Act of 1999 ("AIPA") that requires me to review the USPTO's budget and operations and report annually to Congress on my findings also sets forth the so-called "fence" that does not allow trademark fees to be spent on patent operations, but does allow for patent fees to be spent on trademark operations. USPTO is considering the "fence" option among other possible reforms. At the present time all options are under going review and to date no definitive conclusions have been reached on this option or any of the others.

Nomination of the Undersecretary of Commerce for Intellectual Property and Director of PTO

QUESTION: Will the Administration nominate an Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office soon?

ANSWER: I will defer to the White House on the announcement of the nomination of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO.

Department Wide Security Issues

QUESTION: The Inspector General (IG) reports that the Department has reported information security as a material weakness every year since FY 2001 despite additional expenditures to mitigate the problem.
Securing systems from cyber threats is the most difficult piece of the challenge. Incorporation of wireless and other technologies to support operations and workplace flexibilities invite new risks that the Department must anticipate and mitigate.
The IG has found a number of problems and several notable security incidents. This includes security personnel with an inadequate grasp of the Department's IT security policy, NIST standards and guidance, and security technology. The Department has apparently cited a lack of resources as a major impediment.
Will you commit to providing this Committee with a clear, focused request for IT security funding that lays out the requirements and the results expected?

ANSWER: IT Security continues to be one of the Department's highest priorities. Since the material weakness was first reported in 2001 we have implemented several initiatives to improve the Department's overall security posture. The Office of Inspector General (OIG) noted that our efforts were hampered by a focus on completing system certification and accreditations (C&A) instead of improving their quality. The C&A process provides the underpinnings of a sound IT security posture by identifying critical system weaknesses and helping to establish mitigation strategies and priorities. Investments can then be focused on balancing competing resource demands for improving the effectiveness of the overall C&A process against cyber security operational priorities that address known vulnerabilities and areas needing enhancement. In sharing the same vision to strengthen the Department's security posture, the OCIO/OIG jointly developed a strategy to incorporate realistic milestones, take measurable steps, and build consistent and repeatable C&A practices.

Another IT security challenge that the Department faces is the emerging cyber security threats impacting most Federal agencies. Secure IT infrastructure and proactive cyber security are the Department's highest priorities. Due to recent malicious cyber attacks against Federal agencies, we have invested significant resources to deploy operational security and continuity of operation (COOP) capabilities. The Department's CIO community reviewed critical IT initiatives and through consensus prioritized those considered most critical. Cyber security operational enhancement and capability initiatives received highest priorities. To mitigate the emerging security threats, the Department has upgraded headquarter security operations center (SOC) to include near real-time vulnerability detection, sensitive data loss prevention, and continuous monitoring.

Although the Department and its operating units have reallocated their resources to focus on IT security, significantly more are needed for:

- Cyber threat enhancements;
- Security operations and computer incidents response capability; and,

- Trusted Internet Connection (TIC).

The Department is planning to consolidate and centralize its management of classified systems and emergency networks to ensure consistent application of national security rules across Commerce and compliance with the guidelines set forth by the Committee for National Security Systems and the National Communications System. To do so effectively, the OCIO is proposing to develop a common infrastructure to satisfy these requirements while reducing unnecessary duplication; centralizing management and oversight of these systems; and minimizing operations and maintenance costs. Additional funds will position the Department to:

- Improve IT Security capabilities across dispersed operating unit COOP sites. For example, beginning in FY 2010 the OCIO has requested funds to deploy communications capabilities required for Cabinet-level departments and agencies as well as those bureaus that support National Essential Functions (NEF). This initiative would extend the minimum communications capabilities to the Commerce COOP site, the COOP sites for BIS and NOAA and a distant Commerce reconstitution site to provide for geographic disparity.
- Develop a comprehensive cyber security plan to detect malicious cyber attacks and enhance readiness capabilities. This IT security initiative is needed to protect Commerce and U.S. Government intellectual property; to implement continuous monitoring and reporting of network activity; to provide comprehensive situational awareness capability; and to provide secure (classified) cyber security, counter-terrorism, and national emergency operations information between Commerce equities, the Department of Homeland Security (DHS), Federal, state and local law enforcement officials, the intelligence community, and the national command structure during times of national emergency.
- Integrate multiple internet connections through TIC portals to reduce exposure to Internet based cyber attacks. The Department of Commerce is developing a plan that will reduce its direct Internet connections to approximately six (6) authorized TIC access providers over the next four years.

Overall, costs for these IT security initiatives at the Departmental level will increase from a base of $5.5 million in FY 2009 to approximately $14.4 million in FY 2010. If the requested funding is approved, we're confident the C&A material weakness corrective action plan and the IT security operational initiatives will enable the Department to continue its critical missions securely in today's challenging environment.

National Telecommunications and Information Administration American Recovery and Reinvestment Act Funding

QUESTION: The ARRA provided $4.7 billion to NTIA's Broadband Technology Opportunities Program (BTOP). $4.7 billion sounds like a lot of money, but Australia reportedly announced that it would spend almost $31 billion to ensure that at least 90 percent of the country has access at 100Mbps by 2018. South Korea plans to invest more than $25 billion to increase wired broadband speeds to 1Gbps, with wireless speeds topping out at 10Mbps, by 2012. By contrast, the U.S., with 19 percent of the world's total broadband subscribers, ranks 22nd out of 113 countries

in terms of broadband penetration by population. ***Broadband is defined by anything faster than 256Kbps.***

The US is 15th out of the Organization for Economic Co-Operation and Development's (OECD) 30 member countries. Please explain why this is a problem.

ANSWER: The ranking by the OECD addresses a variety of measures indicating our performance in certain areas as compared to other nations. It is important to be able to measure our progress in fulfilling the President's goal of broadband for all Americans. We believe that the BTOP program is the first step on a path towards reaching the President's goal.

QUESTION: Please outline the process that NTIA is pursuing.

ANSWER: As the President stated in his Inaugural Address, the state of our economy calls for bold and swift action, not only to create jobs but to "lay a new foundation for growth." Part of that new foundation is broadband. Enhancing broadband penetration will, as the President has noted, "strengthen America's competitiveness in the world."

The National Telecommunications and Information Administration (NTIA), an agency within the Department of Commerce, is working expeditiously to implement the Broadband Technology Opportunities Program (BTOP), established by the American Recovery and Reinvestment Act of 2009 (Recovery Act)(P.L. 111-5). On March 12, 2009, NTIA, along with the Rural Utilities Service (RUS) of the Department of Agriculture, issued a joint Request for Information (RFI), inviting public comment on implementation of BTOP. To date, over 1,000 written comments responding to our RFI have been received. All of the written comments are posted on NTIA's BTOP website (www.ntia.doc.gov/broadbandgrants). In addition, in March, NTIA and RUS hosted six public meetings at which interested parties participated in public roundtable discussions of various issues related to BTOP. Four of the public meetings were held in Washington, D.C., one in Flagstaff, Arizona, and one in Las Vegas, Nevada. In addition to hearing from panel presenters, NTIA reserved significant time for audience questions and comment. These meetings were videocast on the Internet and the footage is archived on NTIA's BTOP website (www.ntia.doc.gov/broadbandgrants). NTIA is in the process of reviewing the public comments filed in response to the RFI and plans to issue a Notice of Funds Availability (NOFA) this summer to allow eligible entities to apply for BTOP funds.

QUESTION: What was the purpose of the public meetings held in March?

ANSWER: NTIA believes that the public should have the ability to help shape our policies as well as visibility into how its money is actually spent through BTOP. That is why the Agency created an open and efficient process for facilitating public input into how NTIA can effectively and efficiently administer BTOP. Our goal is to develop the highest caliber grant program, with input from diverse stakeholders, and to award grants to highly competitive projects that further the Recovery Act's purposes.

To that end, on March 10, 2009, NTIA, RUS, and the Federal Communications Commission (FCC) held a "kick off" public meeting in Washington, D.C. Nearly 600 people attended the meeting in the Department of Commerce Auditorium—and thousands more participated via a live web stream and teleconference. The meeting underscored that NTIA, RUS, and the FCC intend to collaborate closely and to provide the public with multiple opportunities to help shape BTOP to benefit the public throughout the country.

Between March 16 and March 24, 2009, NTIA held a series of four additional public meetings in Washington, D.C., and held separate field hearings in Flagstaff, Arizona, and Las Vegas, Nevada, to provide the public additional opportunities to provide input on various aspects of BTOP, including technical, legal, programmatic, and process-related issues. Nearly 120 panelists—including representatives from consumer and public interest groups, State and local governments, tribal governments, minority and vulnerable populations, industry, academia, and other institutions—provided invaluable insights about how to make these programs effective, equitable, and efficient. The meetings were webcast, and people who could not attend in person or via the Internet were invited to participate via a toll-free telephone conference.

The input received in these meetings augmented the public comments received in response to NTIA's and RUS's joint RFI. This robust approach to public comment will help ensure public engagement in the design and implementation of the broadband initiatives in a way that gets Recovery Act dollars out to the public as quickly and efficiently as possible to promote job creation and to expand broadband deployment.

QUESTION: Are additional public meetings planned?

ANSWER: Soon after the NOFA is published, NTIA plans to hold regional workshops to raise awareness of BTOP and answer questions about the grant application process. NTIA intends to collaborate with RUS as well as other Federal agencies, such as the FCC, to ensure BTOP benefits from broad-based expertise across the Federal Government. In addition, we are exploring other methods for disseminating information and addressing common questions from applicants, such as webcasts and Frequently Asked Questions (FAQs). These activities will help ensure that Recovery Act funds are disbursed swiftly and BTOP is administered as effectively and efficiently as possible.

QUESTION: What is the expected time line for the Federal Register notification of available grant funding? [Notice of Funds Availability (NOFA)]

ANSWER: NTIA intends to publish its first NOFA in summer 2009.

QUESTION: The agency has described a funding approach in three 'waves.' Will you elaborate on this concept?

ANSWER: The statute requires that all funds be obligated by September 2010. In order to meet this requirement and to allow all participants a chance to apply, NTIA plans to allow applicants three opportunities to apply for BTOP funds over the life of the Program. Our current plan is to publish a NOFA this summer and to hold workshops across the country soon thereafter to answer questions about the application process. This process would be repeated in late calendar year 2009 and again in spring 2010, so that prospective applicants who are not ready this summer can prepare to apply for BTOP funds during the second or third rounds. The three "waves" would also allow NTIA to make program adjustments based on the experience from the earlier rounds.

QUESTION: Some of the funding is intended to encourage the sustainable adoption of broadband services, the upgrading of technology and capacity at public computing centers, and the development and maintenance of statewide broadband inventory maps.

Please describe the current status of these programs, and how the funding will be distributed.

ANSWER: By statute, NTIA must expend at least $250 million for innovative programs to encourage sustainable adoption of broadband; at least $200 million for expanding public computing center capacity; and no more than $350 million for the development of a nationwide broadband inventory map. NTIA is reviewing the public comments submitted in response to its March 12, 2009, Request for Information and will structure the several programs within BTOP to ensure the most efficient and effective distribution of competitive grant funds consistent with the statute.

QUESTION: There appears to be some concern that the statewide inventory maps will be developed before funding is spent to provide broadband access. Please explain why a concurrent program is best?

ANSWER: Section 6001(l) of the Recovery Act directs that "the Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State." Congress further directed that such a map be available on NTIA's website no later than February 17, 2011. Given the statutory requirement that NTIA award all grants under BTOP before September 30, 2010, it is likely that comprehensive nationwide broadband mapping will not occur before the first round of BTOP grants are awarded, though we are committed to making data-driven funding decisions to the greatest extent possible throughout the program.

NTIA believes that there are many good reasons supporting the concurrent nature of the programs as established by the Recovery Act. First, the BTOP grants are part of a larger effort to stimulate growth rapidly to jumpstart the American economy. Therefore, it is critical that NTIA award the grants quickly, though carefully, with consideration to their

short- and medium-term economic impacts. Second, NTIA believes sufficient data currently exists, both at the FCC and at the State level, to make informed decisions regarding the evaluation of BTOP grant applicants. For these reasons, NTIA intends to adhere to the Congressional timeline set out in the statute, while moving Recovery Act dollars into the economy as quickly as we can. Thus, we will be pursuing the concurrent development of a comprehensive nationwide map alongside the prudent investment in the nation's broadband infrastructure.

QUESTION: Please discuss some of the significant challenges facing this program:

ANSWER: One of the most significant challenges to the broadband mapping program is gathering the relevant data for the national map. In the Recovery Act, Congress has directed that NTIA develop and maintain a "comprehensive nationwide inventory map." NTIA believes that the development of a truly comprehensive map will require gathering extensive data from the States and many public and private sources across the country. Working in concert with public and private parties nationwide to collect all of the data necessary to develop a map that reflects Congress' intent and that serves the needs of the American people will present a significant challenge. NTIA is working closely with other Federal and State agencies, including RUS and the FCC, to determine the most efficient and effective methods to obtain such information.

QUESTION: Has it been difficult to staff quickly?

ANSWER: NTIA has been able to identify and hire the preponderance of its core BTOP staff fairly quickly. NTIA continues to identify and hire staff for the program using a variety of authorities, including staff reassignments, competitive service hires, various excepted service hires, and details from other Federal agencies. Federal staff will perform inherently governmental functions, but NTIA will contract for administrative services to assist the program in carrying out its responsibilities.

QUESTION: What statutory terms must be defined?

ANSWER: The statute requires NTIA to define the following terms: "broadband," "unserved area," "underserved area," as well as adopt non-discrimination requirements and network interconnection obligations. NTIA, the FCC, and RUS are coordinating with regard to these definitions. NTIA and RUS published a joint RFI on March 12, 2009, seeking public comment on these definitional terms, as well as a number of other policy and procedural issues related to establishing the BTOP. NTIA received over 1,000 comments in response to the RFI by the April 13, 2009 deadline. NTIA is presently reviewing and analyzing the record.

QUESTION: What consultative role should States play?

ANSWER: The States are valuable partners from which the Federal Government can learn many key lessons regarding best practices for programs on the national level. Similarly, NTIA also recognizes the instructive value of the States and their

roles as partners in the Broadband Technology Opportunities Program. In the Recovery Act, Congress directed that NTIA consult with the States with respect to the best ways to identify areas to which broadband grant funds should be directed and the proper allocation of grant funds. Additionally, NTIA has already begun meeting with officials from the States and has been actively soliciting input with regard to best practices. NTIA will continue to reach out to the States and to consult with them in achieving our common goals of expanding broadband access and growing the economy. States will also play a significant role in our mapping efforts.

QUESTION: Please describe the relationships NTIA has developed with the Federal Communications Commission (FCC) and the Rural Utilities Service (RUS) in establishing this program.

ANSWER: Since the passage of the Recovery Act, NTIA has coordinated closely and regularly with both RUS and the FCC to ensure broadband stimulus funds are wisely spent. Given that RUS has received $2.5 billion in the Recovery Act for broadband grants and loans, it is critical that these funds be leveraged with NTIA's $4.7 billion. To that end, NTIA and RUS are coordinating their definitions of important terms, such as the definition of broadband. The agencies are also ensuring proposed service areas—in "rural," "unserved," or "underserved" areas—be carefully defined to eliminate redundancy across the broadband programs. Finally, NTIA and RUS are coordinating closely on their respective application kits and guidelines to leverage efficiencies and to minimize the burden on applicants to the extent practicable.

NTIA is also closely coordinating with the FCC in at least two important ways. First, NTIA is consulting with the FCC on defining key policy terms for purposes of BTOP, such as the definition of broadband, unserved, and underserved—as well as key interconnection and non-discrimination program requirements. Second, NTIA is working with the FCC in developing the national broadband mapping program, with the FCC providing expert policy and technical advice in implementing the mapping program.

QUESTION: What other agencies will NTIA coordinate with to leverage funds and expertise?

ANSWER: NTIA has been sharing information and coordinating closely with other Federal agencies through an interagency broadband coordination group convened by the White House. It is critical that NTIA's broadband infrastructure investments dovetail with and leverage other important and related infrastructure development initiatives, such as the national smart grid, the advancement of electronic medical records, and the building of roads and highways. To that end, NTIA is coordinating with the Department of Energy, Department of Health and Human Services, and the Department of Transportation, among others, to ensure maximum coordination and leverage.

Because NTIA will be providing grants to expand public computer center capacity, the agency is also working with the Institute of Museum and Library Services and the Department of Education to ensure NTIA is not duplicating efforts. Moreover, NTIA is

working with the Office of Advocacy at the Small Business Administration and the Department of Housing and Urban Development to benefit from their expertise in advancing innovative programs to encourage sustainable adoption of broadband service.

QUESTION: The Office of Inspector General recently expressed concern that the broadband initiative, like the Public Safety Interoperable Communications (PSIC) program, is an enormous undertaking for NTIA. What lessons can NTIA take from its administration of the PSIC?

ANSWER: In implementing BTOP, NTIA will incorporate two important lessons learned from the Public Safety Interoperable Communications (PSIC) grant program: (1) developing a rigorous application review process; and (2) ensuring compliance with the National Environmental Policy Act (NEPA). First, under the PSIC grant program, NTIA conducted a comprehensive peer review process to review, evaluate, and score grant proposals. For the broadband initiative, NTIA will use peer reviewers to assist in the review and evaluation of applications. A rigorous peer review process will help ensure that the projects funded under the program are feasible, high quality, and meet the program objectives. Second, NTIA has spent the last 16 months conducting an extensive environmental analysis of the proposed communications projects for the PSIC grant program. NTIA plans to leverage the environmental framework established under the PSIC grant program and build upon this analysis to expedite BTOP awards.

NTIA's Digital Transition

QUESTION: The ARRA provided $650 million in additional funding for the digital transition to ensure that citizens could get coupons for converter boxes in a timely manner.

Is there currently a backlog of requests for converter boxes?

ANSWER: There is currently no backlog of requests for coupons. The Program is fulfilling all requests using ARRA funds on a first-come, first-served basis. Based on coupon redemption data and retail store activity, the Coupon Program does not believe there are widespread shortages of actual converter boxes in the stores of retailers participating in the Program. Participating retailers are required to use commercially reasonable methods to stock and manage converter box inventory.

QUESTION: What happens to coupons that expire or are lost?

ANSWER: Funds from expired or lost coupons are deobligated and become available for the Coupon Program to use again for other requests. Eligible households whose coupons have expired now can reapply for replacement coupons.

QUESTION: Are there new regulations that allow NTIA to reissue coupons?

ANSWER: Yes. NTIA issued revised Coupon Program regulations on March 12, 2009, to implement the DTV Delay Act. NTIA's revised Coupon Program regulations allow us to issue replacement coupons upon request to consumers whose coupons expired unredeemed. Since March 23, 2009, the Coupon Program has accepted requests from eligible households to replace coupons that expired without being redeemed. Since then, requests for replacements amount to approximately 27.5% of all coupons requested.

QUESTION: Are converter boxes readily available in retail outlets?

ANSWER: Yes. As of April 29, 2009, there were 2,179 participating retailers in the Coupon Program, including six of the largest retailers—Best Buy, Kmart, RadioShack, Sears, Target, and Wal-Mart—as well as hundreds of regional chains and smaller retailers. These retailers represent 31,185 participating outlets nationwide, including locations in all 50 states, all designated market areas (DMAs), as well as Guam, Puerto Rico, and the U.S. Virgin Islands. Additionally, consumers can choose from among 29 online retailers and nine phone retailers. In short, consumers – even those in areas where the closest consumer electronics retailer is fifty or one hundred miles away – have ready access to coupon-eligible converter boxes (CECBs). A list of all participating retail outlets, searchable by state and 5-digit zip code, can be found on www.DTV2009.gov under "Locate a Retailer Near You."

The terms for retailer participation in the Coupon Program require certified retailers to use commercially reasonable methods to order and manage inventory to meet customer demand for CECBs. The availability of converter boxes through the duration of Coupon Program (i.e., until the last coupons expire in November 2009) remains a concern. The Coupon Program is cognizant of the fact that, especially in this final phase of the Coupon Program, retailers' orders for converter boxes reflect their best estimate of actual consumer demand for boxes, and that retailers seek to avoid excess inventory after all coupons have expired.

With this in mind, the Coupon Program continues to provide coupon request data to a 5-digit zip code level of granularity each week (at our retailer website, www.ntiadtv.gov) so that retailers are able to anticipate consumer demand in their area, and, accordingly, order and distribute inventory to meet that demand. The Program also provides redemption information in great detail to assist retailers in identifying changes in consumer activity and market variations. Additionally, the Coupon Program has certified over 190 different converter brands and models from over 100 different manufacturers, and makes available manufacturers' marketing contact information on the retailer website in order to facilitate any retailers that might wish to add a brand to meet demand. The Coupon Program has also posted links to the Federal Communications Commission's (FCC) listing of television stations by DMA and their planned analog termination dates. From its conversations with leading manufacturers, the Coupon Program believes that innovative distribution arrangements are available, such as wholesale distribution arrangements of CECBs on a consignment basis. The number and flexibility of manufacturers should also help retailers meet demand in the final phase of the Coupon Program. To underscore

NTIA's concern about continued converter box availability, on April 8, 2009, Acting Assistant Secretary Gomez wrote to the major retailers participating in the Program to reinforce the need for retailers to keep a sufficient stock of converter boxes on store shelves as the DTV transition enters the home stretch.

QUESTION: As of January 22, 2009, the Nielsen Media Research group reported that 5.7% of US households (6.5 million) were unprepared for the switch to digital television. People under age 35 were almost twice as likely to be unprepared as those over age 55. In addition, Hispanics were the least likely to be prepared, followed by African Americans and Asians. Albuquerque-Santa Fe is the least prepared market.

The ARRA provided up to $90 million for consumer outreach, including media purchases, call centers, and one-on-one outreach to assist consumers with converter box installation and programming. How do these components work together to ensure consumers can access local TV stations?

ANSWER: Nielsen estimates, as of April 26, 2009 that nearly 3.5 million television households in the U.S., or 3.1% of all television homes, are still "completely unprepared" for the transition – many of them within vulnerable populations. Although great progress has been made and the number of unready households has nearly been cut in half since January 2009, outreach to these unprepared households will continue to be a key focus of NTIA efforts. Collaboration among government, industry, and non-profit partners at the national, regional, and local levels will continue to be a vital part of this effort.

From the beginning, NTIA and its partners have been focused on the five groups (seniors, low income, minority, persons with disabilities, and those living in rural areas) most dependent on over-the-air broadcasting. While much progress has been made, NTIA is refocusing its efforts on those remaining, hard-to-reach consumers who, for whatever reason, have not acted. To better understand why these consumers have not acted and to determine how best to motivate them prior to June 12, NTIA conducted focus groups in Houston, Memphis, Richmond, Albuquerque, Tulsa, and Miami with consumers drawn from target groups. Using information from these focus groups, NTIA has made appropriate changes in its messaging and outreach. The Coupon Program is using promotion and outreach tools that have been proven to be effective in reaching these hard-to-reach consumers. Some examples of these tools include a public service campaign on transit systems in key markets, paid advertising on ethnic media, a social media campaign directed at 18-34-year olds, and sending mobile transition assistance teams into more than 20 markets to help consumers apply for coupons and demonstrate how to connect converter boxes.

Careful targeting and tailored strategies will maximize use of Federal resources to reach as many of the remaining unprepared households as possible to ensure they know about the transition and understand their options for dealing with it.

As required by the Recovery Act, on April 1, 2009, NTIA notified the House and Senate Committees on Appropriations that the Secretary of Commerce, in consultation with the FCC, has deemed it necessary and appropriate to transfer to the FCC certain DTV-related funds provided to NTIA under the Recovery Act. Specifically, following the statutory notification period, $65,705,000 was transferred to allow the FCC to continue to carry out its responsibilities to educate analog television viewers about the DTV transition. The FCC will use these resources to implement the final phase of its consumer education and outreach program to ensure that all Americans are aware of and prepared for the DTV transition. For example, this money will fund important in-home assistance operations and walk-in centers for people who need assistance connecting and setting up digital-to-analog converter boxes. The funds will allow the FCC to augment its call center operations to ensure that those households who have questions about the transition can contact 1-888-CALLFCC for help with all of their DTV transition needs.

QUESTION: Are residents of hotels eligible for converter boxes? There was a report on a major network news program that such residents are ineligible.

ANSWER: No. The Deficit Reduction Act of 2005 established the Coupon Program to send "up to two coupons per household." In its rulemaking to implement that provision, the NTIA decided to adopt the Census Bureau definition of "household," which "consists of all persons who currently occupy a house, apartment, mobile home, group of rooms, or single room that is occupied as separate living quarters and has a separate U. S. Postal address. Typically, hotels maintain business addresses that disqualify their residents from eligibility for converter box coupons. However, Coupon Program grantees and partners are conducting coupon donation programs to assist residents of single-room occupancy facilities – most do not have separate U.S. postal addresses – and other group living quarters in obtaining converter boxes.

QUESTION: What is being done to ensure that residents of nursing homes and other group living quarters have access to local stations?

ANSWER: Residents of licensed nursing homes, intermediate care facilities, and assisted living facilities are eligible to redeem a single coupon using a special application form. Alternatively, a family member or a representative from the licensed facility may apply for one coupon per nursing home resident, but the coupon will be mailed directly to the nursing home resident. In addition, Coupon Program grantees and partners are conducting coupon donation programs to assist residents of single-room occupancy facilities – most do not have separate U.S. postal addresses – and other group living quarters in obtaining converter boxes.

QUESTION: Will the outreach be conducted by contractors or volunteers?

ANSWER: Outreach will be conducted by both contractors and volunteers. Volunteer organizations that interact day-to-day with our target audiences have the access and credibility to move these consumers to action. While many of these organizations do not have the resources to create a special effort surrounding the DTV transition, they do have

the ability and the willingness to distribute information and coupon applications directly to those who need them. While the Coupon Program will continue to use the existing database of more than 400 partner organizations for information dissemination, it will also identify new partners that are specific to those demographics that remain unready for the transition. The Program will ask them to distribute information provided by NTIA, but will also encourage them to conduct additional outreach including hanging posters in public places (e.g., grocery stores, store fronts, etc.) and include information or a booth at an upcoming event.

NTIA will use contractors to conduct on-the-ground outreach by deploying eight regional Mobile Assistance Center (MAC) teams for a four to five week period. We anticipate spending 2-5 days in each selected city. Every team will have its own vehicle and team manager. Along with the team manager, additional MAC staff will be identified and hired for each location. The teams staffing the MACs will reflect the neighborhoods in which they are working (i.e., in Hispanic neighborhoods staff members would be bilingual, etc.). Prior to the MAC launch, all team members will be required to participate in an in-depth training session to ensure understanding of key elements of the program, as well as the technology they are demonstrating.

MACs will have two primary purposes: (1) to help consumers that have yet to apply for coupons complete their application; and (2) to demonstrate the converter box installation process, as well as other technical actions to be performed (i.e., adjusting antennas, conducting channel scans, etc.). The MACs will be branded with the TV Converter Box Coupon Program identity and will be equipped with an analog television, converter boxes, and computer terminals.

QUESTION: Does the funding include antenna installation? After the test conducted in Wilmington, NC last September, it was determined that some people will need more powerful rooftop antenna in order to ensure continued signals.

ANSWER: No. The Coupon Program has received neither authorization nor funds to provide assistance with antenna installations.

QUESTION: On April 2, The Wall Street Journal reported that 11% of local TV stations plan to change their broadcast areas. Is it possible that even with a converter box and a powerful rooftop antenna that some people may still not receive their local TV stations?

ANSWER: According to a publication distributed by the Federal Communications Commission (FCC) and Consumers Union (CU), a consumer might not be able to pick up a digital version of an analog channel they used to receive. The FCC's pamphlet explains that result could occur because the digital transmissions of some stations may cover a different geographic area than their analog broadcasts, or changes in the stations' digital transmissions may make it more difficult to pick up at the consumer's location. The FCC offers a tool to help consumers understand changes in coverage areas and how they might

be affected. Consumers can visit https://dtvsupport.fcc.gov/dtvtools and click on Channel Lookup to see coverage maps of their locations.

QUESTION: Are there areas of the country that do not receive strong signals from any local TV stations?

ANSWER: Yes. These areas are generally remote and/or geographically challenging. Signal strength in such areas can be helped by the use of broadcast relay systems, translators, boosters, or repeaters.

QUESTION: Is this an issue that can be resolved by providing funding through the Public telecommunications facilities planning and construction account to upgrade local TV station signals?

ANSWER: In November and December 2008, the FCC created two services, Distributed Transmission Systems and Digital Replacement Translator Service, to permit full-service television stations to continue providing service to viewers within their coverage area who have lost service as a result of those stations' digital transition. The Public Telecommunications Facilities Program (PTFP) has extended the application deadline for the FY 2009 grants round to May 18, 2009, so noncommercial public television stations can apply for funds to construct these newly authorized services.

QUESTION: How will consumers know whether or not to invest the time and money in converter boxes and more powerful rooftop antenna?

ANSWER: Several organizations, including the FCC, provide tools that help consumers address signal availability. *AntennaWeb.org* is a joint project of the Consumer Electronics Association (CEA) and the National Association of Broadcasters (NAB). The website allows a consumer to input a street address for a listing of free over-the-air DTV signals that should be receivable at that location. It also recommends the most appropriate antenna to use, and the direction in which the antenna should be pointed to optimize reception for each station.

QUESTION: Are digital service mapping sites part of the consumer outreach?

ANSWER: As noted above, the FCC provides a tool that allows consumers to check signal availability. In addition, the FCC has a call center (1-888-CALL-FCC) staffed by live-agents 24/7 to help consumers make a smooth transition.

QUESTION: Is it likely that consumers who rely on over-the-air TV will have access to internet connections in order to check digital availability?

ANSWER: Many consumers will be able to access the Internet at home to check on signal availability. Others will take advantage of resources available at libraries, senior centers, local community centers, churches, and other local organizations that provide access to the Internet to those without home access. For those consumers without any

means to access the Internet, the FCC's call center (1-888-CALL-FCC), which is staffed by live-agents 24/7, can provide such information.

QUESTIONS SUBMITTED BY REPRESENTATIVE MOLLOHAN

National Inventors Hall of Fame

QUESTION: What is the history and current status of USPTO's involvement with the National Inventors Hall of Fame?

ANSWER: The United States Patent and Trademark Office and the National Association of Patent Counsels (now merged with AIPLA), co-founded the National Inventors Hall of Fame Foundation (NIHFF) in 1973. Until 1989, the USPTO hosted the annual induction ceremony and provided space for the plaques honoring the inductees at its headquarters in Arlington, Virginia. In 1989, the board of the NIHFF solicited bids from interested parties to build a permanent home for the institution. The City of Akron, Ohio and the Franklin Institute in Philadelphia submitted bids.

The board accepted the offer from Akron, which included a pledge by the City, Summit County, Ohio, the State of Ohio, Goodyear and B.F, Goodrich to build a $35 million facility in downtown Akron, Ohio. That facility, known as Inventure Place, opened in 1995. Within three years, it became clear that the institution could not sustain itself as a stand-alone museum without additional programmatic revenue and/or public and private sector funding.

In 1998, Congressmen Tom Sawyer and Ralph Regula, and Senator John Glenn, all of Ohio, inserted Committee report language in the USPTO's FY 1999 budget directing the agency to provide $5 million in funding to NIHFF. That money enabled the NIHFF to avoid bankruptcy and to develop and implement a sustainable business model under the leadership of a new CEO, David Fink that allowed NIHFF to continue core operations without government funding.

Since 1999 the NIHFF has created or enhanced national programs whose purpose is to inspire children's interest in science and math, while growing public awareness of the importance and role of innovation in America. The NIHFF has materially assisted the local Akron community by repurposing its Akron facility as an Akron public school, and returning the physical site of the National Inventors Hall of Fame to the USPTO in Alexandria, VA.

Through the America COMPETES Act and other action, Congress has urged the Administration to interest and engage students through a variety of formal and informal programs so that we grow the next generation of scientists, mathematicians, engineers, and entrepreneurs. Informal education programs, like the NIHFF, show students that science careers aren't just in the lab, they are vibrant and help solve every day problems. USPTO has entered into several joint projects with the NIHFF that support national educational outreach and inventor recognition programs. These programs aid the USPTO's fundamental mission to disseminate information about patents, trademarks, and intellectual property protection.

The above-referenced programs include:

1. Camp and Club Invention;
2. The Collegiate Inventors Competition;
3. The Ad Council Inspiring Invention campaign;
4. The USPTO Museum in Alexandria;
5. The NIHFF Annual Induction of the nation's most important inventors;
6. The National Medal of Technology and Innovation; and
7. Independent Inventors Conferences.

The Camp Invention program is carried out in 48 states and the Club Invention programs exists in 24 states throughout the country. This year those two programs alone will provide over 70,000 children with engaging science and math programs.

The USPTO currently provides $2.9 million annually to fund a portion of three joint projects: Camp and Club Invention, the USPTO Museum in Alexandria, and the Independent Inventors Conferences. NIHFF also provides funding for these joint projects, as well as the other programs above through additional funding primarily from camp fees and to a lesser extent private sector entities. NIHFF's total budget for FY 2008 was $16.4 million.

QUESTION: Are there two museums now, one in Alexandria, VA and one in Akron, OH? Does USPTO provide support to both?

ANSWER: No, there is only one museum – located at the USPTO's headquarters building in Alexandria, Virginia. Akron is the corporate headquarters of the National Inventors Hall of Fame Foundation.

In 2008 the NIHFF turned the Akron facility over to the Akron Public Schools, and under license the National Inventors Hall of Fame School will open as a STEM Middle School in the fall of 2010. While Inductees of the Hall of Fame will be guest instructors at the school, the NIHFF has no financial or other involvement with the school. The USPTO does not provide any funding for this project.

QUESTION: Do both museums receive funds from sources other than USPTO? List the sources and amounts of additional funding for both museums.

ANSWER: There is only one museum, in Alexandria, Virginia. That museum is jointly funded by the USPTO and NIHFF.

QUESTION: Provide funding levels of USPTO support for the National Inventors Hall of Fame from 1995 to the present. Break out the funding between the two Halls, where appropriate.

QUESTIONS SUBMITTED BY REPRESENTATIVE SCHIFF

Pacific Salmon

QUESTION: NOAA Fisheries is currently overseeing one of the largest endangered species recovery efforts under way in the United States today: the restoration of imperiled salmon and steelhead in the Columbia and Snake River Basin of the Pacific Northwest. I am confident that under your leadership, we'll see a new focus on allowing the science to drive fisheries decisions, rather than the other way around. How are you addressing this problem, and ensuring that the best available science is used to save endangered fish species while protecting the livelihoods of fishermen as well?

ANSWER: Working with regional states, tribes, and stakeholders throughout the Northwest, the National Oceanic and Atmospheric Administration and the federal operators of the Columbia River hydroelectric system have worked hard to develop the current Columbia and Snake River Biological Opinion (BiOp). This collaborative process has forged strong partnerships to resolve complex scientific, technical, and policy issues.

The Under Secretary of Commerce for Oceans and Atmosphere, Dr. Jane Lubchenco and Nancy Sutley, chair of the White House Council on Environmental Quality are reviewing the BiOp and talking with all the interested parties. Judge Redden's recent letter to the parties in this litigation heightened the importance of this review. We share the court's concern for a final outcome that respects the law, the science, and the salmon.

Sound science is, and will continue to be, a fundamental component of salmon policy decisions. While challenges remain, I am hopeful the integration of sound science and collaboration with our state, tribal, and local partners will lead us to long-term, self-sustaining salmon and steelhead.

Climate Monitoring Satellites

QUESTION: In the next few years, we must have the ability to monitor carbon dioxide and other greenhouse gas emissions so that we can verify carbon emissions around the world. Even without an international agreement, any U.S. cap-and-trade system will likely allow companies to offset emissions by reducing emissions elsewhere in the world, presenting a difficult verification problem, absent satellite data. Given its climate expertise, NOAA may be tasked with maintaining such a system. Can NOAA be ready for that mandate? When could NOAA be ready to monitor carbon dioxide emissions around the globe, and what kinds of developments would be necessary?

ANSWER: NOAA's satellite data provides information to assess the status and trends of changes to the global environment. These data are used by regulatory agencies to support development and enforcement of U.S. laws and international treaties. For example,

NOAA's Polar-orbiting Operational Environmental Satellites and ground based platforms provide data on stratospheric ozone over Antarctica. These data are analyzed and used by agencies, such as the U.S. Environmental Protection Agency and the Secretariat for the Convention on the Montreal Protocol, to develop global plans and actions to prevent depletion of the ozone layer. NOAA envisions a similar arrangement for monitoring carbon dioxide in the atmosphere and the development and enforcement of a green house gas monitoring system by providing the necessary scientific information to national and international enforcement agencies. NOAA has maintained and enhanced weather monitoring systems for over 100 years and climate systems for over 50 years.

We recognize that a comprehensive national system does not exist yet in its entirety within NOAA or the United States. NOAA has been collaborating with NASA, the Department of Energy, the National Science Foundation and others to identify what would be required to develop such a system. A national system would require space-based platforms such as satellites, ground-based towers, aircraft, and accurate forecast models. A part of the required ground-based system exists today in operational mode, while other parts are in research mode. A comprehensive system could include NOAA's CarbonTracker, a system that keeps track of carbon dioxide uptake and release at the Earth's surface over time and will, together with long-term monitoring of atmospheric carbon dioxide, help improve the understanding of how carbon uptake and release from land, ecosystems, and oceans are responding to climate change, increasing levels of atmospheric carbon dioxide (the carbon dioxide fertilization effect), and other environmental changes, including human management of land and oceans.

NOAA scientists are working with NASA on the steps needed to address the failed launch of the Orbiting Carbon Observatory (OCO) satellite mission and the space-based carbon measurements it would have taken.

Commercial Data

QUESTION: Last year NOAA took the first steps to promoting development of commercial satellite sources of weather and climate change information by awarding study contracts to a number of companies. This subcommittee asked for a report on these activities and the range of possible data that NOAA could purchase from commercial sources, which was due in mid-May. What is the status of that report?

ANSWER: The report entitled "Acquisition of Space-based Scientific Data from Commercial Sources to Supplement NOAA's Weather and Climate Observation Requirements" has been drafted and is currently undergoing Administration review.

QUESTIONS SUBMITTED BY REPRESENTATIVE VISCLOSKY

Response to Mr. Vinzant on American-made Products

QUESTION: Secretary Locke, I recently contacted your office on behalf of Mr. Dave Vinzant, a resident of Indiana's First Congressional District and Councilman for the City of Hobart. Mr. Vinzant compiled a list of all the current websites that promote American-made products, and he expressed concerns that these websites only present information regarding a small subset of products, and often only present an individual business interest.

As you know, the Department of Commerce is responsible for promoting and developing domestic commerce, and I requested from your Department a direct response to his proposal and information on all initiatives that the Department is taking to promote American-made products.

Unfortunately, the response from your Department was woefully inadequate, neither responding to Mr. Vinzant's proposal nor indicating what the Department is doing to promote American-made goods. I understand that the Federal Trade Commission has a responsibility to verify the legitimacy of American-made products, but I do not understand how that precludes the Department of Commerce from not promoting manufactured goods that are made in America as part of your efforts to foster our nation's economic development. Therefore, I would appreciate your direct response to Mr. Vinzant's proposal and information on all initiatives that your Department is taking to promote American-made products, both domestically and abroad.

[For your convenience a copy of the correspondence I received from your Department on April 13, 2009, is enclosed]

ANSWER: Within the Department of Commerce (DOC), the International Trade Administration (ITA), and particularly the U.S. and Foreign Commercial Service (U.S. Commercial Service), take the lead on promoting the export of U.S. goods and services.

ITA conducts the following activities directly promoting the export of U.S. goods and services:

ITA Client Services

Through its international business counseling, ITA trade specialists work with American firms to answer questions and provide advice on how to navigate all aspects of the export process. By advising on the export process in this individualized way, ITA is helping U.S. companies increase sales of American goods and services abroad.

ITA's matchmaking programs help American companies promote their goods and services in overseas markets by helping to identify quality overseas distributors and buyers for their American products. ITA does this by pre-screening potential

international distributors, re-sellers and buyers, and by arranging individual meetings for the American firm with the overseas entities.

ITA's Advocacy Center works on behalf of U.S. firms to ensure they have every chance for success when competing for foreign government procurements. Engaging with a foreign government decision-maker on behalf of U.S. interests may be important to counter foreign government advocacy on behalf of other bidders and to encourage transparency and fairness in foreign government tenders.

Trade Promotion Programs

ITA's Trade Promotions Program (TPP) includes the following programs that promote American products abroad:

The Trade Fair Certification (TFC) Program is a cooperative partnership between the DOC and leading industry associations, international trade show organizers, other government agencies, and foreign trade fair authorities. TFC provides DOC endorsement and U.S. Commercial Service services to assist the organizer with the development, recruitment and management of an official U.S. pavilion of U.S. exhibitors at international trade shows.

The International Buyer Program (IBP) is a government-industry program designed to increase the number of international buyers visiting major U.S. trade exhibitions and to provide U.S. firms likely to export with practical onsite help and advice at these shows.

The Trade Missions Office (TMO) supports and recruits official DOC trade missions. Trade missions offer a proven, cost-effective tool to help U.S. companies learn firsthand about overseas markets by attending market briefings, visiting sales channels, and meeting face-to-face with qualified potential buyers, agents, distributors, and other business partners.

Web Presence

Though the Department of Commerce does not maintain a single website promoting U.S. made products, the Department maintains a reliable internet presence.

ITA manages Export.gov as a collaborative effort with the 19 Trade Promotion Coordinating Committee Federal Agencies. This website brings together resources from across the U.S. Government to assist American businesses in planning their international sales strategies and to succeed in today's global marketplace. Examples include introduction to exporting webinars, trade leads, market research and World Bank and multilateral development bank opportunities.

The U.S. Commercial Service maintains www.buyusa.gov, which helps international importers worldwide locate U.S. manufacturers and service providers and facilitates the promotion of American exports of goods and services for U.S. companies. To that end,

each of the 109 domestically located U.S. Export Assistance Centers and the 127 overseas posts in 77 countries manage their own buyusa.gov website which educates users about the products and services provided by the Commercial Service. Examples include trade alerts, business service provider directories, trade events and overviews of Commercial Service for-fee export assistance services.

The U.S. Commercial Service also maintains the Featured U.S. Exporters (FUSE) directory on buyusa.gov. This directory provides companies an opportunity on a user-fee basis to target specific markets in their local language. Listings are offered to qualified U.S. exporters seeking trade leads or representation in over 50 markets around the world.

Commercial News USA, a publication of the Department of Commerce, maintains the website www.thinkglobal.us that showcases U.S.-made products and services and features U.S. exporters. Commercial News USA is a catalog-style magazine available both electronically and in hard copy listing U.S. products and services which companies are seeking to export. Commercial News USA is available in Spanish and Chinese in addition to English. A contractor administers this program for the Department of Commerce. Product and services listings are fee-based.

The Export Yellow Pages, which has been a staple resource of the export community for over a decade, maintains a website www.exportyellowpages.com that provides online details about the products and services offered by over 27,000 U.S. companies.

Imported Steel

QUESTION: On April 30, 2008, as the Chairman of the Congressional Steel Caucus, I held a hearing on sub-standard Chinese steel. At the hearing, we aimed to address concerns regarding the importation of the sub-standard steel and the process by which steel is inspected prior to entry into the United States.

During the hearing, we received testimony from the Assistant Commissioner of Customs and Border Protection at the Department of Homeland Security, and he stated that a substantial amount of authority to ensure that steel imports are safe relies primarily with the Department of Commerce.

Therefore, I would like to know the exact involvement of the Department of Commerce with imported steel, and what safeguards are in place to ensure that it is safe for use.

ANSWER: The Department monitors imports of steel mill products through its Steel Import Monitoring and Analysis (SIMA) program. This is a licensing program which collects virtually real-time information from traders in the marketplace on steel imported into the U.S. The resulting statistics, including value, volume and unit price information, are included on the SIMA website. The Department's authority with respect to steel imports does not extend to ensuring that steel imports are safe.

QUESTION: I am also concerned about an importer of record with no financial assets. Specifically, I am concerned that an importer with no financial assets may import defective steel, and then a distributor may use that defective steel and cause potential damage to individuals and the public. Should the distributor seek damage payments, there is nothing to recover from a paper thin importer of record. Therefore, I would like to know what the Department of Commerce is doing to ensure that those distributors that use sub-standard steel have the proper ability to recover damage payments from importers of record with no assets.

ANSWER: In conducting its antidumping and countervailing duty investigations, Commerce does not have authority to examine the liquidity of U.S. importers, or to investigate the veracity of statements by U.S. importers made in the importation process. Other agencies or departments of government may hold authority to conduct investigations into these important areas.

Trade Issues

QUESTION: I am concerned over the absence of trade issues in your prepared testimony today. Your position is critical to defending and enforcing the trade laws which are administered by your Department, and today these laws are the only recourse for many companies both small and large and for workers who are in the fight of their lives challenging unfairly traded imports.

Just yesterday, representatives from the U.S. and China agreed to 32 business deals worth $10.6 billion. In general, this is good news for the technology and communication industries. However, those of us who represent U.S. industries who have been decimated by Chinese imports cannot jump on the bandwagon to support the Chinese efforts to destroy the global trading system.

Therefore, I would like to know how do you plan to enforce trade laws, and most importantly, what steps will you take to engage the Chinese to insist that they adhere to global trading rules?

ANSWER: The Department of Commerce places great importance on enforcing the international obligations of our trading partners. In FY2008, ITA initiated 44 new cases, almost double the amount from the previous year.

Regarding China, Commerce is engaged in active monitoring efforts to ensure China's compliance with its international obligations. Through these efforts, Commerce identifies and works to reduce trade barriers and to assist U.S. exporters experiencing market access problems on a case-by-case basis. To enhance market access and address trade distorting policies in China, we bring trade barriers to China's attention through our bilateral dialogues such as the U.S.-China Joint Commission on Commerce and Trade (JCCT), including through the Structural Issues Working Group (SIWG). Commerce and USTR also maintain a forum for discussion of issues facing the steel sector, *i.e.*, the U.S.-China Steel Dialogue.

However, bilateral engagement does not always succeed; when we believe that China fails to abide by its WTO obligations, the U.S. Government is willing to utilize the WTO dispute settlement mechanism. Commerce is an integral member of the interagency team involved in WTO disputes.

The U.S. Government has initiated seven WTO disputes against China, including two in 2008 – one relating to the distribution of financial information services in China, and another case challenging China's use of export subsidies, which are generally prohibited under WTO rules. In December 2008, China and the U.S. signed an MOU in the financial services case that commits China to modify its regulatory practices to become WTO consistent by June 2009.

I will continue to make identifying and addressing Chinese unfair trade practices a top priority for the administration. This includes ensuring that our antidumping (AD) and countervailing duty (CVD) investigations are conducted in accordance with the statute and regulations. Strict enforcement of U.S. trade laws is essential to ensure U.S. producers and workers have a level playing field on which to compete with their foreign counterparts. We will continue to provide information and counsel to U.S. businesses about potential remedies from unfair trade practices. Commerce will also continue its active monitoring of ongoing and emerging trade threats from unfair subsidization and government support through observation, analysis, counseling, and advocacy services provided to U.S. parties. Commerce will work closely with USTR to confront harmful Chinese government subsidies.

Commerce currently maintains 87 AD and CVD orders on imports of a wide range of products from China, including consumer goods, steel products, agricultural products, seafood, and chemicals. These orders represent 31 percent of the total AD and CVD orders currently in effect. In 2008, Commerce initiated 15 investigations against China (10 AD and five CVD). Thus far, in 2009, Commerce has initiated one CVD investigation on Chinese imports of oil country tubular goods.

QUESTIONS SUBMITTED BY REPRESENTATIVE WOLF

2010 Census Life-Cycle Costs

QUESTION: The 2000 Census cost $6.5 billion and the 2010 Census is projected to cost more than $14 billion. While I understand that the population has grown over the past decade, shouldn't we expect the Census Bureau to become more automated and efficient?

ANSWER: Even after factoring out the effects of inflation and growth in the population, the cost of conducting censuses increases with each subsequent cycle. Several factors that are independent of programmatic methodology contribute to this phenomenon. For example, a desire for accurate coverage of a growing and increasingly diverse population adds complexity to each census. Also, experience reveals that people have become more resistant to answering surveys and providing information to the government. Adding to these difficulties is increased immigration and its diversity of languages and cultures, which creates challenges in maintaining a wholly inclusive census. Factors such as these lead to an expectation for increased costs for the 2010 Census over the 2000 Census, regardless of the design.

QUESTION: Why are the costs of the 2010 Census increasing faster than inflation?

ANSWER:

Life Cycle Decennial Census Program Costs 1970-2010
(constant 2010 dollars[1])

	1970	1980	1990	2000	2010 (estimated)
Cost in Constant 2010 Dollars (billions of dollars)[1]	$1.0	$2.6	$4.1	$8.1	$15.0
Percentage Increase in Cost Compared to Previous Census	--	160.0%	57.7%	97.6%	85.2%
Housing Units[2] (millions)	69.5	89.5	103.5	117.5	133.8
Cost Per Housing Unit (dollars)	$14.39	$29.05	$39.61	$68.94	$112.11
Percentage Increase in Unit Cost Compared to Previous Census	--	101.9%	36.4%	74.0%	62.6%

[1]Year 2010 dollars calculated using the Chained Price Index contained in the Historical Tables volume of the FY 2009 Budget of the United States Government. All years from 1964 through 2013 inflated/deflated to constant 2010 dollars.
[2] Includes Puerto Rico and Island Areas (as do costs). Note that versions of this table through the FY 08 President's Budget used housing unit (HU) figures from a GAO report of December 2001 (GAO-02-31). Starting with the FY 09 President's Budget, this table will reflect official Census Bureau HU figures and estimates for the 50 states, District of Columbia, Puerto Rico, and the Island Areas. For 2010, this incorporates a recent, revised Census Bureau estimate.

While achieving the significant benefits to the nation from the annual release of long-form data by the ACS and the improvements to the MAF/TIGER databases, the table shows that the reengineered 2010 Decennial Census Program also will be somewhat less costly than historical trends would project. This pattern also holds when comparing unit costs. For example, the average percentage increase in unit cost for the three previous census cycles was 70.8%. If applied to the unit cost for Census 2000, this straight-line projection would produce an estimated unit cost for the 2010 Census cycle of $117.72 per housing unit, and thus an estimated total cost of $15.75 billion, compared to our plan of $112.11 per housing unit and a total of $15.0 billion.

International Trade Administration

QUESTION: In 2005, this Subcommittee created an office of China Compliance in ITA to specialize in anti-dumping involving non-market economies, especially China. Are you aware of the work of this office, and does your 2010 budget continue funding for this and other China trade enforcement activities of ITA?

ANSWER: Yes, I am aware of the fine work being conducted in Import Administration's Office of China/Non-Market Economy Compliance. Since its inception, this office has developed the expertise necessary to apply effectively the unique antidumping methodology applicable to non-market economy countries such as China, including hiring analysts fluent in Chinese. By consolidating the bulk of our China dumping cases within this office, our ability to enforce the antidumping law has been strengthened. I will continue to commit the necessary resources to the trade enforcement activities of ITA, including the work of this critical office.

QUESTION: The Committee also began a human rights training program in ITA, wherein commercial officers headed to overseas postings received training on human rights, rule of law issues, and corporate responsibility. Can you submit for the record information about this program and whether any funding is currently planned for fiscal year 2009 and fiscal year 2010?

ANSWER: Beginning in FY 2003, Congress directed ITA to use $500,000 to develop a human rights training program to address a concern that ITA's efforts to increase trade were conducted without consideration of the impact of U.S. global business expansion on human rights. To ensure that our employees included information on human rights as part

of their counseling for U.S. exporters, the U.S. and Foreign Commercial Service's (US&FCS) Office of Professional Development built a comprehensive training program in coordination with ITA. Designed with the input of Commercial Officers, outside experts, NGOs, and the State Department, the training provided Commercial Service staff with the tools to incorporate the promotion of human rights, rule of law, and corporate responsibility into their daily work when counseling U.S. businesses.

This training program began implementation for Commercial Officers in FY 2003. In FY 2005, the training initiative was expanded to include Commercial Specialists and Domestic Trade Specialists. ITA has incorporated Human Rights training in the employee professional development plans and at the beginning of FY 2009 almost all Commercial Service officers and the majority of the staff have been trained. As we bring on new employees, we are committed to ensuring that they too receive human rights training as a part of their ongoing professional development.

Stimulus Oversight

QUESTION: The Stimulus bill provided the Department with $7.9 billion. When combined with the funding provided in the fiscal year 2009 omnibus, this more than doubles the Department's resources compared to fiscal year 2008. The Commerce Inspector General has stated that "Spending Recovery Act funding quickly and with little time to staff up and gear up operations to accommodate the new and expanded programs, grants, and contracts it will support significantly increases the risks for fraud and waste in both stimulus-funded activities and the Department's traditionally-funded operations. How do you intend to spend funds quickly so that it is stimulative to the economy but not wasted or stolen?

ANSWER: The Department of Commerce has established a clear path forward for meeting our responsibilities under the ARRA. First, the Department worked with the senior management in each bureau that received ARRA funding, as well as the Department's Office of Budget and the Office of Management and Budget (OMB), to complete proposed spending plans for the agency programs funded through the Recovery Act. These plans were transmitted to Congress within the time frame required in the legislation and are being implemented in accordance with all requirements.

The Department is hard at work making sure that we have the structures and personnel in place to ensure DOC compliance with OMB guidance and statutory requirements. The Department appointed a Senior Accountable Official to coordinate, integrate and manage our implementation of the Recovery Act. The Department of Commerce has existing accountability mechanisms in place which are being used to review plans, progress and performance results for ARRA funded activities.

1) Department Investment Review Board (IRB) is responsible for conducting investment reviews and assisting Department management by identifying programs and projects that merit review; and providing findings and recommendations from investment reviews to the Department for resolution. The IRB serves as the senior oversight board in the

investment review process and provides for Department oversight of program performance through the objective review of progress and assessment of pertinent measurable data tied to total life-cycle investment planning, budgeting and execution. Department IRB Membership consists of the senior manager for all department level offices as well as bureau representation and subject matter experts.
The IRB has already scheduled for initial review the ARRA programs that have received significant funding. While many of these programs already existed and were already in the IRB review cycle, the Department chose to increase the level of review due to ARRA funding. Additionally, the NTIA Broadband program is scheduled for its first review as a new program and will be on a quarterly review cycle with the IRB.

2) Senior Management Council (SMC) provides leadership and oversight for internal control assessments under OMB Circular A-123 Management's Responsibility for Internal Control. The SMC is co-chaired by the Deputy Chief Financial Officer and the Director, Office of Management and Organization, and is composed of all bureau Chief Financial Officers, the Chief Information Officer, and the heads of Human Resources, Acquisition Management, Budget and Administrative Services offices. The Department also has a Senior Assessment Team (SAT) which is responsible for conducting day-to-day A-123 activities, including review, documentation, and testing of internal controls. The SAT is composed of representatives from bureaus and offices that have a material impact on the Department's financial reporting.

The SAT was tasked to: identify the programs that will receive the ARRA funding; re-evaluate the risk assessment based on the new dollars coming in to the programs; determine if the programs will follow existing procedures or new procedures; determine if the existing controls will be sufficient to handle the new projects; test any new controls that will be put in place; and evaluate any non-routine processes to determine if the processes should be modified.

The SAT is currently refining the details of additional testing bureaus will need to complete in regard to ARRA Funds.

Additionally, DOC has put in place ARRA specific mechanisms for oversight of ARRA implementation activities.

ARRA Working Group
The Department has formed several cross-bureau, cross-function work teams to plan and implement the Recovery Act across the Department. Our Departmental Work Team structure is as follows:

- Senior Advisor and Program Management staff are responsible for overall coordination and management at the Department level of ARRA implementation, including timely delivery of information on Recovery Act projects.

- ARRA Working Group structure - provides senior oversight and management to all sub-groups. This Working Group consists of:

- Recovery Implementation Steering Committee with subject matter expertise composed of senior managers from all Department-level Offices (Acquisition and Grants, General Counsel, Financial Management, Budget, Human Resources, Legislative and Intergovernmental Affairs, Public Affairs, Management and Organization, Policy and Strategic Planning and the Chief Information Officer) as well as a senior manager from the Office of Inspector General, who will provide proactive advice and education. Members of the Steering Committee are responsible for providing guidance in their area of responsibility as well as coordinating communication and activities. They, in turn, work with the functional offices within each bureau to support specific activities.

- Recovery Implementation Bureau Points of Contact (POC) – a single senior manager from each of the bureaus receiving funding (Census, EDA, NIST, NOAA and NTIA) as well as a representative from the Office of Inspector General. These bureau POCs are responsible for coordinating and managing bureau efforts with Departmental efforts. Each bureau has its own internal team working on bureau-specific activities and oversight, and the bureau POC is the communication and management liaison to the Department.

- Leaders of each of the work group sub-teams. There are multiple sub-teams working on specific issues including:
  - Transparency to the public
  - Detailed data reporting and systems
  - Grant and contract recipient reporting.

QUESTION: What safeguards are you instituting to prevent waste, fraud and abuse?

ANSWER: As anticipated by the Recovery Act, our Office of Inspector General (OIG) is very involved in advising on Recovery Act spending. A member of the OIG's senior management team serves on the Department's Recovery Act Steering Committee and participates in an advisory capacity to provide recommendations upfront on internal controls and operational best practices. The OIG has also implemented fraud indicator and grant management training programs to help strengthen fraud awareness and detection, and provide additional guidance in managing Recovery Act grant programs. Additionally, Commerce bureaus are completing risk assessments and program plans for their Recovery Act programs. The OIG is evaluating our risk assessments, plans, and internal controls during program start-up and will provide feedback in areas where issues are identified. In instances where Recovery Act funding goes to existing programs, the OIG is reassessing established internal control procedures. For new programs such as Broadband or where there are unique requirements related to Recovery Act processing such as the National Environmental Policy Act (NEPA) or Buy American contract provisions, the OIG will complete a thorough review of operating procedures and

surrounding controls. I've also been advised by the Inspector General that he is implementing additional complaint processing procedures and an enhanced workforce to ensure prompt response to complaints of waste, fraud, and abuse. Specifically, the OIG plans to use Recovery Act funds to increase the personnel resources available to assess complaints as they are received and ensure they are appropriately addressed by the applicable OIG or Commerce office. Although the OIG is still in the process of determining how many FTE and contractors will be hired, the OIG will seek personnel with appropriate expertise in this area such as in the GS-1801 investigative series.

QUESTION: How much Commerce funding do you expect will be lost to waste, fraud and abuse?

ANSWER: There is no reliable data to accurately estimate the dollar amount that Commerce could potentially lose to waste, fraud and abuse. However, adequately designed and operating internal controls can limit potential losses. The Inspector General—as part of his membership on the Recovery Act Accountability and Transparency Board and in his role of providing oversight to Commerce Recovery Act activities—has emphasized the importance of focusing on preventive controls while still ensuring operational effectiveness and efficiency. With this in mind, the OIG is working to promote effective program management and implementation, as millions of dollars can be saved by avoiding cost overruns or embarking on poorly planned programs. For example, achieving just a one percent increase in efficiency and effectiveness on Commerce's $7.9 billion in Recovery Act funding will yield nearly $80 million in additional funds that will directly benefit Commerce stimulus programs.

Patent and Trademark Office

QUESTION: Since fiscal year 2001, the Committee has increased appropriations for the PTO from $1.0 billion to $1.9 billion, a 94 percent increase. Yet there is a backlog of 760,000 patent applications and it takes 34 months on average for an application to be approved. In addition, I understand that as a result of the poor economy that PTO fee collections have dramatically declined and therefore you will not have sufficient resources to meet your staffing goals. What reforms should the PTO pursue to reduce the backlog?

ANSWER: It is true that hiring – while not the sole answer to reducing the backlog – was and remains an important means for examining record numbers of new patent applications. In fact, in 2005, when the USPTO set a strategic goal of hiring 1,000 new examiners per year, many in the public said that it couldn't be done. Yet, the USPTO successfully hired and trained these new employees, and then went on to hire and train over 1,200 new patent examiners in FY 2007 and FY 2008. These new patent examiners have helped cut into the patent backlog, by decreasing the rate at which the backlog was increasing. Also, the recent decrease in filings has decreased projections of the average number of months between filing and completion of a patent application review, when compared to projections from last year.

In addition to hiring, providing patent examiners with training, mentoring, and better electronic search and examination tools are reforms the USPTO is pursuing to help it reduce the backlog. Additionally, the Accelerated Examination option introduced in August 2006, allows any applicant to obtain a patent decision within 12 months. To date, over 3,060 of patent applications have been filed under the Accelerated Examination program.

QUESTION: What steps are you going to take to ensure that PTO has sufficient resources to maintain its current operations in a declining economy?

ANSWER: In response to current economic conditions, USPTO management has made decisions to continue certain operations, while implementing other cost-saving measures. These measures include:

- FY 2009 Patent Hires Frozen at 600 attrition replacements
- Curtailed Hiring in other Business Units
- Curtailed Discretionary Awards and Non-Revenue Generating Overtime
- Reduced IT System Development/Improvement Efforts
- Reduced Patent Workload-based Contracts
- Reduced Non-IT Contracts/Services including Training
- Reduced global IP training programs and conferences, and reduced international travel
- Reduced Travel and Supply Purchases

Should the economy continue to decline resulting in further reductions to USPTO resources, several options still exist to reduce funding requirements including:

- Stopping patent examiner recruitment & retention bonuses
- Stopping production and revenue generating overtime
- Stopping IT infrastructure strengthening and replacement projects
- Further reducing global IP training programs and conferences, and reducing international mission travel
- Reducing IT and non-IT operational support functions

The USPTO is working with my staff and the Office of Management and Budget to identify efficient models of operation that can responsibly accommodate both positive and negative changes in the economic landscape, while maximizing the innovative capacity of the nation. We look forward to engaging Congress to develop the optimal model to ensure continued USPTO success.

QUESTION: Do you anticipate PTO will have implementing furloughs or RIFs this year in order to address their funding shortfalls?

ANSWER: No. Based on current projections, the measures listed in the previous question will provide sufficient savings to effectively operate the agency without the need for personnel reductions.

Economic Development Assistance Programs

QUESTION: In fiscal year 2008, Economic Development Assistance Programs received an annual appropriation of $249 million. Since that time, this program has received $500 million in disaster related funding, $240 million in the fiscal year 2009 Omnibus and $150 million in the Stimulus bill. Does EDA have the infrastructure in place to go from managing about $250 million in projects per year to managing close to $1 billion in projects?

ANSWER: EDA appreciates Congress' recognition of the bureau's resource constraints caused by recent increases in appropriations. Thus far in FY 2009, EDA has received an increase of $7,350,000 for salaries and expenses-- $3,000,000 from the bureau's Recovery Act appropriation (2% of EDA's total Recovery Act funding) and authority to transfer $4,350,000 from the Economic Development Assistance Program in the FY 2009 budget. With this increased funding, EDA plans to add staff, resources, and equipment throughout the organization to help the bureau manage the anticipated increase of project volume. However, this funding is not permanent so EDA will be limited to hiring term employees in order to meet its most immediate staffing needs. Because many of EDA's infrastructure projects are large, multi-year construction grants, continued and sustained funding to support increased staffing is needed to manage these projects in the future. Therefore, EDA is requesting approximately $3,500,000 for salaries and expenses in FY 2010 to continue to address these workload related challenges.

QUESTION: What safeguards have you put in place to prevent this program from being subject to waste, fraud and abuse?

ANSWER: In addition to existing internal controls, the bureau is taking advantage of training that is being offered by the Department's Office of Inspector General to identify and avoid waste, fraud, and abuse. EDA continues to coordinate with the Department's Budget Office and officials at the Office of Management and Budget (OMB) to ensure that our Agency Program Plan is implemented efficiently. For example, EDA is working closely with the Department's Recovery Act coordinator and the other Department bureaus that are administering Recovery Act funding to guarantee compliance with all of the Act's specific requirements and OMB guidance. Additionally, EDA has established a Recovery Act taskforce, consisting of representatives from EDA's regional offices as well as Office of Chief Counsel, to focus specifically on risk identification and mitigation actions in the administration of Recovery Act funds.

Digital TV Transition

QUESTION: Originally, Commerce was provided $1.5 billion for the DTV coupon program. The stimulus bill provides Commerce with an additional $650 million for coupons. How many households do you estimate are unprepared for the transition and do you anticipate the Administration will ask for further delay in the transition date?

ANSWER: The Nielsen Company estimates that as of April 26, 2009, about 3.1% of households (approximately 3.5 million households) remain completely unready for the end of analog broadcasting on June 12, 2009. This figure represents a 1.3% decline from the percentage of unready households as of February 15, 2009. In view of the flexibility the DTV Delay Act, Pub. L. 111-4, 123 Stat. 112, and the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, 123 Stat. 115 (Feb. 17, 2009) provided NTIA to help consumers prepare for the end of analog broadcasting by June 12, 2009, the Administration does not anticipate seeking a further delay in the transition date.

QUESTION: The spending plan you submitted to the Committee for the $650 million in stimulus funds includes $70 million for administrative costs. Can you explain why $70 million is required to administer a program that has been operational for quite some time?

ANSWER: NTIA has set aside an estimated $70 million for program administration, including coupon distribution and service enhancements. Funds were used to extend the contractor's services for an additional four months. These services include: (1) provision of the consumer call center; (2) coupon distribution; (3) retailer management; (4) coupon redemption processing systems; (5) efforts to prevent waste, fraud, and abuse; and (6) all supporting functions. In addition, program administration funds were needed: (1) to design and implement changes to all relevant systems to track Recovery Act funds separate from the initial funding; (2) for system changes to accommodate reissuing coupons to households that had previously received coupons and those coupons had expired; (3) to implement enhancements that improve coupon processing and distribution time; and (4) to allow use of first class mail delivery. Finally, NTIA has applied additional administration funds for consumer education to target the specific vulnerable and unready households. These include African American and Hispanic households that have not prepared for the end of analog broadcasting by June 12, 2009.

QUESTION: Do you anticipate there will be any excess coupon funding available after the transition has been completed?

ANSWER: The additional funds provided for coupons from the Recovery Act, plus $160 million in projected "recycled" funds from expired and unredeemed coupons, will provide the Coupon Program with approximately $650 million for coupons. This will enable the Coupon Program to fulfill requests for a grand total of up to 65 million coupons by June 12, 2009 (funds permitting, the Program will continue to accept requests for coupons through July 31, 2009). The Recovery Act and recycled funding amount funds 10 million coupons in addition to the 55.3 million coupons funded to date. In addition, some Recovery Act funds will be deobligated from coupons issued after March 5, 2009, that expire without being used. Although there is no guarantee that consumer demand for coupons will not exceed this additional funding, we believe these funds are sufficient to ensure that consumers will have access to the information and assistance they need when television stations end analog service. Whether or not there will be excess coupon funding available after the transition has been completed depends upon

total consumer demand, as well as coupon redemption rates, both of which are difficult to predict with accuracy.

Training for ITA Employees

QUESTION: Several years ago, as Chairman of this subcommittee, I included language requiring that ITA employees receive training on human rights, the rule of law, and corporate responsibility.

Unfortunately, it is my understanding that this training has not been continued after that year and that new ITA employees have not received any training on these issues.

Given that the Department's Commercial Service currently has 120 officers in China – far more than any other country – I believe this is a missed opportunity to better prepare our officers to be aware of abuses and advocate for human rights victims.

Will you re-start this training program and require all new employees and those working abroad to participate?

ANSWER: The International Trade Administration recognizes the importance of human rights, rule of law, and corporate responsibility and the role they play in international trade. We have trained almost all Commercial Service officers and the majority of staff in this important area and are committed to including human rights training in the ongoing professional development of new officers and staff. In addition, we are exploring cost-effective technology solutions to deliver the training in the future to ensure that the training is available to all employees on a continuous basis.

QUESTIONS SUBMITTED BY REPRESENTATIVE BONNER

Fair Trade of Shrimp

QUESTION: Several rulings by the World Trade Organization's Appellate Body have severely weakened U.S. fair trade laws. As a result of these rulings, the Department of Commerce withdrew trade relief on imports of shrimp from Ecuador and exempted two large exporters of shrimp from Thailand from the order, without any change to U.S. law. What steps will the Department of Commerce take to ensure that shrimp imported into this country is fairly traded?

ANSWER: The Department of Commerce will continue to enforce vigorously the U.S. unfair trade laws including the antidumping orders on shrimp imported from Brazil, India, Thailand, the PRC and Vietnam. We are currently conducting administrative reviews of those orders, pursuant to requests from the domestic shrimp industry, in accordance with the U.S. antidumping law. With respect to recent rulings by the WTO Appellate Body, we are deeply troubled by the Appellate Body Report's evaluation of the issue of so-called "zeroing."

Commerce will continue to use the WTO Rules negotiations as a forum to educate other members on the troubling implications of the Appellate Body's findings. We continue to believe that any final agreement should permit the use of zeroing in all aspects of antidumping proceedings. In fact, U.S. proposals in the Rules negotiations call for clear, precise rules in the Antidumping Agreement expressly permitting the use of zeroing. Again, be assured that this Administration is committed to the strict enforcement of U.S. trade laws, and to ensuring that U.S. producers and workers have a level playing field on which to compete with their foreign counterparts.

WEDNESDAY, APRIL 29, 2009.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

WITNESS

CHRISTOPHER J. SCOLESE, ACTING ADMINISTRATOR

CHAIRMAN MOLLOHAN'S OPENING REMARKS

Mr. MOLLOHAN. The hearing will come to order.

Good morning, Acting Administrator Scolese, and welcome to everybody who is at the table this morning.

This morning, we turn our attention to the National Aeronautics and Space Administration. We appreciate your coming today to inform the Committee about ongoing programs and activities and general details of the NASA budget while we await the appointment and confirmation of a permanent Administrator for NASA and its detailed budget submission for fiscal year 2010.

Mr. Scolese was cited by Administrator Griffin as the second of twelve people that are most essential to remain at NASA. So while we do not have an Administrator in place, NASA certainly remains in competent hands as Mr. Scolese and his very competent team continue to fulfill their responsibilities at NASA. We look forward to hearing from you all this morning.

Preceding your appearance today, the Committee received testimony from a number of expert witnesses in the areas of science and technology, research and higher education, earth observation, and climate change. NASA is not at the periphery of these activities. Rather, it is at the center of them.

Dr. Leonard Fisk commented that he "can find no logic in the judgment that NASA science is less important than other scientific disciplines," at NSF and NIH, for example, and that we need to recognize that space has become part of the underlying infrastructure of our society and an integral part of our foreign policy.

Dr. Ralph Cicerone stated that NASA's science activities were an admission from the gathering storm and that its activities should be treated similarly to NIST and NSF in the doubling agenda outlined in "The American Competes Act."

He went further to note that NASA's research and higher education infrastructure is extremely important to this nation. Innovative technologies developed from NASA's space and aeronautics missions have improved our health and medicine, transportation systems, public safety, computer technology, and industrial productivity.

With respect to earth observations and climate change, NASA is also front and center. It developed the current class of earth observation systems, nearly all of which have exceeded their life expectancies, and today is developing the next generation of satellites and sensors recommended by the National Research Council.

Part of that effort includes the NPOESS Program which is managed by NOAA, DoD, and NASA. We have had to confront major cost overruns in the NPOESS Program and additional requirements appear likely given the anticipated need to support operational climate predictions and monitoring.

In nominal terms, investments in earth science have decreased by one-third since their high water mark. It is time again to renew our focus on the mission to planet earth.

Investments in these satellite development programs and in NASA's science enterprise generally are critical, but they also must compete for resources with NASA's other major programs. NASA continues to fly the shuttle, operate and maintain the International Space Station, and proceed with the Constellation Program, all very important.

Costs of all these activities are rising. Last year, for example, nearly 70 percent of NASA's major projects were in breach of the projects' development costs and/or schedule thresholds.

The price tag for Orion and Ares continues to mount and there are considerable unknowns as to whether NASA's plans for the Ares and Orion vehicles can be executed within schedule and current cost estimates.

These cost increases occur within finite annual budgets and as such, cost increases in one program likely mean reductions in another.

Given these fiscal realities, it is incumbent upon NASA to have far more reliable cost estimates at the time missions are proposed, effective management tools and empowerment managers in place to minimize cost increases and schedule slippages, and greater transparency in NASA's budgeting and execution to improve program costs, budgeting, review, and oversight. This is an ongoing process and one that continues today.

But the larger looming question remains. Can NASA do all that it is asked to do within its budget allocation? Although this Administration has requested nearly $1 billion more for NASA over the fiscal year 2009 enacted level, the out-year profile for NASA is straight-lined over the next five years, signaling little change in the budget profile from the last Administration.

Unlike previous years, today NASA is asked to reinvest in observations to planet earth and to reinvigorate its aeronautics research. These programs suffered at the expense of the Constellation Program, so this is a welcome change.

NASA is to continue with its development of the existing vision and the new generation of U.S. human space flight capabilities, the cost of which, as I commented earlier, continues to mount and the time line for initial operating capability gets pushed further and further into the future.

The shuttle is to be terminated in 2010, creating a gap in U.S. human space flight of at least five years before Orion and Ares are available. The space station continues to fly, used as a platform for far less research than supported by its original justification, until 2015 at which time, its fate is uncertain.

If the decision is to cease the use of the station at that time, we could be developing portions of the Constellation Program for a one-way trip to low earth orbit to take the station from orbit.

Is it any wonder that it has been so difficult to find an Administrator for this agency?

At some point, it seems clear that the walk must match the talk and that funds must follow policy. But the problem is not mid-level career staff at the Office of Management and Budget. The President, the Administrator, and Congress are responsible for defining NASA's missions and then ensuring that funds are there to support those missions.

As we all know, we have not yet received the President's complete budget submission. Accordingly, we do not know many of the details of the request. We will be eager to see those details when the budget is submitted and we are sure to have additional questions at that time.

The hearing transcript that we are developing today will remain open for two weeks after the budget submission so as to provide members an opportunity to submit any budget-related questions.

At this time, I would like to invite Mr. Scolese to offer your opening statement. Your written statement will be made a part of the record, of course.

But first I want to recognize Mr. Culberson who is sitting in for the Ranking Member, Mr. Wolf, for any opening statement that he would like to make.

Mr. Culberson.

REP. CULBERSON'S OPENING REMARKS

Mr. CULBERSON. Thank you, Mr. Chairman.

I am anxious to hear from everyone on this panel. And everyone I know on this Subcommittee shares my support for the sciences, for the investment the nation must make in our space program to maintain America's competitive edge, our leadership role in space. It is essential that we provide the resources NASA needs to complete everything that you have got on your plate.

And I know that the stimulus package helped immensely in filling some of those gaps, but, Mr. Chairman, I appreciate very much your support for our nation's space program and look forward to your testimony.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

Mr. Scolese.

ACTING ADMINISTRATOR SCOLESE OPENING STATEMENT

Mr. SCOLESE. Okay. Thank you, Chairman Mollohan and Mr. Culberson and members of the Subcommittee, for inviting us here today to discuss the President's Fiscal Year 2010 budget request for NASA as submitted to Congress on February 26th.

The President's request of $18.686 billion represents an increase of $903.6 million above Fiscal Year 2009 Omnibus Appropriations. Because the President's detailed budget request has not yet been submitted to Congress, I will address the Fiscal Year 2010 budget overview, highlights of NASA's Fiscal Year 2009 funding, and current program status.

NASA's initial Fiscal Year 2009 operating plan is $18.784 billion or about $1.17 billion above the President's fiscal year 2009 request. This reflects an increase of $168.2 million in the regular ap-

propriations and about one billion in "The Recovery Act." NASA is appreciative of the action by the Committee and Congress in providing full funding in the regular appropriations and for providing "Recovery Act" funds which will enable NASA to meet its critical objectives.

In Earth science, NASA is continuing to work aggressively to implement the recommendations of the Decadal Survey. The first two Decadal missions, SMAP and ICEsat–II, will continue formulation in fiscal year 2010. The next two, DESDynI and CLARREO will be accelerated. NASA will issue its first venture class announcement of opportunity later this year.

In the next year, we plan to launch the Glory and Aquarius missions and the GOES–O Mission for NOAA, complete development of the NPOESS Preparatory Project, continued development of foundational missions such as the Global Precipitation Mission and the Landsat Data Continuity Mission, and initiate work on a thermal infrared sensor to complement the Landsat Data Continuity Mission.

NASA is assessing options to recover from the disappointing loss of the Orbiting Carbon Observatory and we will keep the Congress informed of our plans.

We are continuing the exploration of the solar system with planetary science missions, Juno to Jupiter, and the Mars science laboratory, both planned for launch in 2011, and recently selected the MAVEN Scout Mission to Mars.

NASA's fleet of heliophysics missions strategically placed throughout the solar system is providing researchers the first ever solar system-wide view of solar influences on Earth and other planets and the dynamic structures of space itself.

In astrophysics, NASA launched the Kepler Mission to search for earth-like planets in our galaxy. The final Space Shuttle Servicing Mission to the Hubble Space Telescope aboard STS–125 is scheduled for launch on May 11th to upgrade the observatory to its peak scientific performance.

Development continues on the James Webb space telescope which passed its confirmation review in 2008 and has an Agency commitment to launch in 2014.

Formulation continues for ambitious future mission concepts to search for Earth-like planets around nearby stars, to explore the universe and the nature of dark energy.

The fiscal year 2010 budget request renews NASA's commitment to a strong national program in aeronautics that contributes to the economic well-being and quality of life of American citizens through its strong partnerships with industry, academia, and other government agencies.

Our Aerospace Systems Program continues to collaborate with the Joint Planning Development Office to enhance the capacity, efficiency, and flexibility of the national aerospace system.

In exploration, the President's fiscal year 2010 budget overview directs that NASA advance the development of the next generation human space flight system to carry American crews and supplies to space and work to return Americans to the moon.

NASA exploration systems continue to make significant progress in developing the next generation human space flight vehicles and their associated ground to mission support systems.

Soon the Lunar Reconnaissance Orbiter and the Lunar CRater Observation Sensing Satellite Spacecraft will be launched to help NASA scout for potential lunar landing sites.

Later this year, two major flight tests for the Constellation programs will be conducted. First the Ares I–X developmental test flight will launch from Kennedy Space Center, pad 39B, to support the design of the Ares I crew launch vehicle. Second, the pad abort 1 test at the White Sands missile range will be the first test of the launch abort system for the Orion crew exploration vehicle.

The President's fiscal year 2010 budget funds the safe flight of the space shuttle to conduct a final servicing mission for the Hubble, complete the ISS, and then retire the shuttle in 2010.

An additional flight to deliver the Alpha Magnetic spectrometer to the space station will be conducted if it can be safely and affordably flown by the end of 2010.

In May, the ISS will host its first six-person crew. And in June, the STS127 mission will deliver the third and final component of the Japanese Kibo laboratory, setting the stage for full utilization of the ISS as a highly capable research facility.

In December 2008, the Agency awarded two commercial resupply services contracts that are required to deliver supplies and experiments to the space station.

The benefits from space shuttle missions and ISS research are ultimately demonstrated in the program's ability to inspire the next generation of Americans. This was reflected recently in the delighted faces of students who participated in the uplink phone call between President Obama and the station on March 24th which we both participated in, sir.

NASA's Education Program will continue developing a future aerospace workforce, improving the technological competitiveness of our nation's universities and attracting and retaining students in science technology, engineering, and mathematics.

Finally, the 2010 budget funds NASA's cross-agency support programs which provide critical mission support activities necessary to ensure the efficient and effective operation and administration of the Agency, including the management and operations of our centers.

Chairman Mollohan, thank you again for your support and that of the Subcommittee. The five of us would be pleased to respond to any questions you or the other members of the Subcommittee may have.

BUDGET OVERVIEW

Mr. MOLLOHAN. Thank you, Mr. Scolese.

We are going to proceed under a five-minute rule in these first rounds and then we will see after we go forward how far we get and perhaps modify that for longer questioning in subsequent rounds. Mr. Scolese, the budget proposes to increase funding for NASA in Fiscal Year 2010 by $700 million over the Fiscal Year 2009 enacted level, as you pointed out, after which the budget would be flat for the next several years.

The increase this year is notable and a welcome change, but what is the effect of straight-lining this budget into the out-years on your program and project planning?

Mr. SCOLESE. Well, of course, we are very appreciative of the increase that we get in 2009 and 2010. That allows us to start and accelerate a number of activities. The impact in the out-years of a flat-line budget, of course, is dictated by the economic situation in the country as we all know.

Mr. MOLLOHAN. No, no. I am not asking what dictates it. I am asking like if you were sitting around the table with these fine folks that are sitting right there and you said, wow, this is a great increase for this year, are we not lucky, or not lucky, are we not fortunate and deserving.

Mr. SCOLESE. I like that.

Mr. MOLLOHAN. But, boy—no, I mean that—but, boy, these out-years, they are flat. What does that mean for us?

Mr. SCOLESE. Yes, sir.

Mr. MOLLOHAN. So what would we be saying here?

Mr. SCOLESE. Yes, sir. We would look at that and, of course, we would do our mission planning based on the budget projections that we have. So we will design our missions so that they fit within that profile. That means some missions will not start as soon as people would like, but we also look at the content of the mission so that we can structure a program. I think you will see when the budget comes out a very good program that does excellent science, excellent aeronautics, and continues the Human Space Flight Program along the lines that we have talked about. But it is very difficult to go through all those details. We can give you some more details on——

Mr. MOLLOHAN. Well, why don't you do this at a kind of remote level then?

Mr. SCOLESE. Okay.

SCIENCE

Mr. MOLLOHAN. What does it mean for science? What does it mean for aeronautics? If you were summarizing like a paragraph on each one of them, what would flat-lining mean to you? Something meaningful for this Committee——

Mr. SCOLESE. Okay.

Mr. MOLLOHAN [continuing]. To understand what flat-lining means.

Mr. SCOLESE. We, as I was highlighting here and I can give some more details, we clearly are going to be developing in earth science the Decadal missions. We will solidify the SMAP Mission and the ICEsat-II Mission in the 2013 and 2014 time frame, which allows us to do that.

We will accelerate the next two Decadal missions, the tier ones. It allows us to maintain and progress on the foundational missions. I mentioned two, the GPM, Global Precipitation Mission and the Landsat Data Continuity Mission. There are other missions in that category, the NPOESS Preparatory Project, that we are working on and continue to develop. So we have those missions coming along and we are using all the resources that we have, quite frankly, in the Earth Sciences community to define those missions. We will

also be engaging more the research community with the new venture class——

Mr. MOLLOHAN. Okay. Now, are you telling me what flat-lining into the future, the impact it would have on you?

Mr. SCOLESE. Yes, sir we can do all these missions with the flat-line budget that you are describing.

Mr. MOLLOHAN. You could get to tier two?

Mr. SCOLESE. Tier one, we are working tier one.

Mr. MOLLOHAN. I know you are working tier one.

Mr. SCOLESE. Tier two is still delayed, sir, in the budget.

Mr. MOLLOHAN. So if you were not flat-lined, would you be able to get to tier two?

Mr. SCOLESE. Possibly. We also have, frankly, an industrial base issue with the number of people that we have, number of contractors we have, number of centers we have to go off and do this. I am sure we could do more, but probably not all, just the capacity of the nation to be able to go off and support all of those missions. So there is a balance there between the budget available, of course, and the workforce and the industrial capacity that we need to deal with.

AERONAUTICS RESEARCH

Mr. MOLLOHAN. What would flat-lining mean for aeronautics?

Mr. SCOLESE. Aeronautics, we have actually a fairly robust program there. The flat-lining for Aeronautics is flat-lining with a higher level than we have been at in previous years. There, we are initiating programs to improve the aerospace system, as I mentioned, working with the FAA and others, but also allowing us to work on I will call it green aviation, looking at ways to improve the efficiency of our aircraft and our aerospace system to look at synthetic biofuels.

So that program will be a very robust program. It is enhancing its research in fundamental aeronautics, looking at ways to trade, for instance, noise versus fuel efficiency versus the effluent. So the Aeronautics Program will be very strong.

EXPLORATION SYSTEMS

Mr. MOLLOHAN. Well, if you have got increases for earth into the out-years and you are flat-lined, that means something is going to have to suffer. What happens to Constellation?

Mr. SCOLESE. The Human Space Flight Program, in general, I need to talk about. As you know, the intent is to retire the shuttle in 2010. As the shuttle is retired, the funds that are there for the shuttle go to or accrue to the Constellation Program. So that was in the plan before. We are able to maintain our plans for the initial operational capability in the 2015 time frame. Acceleration earlier than that is not likely. Our plans for the lunar, the beyond low earth orbit portion really did not start ramping up funding until the 2013, 2014 time frame.

Mr. COOKE. Right.

Mr. SCOLESE. So that is where we would have to discuss the flat-lining, if you will, sir.

Mr. MOLLOHAN. Availability of Constellation before 2015 is not likely? Is that what you said?

Mr. SCOLESE. Yes, sir.

Mr. MOLLOHAN. Well, it is not possible, is it?

Mr. SCOLESE. I would not say it is not possible, but it is not likely. I mean, as we look at today and——

Mr. MOLLOHAN. I mean, what is likely is it is going to be pushed out beyond 2015.

Mr. SCOLESE. We are going to work very hard, sir, to make that——

Mr. MOLLOHAN. No, no, I know, but that is what is likely, right?

Mr. SCOLESE. We are going to try as hard as we can, sir, to make 2015.

Mr. MOLLOHAN. Thank you.

Mr. Culberson.

PRIORITIZING PROJECTS

Mr. CULBERSON. Thank you, Mr. Chairman.

Administrator Scolese, you have got no better friends in Congress than this Committee and we really want to find ways to help you.

We are also operating in an environment of record debt and deficit which is affecting all of the entire federal government. And every agency is going to have to prioritize and find ways to control costs and save money.

We had the Department of Commerce Secretary in yesterday. I asked him about a procedure he followed in the State of Washington of prioritizing projects and figuring out ways to cut or eliminate those that are at the lower end.

And as, you know, difficult or hard as it is for NASA, you all may have to go through the same process.

And the Decadal Survey, I know, has been a very successful way over the years when it comes to the scientific robotic missions of identifying the top priority of the planetary scientists. And as I recall, it is broken down to the—is it solar missions or is it solar Decadal, inner planet, earth Decadal, and then outer planets in each of those categories?

Mr. SCOLESE. I think it is planetary, Earth science, heliophysics, the solar and planetary or astronomy, I am sorry, astronomy and physics.

DECADAL MISSIONS

Mr. CULBERSON. One thing I would certainly suggest, Mr. Chairman and panel members, is that we make absolutely certain that NASA has sufficient funding and that you are giving us accurate cost estimates, that is really critical, to make sure that those Decadal missions are flown.

NASA has historically always flown those missions, but with everything on their plate that they have got to do and inadequate funding over the years and the loss of the Columbia, the Agency has never really fully been reimbursed and no way to compensate the Agency for the loss of the astronauts.

But when Challenger was lost, Congress paid for another shuttle and the Agency was never fully compensated financially for the financial loss of Columbia or the hurricane damage. The stimulus went, I know, a long way towards helping with that effort.

But what could you tell us about the ability of NASA to fully fund, make sure—are you confident that you will be able to fully fund the Decadal Survey missions that you have for this decade?

In particular, I am very pleased and excited that the internal review process that you went through, Dr. Weiler, singled out, reaffirmed the Europa Mission, which had been chosen as the Decadal Survey Mission for the outer planets.

Are you confident you will have what you need to do to fly those Decadal Survey missions?

Mr. SCOLESE. We have a plan to go off and fly those missions, yes, sir. It fits within the budget profile that you see. If I may, to address your question about how do we get confidence in our budgets, we are working——

Mr. CULBERSON. Cost estimates in particular.

Mr. SCOLESE. Cost estimates, yes, yes. That is what I am talking about, sir, yes. We are working with the National Academy at the front end because as you accurately pointed out, we go there for our Decadal Surveys and they rank our missions appropriately.

But we need to have good estimates there. So we are working with the National Academy so that they have better estimates up front that we can use and rely on. Clearly they will not be the best estimates. So at NASA, we have instituted processes where we get consistent cost estimates. We can compare them over time. We will not make our commitment until we have done at least the basic research and mission definition. So at least at the PDR timeframe is where we will make our commitments to you and to the American public as to what it is going to cost. We have instituted much more rigorous cost accounting. I discussed that in a previous hearing. So I think our cost estimates are going to be much better in the future and I think the ones that we are providing you today in terms of cost and schedule are much better than they were even a year ago.

Mr. CULBERSON. It was a particularly good article in the Journal of Science which I have always relied on very heavily for a lot of my information. Mr. Chairman, I will make sure you get a copy of this as well.

And Dr. Weiler correctly pointed out over a ten-year period, you have got $6 billion worth of promises made in planetary sciences and you just do not have the money. It is just a real concern.

So the prioritization is critical. Make sure, please, that you are flying the Decadal Survey missions. That is vital. We have got to close that gap.

And the Manned Program is one of the, in terms of priority, seems to me, you have got to close the gap and make sure that we minimize that gap when we are unable to fly manned missions, number one, and, number two, to make sure that we are flying those Decadal Survey missions and get us realistic cost estimates——

Mr. SCOLESE. Yes, sir.

Mr. CULBERSON. Because we want to help, but we have got to have realistic cost estimates.

Mr. SCOLESE. And we will do that.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Culberson.

Mr. Schiff.

COMMERCIAL ORBITAL TRANSPORTATION SYSTEM (COTS)

Mr. SCHIFF. Thank you, Mr. Chairman.

Administrator, Dr. Weiler, great to see you both. Thank you for the outstanding work that you do and all of your team.

I wanted to ask you about the COTS Program. Over the last three years, NASA has developed a commercial orbital transportation system to provide commercial cargo and crew flights to the International Space Station.

In December, NASA awarded contracts to two companies, Orbital Sciences and SpaceX for ISS resupply missions. The first flights are expected in late 2010 or early 2011.

Before those flights, it is hard to declare the program a success, but at this point, it is hard to see how it could be going any better.

I want to congratulate NASA for having the foresight to launch the COTS Program. I have been out to SpaceX and was incredibly impressed with what they are doing. And I was there after the second unsuccessful launch where they were quite confident they diagnosed the problem correctly and sure enough, on the third launch, they showed that they had. And it is very exciting.

There is another stage to the COTS Program, Capability D, which involves developing commercial crew delivery. As we approach shuttle retirement, Capability D could offer our only domestic method of delivering astronauts to the ISS. This Subcommittee has consistently supported that capability as has the Authorizing Committee.

My understanding is that the crew capability could be demonstrated two years after approval. In the Stimulus Bill, Congress provided an additional 150 million for commercial crew and cargo.

So I am interested to know if NASA has taken any steps toward activating the Capability D option or if there are any impediments to that. And does NASA believe that exercising the option would allow for cheaper ISS crew flights during the 2010 to 2015 window?

Mr. SCOLESE. The Capability D, we did provide $150 million of stimulus funds for looking at crew and enhancing cargo. About $70 million of that funding is to go off and address issues that are broadly related to crew capability for anybody that would be providing a crew capability. It is looking at what we need to do for attaching a vehicle and detaching a vehicle from the station. We need to provide some interfaces for that, so we are looking at that. We have activities to work with people and to better define the human rating requirements that would be needed to put crew into space.

The Aerospace Safety Advisory Panel had some concerns about our human rating requirements as currently written. So this is to go off and clarify those, make them clear to anybody that wants to fly crew.

And then we have about $80 million——

Mr. SCHIFF. I am sorry, Mr. Administrator. It sounds like bongos in here. Is that the sound system or do you have musical accompaniment at NASA now?

Mr. SCOLESE. I do not think I have musical accompaniment, sir.

Mr. SCHIFF. Is that in the room?

Mr. SCOLESE. I am sorry. I do not know how to follow that up.

Mr. MOLLOHAN. This is NASA.

Mr. SCOLESE. And then we have additional resources, the balance of it to accelerate cargo flights and to go off and solicit initially as a request for information, information on how commercial crew could be done.

Fundamentally, the plan that we see going forward is to logically proceed from cargo, which will be difficult in and of itself to achieve, to a crew escape capability to ultimately bringing crew up to the space station.

So that is basically our plan and overview and that is what the $150 million in the funding that you saw in the operating plan yesterday that it will initiate. And that is in addition to, as you pointed out already, the commercial cargo portion of it.

EUROPA MISSION

Mr. SCHIFF. Let me ask you about one other issue and that is an issue that Mr. Culberson and I are very interested in and that is Europa. I saw that a couple months ago, NASA selected Europa as the first outer planet flagship mission with a tight mission to follow.

Will you be issuing an Announcement of Opportunity (AO) for Europa in fiscal year 2010?

Mr. SCOLESE. I do not know the answer to that.

Mr. WEILER. There are not sufficient funds to get an AO out in 2010. I am not sure of the exact date we have planned for that, but we can certainly submit that to the record.

We are also awaiting——

Mr. SCHIFF. I am sorry. Did you say there were not sufficient funds?

Mr. WEILER. There are not sufficient funds in the near-term budget to issue an AO that early. I will get that date to you in the record.

In the meantime, we are starting the planetary Decadal Study and one of the questions we are asking them is to really look at the current priorities in the Planetary Program across all planets including the moon. We have to ask the question what is the highest priority in our program. Should we be putting more money into Europa from other parts of the program, for instance. Right now Europa is not well-funded at all because of previous priorities, frankly, and I want that to be relooked at and I want the Decadal to do a fair and competitive peer review across all of the missions in the Planetary Program.

Mr. SCOLESE. But the current plan is at 2020.

Mr. WEILER. It is a 2020 launch. I should also point out that we have worked with the ESA, the European Space Agency, and now Europa will actually be a truly international mission. Instead of competing with each other, we are going to go to Jupiter together. The Europeans are going to orbit Ganymede and we are going to orbit Europa and share the data. So it is a much better mission, I think, in the long run.

Mr. SCHIFF. In the next round, I would love to follow-up with you on the moon science and how it affects other science. Thank you.

COTS D

Mr. MOLLOHAN. Just clarification of a question that Mr. Schiff asked on the COTS D. Your spending plan is $150 million for commercial crew and cargo. Our information, it was 80 million to be available for commercial development of crew concepts and technology demonstrations and investigations.

And all that sure sounds like COTS D and what you described sounded like COTS D. But in conversations with our staff, your staff assured us or not assured us but represented that that was not COTS D.

So could you clarify?

Mr. SCOLESE. Unfortunately, we use COTS D as a shorthand for commercial crew. COTS D really is an option that was out there in the early "Space Act" agreements to talk about human space flight. And there is only one organization that bid to that. So shorthand, we call it COTS D, but it really is not COTS D. If I misspoke, I am sorry.

Mr. MOLLOHAN. No, no, you did not misspeak.

Mr. SCOLESE. Okay.

Mr. MOLLOHAN. It just sounded like COTS D.

Mr. SCOLESE. Okay.

Mr. MOLLOHAN. So what is the difference?

Mr. SCOLESE. The difference is we are not going off doing what we originally described as COTS D. And when I get done here, maybe Doug can add a little more——

Mr. MOLLOHAN. Okay. Well, we will come back to that.

Mr. SCOLESE. But what we are doing is a logical progression to crew. It is not COTS D as was originally discussed, what was it, two years ago?

Mr. MOLLOHAN. Okay. Great.

Mr. Bonner.

KEEPING THE AMERICAN PUBLIC INTEREST IN SPACE

Mr. BONNER. Thank you, Mr. Chairman.

Mr. Scolese and your colleagues, we are glad to have you before us.

When I was on the Science Authorizing Committee before I joined the Subcommittee this year, I asked this question of your predecessors, so I will give you another shot at it as well.

Help me understand. And this is not a new problem, but I do think it is a challenge. The shuttle is going to retire in 2010 and we are looking to have returned man space flight to the moon in 2020. So I am trying to understand how we keep the American taxpayers' interest in NASA.

Even though I know there are many important missions that will take place between 2010 and 2020, I just wonder sometimes if Major League Baseball, which we have got a new season upon us, had a ten-year hiatus or the National Football League went ten years without there being a Super Bowl, would it not be a challenge to keep people—there may be Minor League sports and there may be other factors taking place, but the big game that for many Americans is seeing that shuttle launch or seeing that man take his or her first steps on the moon.

Are you all concerned about this and, if so, what can we do to help you bridge that gap and keep the American taxpayers interested, as Mr. Culberson said, with record deficit, record debt, record spending, and, yet, out of sight, out of mind?

Mr. SCOLESE. I do not know if I will do better than my predecessors here or not, but I think the answer to your question is it is clearly unfortunate that we have the gap. I do not think anybody wanted to have a gap in the ability to take Americans to space in American vehicles. That is unfortunate and it is the result of previous decisions that were made.

To keep people excited, I think you cited a few things. Clearly the missions of exploration on Mars, going to the outer planets, going to the inner planets, as we look at those will certainly provide a degree of excitement, but we must not forget that during that entire period, we will have permanent crew on board the space station.

And the unfortunate thing is it will not be American rockets taking the crew to the space station, but we will have crew up there. We will have international crew and we will be demonstrating, I think, once we get all the labs on board, which we will this year, and have it fully functional by the end of next year, we will be demonstrating some really exciting research that has some very practical applications.

Others can give you a better indication, but I think, you know, one that really peaked my interest and I think even had some articles on it is the research that was done that is allowing us to better understand salmonella and its modalities so that we can develop a vaccine for it.

So I believe that with a combination of our permanently crewed presence on the space station, the exciting research that can be done there, as well as the other missions that we will keep people stimulated in it.

And hopefully with the development of the next generation system, people will see and be excited about that as I was in the 1960s when I was young and becoming interested in the Space Program.

There was that hiatus between Gemini and Apollo and subsequently between Apollo and Shuttle. And many of us still stayed very much interested in the program.

So I hope those are the ways that we will keep the American public interested, sir.

MATH AND SCIENCE EDUCATION

Mr. BONNER. Well, that is a great lead into my second question. This year under the dynamic leadership of our Chairman, our Subcommittee has spent a lot of time in conversation talking about how to get kids and young people throughout the country more interested in math and science education.

And you have just alluded to when you were a young man in the 1960s and what piqued your curiosity and interest in this area.

One of the items in your written testimony discusses NASA's efforts to strengthen curricula in two-year community colleges.

In our home State, Congressman Aderholt and I, we are both from Alabama, and our state has established a plan to dramatically improve workforce training in our two-year system.

Can you tell us a little bit more about what NASA is doing specifically to reach out and engage students? Now, that is at a much more advanced stage than you were when you were interested in it, but is it too late to capture those opportunities when they get to the two-year system?

Mr. SCOLESE. No, sir, I do not think so. In fact, not going on that, and we will provide you more details for the record about what the program is there, but I can describe a program that we initiated when I was at the Goddard Space Flight Center working with two-year colleges, Capitol College at the time, where we provided opportunities for junior college students to go off and operate spacecraft. And that has become a very successful program, inspiring a lot of people not only to go off and become spacecraft operators but to go on and get their four-year degrees in engineering or science or mathematics. So building upon that program, I think very much we can go off and do that, but I cannot give you the details right here. I will have to provide the absolute details for the record, sir.

Mr. BONNER. Great. Thank you.

Thank you, Chairman.

Mr. MOLLOHAN. Thank you, Mr. Bonner.

Mr. Aderholt.

ARES I ORION/ARES V

Mr. ADERHOLT. Thank you, Mr. Chairman.

What is the original date that Ares I and Ares V were proposed to be ready?

Mr. SCOLESE. I believe the commitment date that we always had for the Ares I Orion system was 2015. We were striving internally for a 2013 and a 2014 date.

Over time, as a result of a number of factors, that has no longer really become possible. So we are at the commitment date that we had made of 2015. And for Ares V, I thought it was 2018, but I may be wrong on that, Doug.

Mr. COOKE. No. That is correct.

Mr. SCOLESE. Okay, 2018.

Mr. ADERHOLT. That is what the current is?

Mr. SCOLESE. Today, yes.

Mr. ADERHOLT. Yeah. Okay. But you said it was originally by 2013?

Mr. SCOLESE. Our internal date for Ares I was 2013 and then 2014. And now our internal date and our commitment date are approximately the same within a few months, but they are both in 2015.

CONSTELLATION PROGRAM

Mr. ADERHOLT. Okay. If the shuttle is retired in 2010 or any costs to extend the shuttle are added to your current budget, how many additional dollars would you need to be able to complete the Constellation Program by 2013 or 2014? Let us think of in increments of $100 million. For each $100 million that we add to Constellation, how many months do we accelerate the completion of the program?

Mr. SCOLESE. Today we are driven largely by our long-lead materials. So we have looked at acceleration options and do not see a

significant acceleration that could be done for almost any amount of dollars. We could talk a few months, but we could not talk a year or more, sir.

Mr. ADERHOLT. But it would be possibly a few months?

Mr. SCOLESE. Possibly at best.

CLIMATE RESEARCH AND AERONAUTICS

Mr. ADERHOLT. Okay. There are a lot of climate research duties and aeronautics duties that have been added to NASA's list that had not been done so in the past.

Is the Federal Aeronautics Administration, the airline industry, or NOAA adding any of their own funds to these efforts?

Mr. SCOLESE. In both cases, the answer is yes. I cannot speak specifically to FAA. Perhaps Dr. Shin could do that. But, yes, they are providing resources to go out and do that. NOAA definitely is. They have an increase in their budget to go off and improve the weather system and the climate system which, of course, are very much related. So, yes, there are increases in both.

Dr. SHIN. Yes. FAA has a specific program called CLEAN and this is to develop certifiable technologies for environmental impact mitigation and also climate change. They have also a very active weather policy group that works with the international community to address regulations and setting the standard and all those aspects for climate control or climate change mitigation. So we are happily working with FAA in those areas.

Mr. ADERHOLT. Are they adding any of their own funds, though, or——

Dr. SHIN. Out of their new reauthorization at FAA, they are funded. The CLEAN Program is funded and climate change——

Mr. ADERHOLT. Out of their own budget?

Dr. SHIN. Yes, out of their own budget.

Mr. ADERHOLT. Okay. That is all I have, Mr. Chairman.

NASA BUDGET REQUEST

Mr. MOLLOHAN. Thank you, Mr. Aderholt. Mr. Scolese, in testimony before this Subcommittee earlier, again, Dr. Fisk stated that when he was on the Space Studies Board they repeatedly pointed out that NASA is asked to do too much with too little, something we hear a lot of. Do you feel that this is the case today?

Mr. SCOLESE. Yes. I mean, it is also a good place to be, quite frankly. It is nice to have people wanting us to do more than we can do. All of our communities, the science community, the aviation community, all want us to do a lot of very exciting things. And we have to work collaboratively with them to try and determine what we can fit within the resources that we are provided. I think for as long as NASA is around I hope there is always more people coming to us asking us to do more than is currently possible. But I also hope that we have an organization in the National Academy, and obviously with Congress and the administration, that understands that we have a finite budget and a finite number of people and resources to be able to prioritize those in a sensible and logical way. And I think we get that, sir.

Mr. MOLLOHAN. I think I heard that process being discussed in Mr. Weiler's response to Mr. Schiff's question.

Mr. SCOLESE. Yes, sir.

RETURN HUMANS TO THE MOON

Mr. MOLLOHAN. Does this budget in any way, either programmatic content or out year funding constraints, change the nation's current plans to return Americans to the moon by 2020?

Mr. SCOLESE. It may impact the return to the moon. But clearly, that is part of our normal design process as we go off and understand the vehicles that we are developing. We have a major preliminary design review coming up this year that will help us inform that decision. I think the significant piece in this discussion is that the President did in the overview budget ask that we strive to return humans to the moon by 2020. That is the goal that we are going to work on. But it is going to be informed along the way as we understand more and more about our systems, and we can understand more and more about the budget that we will have to live on. Not just this year and for the next five, but for the next ten years.

Mr. MOLLOHAN. So my question is, how does this budget and the out year budgets impact that as you are looking at it are informed along the way?

Mr. SCOLESE. Yes, sir.

Mr. MOLLOHAN. Do you anticipate an impact?

Mr. SCOLESE. I anticipate that we will have some changes in the program, yes, sir.

Mr. MOLLOHAN. Yeah, but my question is, is there anything——

Mr. SCOLESE. I cannot tell you what those changes will be.

Mr. MOLLOHAN. I do not know. I mean, if you look forward, you can look at the budget and see how that impacts various programs and see which ones of them are a critical path to getting back to the moon. And does anything you see possibly impact our getting to the moon by the 2020 target date?

Mr. SCOLESE. Well the reason——

Mr. MOLLOHAN. Anything you see in this budget, in the project?

Mr. SCOLESE. No, I understand, sir. The difficulty is, we looked at, we are still looking at options for what do we mean by the moon. Do we mean a colony on the moon?

Mr. MOLLOHAN. Oh, boy.

Mr. SCOLESE. That is clearly very expensive, right? Are we looking at something along the lines of what we did with Apollo?

Mr. MOLLOHAN. Well what definition were we using when we set the goal? So whatever definition we were using, what is returning to the moon, when we set the goal of 2020.

Mr. SCOLESE. I think we were looking at an outpost on the moon, was the basis for that estimate, and that one is being revisited. It will probably be less than an outpost on the moon. But where it fits between sorties, single trips to the moon to various parts, and an outpost is really going to be dependent on the studies that we are going to be doing, not just this year but as we progress in the definition of the lunar program.

Mr. MOLLOHAN. So if you were sitting on the Committee and you were asking somebody, because you want to get a sense of, well, is the funding we are providing in these various programs that are lead up to getting on the moon by the target date, what kind of an

answer would you want to walk away with, having a sense, or at least an understanding, of what the experts thought about this budget impacting our getting to the moon, whatever definition we used originally, what answer would you want to hear in order to help understand that? That is the answer I would like to have.

Mr. SCOLESE. Okay. I think the answer I would like to hear, and I guess I will give, is that we will have the capability provide options for what that solution space looks like at the moon and beyond. Because recall, the vision was not just to go to the moon, as it was in Apollo. It was to utilize space to go on to Mars and to go to other places. So what I would look for from us over time is a system that is capable of carrying crew, clearly, into space. But then the capability of carrying crew and sufficient cargo out of low Earth orbit. So that we can do various things at the moon.

We have demonstrated over the last several years that with multiple flights we can build a very complex system reliably, the Space Station, involving multiple Nations. As long as we have that capability, and we will need something like that if we are going to go to Mars. So what I would like to see from NASA over time is an architecture that allows us to build up a system that will give us flexibility for taking humans beyond low Earth orbit and allowing us to have options for what we can do at the moon as well as other destinations. Be they, physical destinations like the moon or Mars or an asteroid, or whether they be, astronomical ones, or celestial mechanics ones, the libration points where we are going to be putting satellites to do, you know, to do repairs there if that is warranted.

So that is the answer I would be looking for from us today so that there are options on what we do in 2020. Is that okay?

Mr. MOLLOHAN. Well, you have exhausted my five minutes. Mr. Culberson.

SCIENCE MISSION PRIORITIES

Mr. CULBERSON. Thank you, Mr. Chairman. The Chairman asked a really important question and I want to follow up on it. But I first want to make sure I understand Dr. Weiler's response to my good friend Mr. Schiff's question about Europa. I thought the Europa question was settled. That is the top outer planets priority, is it not, Dr. Weiler? You said something about you are going to go back and reevaluate as a scientist, to compare Europa, we are not going through another competition, are we? Europa is settled. That is the flagship mission to the outer planets, now top priority, right?

Dr. WEILER. Absolutely. The Europa orbiter is now the top priority in the outer planets program. The problem is, the budget that I inherited about a year ago when I came back to headquarters does not just have outer planets in it. It has Mars, it has the moon, it has asteroids, comets, and various other programs. To get Europa moving faster than the plan is currently——

Mr. CULBERSON. Okay.

Dr. WEILER [continuing]. I would have to move money around.

Mr. CULBERSON. From other, lower priority missions that are not——

Dr. WEILER. Well, that is the key, Mr. Culberson. As an associate administrator I may have a lot of authority but when it comes to

making priority scientific decisions I tend to rely on the National Academy.

Mr. CULBERSON. Sure. Of course, as you should.

Dr. WEILER. That is why this decadal is so important, because I have asked them, nothing is special in the solar system. Not the moon, not comets, whatever. You guys, you gals, are supposed to tell me. What is the most important thing? Is it Mars? Is it the outer planets program? Is it going to the moon——

Mr. CULBERSON. Right.

Dr. WEILER [continuing]. For science? And we should have that answer, you know, over the next year, year and a half.

Mr. CULBERSON. Okay, very good. I recommend, Mr. Chairman and the Committee, as an absolute minimum that we make certain that no matter what else NASA is doing, and when it comes to the scientific work that they do on the robotics missions, that we have given them enough money to fly that top priority decadal mission in each of those categories. At an absolute minimum, particularly in this tough budget environment. That would be good. Because the scientific community does make those recommendations to them, Mr. Chairman. And they have done a good job over the years of prioritizing the mission.

The one area that you have just got to get a handle on is the cost estimates. And the GAO recommends that you develop a sound business case for each mission and as a part of the process. Could you comment on that? What is your thought on the GAO recommendation on trying to give us more accurate cost estimates? And it makes it easier for your friends on this Committee to be able to fund what you want to do.

Mr. SCOLESE. Well, we certainly do not disagree with the GAO. And we, in fact, responded back that we principally agreed with their findings. And they also commented in the report that we were doing much of what they had recommended in the report. So we are doing those things to make our estimates much better.

Mr. CULBERSON. Okay.

Mr. SCOLESE. The one thing I would like to comment on in the report that we did disagree with, which was mentioned earlier, was the number of missions that had cost growth. We specifically asked them to consider the fact that many of those missions we had no control over. I will give two examples, and we said about half of them they really should not count as NASA cost growth.

SDO, the Solar Dynamics Observatory, was ready on time to launch. And because of the launch manifest will launch about a year later than anticipated.

Mr. CULBERSON. Sure.

Mr. SCOLESE. And a similar, although not as significant delay, is for the lunar reconnaissance orbiter and the LCROSS mission.

CBO'S ANALYSIS

Mr. CULBERSON. Well let me if I could follow up on the Chairman's very important question. Because he was throwing you a nice softball trying to help you find a way, help you help us to get you the money that you need. And in order to help, I am going to yield, I am going to ask the question and then yield whatever time I have got back to the Chairman to follow up.

But the CBO estimated that if you follow your current budget plans there will be an average rate of cost growth, would result in a delay in Orion/Ares until 2016. And we have just got to shrink that gap. Because the human space flight program is just essential. And we cannot allow ourselves to be hostage to the Russians, who will charge us whatever the market will bear. Because they will be the only game in town. That is just an unacceptable, that gap is just unacceptable and we have got to make sure we shrink it. But the CBO is estimating that there could be a delay in Orion/Ares until late 2016, a delay in returning humans to the moon until 2023, and that fifteen of seventy-nine science missions would be delayed beyond 2025. Do you agree with the CBO's analysis? And then could you make sure you address the Chairman's question, which is related to this?

Mr. SCOLESE. I agree with how the CBO did their analysis, the results they got. I do not agree with their conclusions, however. They made assumptions that we would have 50 percent cost growth across the board, in all of our activities. Clearly, we do not plan to have 50 percent cost growth. We work so that we do not. As I alluded to earlier, we are doing what we can to provide you and ourselves, frankly, with better estimates so that when we lay out a plan it is a plan that we can live with, and that we can execute, and that we will show up on time.

That is our plan with Constellation. We will come to you with our detailed plan at the conclusion of PDR, as we do with all of our missions. But our plan, our efforts, and everything that we are doing is to be there in 2015. Of course, I mean in any new development there are surprises. But our plan, and the activities that we have settled, that we have in place, and the benefits that were provided by the stimulus allow us to do some early testing. So we are going to work as hard as we can to make 2015 a reality.

Mr. MOLLOHAN. Thank you, Mr. Culberson. Mr. Schiff?

EUROPA MISSION

Mr. SCHIFF. Thank you, Mr. Chairman. I had a couple of follow up questions for Dr. Weiler on the Europa mission. How soon would you need to go out with a proposal on the science in order to keep on a 2020 schedule?

Dr. WEILER. Well we are talking about an AO for a mission that if we can meet a 2020 goal, which is currently what the Europeans are trying to meet too, I would guess that an AO would have to go out for instruments. Because we would be soliciting AO instruments and science team, broadly. That would probably have to go out in a time frame of 2012, 2013, probably, at the latest. So I would feel more comfortable if we went out about 2012. Despite our best efforts, instruments usually drive the launch. So, you like to get those started as early as possible. In the meantime, even with the budget we have now, I can keep the Europa team working on critical technologies. But again, I look to the decadal for advice on how to prioritize these things because with more money I could accelerate that launch date.

SCIENTIFIC PRIORITIES

Mr. SCHIFF. Well, let me ask you about that issue. And this, I think, may have been part of the Chairman's question. Or I may have been reading more into the Chairman's question than I should. But you mentioned doing some reexamination of scientific priorities and where we are putting our resources. As I understand it, the manned mission to the moon is part of a broader manned mission to Mars. There is moon scientific work that is being done in preparation for a manned mission to the moon. And there is moon science that is being done that is probably independent of what you would need to do to bring man back to the moon. If the science community does not, and I am asking this question. If the science community does not conclude that the moon science is anywhere near as valuable as, say, Mars science or Europa science, are there ways that the moon program could be trimmed back to accommodate other higher scientific priorities?

Dr. WEILER. Oh, absolutely, Mr. Schiff. That is exactly, that is exactly why we want this decadal. Because, and I will let Doug speak for himself, but there is no question that the lunar reconnaissance orbiter (LRO) mission that we are going to launch hopefully next month is absolutely critical for the human landings. Because we to this day do not have a high quality digital map of the moon. And we do not have a laser altimeter map of the terrain. So the LRO is going to provide critical information that is going to help the manned lunar program in the near term.

On the science side, I have asked the current Associate Administrator, and actually the previous two, are there scientific missions that are critical to support the human mission beyond LRO, the lunar reconnaissance orbiter? The answer has usually been no, so at that point I have to ask the question, where does moon science stand in priority, versus searching for life on Mars, going to Europa, going to other planets, comets, whatever? That is a question that is so important. That is why I say the decadal should answer that question. I do not feel qualified to make that decision on my own.

Mr. SCHIFF. Thank you. And I think that is exactly the right question to ask. Things get put in motion, they get an inertia of their own. And they may, they may not make sense. And I realize you inherited this budget, and the trajectory we are on in several different programs. But given, you know, for example the very exciting discovery of this Earth-like planet, this planet that is two or three times the size of Earth, and the possibility that there may be a great many Earth-like planets out there, I would think as a non-scientist the level of interest and excitement that could be generated over, you know, science exploring those, you know, habitats where life could exist would drive a lot of interest in the science. In the space program and in the sciences.

Let me ask you one other question. The President announced a new science initiative designed to devote 3 percent of our GDP to research and development, which I was thrilled to hear. "Science," he said, "was more essential for our prosperity, security, health, environment, and quality of life than it has ever been." Has the administration given you any indication, Mr. Administrator, that

NASA will be a part of this new focus on science? Because obviously, I think I speak for my fellow Committee members, we really feel it should be. And it is probably the one area of science that is most attractive to young people, to get them interested in science. But also has some of the most fascinating questions. So have you heard anything about whether NASA will be part of this?

Dr. WEILER. If I could interrupt and save a question for the record, it turns out I am more conservative than my planetary division director. Even with the budget he has today in the near term he feels he can get an AO on the street for instruments on Europa in the late 2011 time frame, which would even be better for a 2020 launch because it would give us more time to develop the technologies.

Mr. SCHIFF. All right. Well, I think many of us would love to see it happen before 2020. So we would love to see the proposal go out in 2010.

Mr. SCOLESE. The answer to your question is, I was at the President's speech. He did mention it. He mentioned, of course, NASA several times. But to be very frank, we do not have the details yet of what that means. But I would fully expect that NASA as a science agency would certainly be a part of that. But I cannot say anything more than that because I do not know.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Schiff. Mr. Kennedy.

EARTH SYSTEMS DISTURBANCES

Mr. KENNEDY. Thank you, Mr. Chairman. Welcome all of you. Thank you for the work you do for our country. I wanted to ask about, particularly Dr. Cooke if you would, about how NASA has begun to support systems approaches to exploring science of the interactions among components of the Earth's system, including human dimensions of the Earth's systems disturbances. And particularly we do, in Rhode Island, through our sciences work to develop quantitative risk models that analyze the interactions between humans and regional atmospheric systems for studying local and regional environmental changes, and the potential for social and economic consequences related to renewable energy, coastal fisheries, and human infrastructure and health. Has NASA begun to include this type of applied modeling and social science into its scientific portfolio? And are there opportunities for NASA to support this type of work with universities like we have in Rhode Island?

Mr. SCOLESE. Mr. Kennedy, that would be in Dr. Weiler's division. Let me answer just real briefly, though, and then Ed can add more detail to it. The short answer is, yes. It is in our applied sciences division. We do do that. Of course, we have to work with other agencies. Since NASA is a research agency we do not do operational type of activities. We support—operational activities. But, it is something——

Mr. KENNEDY. Well then what do you need to do with other agencies to do that?

Mr. SCOLESE. I will let Ed cover that.

Dr. WEILER. It is a very detailed question, Mr. Kennedy. I really would like to take it for the record, if I could.

Mr. KENNEDY. Okay. That would be fine. Maybe you could comment about it just generally, then we could get some detail later on. But in terms of the Earth's systems disturbances, and how the human——

Mr. SCOLESE. I can give a brief one because most of my career in NASA was actually on the Earth science side. So while it may not be as current or as up-to-date as some, NASA has launched a number of missions, as you know, to collect data about the Earth. The Landsat missions have been flying since the 1970's, and in their current forms since the early 1980's, they provide us with a continuous data record that is used by a number of localities for urban planning and it is used by agricultural services to predict and plan for crops. The EOS series of missions, there are several of those, are providing daily critical resources, critical information on resources around the world, not just in this country, both for marine and hydrologic activities. We have our tropical rain forest mission. It is integral in predicting the path and the intensity of hurricanes. We have instruments that are used routinely by the operational agencies for mitigating floods, predicting flood paths, and predicting paths for even volcanic activity. So that is sort of an overview of it. Those missions are being used continuously by virtually every agency of the U.S. government, and they are being used by other nations as well.

[The information follows:]

Earth Systems Disturbances

One of NASA's 6 strategic goals is *to study planet Earth from space to advance scientific understanding and meet societal needs* (2006 NASA Strategic Plan). This goal is motivated by the fundamental questions: *How is the Earth changing?* and *What are the consequences for life on Earth?* NASA has long recognized that to meet this goal, it must study each of the Earth's components: atmosphere, solid earth, land, freshwaters, cryosphere, ecosystems, the oceans and indeed, humans, and it must go further to investigate the relationships between these components. NASA's unique view from space of all of the Earth's major physical components provides an unprecedented opportunity to understand the Earth as an integrated ***system***.

As the U.S. civil space agency, NASA has been the primary organization developing and implementing scientific Earth observations from space, which for the past 50 years have transformed the way people view our home planet. The recent NRC study " Earth Observations from Space – the first 50 years of scientific achievements" (2008) captured the evolution of these capabilities and the major resulting new discoveries, avenues of research and important societal benefits following the improvement in our ability to predict Earth System processes. For the past two decades the implementation and continuing operation of the full suite of NASA Earth Observing satellites has enabled the most comprehensive global views of the Earth ever attained. These missions supply data that enable the study of the interactions among all of the components of the Earth's system, including human-induced influences.

NASA funds the efforts to ensure that the data are accurately calibrated and that precise correlations between datasets are possible. Further, NASA funds research that integrates these data in the study Earth system interactions. In addition to the extensive research that it funds, NASA's open data policy has enabled the wide use of the data around the world. Most of the US Government agencies are routinely using NASA data in their operations; e.g. the National Weather Service uses operationally observations from instruments aboard the Terra, Aqua, TRMM, QuikSCAT and JASON satellites. In addition to NASA-operated satellites, NASA is responsible for developing and launching operational weather and Landsat satellites operated by NOAA and USGS, respectively. [For polar-orbiting weather satellites, the last NASA-developed satellite was launched earlier this year; future polar-orbiting weather satellites are being developed by the NPOESS program funded by DoD and NOAA, with NASA as a technology provider.] The generations of NASA-developed satellites for our operational agency partners have resulted in significant advances in capability as NASA continues to develop and mature Earth observing science and technology.

NASA's suite of Earth science missions is specifically designed to study the Earth in a comprehensive way—to make observations of all of Earth's physical components.

NASA's Earth Science Research and Analysis (R&A) Program is likewise comprehensive and conducts its research within and across six Focus Areas:

- Atmospheric Composition
- Weather
- Carbon Cycle & Ecosystems
- Water & Energy Cycle
- Climate Variability & Change
- Earth Surface & Interior

The interplay between humans and the environment is a component of the research in each of these areas. An example of an area of research that integrates across the focus areas is the Land-Cover and Land-Use Change Program (http://lcluc.umd.edu/). This is an interdisciplinary science program that works across the Carbon Cycle and Ecosystems and the Water and Energy Cycle Focus Areas. Research in this program encompasses social science understanding of human interactions with the environment to provide a scientific foundation for sustainability, vulnerability, and resilience of land systems and their use.

The NASA Earth Science Applied Sciences Program (http://www.nasa.gov/home/hqnews/2009/jul/HQ09-154_Turbulence_Research.html) directly incorporates the human dimension in all of its work. This program conducts research and development into new and improved tools that enable the use of information provided through the NASA Earth science programs by others to make better decisions and policy, manage resources, and respond to disasters. The program works directly with operational users of NASA data and research to identify their needs and collaborates with them throughout the development of each application project. In conducting its applied research projects, the Applied Sciences Program must account for such things as economic value and viability, human barriers to utilizing new tools, the need for translation of NASA information and training new users, and complex ways in which decisions are often made.

Other NASA Earth Science programs that deal with the human dimension include the following:

- The Socioeconomic Data and Applications Center (SEDAC), hosted by Columbia University, is one of the twelve Earth Science Distributed Active Archive Centers (DAACs). SEDAC provides Earth data and information pertaining to the effects of changing environmental conditions on human activities and *vice versa*, and maintains a socioeconomic and applications data collection.
- The Space Archaeology Program incorporates space-based remote sensing into archaeological research.

Yes, NASA includes applied modeling and social science into its scientific portfolio. For example, NASA's Goddard Institute for Space Studies (GISS) investigates the

chain of causes and effects linking climate and its impacts, utilizing the GISS Global Climate Model (GCM), physically based impact models, chemical tracer models and interdisciplinary teams. The GISS model results were utilized by the Intergovernmental Panel on Climate Change (IPCC) in their 2007 Working Group II assessment report *Impacts, Adaptation and Vulnerability.*

Another example of NASA applied modeling is NASA Ames Research Center's Terrestrial Observation and Prediction System (TOPS). TOPS is a data and modeling software system designed to seamlessly integrate data from satellite, aircraft, and ground sensors with weather/climate and application models to produce operational nowcasts and forecasts. TOPS operates at a variety of spatial scales, ranging from individual vineyard blocks to global monthly assessments of vegetation production. One of the many applications of the TOPS system is providing the California agriculture community with forecasts on water availability and weather to enable efficient irrigation of crops.

Yes, NASA works with universities and educational systems across the U.S. There are many opportunities for Rhode Island universities, colleges, and businesses to be involved in NASA Earth Science. Each year NASA issues the Research Opportunities in Space and Earth Sciences (ROSES) (http://nspires.nasaprs.com/external/solicitations/summary.do?method=init&solId={F35D3EEA-790E-663A-CEA2-ACE5B9E13A53}&path=open). Organizations of every type –
Government, private, for profit and not-for-profit – may submit proposals. In FY 2008, Rhode Island Congressional District 1 received ten awards through ROSES, with one award related to Earth Science and the others related to Space Science; Congressional District 2 received six awards, and five were related to Earth Science. The Earth Science research funded in Rhode Island is primarily focused on research and analysis of NASA measurements.

Noteworthy contributions were made to NASA's Program, as well as other agencies and the Earth Science community at large, by Rhode Island scientists under competitive funding. These contributions had a significant impact on the evolution and development of effective Data and Information Systems architecture, particularly NASA's Earth Observing System Data and Information System (EOSDIS), which constitutes the world's largest Earth data system. In 1994 the University of Rhode Island (URI) received NASA funding to develop a data system that would facilitate access to oceanographic data over a network. Continued work on this system was subsequently co-funded by NASA and other agencies (NOAA, NSF and US Navy), and led to the recognition of a new type of data access protocol. In early 2000 NASA funded a competitively selected 5-year project to continue the development of the Open source Project for a Network Data Access Protocol (OPeNDAP) architecture, leading to a revolutionary system for the integration of data systems. The project Principal Investigator (PI), Dr. Peter Cornillon served as a member of NASA's EOSDIS Evolution Study Team, establishing fundamental objectives and principles for data systems of the future. Currently the OPeNDAT is adopted as the basis of the access protocol for the Integrated Ocean Observing System (IOOS), developed under NOAA's leadership.

In FY 2010, the Research and Analysis Program will solicit, through ROSES, proposals to integrate the understanding of the coupled human-environment system. This feature recognizes the fundamental nature of how human activities on land influence the global integrated Earth system and how global change impacts humans. The request for proposal will have three themes: causes and nature of land system change; consequences of land system change; and, integrative analysis and modeling for land sustainability. Additionally, the Applied Sciences Program will solicit proposals for research and development of applications across a range of societal benefit areas.

Since 1960 when NASA launched the world's first civil satellite to observe Earth's changing environment, NASA has developed satellite measurement capabilities and research products and transitioned them to operational agencies. The US National Space Policy of 2006 re-stated the long-standing role for NASA to "... develop, acquire, and use civil space systems to advance fundamental scientific knowledge of our Earth system ..." and to "transition mature research and development capabilities to long-term operations, as appropriate." NASA continues to work closely with NOAA to provide advanced capabilities for their weather/climate and oceans services. NASA also works closely with the USGS on land imaging satellites.

NASA supports the operational activities of other agencies in other ways as well. The Applied Sciences Program works with numerous agencies to support their operational missions. Some examples are provided in the answer to Question 5. Perhaps less directly related to transfer of capability to operational satellite agencies , but nevertheless important, is NASA's active participation and leadership in interagency activities such as the US Global Change Research Program (USGCRP), the US Group on Earth Observations (US GEO), and the Joint Subcommittee for Ocean Science and Technology. Because NASA's Earth observations and research have played such a key role in understanding global change and its impacts, this interagency coordination is important to both inform operational agencies and, conversely, to inform NASA about gaps in information and research.

NASA'S EARTH SCIENCE PROGRAM BENEFITS

Mr. KENNEDY. Well I think it is important that we find out, Mr. Chairman, how those other agencies benefit from the work that NASA does. Because I think in a time of global climate change, like we are going through right now, it is especially important how the Department of Agriculture uses NASA's assets, and how Department of Defense uses NASA's assets, and how all of these different agencies use NASA's, rely on them, you know, frankly I think even the Department of Transportation and all of our local governments with coastal zone management.

The fact of the matter is, I think these are the assets that NASA has that they could contribute in the most direct way, obviously, in the Mission to Planet Earth. And we obviously have to plan ahead in terms of droughts, in terms of preparing for potential civil conflict. If there is a drought that is going to be coming ahead, we are going to see it from space before we see it anywhere else. And if we can, and we know there is going to be displacement of people because of the drought and we are going to have to call in our Marines as a result, it is going to be a mass expenditure of our military. I mean, these are things that, you know, we can know and have a direct impact on our economy and on our national security. And, you know, most people in my district do not know how NASA impacts their daily lives. I think they would like to know, and I think they would be very happy to know how it does in a very direct way, that their sons' and daughters' lives could be saved by this vital information.

So I would really like to get that. And I would like to have this so that we can really publicize it. Because I think NASA really, we need to get the message out there about how vital the work that NASA does is to our national security and to the future of this planet and its security.

Mr. SCOLESE. Yes, sir. And we will provide you with the details on that.

[The information follows:]

International Traffic in Arms Regulations (ITAR)

In January 2004, the United States announced a new Space Exploration Policy, which provided for completion of the International Space Station and retirement of the Space Shuttle by 2010, development of a new Crew Exploration Vehicle, and the return of crewed missions to the Moon by 2020, along with the exploration of Mars and other destinations with robotic and crewed missions to follow. Importantly, this policy stated that the United States will "[p]ursue opportunities for international participation to support U.S. space exploration goals," in recognition of the importance and necessity of international cooperation in space exploration. This important principle of international cooperation in advancement of the national Space Exploration Policy was subsequently codified by the Congress in December 2005, in Public Law 109–155, and again in October of last year, in Public Law 110-422.

As a Government agency on the leading edge of technological development and international cooperation in space, aeronautics, and a variety of scientific endeavors, NASA is dedicated to responsible stewardship of the Nation's advanced technologies.[1] NASA is unswerving in its commitment to full compliance with the Nation's export control laws, regulations, and policies. For well over a decade, NASA has administered an effective, comprehensive, Agency-wide export compliance program, known as the NASA Export Control Program, which was established nearly fifteen years ago in close partnership with the Departments of State and Commerce. We continue to work closely with those agencies – on a daily basis – to ensure fastidious compliance with the relevant export control and nonproliferation laws and policies.

Most export control challenges confronting NASA and its contractors lie with the International Traffic in Arms Regulations (ITAR).[2] The ITAR regulates "defense articles" and "technical data" pertaining thereto, as well as the provision of technical assistance or "defense services" regarding those items. Defense articles are items listed on the U.S. Munitions List (USML),[3] and include not only implements of war but also all launch vehicles (including the Space Shuttle) and virtually all spacecraft (including the Hubble Space Telescope, the suite of Mars spacecraft, and the James Webb Space Telescope).[4] The parts and components of such items are likewise captured on the USML, as is relevant technical data, which is defined as information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of such items.[5]

---

1 NPR 2190.1, *NASA Export Control Program*, April 10, 2003.
2 22 CFR §§ 120-130.
3 Id. at Part 121.
4 Id. at § 121.1, Categories IV & XV (June 2007). Note: The International Space Station (ISS) is the only spacecraft that is not captured on the USML; however, technical data required for the design, development, production, or manufacture of ISS components is nonetheless subject to the ITAR.
5 Id. at § 120.10.

The most common ITAR concerns for NASA and its contractors relate to export license requirements and restrictions that impact our approved international cooperative programs, such as requirements for foreign government signatures on contractors' licenses and restrictions on foreign governmental employees with dual-nationalities that have been problematic for foreign governments and other partners. We are very pleased that the Department of State has taken steps to address certain ITAR licensing issues, most notably with regard to processing times and certain license conditions, and we are hopeful that additional improvements may be undertaken.

For example, in the International Space Station program, which is governed by Government-to-Government agreements that already include safeguards on transfers of export-controlled goods and data, several of our International Partners only reluctantly signed the prime contractor's Technical Assistance Agreement (TAA) for Space Station and Space Shuttle activities, citing the preexisting safeguards to which they already agreed at an intergovernmental level, and the Russian Federal Space Agency (Roscosmos) continues to decline to sign the TAA. As a result, NASA's Space Station contractors cannot participate in necessary technical interchanges with certain International Space Station partners.

The inability of U.S. contractors to adequately engage foreign contractors in anomaly resolution discussions because of restrictive conditions, or "provisos," in their licenses and TAAs has also been of concern. Rendezvous and docking of the European Automated Transfer Vehicle (ATV) and Japanese H-II Transfer Vehicle (HTV) with the International Space Station are time-critical operations that require timely exchange of information for effective operations. In the event of an on-orbit problem, for the safety of the Space Station and its crew, ATV and HTV engineers must be able to quickly and easily share technical data – in real-time – with U.S. engineers about command and data architecture, software, environmental control, thermal control, and power issues. This is true for proximity operations as well; the Proximity Communication System (PROX) located in the Japanese Experiment Module (JEM) is used to communicate vehicle health and status data during proximity operations, and quick resolution could be required if a communication failure occurs before docking. Safety concerns such as HTV fire, pressure, and temperature issues must then be addressed before docking.

Unfortunately, certain provisos requiring separate and specific Government review and approval for any collaborative anomaly resolution activity may impede the ability of NASA's contractors to expeditiously take action to assure operations safety and mission success, including during real-time operations, where an anomaly could be encountered.

Another proviso which has occasioned concern focuses on employees of the European Space Agency (ESA) and Canadian Space Agency (CSA), and requires that employees of these governmental agencies who are dual-nationals execute Non-Disclosure Agreements (NDAs) prior to receiving technical data or technical assistance under applicable TAAs. We are pleased to note that the State Department published revisions to the ITAR that relieve those who hold security clearances or citizenship exclusively in NATO countries and a few other states from this requirement.[6] We are hopeful for additional developments in this regard, however, since the effect of the remaining NDA provisos is to require our international partners to discriminate

against many of their employees – including those employees who are their citizens – on the basis of national origin in a manner that we would likely not accept ourselves.

Unfortunately, the export control problems encountered by our contractors have become NASA's problems – through schedule delays, cost overruns, and the inability of contractors to perform necessary work with NASA's international partners in the absence of formal export control authorizations from the Department of State. Accordingly, NASA has been working closely with the State Department for the past eight years on proposals to obtain expanded ITAR authority and other improvements to address these challenges. The centerpiece of this effort for NASA has been the pursuit of an appropriately-circumscribed ITAR exemption, modeled on the ITAR's Foreign Military Sales exemption enjoyed by the Department of Defense and its contractors. Such authority would be consistent with the Arms Export Control Act's statement that "no license shall be required for exports or imports [of defense articles or defense services] made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means."7 This approach is likewise consistent with the recommendations of both the Congressionally-chartered ISS Independent Safety Task Force (IISTF) report of February 21, 2007, which found that ITAR restrictions "are a threat to the safe and successful integration and operations of the [International Space] Station" and recommended that the Department of State "grant immediate relief in the form of an [ITAR] exemption," and the May 18, 2007, NASA Advisory Council endorsement of an exemption "to facilitate NASA's critical tasks in implementing the [United States Space Exploration Policy] and other NASA programs."
Last year, the State Department advised NASA to seek legislative authority as a prerequisite to the Department's promulgation of an exemption to facilitate the implementation of NASA's programs, including the U.S. Space Exploration Policy. Accordingly, we will continue to work closely with the State Department and other agencies of the Government on appropriate avenues to address the ITAR-related concerns of the Agency and its contractors, and are hopeful for a favorable resolution to move forward. With or without changes to the ITAR, however, NASA is committed to full compliance with the Nation's export control and nonproliferation laws and policies.

---

6 "State Department's Arrangement on Dual Nationals with Three Canadian Agencies," U.S. Department of State Directorate of Defense Trade Controls website; 72 Fed. Reg. 71785, Dec. 19, 2007)
7 22 U.S.C. § 2778(b)(2)

NASA Earth Science Program Benefits

NASA's Earth science program benefits other agencies in many different ways. First, our observational data and research results are heavily utilized both operationally and for research in agencies such as DoD, USDA, USGS, NOAA, and EPA. Researchers in the private sector as well as universities, who may be funded by agencies such as NSF and DOE, also rely heavily on NASA data.

Secondly, the Earth science Applied Sciences Program's overall goal is to expand and accelerate the realization of societal and economic benefits from NASA Earth observations. In doing this, Applied Sciences partners with and benefits Federal and state agencies (as well as other organizations) on a routine basis, including 7 USDA agencies, 6 NOAA branches, 4 DOI Agencies, DOE, DOT (FAA), USAID, NRL, DHS, CDC, and EPA. Examples include:

- NASA Earth science weather observations and modeling capability are being utilized by NOAA and the FAA for better turbulence and cloud-icing forecasting for airline travel. A recent press release on this topic can be found at the following link: http://www.nasa.gov/home/hqnews/2009/jul/HQ09-154_Turbulence_Research.html.

- NASA scientists are collaborating with the U.S. Department of Agriculture (USDA) and the National Oceanic and Atmospheric Administration (NOAA) to better understand seasonal variability of climate and apply that understanding to agricultural issues. Space provides an ideal vantage point for the efficient measurement of critical parameters for agricultural production, such as water availability, radiation, and vegetation health, over large areas.
- NASA is teaming with the USDA's Foreign Agricultural Service and the National Agricultural Statistics Service to incorporate NASA space-based measurements into models and systems used to monitor and forecast global and domestic agricultural production.
- NASA routinely provides satellite-based modeling results of atmospheric conditions to EPA for their air quality forecasts.
- In the area of ecological forecasting, NASA supports 1) NOAA in the management of marine fisheries and the protection of endangered marine mammals, 2) the National Park Service in determining the impacts of changing climate and land cover on our national parks, and 3) the U.S. Fish and Wildlife Service with remote sensing data on land cover and land use and in tracking the migrations and changing distributions of migratory birds and endangered species.
- NASA has provided satellite observations, information tools, and airborne sensor measurements to the USFS and state firefighters to aid in responding to the severe wildfires in California for the past 2 fire seasons, and will do so

again this year. These capabilities are being transitioned to the USFS so that they can be used operationally and in other regions.

- NASA, EPA, and NIH have conducted research on how satellite measurements of weather, climate, and other key environmental factors can be correlated with the occurrence of chronic and infectious diseases. These results are being assimilated into CDC's surveillance systems, such as the Environmental Public Health Tracking Network to track and predict disease. Additionally, NIH-supported researchers, especially those funded by the National Institute of Environmental Health Sciences who are studying the health effects of air pollution, have benefited from the numerous resources (maps, satellite images, weather maps, climate information, etc.) that NASA makes readily available to the research community.

The benefits from NASA Earth observations and research go well beyond other Federal agencies and US citizens however. NASA Applied Sciences works closely with USAID on several aid programs in developing regions of the world. One example is the SERVIR initiative. Spanish for "To Serve," SERVIR is a regional visualization and monitoring system that integrates Earth observations (e.g. satellite imagery) and forecast models together with in situ data and knowledge for timely decision-making to benefit society.

The first SERVIR regional operational facility – for Latin America and the Caribbean region– was established in 2005 through the efforts of NASA and USAID, at the request of the governments of Central America, as an innovative way to utilize space based assets for development. A second SERVIR regional operational facility – for East Africa – was opened in 2008 in Nairobi, Kenya. SERVIR currently provides critical and actionable information for Central America, the Dominican Republic and East Africa on disasters, ecosystems, biodiversity, weather, water, climate, health, agriculture, and energy. SERVIR has been a breakthrough contribution in these regions, where ground-based data is scarce and information is not easily accessible. USAID and NASA are currently evaluating an expansion of SERVIR to other developing regions around the world. More information is available at www.servir.net.

Everyone in Rhode Island and elsewhere who listens to a five-day weather forecast is benefiting from NASA-developed satellites. The communications satellites that transmit TV and telephone signals have their heritage in NASA's early pioneering work. Satellite imaging of land cover for agriculture, forestry, and transportation planning began with NASA's Landsat program. The advances from NASA's Earth remote sensing program and Earth system research have also provided an unprecedented wealth of data and information about the Earth environment. These data and information are now routinely used on campuses in Rhode Island through courses on Earth or environmental remote sensing, geospatial science and applications, etc. The universities in Rhode Island regularly participate in NASA sponsored research particularly in areas related to atmospheric chemistry, oceanography, terrestrial and coastal studies. NASA is pleased that the nation's investment in NASA Earth Science can, in turn, offer the universities with unique information about the Earth from space. One benefit can be to educate the next generation of workers who will be crucial for emerging "green" industries.

From the time of its establishment in 1958, a vigorous education and public outreach program has been one of NASA's core responsibilities (http://nasascience.nasa.gov/researchers/education-public-outreach; http://www.nasa.gov/offices/education/programs/). The NASA Aerospace Education Services Project (AESP) routinely reaches out to the formal and informal education communities in all fifty states and the U.S. territories. The members of the AESP staff are professional educators assigned to each NASA center. These education specialists share NASA's use of emerging instructional technologies and the motivating outcomes of NASA's research, exploration and discovery with education communities and the public. The project is designed to inspire students to continue the study of science, engineering and mathematics throughout their school career and encourages them to pursue a career with NASA or in another technical endeavor.

Rhode Island participates in the National Space Grant Program established by Congress in 1988; NASA administers the program. The Rhode Island Space Grant Consortium Program (http://www.spacegrant.brown.edu/RI_Space_Grant/) is hosted by Brown University and has eleven affiliate members. The program offers learning opportunities at all levels of education, from elementary school through graduate school covering NASA Earth and space sciences, engineering, and exploration.

The NASA Earth and Space Science Fellowship (NESSF) Program routinely receives applications from graduate schools in Rhode Island. NESSF provides graduate research fellowships on a competitive basis to students pursuing master and/or Ph.D. degrees in fields relevant to NASA to ensure a well trained and prepared workforce to carry out NASA's mission in the future.

Finally, NASA Headquarters and its centers offer a wealth of information to all interested parties through the internet. A number of sites were provided throughout this response. Those are provided again here, along with several other outstanding sources of information about NASA's Earth science programs:

NASA Earth Science

- Home Page
  - http://nasascience.nasa.gov/earth-science
- Applied Sciences Program
  - http://nasascience.nasa.gov/earth-science/applied-sciences
- "Big Questions"
  - http://nasascience.nasa.gov/big-questions/big_question_by_division_list?division=earth-science
- Climate Change: NASA's Eyes on the Earth
  - http://climate.jpl.nasa.gov/
- Earth Science Missions
  - http://nasascience.nasa.gov/earth-science/mission_list
- Earth Science Research Focus Areas
  - http://nasascience.nasa.gov/earth-science/atmospheric-composition/focus_area_list
- NASA Earth Observatory

  - http://earthobservatory.nasa.gov/
- NASA Climate Modeling
  - http://www.giss.nasa.gov/research/modeling/
  - http://gmao.gsfc.nasa.gov/

Applications and Research Using NASA Earth Science Information

- NASA Land Cover and Land Use Change Program
  - http://lcluc.umd.edu/
- NASA/US Department of Agriculture (USDA) Partnership for Global Agricultural Monitoring
  - http://www.pecad.fas.usda.gov/glam.cfm
- NASA Wildfire Research and Applications Partnership
  - http://geo.arc.nasa.gov/sge/WRAP/
- SERVIR: A Regional Visualization and Monitoring System
  - http://www.servir.net/
- Socioeconomic Data and Applications Center
  - http://sedac.ciesin.columbia.edu/
- Space Archeology
  - http://www.jpl.nasa.gov/news/features.cfm?feature=3
  - http://wwwghcc.msfc.nasa.gov/archeology/
- Terrestrial Observation and Prediction System (TOPS)
  - http://ecocast.arc.nasa.gov/
- Landsat Program
  - http://landsat .gsfc.nasa.gov

Mr. MOLLOHAN. Thank you, Mr. Kennedy. Mr. Ruppersberger.

SPACE COMMUNICATION NETWORK SERVICES

Mr. RUPPERSBERGER. First I have a question. I want to get into two areas if I have time, ITAR and also cyber security. But Chairman Bart Gordon from the Science Committee asked me to ask this question. It is about the $1.3 billion contract for Space Communication Network Services, SCNS, despite the fact that both the House Science Committee and NASA's own inspector general are investigating serious allegations of that may have affected procurement. He asked me to ask you, is there any reason why NASA could not have waited to award the contract until after these investigations are complete?

Mr. SCOLESE. Sir, we had reviewed the——

Mr. RUPPERSBERGER. I do not want to spend a lot of time because I want to get into my questions.

Mr. SCOLESE. Okay.

Mr. RUPPERSBERGER. I am doing this as a favor.

Mr. SCOLESE. Well, I will make it real short, then. Sir, we awarded the contract because we felt it was in the best value of the government. The contract has been protested again, so it is under a protective order. We are prohibited from discussing it further than that, really.

Mr. RUPPERSBERGER. Okay. But, maybe, have you determined whether an adequate analysis was performed to ensure that no organizational conflict of interest was prevalent during this competition? Is it not NASA's responsibility to do so?

Mr. SCOLESE. Yes, sir, we did do that. We did not see an organizational conflict of interest.

Mr. RUPPERSBERGER. And the final question that was asked, should this Committee fund a program when you cannot find an assurance that proper process was followed to ensure adherence to ethical requirements to prevent personal and organizational conflicts of interest?

Mr. SCOLESE. We, on every one of our contracts we review organizational conflicts of interest. We have a rigorous process. We believe we followed all the rules and that the award was valid.

Mr. RUPPERSBERGER. Okay. Also, what will NASA do in the event that a problem is found as a result of these investigations? Will there be, will we be, it is too late to remedy the problem once one is found?

Mr. SCOLESE. No. We will have to work out a remedy if a problem is found.

INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

Mr. RUPPERSBERGER. Okay. ITAR. ITAR is an issue that, again, sometimes I think in this country we try to fix some problems and it causes other problems, and I think this is a perfect example. Different administrations have been looking at ITAR and saying, "We are going to study it. We are going to look at it." But we really do not do anything. And it is about time we stand up and do something. I think we need to do something right away.

There have been different studies that have come out about U.S. national space policy and how do we resolve some of the ITAR

issues. And I want to read something here. Maybe you can respond to it. "The study recommends a number of changes to existing export control regime, including that the Secretary of Defense and NASA Administrator in conjunction with the Secretary of State should have the authority to grant real time, case by case, specific time period exemptions for resolutions deemed to be in the national interest based on the criteria and the national space policy." Do you have any comments on, and you are included in, trying to be involved and providing exemptions, I guess, right away?

Mr. SCOLESE. That would be ideal. I mean, ITAR has been one of the issues that has made it very difficult to do some of our international missions, mostly because of delays to get the agreements in place, and the delays associated with working the protections to make sure that information is not exchanged. Further, it sort of stifles the conversation with our international partners, as they look at it and say, "Are you telling us everything you can tell us?" So they create, in some cases, their own ITAR, a reverse ITAR.

Mr. RUPPERSBERGER. And that is what is happening internationally, and it is putting a lot of our companies at a disadvantage.

Mr. SCOLESE. Seriously.

Mr. RUPPERSBERGER. Seriously. And it seems to me that when it comes to, you want to call it tier one or whatever as far as what we need to be classified, I think that most of the contractors you deal with understand that. And you all have the ability to be able to maintain that confidentiality, or keep it classified.

Mr. SCOLESE. Yes, sir.

Mr. RUPPERSBERGER. But we need to move it. I think, I met, we had the Commerce Secretary here afterwards. I met with him afterwards. We are going to have to deal with our International Relations Committee. I know Mr. Schiff is on that Committee, right? And also on Intelligence, we are both on Intelligence and we are looking at it from that perspective. But we are going to try and get very aggressive. And if you have any ideas if you could get to us on that, where we need to go. Whether we need a law, a regulation, we are still not sure. But we are going to try to deal with it.

Mr. SCOLESE. Yes, we do have ideas on that and we will be happy to provide it for you on the record.

Mr. RUPPERSBERGER. Do you have any recommendations? Any recommendations what you think should be done?

Mr. SCOLESE. Well, I think one of the things that you mentioned, providing exemptions. Or providing the ability for the NASA Administrator to make exemptions, similar to what the Department of Defense has. Getting the munitions list down to a, to truly those things that are classified as opposed to potentially useful would help immensely as a first order. Those would probably be the first two things that I would go after. Then we could probably do more at the detail level for the record.

CYBERSECURITY

Mr. RUPPERSBERGER. The other thing is cybersecurity. Very serious issue to our country, to the world. And we know we have had a lot of attacks. We know that NASA has been attacked. We are concerned about, and this is all unclassified because I have been reading about it in the papers, and these issues. I believe there was

an article about how NASA really has not identified the fact, it does not want to admit that we have been compromised, especially by countries like China as far as getting a lot of our data, information, and the way we do business. Do you have a system, is my time starting to run out, Mr. Chairman?

Mr. MOLLOHAN. Yes, it is.

Mr. RUPPERSBERGER. Okay. Can I finish this?

Mr. MOLLOHAN. How long are you going to take?

Mr. RUPPERSBERGER. Well, I am just going to finish this question.

Mr. MOLLOHAN. Okay, go ahead. And it is a short answer, I am sure.

Mr. RUPPERSBERGER. That is up to him. It is just that it is important, I think, that you work with our different agencies that deal with cyber, and that we have a defense because of what we do in space. It is very important. And I hope you have a system or a plan in place to do that.

Mr. SCOLESE. Yes, sir, we do. We are working with the other committees. In the interest of time I will not go much further. But I will add that we do have a committee on our advisory council that also looks at cybersecurity that we work with. So we do take it very seriously. We are taking appropriate actions, and in the interest of time I will leave it at that, sir.

Mr. RUPPERSBERGER. Okay, thanks.

Mr. MOLLOHAN. Supplement that for the record, if you want.

Mr. SCOLESE. Okay.

Mr. MOLLOHAN. Thank you, Mr. Ruppersberger. Mr. Wolf.

NASA ADMINISTRATOR SELECTION

Mr. WOLF. Thank you, Mr. Chairman. I apologize for being late. I had a, I was on a panel with Congressman Cooper downtown and there was a demonstration at the Capitol. You cannot get in the grounds. So I do apologize, and do not know what questions have been asked. So just some general ones that probably have not, and hopefully have not. When will the new Administrator be selected? Do you have any idea?

Mr. SCOLESE. No, sir, I do not.

CHINA SPACE PROGRAM

Mr. WOLF. Okay. What is the likelihood of China beating us back to the moon?

Mr. SCOLESE. That is hard to say. We believe they have a vehicle with minor modifications to maybe moderate modifications could be a lunar vehicle. Not a lander, but it could get to the moon. And we believe that they are developing vehicles that would allow them that opportunity. Whether they have the desire to do it or not, we cannot say.

Mr. WOLF. I think the desire, so, given I believe they have the desire, do you think with the desire they have the ability?

Mr. SCOLESE. Yes. They will. I mean, they do not have it today but they will.

Mr. WOLF. And could they beat us back? Could they beat us, the United States, back to the moon?

Mr. SCOLESE. Sir, I do not have the latest study.

Mr. WOLF. Well, you must have thought about this.

Mr. SCOLESE. We have. I am just checking——

Mr. WOLF. I mean, I cannot be the only guy, person——

Mr. SCOLESE. No, I mean, they could beat us to the moon, yes, sir.

Mr. WOLF. Well, how do you define "could"?

Mr. SCOLESE. That is what I was trying to find out, sir. I have not seen the latest study. What we do know is that they have plans for vehicles that are capable, with docking and Earth orbit, of getting to the moon. We understand that their Shenzhou capsule, with some modifications, would leave Earth orbit, clearly, and return from a lunar trajectory. What we do not know is, you know, whether they have any plans to build a lander and what the——

Mr. WOLF. What are your expectations?

Mr. SCOLESE. I think if they have the desire to do it, sir, they can do it. I think considering where they are today they could probably beat us to the moon before 2020.

Mr. WOLF. Well, how many employees do we have, both government and contractors, working on the space program and how many do the Chinese have?

Mr. SCOLESE. I do not know the answer on the Chinese side. We have 17,900 civil servants in the agency. We have about double that in support contractors immediately around the centers. Then the industrial base is probably several times that number.

Mr. WOLF. So what——

Mr. SCOLESE. I will have to give you for the record the total number, sir.

Mr. WOLF. And, Griffin was able to tell us last year how many the Chinese had. Can you——

Mr. SCOLESE. We can get that for the record, sir. I do not know the answer to that.

AERONAUTICS RESEARCH

Mr. WOLF. Two other last questions. The aeronautics, there has been great criticism that NASA, National Aeronautic, you are not doing as much. What are the expectations in the budget with regard to aeronautics?

Mr. SCOLESE. Aeronautics has been given a plus up in the 2009 budget, as you saw, and with the stimulus. So we expect more out of aeronautics. I would let Dr. Shin cover some more of the details of what we are doing there.

Dr. SHIN. Yes. Most importantly, we will be able to address and focus more on the environmental impact mitigation. Also, we will continue to work on supporting NextGen vision, Next Generation Air Transportation System vision. So we still play a very strong role providing research and technologies in that initiative.

Mr. WOLF. Would you agree that it had weakened a little bit?

Dr. SHIN. I do not think so.

Mr. WOLF. Well, most people outside do. But——

Dr. SHIN. I did not quite catch the last part.

Mr. WOLF. Do you believe the emphasis, both funding and interest, by NASA on aeronautics had weakened over the last several years?

Dr. SHIN. We have been stable. We have been getting stable funding. And we conduct fundamental——

Mr. WOLF. But what about the funding for the Jet Propulsion Lab, and what about the funding for some of the other labs. I mean, has that not been decreased?

Mr. SCOLESE. In aeronautics the principal centers are Langley, Ames, and Glenn Research Centers.

Mr. WOLF. And has Langley not been reduced in numbers of people, too?

Mr. SCOLESE. Langley is not as large as it was a few years ago. It is growing again. They are hiring up. Langley has continued to do work in aeronautics, and Jai can focus more. Langley has also been very much involved in the exploration program. They have developed the launch abort, or developing launch abort system, the boiler plate capsules for the various tests that are going on. I mentioned earlier the Ares 1–X Test and the Pad Abort 1 Test. Langley developed those vehicles for it and is very much engaged on the Constellation program as well. But today they are in the process of increasing their hiring.

IRAN, NORTH KOREA, SYRIA NONPROLIFERATION ACT (INKSNA)

Mr. WOLF. Two other last questions. At the retirement of the shuttle, and maybe you have answered this, you will need to buy flights from Russia to deliver crews. Last year, Congress provided you with a waiver from the Iran, North Korea, Syria Nonproliferation Act to continue these purchases. Have you secured the necessary agreements with the Russians?

Mr. SCOLESE. Yes. Yes, we have.

WALLOPS FLIGHT FACILITY

Mr. WOLF. Lastly, what are you doing down at Wallops Island? Maybe you can just tell me that, have somebody call me and bring me up to speed on it.

Mr. SCOLESE. Certainly, we would be glad to do it. We are doing a lot of interesting things there. Of course, just as a brief highlight, we are going to, we have started space launches again from Wallops with the Minotaurs. Orbital space science is moving there.

Mr. WOLF. Well maybe you can get somebody to tell me what you are doing, and what your projections are, and what you——

Mr. SCOLESE. Okay. We are doing launches today with the Minotaurs. We will be doing launches in the future as well, with the orbital sciences. Of course, we do the balloon research there as I am sure you know. But we will get you all the details of that.

[The information follows:]

Wallops Flight Facility (WFF)

The Wallops Flight Facility supports NASA's suborbital Sounding Rockets, Balloon Programs and Aircraft Programs as well as provides tracking support for NASA's Space Shuttle missions using communications, telemetry and radar facilities. Upgrades to the launch range will enable WFF to serve as a launch site for small and mid-size rockets, specifically the Taurus and Minotaur.

NASA **Earth Science** conducts research and utilizes research aircraft and unmanned airborne systems (UAS) at Wallops Flight Facility (WFF).

NASA operates a P-3B research aircraft at WFF. This aircraft is used as a reconfigurable airborne laboratory, allowing flexible instrument suites to be accommodated based on the science objectives of the field campaign. Examples of recent NASA Earth Science utilization of the P-3B are:

- In July 2008, the P-3B participated in the Arctic Research of the Composition of the Troposphere from Aircraft and Satellites (ARCTAS) field campaign. The P-3B was a flying laboratory that flew through and around smoke plumes of northern-latitude forest fires to determine the impact of forest fires on the Arctic atmosphere compared to human-caused emissions from lower latitudes.
- In April 2009, the P-3B made laser and radar measurements over Greenland for comparison with measurements from the on-orbit Ice, Cloud and land Elevation Satellite (ICESat) mission, which is operating three years beyond its primary mission lifetime. In following years through 2015, the P-3B will make similar measurements as part of NASA's IceBridge Campaign to bridge the anticipated data gap until the launch of ICESat-II. The measurements will determine time variations of Greenland's ice sheet mass, which are important to understand global sea level rise.
- In FY 2010, the P-3B will map the thickness of Arctic sea ice to complement satellite observations that show a thinning of old or "multi-year" sea ice.
- In FY 2010, the P-3B will test instrument algorithms over the United States for the Soil Moisture Active Passive (SMAP) mission, which is a National Research Council Decadal Survey satellite mission in Phase A concept and technology development.

NASA Earth Science also has research and analysis projects at WFF. Examples are:

- Amino acids as taxonomic indicators in remote sensing reflectance,
- Laboratory experiments with a wave tank to explore the physics of air-sea interaction,
- Laboratory experiments on measuring rainfall,
- Southern Hemisphere ADditional OZonesondes (SHADOZ) network.

NASA's WFF is a deployment base for an Unmanned Aerial Systems (UAS)

- In November 2007, WFF was the base for Aerosonde UAS observations through the eye of a hurricane (Hurricane Noel), flying as low as 100 m above the sea surface where it is too dangerous for manned aircraft. These measurements were the first such measurements by a UAS in a hurricane.
- Beginning in FY 2010, WFF is planned to be an operational base for the Global Hawk UAS for the NASA Earth Sciences Genesis and Rapid Intensification Processes (GRIP) field campaign and other science campaigns being developed. The Global Hawk will fly in the upper troposphere and stratosphere, and, operating from WFF with 30-hour flight duration, can extensively sample all regions of the Atlantic, Caribbean, and Gulf of Mexico.
- Aeronautics Research Mission Directorate's Aviation Safety Program supports the development of AirStar, a UAS facility flown at WFF, to conduct tests of automatic control systems using remotely piloted scale aircraft models. These tests are designed to evaluate and mature automated systems for transport aircraft to respond to abnormal flight conditions.

For NASA's **Heliophysics** Program, WFF hosts the Sounding Rockets Program Office (SRPO), which provides suborbital launch vehicles, payload development, and field operations support to NASA and other government agencies. SRPO works closely with the Sounding Rocket User Community to provide launch opportunities facilitating a broad spectrum of science applications.

NASA Sounding Rocket Program (NSRP) customers consist primarily of university and government research groups; however, some research activities involve the commercial sector. The program has contributed major scientific findings and research papers to the world of suborbital space science, validated satellite tracking and instrumentation, and served as a proving ground for spacecraft components. Many new scientists have received training and developmental experience through NSRP internships and graduate study programs offered by participating educational institutions.

In FY2009, 24 NASA sounding rocket flights will be launched in support of 20 scientific investigations. Examples include:

• HERSCHEL (Helium Resonance Scattering in the Corona and Heliosphere)
– This mission will make the first global measurements of Helium and Hydrogen in the Sun's Corona.
• DICE (Diffuse Interstellar Cloud Experiment)
– This mission will obtain high-resolution far ultraviolet spectra of the gas inside the local galactic bubble. Data will be used to confirm or deny the hot bubble model.
• CyXESS-II (Cygnus X-ray Emission Spectrograph Survey II)
– The objective of this mission is to understand the interaction of the supernova shockwave with the surrounding inhomogeneous medium
• SUMI (Solar Ultraviolet Magnetograph Instrument)
– The objective of this mission is to test technologies to measure the vector magnetic field between the photosphere and corona to ultimately obtain the 3-D structure of the solar magnetic field.

For NASA's **Astrophysics** and **Heliophysics** programs, WFF hosts SMD's scientific Balloon Program Office. The Balloon Program allows long-duration flight of science experiments above as much as 90% of Earth's atmosphere, yet unlike spacecraft, allows these experiments to be retrieved for re-flight.

The FY09 flight program includes 19 flights, including 3 from Antarctica and 4 from Sweden to enable flights over the poles. Examples include:

• Sunrise - The Sunrise mission will fly a series of balloon flights designed to study the Sun's magnetosphere and chromosphere.

• AESOP – The AntiElectron SubOrbitial Payload (AESOP) mission objective is to determine the extent to which the large-scale structure of the Sun's magnetic field is important in the transmission of galactic cosmic rays through the heliosphere.

• LEE - Low Energy Electrons (LEE) LEE's primary science objective is to make a definitive determination of the cosmic electron energy spectrum during a Solar Minimum.

• SPB – Test flight for Super Pressure Balloon (SPB) from Kiruna, Sweden is another in the series of test flights to validate deployment and materials strength for the redesigned Super Pressure Balloon. SPBs are capable of carrying scientific instruments more than 100,000 feet into the atmosphere for months. Ultra-long duration SPB missions cost considerably less than a satellite and the scientific instruments flown can be retrieved and launched again, making them ideal very-high altitude research platforms.

Finally, WFF hosts launch activities for the DOD's Minotaur launch vehicle. WFF will provide Project Management and Safety support for two DOD Minotaur 4 launches from the Kodiak Launch Complex. NASA and the DOD are working on an arrangement for NASA to launch its Lunar Atmosphere and Dust Environment Explorer (LADEE) mission on a Minotaur 5 launch vehicle from WFF.

In the FY 2009 Omnibus Appropriations Act, the Congress provided $14M for NASA to improve launch pad infrastructure.

Mr. WOLF. Okay. Thank you very much. Thank you, Mr. Chairman.

RETURN TO THE MOON

Mr. MOLLOHAN. Thank you, Mr. Wolf. Mr. Scolese, so Mr. Cooke, I asked Mr. Scolese, does this budget in any way either by programmatic content or out year funding constraints change our nation's current plans to return Americans to the moon by 2020? May I direct that question to you, please?

Mr. COOKE. Yes, sir. In terms of the 2010 budget we have actually not assessed that at this point. The programs, the Constellation program projects have not seen that budget.

Mr. MOLLOHAN. No, no. I am sorry. This budget. Is there anything in this budget——

Mr. COOKE. The 2009?

Mr. MOLLOHAN [continuing]. That would impact our getting to the moon by the target date of 2020? I am sorry—2020. Does the 2010 budget request impact in any way our target, is this so complicated, our target of getting to the moon by 2020? Or is the answer scary? What is——

Mr. COOKE. Well, we, once again, we have not released, we have not given that budget to the project or program to assess. There are also variables associated with that far out, which include certain things that we can do ourselves.

Mr. MOLLOHAN. But all of those variables existed when that target date was established.

Mr. COOKE. Yes.

Mr. MOLLOHAN. Is that not correct? Have any of those variables changed that would impact that target? With the same probabilities as was in existence when the target was set?

Mr. COOKE. Not really. The variables are the cost of transition from shuttle to Constellation. The question of extension of Space Station beyond 2016. Those variables have been there and they, they certainly have an effect one way or another. But we have, we actually have not assessed the 2010 budget at this point within the program.

Mr. MOLLOHAN. Is there any consideration being given within the organization to not attempting to, to not attempting to meet the 2020 moon? Is there any reconsideration of going there? What is going on there?

Mr. COOKE. The direction that we have is to continue to pursue the 2020 date within our guidance.

Mr. MOLLOHAN. Mm-hmm. And with the 2010 budget request, do you feel like you are still on target for that?

Mr. COOKE. That is what we have to assess.

Mr. MOLLOHAN. And what will be the assessment process?

Mr. COOKE. Well, we will——

Mr. MOLLOHAN. Describe the assessment process for me, please.

Mr. COOKE. The budget that we build is based on release of that budget, and the program and projects working through what has to be done first to get to the initial operating capability of 2015 with Ares I and Orion and then looking at the out year budgets and what we can do with that. But it does, it is a bottoms up exercise that we go through to build the budget, within the Ares I

project, the Orion, with the people who are working Ares V, and lunar lander, and surface systems, and all that. So that is the process we go through. And as we try to understand priorities and how they fit together, and what we are able to do within the budget that we have.

Mr. MOLLOHAN. What about your 2009 budget, which we have seen? Does that in any way impact your ability to get to the moon by 2020?

Mr. COOKE. That one, that budget we feel we are on track to get there in that time, near that time frame, understanding that those variables are still in play.

Mr. MOLLOHAN. Is there anything in the 2009 budget that would bring that into question, getting to the moon by 2020? Is there anything in that budget, 2009 budget, that would impact getting to the moon by 2020?

Mr. COOKE. Not that I can think of, sir. We fully intend, with that planning we had the ability to get there, I believe.

Mr. MOLLOHAN. Are you involved——

Mr. COOKE. With some uncertainty due to the Space Station commitment, for extension and such.

Mr. MOLLOHAN. So the question of Space Station is in the path of thinking about getting to the moon by 2020. In what way?

Mr. COOKE. Well, in terms of overall budgets, that has never, the extension beyond 2016 has not been in our, absolutely in our budget.

Mr. MOLLOHAN. Yeah.

Mr. COOKE. So, actually between Bill Gerstenmaier and I we are looking at operations costs, fixed costs out in that time frame to get to reductions there to make those kinds of plans work.

SPACE STATION

Mr. MOLLOHAN. Okay, well that is a nice segue. Mr. Gerstenmaier, Space Station after 2015, is there any money projected in the budget beyond, or to 2015 and beyond 2015, for Space Station? Why do you not just pull that close to you?

Mr. GERSTENMAIER. Yes. We have been given guidance to not preclude Space Station operations beyond 2015. We have done that within the budget we have been given. There is no unique expenditures now that we have applied that have been required prior to our 2009 budget submit for that do not preclude statement. In the next budget cycle 2010 and 2011 we are going to have to start showing some additional impacts potentially to protect the option of keeping Space Station viable beyond 2015.

Mr. MOLLOHAN. Well in your planning do you, I have got several questions for you. In your planning, do you anticipate budget requests for Space Station beyond 2015?

Mr. GERSTENMAIER. Yes. We are going to go ahead and propose to continue to operate Space Station in conjunction with what Doug talked about, to work an overall kind of combined exploration operations budget for beyond 2015. We will make those submits into the system at the appropriate time.

Mr. MOLLOHAN. And your international partners, are they confident and totally reassured that you are going to be operating Space Station beyond 2015?

Mr. GERSTENMAIER. We do not have formal approval to operate beyond 2015. We have been told to not preclude operations beyond 2015. That is what we are doing. We will look for a decision from the administration at the appropriate time to allow us to either continue or not continue Space Station operations. We are working that through the system. We keep our partners informed. At the last heads of agency last year we got agreement from all our partners that each of us would go to our governments and talk about extending operations beyond 2015 with the idea that we would get together as an international community this summer, or maybe fall. Then we would decide collectively if that is in all our best interests, to go ahead and continue Space Station beyond that.

Mr. MOLLOHAN. I am sorry. Say that again, that last part?

Mr. GERSTENMAIER. We were going to get together at another heads of agency meeting in the fall to understand whether we can all then commit to operating Space Station beyond 2015. So it is, each country has to go seek approval from their own government to do that. We are in the same situation as they are. We need each other to continue to operate. The Russians need to be there to supply some services to us. We provide services to them. The Japanese operate their laboratory. The Europeans do as well. So it is a collective international decision that will ultimately result in whether we continue Space Station operations or not.

Mr. MOLLOHAN. So you anticipate that by this fall you will have enough interaction, enough collaboration with the administration to be able to talk confidently about what our government's attitude is going to be with regard to Station after 2015?

Mr. GERSTENMAIER. That is our goal, is to get the appropriate approval to remove the do not preclude and make a positive decision on the future of Space Station.

Mr. MOLLOHAN. Okay. This is our situation. And members have left, so I would ask staff to advise their members. We have a series of votes here. We are going to recess the hearing and reconvene at approximately 1:00. We hope to reconvene by 1:00. And we understand your time constraints, Mr. Scolese, and some others. And we are going to respect that. So we are going to be done by 3:00 here, or very shortly if an answer goes over. Does that accommodate you? Okay. So we are going to try to start an hour earlier if that is all right. Both the Ranking and myself, we have noontime commitments, but we are really cutting that short and trying to get back here. So we will take advantage of this vote to stop a little early. And we will start a little early, and then we will move right along and be done by 3:00.

Mr. SCOLESE. Okay, thank you.

Mr. MOLLOHAN. Thank you, Mr. Scolese. Thank you, all, and we will look forward to seeing you.

MARS PROGRAM

Mr. SCHIFF [presiding]. We are back in session. And Mr. Administrator, this is the moment I have been waiting for. It came much sooner than I expected. I have always wanted to be a Committee or Subcommittee Chair and it is finally happened. Up until now I have been only the chair of the Congressional Delegation from the

eastern part of the San Fernando Valley and the western part of the San Gabriel Valley, and that is my only chairmanship of one.

I would like to start out and ask you about an issue that is near and dear to my heart. We had a chance to talk it over a little bit yesterday, and I know you can't be very specific, given the budget numbers haven't been fully delineated yet, but I would like to ask you your agency's perspective on the Mars Program.

It was on a very strong trajectory, that trajectory was changed over the last couple years, and we have had some problems with the Mars Science Lab, which are hopefully now being corrected. But I would like to get your thoughts on the future of the Mars Program and whether you see an opportunity to make up for some of the ground we may have lost funding wise over the last couple years.

Mr. SCOLESE. Sure. Well as you know the Mars Program has yielded some incredible results. And you know, with the first time a human machine—not a human yet—but a human machine has touched water on another planet with the Phoenix landing, and of course the incredible discoveries of our two rovers on the surface and the orbital assets that are there, and we now need to go beyond those as you were talking about. Ed talked about it earlier or eluded to it, but there is really—if I could expand on it a little bit and then let Ed add to it.

There is really three pieces. There is The National Academy study that is going to go off and look at the entire planetary arena; the Moon, Mars, and all the other planets, the outer planets, what have you, to determine their priorities and their ranking so that we have an assessment of the importance of the various planetary bodies as well as the missions that would be going there.

Second we have, kind of collectively realized as a world that we are getting to the point where Mars' exploration—we are starting to ask the very difficult questions, and very difficult questions tend to cost a lot of money. So partnerships are being forged. The most recent one is with ESA for the 2016 mission that we are working.

Third, we have asked Scott Hubbard, who led the recovery effort of Mars '98 to go off and look at the Mars Program and help us put together a program of record that we can go off and look at.

So these three things will all help us to (a) do more as we have partners that can provide resources, provide a better understanding of what needs to be done so that we can advocate for more or less, if it comes out that way, for the Mars Program, and have a solid direction to go in.

I don't know, Ed, do you want to add to that?

Dr. WEILER. If I could expand a little bit on the European Space Agency connection, because I am in the middle of that for the past few months. Because of the problems with the Mars Science Laboratory and the impacts that it has on the ability for us to do the kind of missions we want to do in the out years, we were facing a situation where the kinds of missions we wanted to do we weren't going to have enough money for.

In the meantime I met with David Southwood, who is my counterpart in Europe just last summer, and he was having the same problems with his Mars Program. He has a 2016 mission that is very aggressive. His scientists have added a lot of instruments to

it. And he was facing a situation where he just didn't have the kind of money that would be needed to do his mission. So that is where the idea came up, maybe it is time.

We have now reached the point where the easy things have been done on Mars, the really cheap things have been done. When you look at U.S. science community plans, western European plans, they are remarkably similar. We all want the so-called Holy Grail. We all agree at some point we have to send a robot to Mars, pick up a piece of Mars and bring it back for analysis and the billions of dollars of laboratories we have here right on Earth. That is going to be a very expensive mission, and it is going to be very expensive to develop the technology to get to that point.

Since missions are looking like they are going to cost a billion dollars whether they are European or American, we kind of said maybe it is time for us to stop competing with each other and start working together since we have the same goals. That was kind of the genesis of where we are now. We are going to Plymouth, England in June for our annual bilateral meeting and that is what we are going to start trying to lay out not just a plan where we might do the 2016 mission together, but what I would call an architecture of where are we going to go in 2016, 18, 20, and so on leading up to a Mars sample return. I think we all have agreed between us scientists that there is no way one country is going to be able to afford a Mars sample return mission. We have to do it internationally, and maybe it is the time to start recognizing that now and do the whole program that way in the future.

COLLABORATION WITH CHINESE SPACE PROGRAM

Mr. SCHIFF. What kind of collaboration, if any, do we have or might we have with the Chinese space program?

Mr. SCOLESE. Today on the science side we have some collaboration and we are expanding that a little bit more. The fundamental tenants that we have for the Chinese program, is transparency as we do with all of our other partners within the bounds that we are allowed to have as we were talking earlier about ITAR, and we have that on the science programs.

I believe at this stage, and I have to be corrected, we have some efforts going on in Earth science that we are doing. I do know we have a Landsat station in China that they utilize, and we are looking to expand that.

On the human space flight front there haven't really been any dialogues there yet because we really haven't— it is a much more complicated situation, because anything that involves human space flight and going to the space station isn't really a U.S.-only question.

So in addition to the transparency it is our other partner nations on the space station that would have to agree to participate. So we have to have the dialogues with our international partners on that. But that is about the extent of it right now.

Some limited science missions and activities are progressing and not much in the way of human space flight yet.

JAPANESE AIR SPACE EXPLORATION AGENCY

Mr. SCHIFF. Does the Japanese Air Space Exploration Agency have a potential role in the Mars Program or is that something to explore as well?

Mr. SCOLESE. You want to answer that one?

Dr. WEILER. Yes. The Japanese have played a major role in many of our programs, especially x-ray astronomy, and they have their own small planetary program even now. We have a collaborative mission with them on an asteroid sample return mission. I forget the name of it, but it is on the way back to Earth now with Japan and JPL.

When I mentioned our working closely with ESA it is not to preclude other countries, it was just that I was looking for other space agencies that could afford billion dollar class missions, and certainly ESA is the only one out there at this point in time. That does not preclude us working with other countries, especially Japan, for contributions like a science instrument on a rover or an orbiter, that kind of thing.

So we welcome all comers, and Japan is certainly one of the strongest space agencies, you know, other than the U.S. and Europe.

ORBITING CARBON OBSERVATORY (OCO)

Mr. SCHIFF. Can you comment a little bit on the loss of the OCO and what options NASA is exploring to be able to replace the data that we would have had, had that been a successful launch?

Mr. SCOLESE. Certainly. Like everybody, we were very disappointed in the loss of OCO. It had great potential and it still does. So that has been confirmed. We have asked the science community to go off and look at the mission and see if the data that was going to come from OCO would still be relevant and still be high priority. The answer came back yes. That wasn't really a surprise, but we had to answer that question. So we are in the process now of looking at what is the best way to go off and recover that mission. We are looking at two options.

One which would be to fly essentially a copy of OCO, and the other would be to fly the OCO instrument with the Landsat instrument, TIR, on a common bus. That one is a little bit more complicated because you have to work out the relationships between the two instruments and make sure that since they will be in the same orbit to make sure that that orbit is compatible with the science for both. We are in the process of evaluating that.

One of the reasons it is not exactly a copy is OCO was—we didn't have any spares, so we have to acquire the same equipment and some of it is obsolete, so we will have to go off and restart that. But we are looking at the earliest as probably three years before we could have a mission flying again. Principally because of that.

Mr. SCHIFF. How with the cost of OCO change in doing a duplicate if that is the route that you take? You mentioned that some of the parts aren't made anymore and they have got to be redone, some of the instrumentation may need to be updated. On the other hand a lot of the work has been done. Do the cost savings in doing again largely what you have done before, are they more than

enough to offset the additional costs of the new instrumentation or re-engineering the parts that aren't made anymore?

Mr. SCOLESE. Again, it depends on which mission, and that is one of the factors that we are off looking at. But the short answer is it will end up costing about the same. Clearly we don't have to do the design over again, but we have to do the build over again.

The spacecraft—I am not 100 percent sure—I think it was an off the shelf spacecraft, so that is going to be essentially the same price as it was before. The launch vehicle cost has gone up a little bit.

So if we were to do a copy we wouldn't have to pay for the engineering all over again, but that is a small part of the cost that we had to recoup. So it would end up being about the same cost. A little less, but about the same cost.

So that is one of the other motivations for looking at flying the two sensors that I mentioned, the OCO sensor and TIR sensor together. There may be an economic advantage, as well as a scientific advantage to do that. We haven't determined whether that is true or not yet, and that is one of the things that we hope to find out by the end of late spring, early summer, to have that answered and then be ready to present a plan.

Mr. SCHIFF. Thank you. Mr. Wolf.

SHUTTLE RETENTION AND WORKFORCE

Mr. WOLF. I thank you, Mr. Chairman.

And a couple questions to you both. I had just spoken to somebody earlier, they said that with the end of the shuttle that you potentially could lose thousands of employees.

What are your expectations with regard to employee additions, losses, retirements, ages, and with regard to NASA based on where we are now and where you think we are going to be going?

Mr. SCOLESE. With the retirement of the shuttle we do expect to lose several thousand employees.

Mr. WOLF. Two thousand or——

Mr. SCOLESE. The current number is close to 10,000.

Mr. WOLF. Ten thousands.

Mr. SCOLESE. Yeah. Correct me if I am wrong.

Mr. GERSTENMAIER. That would include all of the contractors that support the shuttle program throughout. Civil servants were about the same. We do a work course report that is given to Congress periodically, we are due for another update for that. As soon as we get the budget that report— and then you can go ahead and you can see the report and read for yourself the numbers where they are. The report is about six months old.

Mr. WOLF. And where would they likely go?

Mr. GERSTENMAIER. Well, we were trying to capture as many of the workforce as we can in the new program, the Doug Constellation Program, so we have been giving them some training opportunities to go learn some skills that helps support his program.

Again, it is not uniform across our workforce. Some of the older employees are ready for retirement. The younger employees have employment opportunities in other areas. The mid-age group has opportunities to potentially— they are probably more susceptible to have to move to another industry other than aerospace, but our

goal is to try to capture and give them jobs in the aerospace community. They have provided unbelievable service to us. They have great knowledge. We want to use them in the most effective ways we can and engage them in the Doug's program.

So even though there is a period where we are not flying, we are still doing testing for Doug's equipment, we are doing test flight at KSC, we are starting to build up launch pads, we are putting infrastructure in place, we are doing analysis and those types of things. We can do those with this same workforce. So there will be a period where they will be employed maybe in a slightly different job, but they will still be able to contribute to the space station.

Mr. WOLF. But you are projecting there are a loss of 10,000 that would leave the agency?

Mr. GERSTENMAIER. We don't know the exact number leaving the agency, but that is the maximum number that is in our workforce report. It is a function of how many jobs we can create.

Again, you know, we purchase services as NASA, and then we let our contractors go do the actual employment and hiring. So the estimates we had, the worst case, was the number on the order of 10,000, and that is again, agency wide and country wide, and we will see where they are. The lower ranges were on the order. I don't remember the exact number off the top of my head, but we can get it for you for the record.

[The information follows:]

WORKFORCE TRANSITION STRATEGY

In NASA's October 2008 *Workforce Transition Strategy* update, the Agency projected a net reduction of between 3,800 and 6,000 direct equivalent positions from FY 2008 through FY 2013, including civil service "full time equivalents" and contractor "work year equivalents." Since civil servant equivalents stay roughly level from year to year, the great majority of the reduction would be in contractor "work year equivalents." This 3,800–6,000 planned reduction is the net change from year to year based on the total number of equivalents working on the Space Shuttle Program and the Constellation Program. It should be noted that NASA's workforce projections after FY2010 will change as a result of the President's 2010 Budget Submission and the "Review of United States Human Space Flight Plans." This review will examine ongoing and planned NASA human space flight development activities, as well as potential alternatives, and present options for advancing a safe, innovative, affordable, and sustainable human space flight program in the years following Space Shuttle retirement. The review will be concluded by August 2009; any resultant changes will be reflected in future editions of the *Workforce Transition Strategy*, which NASA updates and provides to Congress twice a year, as directed in the FY 2008 Consolidated Appropriations Act (P.L. 110–161). NASA plans to update its workforce report in July 2009. This report will focus on the workforce changes anticipated in 2010. The remaining years will be updated after the "Review of United States Human Space Flight Plans" is completed in August 2009.

Mr. WOLF. Would they ever go work for Russia?

Mr. GERSTENMAIER. No, I don't think so.

Mr. SCOLESE. Don't think so. And Bill is indicating the difficulty that we have. We can tell you what you lose if you no longer do an activity, but we don't actually know what the contractors are going to hire back. So that makes it difficult to determine the lowest number, and that is what the higher number is based on, just what would be lost.

PROGRAM COST ESTIMATES AND ASSESSMENTS

Mr. WOLF. A combination of a couple questions. A recent article in Science quoted some unnamed scientists who blame NASA centers, contractors, and members of Congress for exploiting the system of low initial estimates to get a project started, followed by pressure to fund any ensuing cost growth in order to protect the project and the jobs associated with it. What is your reaction to that critique?

Mr. SCOLESE. Well, I think it is exaggerated, unfair. I had mentioned earlier that we are working harder today to develop better estimates that we can provide to you, that we can commit to ourselves so that we can do it more completely.

And what are we doing to do that? We are working with the National Academy to help them develop better cost estimates. They are contracting with people that do cost estimates so they can develop better cost estimates. We have established rules for how we are going to do our cost estimating and assessing of our programs and projects from day one and monitoring those monthly, quarterly and periodic reviews so that we can clearly understand what the costs are and when there are threats to cost growth, be they underestimates, optimism in the estimate, or problems that come up. Either they are not getting the funding that they needed, they have launch vehicle issues, they have things outside of their control that they are going to go off and deal with. The earlier we can address those the earlier we can make corrective actions that will limit or eliminate any additional cost growth. So we are looking at it from the very beginning at those essential estimates, working with our colleagues in the academy to develop better estimates, common estimates, all the way up until we actually deliver the spacecraft on orbit or on a planetary surface so that we are looking at each step to make sure that we understand what the impacts are and how we can mitigate those.

MAJOR PROGRAM COST AND SCHEDULE GROWTH

Mr. WOLF. One of the questions was, and you don't have to cover it, it is going to set up another question, but one of the major reasons why NASA does not seem to have enough funding to carry out its mission is a recurring problem of cost and scheduled growth in their major projects. A recent GAO report found that 10 or 13 large projects they reviewed experienced cost or scheduled growth that exceeded reporting thresholds.

I guess the general question because we are out of time and I assume we are coming back here, but what has happened to NASA? What do you think? I mean, this is not a fair question and I am not trying to put you on the spot. You don't have an administer and I think it is until you get an administer a lot of these can't be directly—you may not want to answer. But what has happened to NASA? Is it that the bloom is off with regard to—you know, in the old days when there was a space shot everyone knew it was Glenn, it was Shepard, it was—we stopped, we watched it on television. I bet, maybe this audience would be the exceptions, but we don't know the names of the last astronauts that went up. And it

seems you have had leadership that has been somewhat political at times, and then you have had other leadership.

And it may not be a fair question, and if you don't want to answer it is fine. But I guess I am asking myself what has happened to NASA? It is a great agency and you have done a lot of amazing things. America ought to be number one in space. We ought to be, you know, just out there. It is kind of the American explorer concept, ideas, excitement, having young people excited about it and involved in it, and yet it seems that there is something missing, that something has been lost. No offense to anybody here, obviously I am not attributing that to anyone.

If you want to take a shot at the answer I would appreciate it. What has happened to NASA?

Mr. SCOLESE. I will be glad to take a shot, don't know how well I will do, but I will take a shot at it from a couple of different directions.

Mr. WOLF. And I guess the question is that do you agree something has happened to NASA?

Mr. SCOLESE. I think our mission has matured, but I think that the NASA you see today is as vibrant and as capable as the NASA that you talk about from the 1960s. We have some incredible people, we are doing some absolutely incredible things that I believe from going around and talking to people, not that this is representative, but most recently to a group of seventh graders that were absolutely thrilled about what we were doing at NASA. More than thrilled, they were as engaged and knowledgeable about the program as a geek like I was in the 1960s and 1970s when I was the same age as they were. So I think the excitement is still there.

I think the difference is that the agency has matured as many do. As we said earlier the problems have become more difficult. To think that we have built a space station. Back when I was a kid in the 1960s there was 2001: A Space Odyssey, space stations were science fiction. And we built this one over, what was it 50 flights or thereabouts, with multiple other nations. It is an incredible accomplishment. We have landed spacecraft on Mars, discovered water.

We look back at the Earth and we have made the Earth a better place. Aviation, we continue to make, great discoveries in aviation that help our civil aviation as well as or national air space system. So I think the difference that you are reflecting is a more mature agency that is addressing much more difficult problems.

TENOR OF NASA ADMINISTRATORS

Mr. WOLF. All right, the last question.

Would it make sense to use the same language for the NASA administrator that you have for the FBI, set a ten-year term, non-political, non-partisan, and so there is a continuity?

I mean, you had Griffin and you had the other guy. I mean, would something like that—has that ever been considered or would that make sense to have a NASA administrator, non-political ten-year term, only removed for cause of action?

Mr. SCOLESE. All I can say is it has never been discussed with me, and it certainly makes sense.

Mr. WOLF. Okay, thank you.

Thank you, Mr. Chairman. I don't know what the time is.

Mr. SCHIFF. I think we are probably out of time.

Mr. WOLF. Are we coming back?

Mr. SCHIFF. We are coming back. Okay, we will recess until after votes, thank you.

[Recess.]

INDEPENDENT VERIFICATION AND VALIDATION (IV&V)

Mr. MOLLOHAN [presiding]. Good afternoon. One of the best laid plans. Yeah. As the clock goes on though there is fewer questions.

Mr. SCOLESE. Yes, sir.

Mr. MOLLOHAN. Thank you all for your patience.

Mr. Scolese, NASA maintains an internal, independent verification and validation process that it applies to its mission critical software. This assurance process is performed in addition to and not in lieu of software design and project verification and validation. This process is independent of the project design team and seeks to answer three questions.

One, did the design team miss anything? Two, did the design team design the right thing? Three, does the design system work?

Today the IV&V facility supports dozens of projects across the mission directorate. It is each year, however, program coverage is restricted, as insufficient funds have been requested each out year by NASA, significantly increasing agency risk related to safety and mission critical software rework.

IV&V's customers have identified the value added of IV&V work noting, quote, "IV&V has unequivocally become some of the best systems engineers on the program, their depth of knowledge contributes continually." Quote, "IV&V discovers issues that no one else is capable of discovering." Quote, "Your IV&V staff demonstrates an outstanding ability to know when to bring forward issues to be resolved."

Mr. Scolese, do you share the same opinions as those I have just reiterated and that IV&V adds valuable review to NASA systems and accordingly contributes to cost savings and mission success?

Mr. SCOLESE. Certainly IV&V focuses on the software and the interaction of the software with the hardware, and yes, they do definitely provide a value added service to the missions that they support.

Mr. MOLLOHAN. Do they contribute to cost savings and to mission success?

Mr. SCOLESE. Yes, they do. It is always hard to determine the cost savings, because when you find something you don't always know what the cost would have been if you didn't do it, but I am sure that it is there, it is just a little bit harder to quantify.

Mission success is a lot easier to demonstrate by the fact that we have fewer software issues with our missions.

Mr. MOLLOHAN. Is that a fact with the use of IV&V processing?

Mr. SCOLESE. Again, some of these things are very difficult to go off and quantify specifically. We believe that we need an independent process to review all of our activities in fact. IV&V looks at software and they come at it from an independent viewpoint. That, as we do in other areas, as you know where we look at our designs and we bring in an independent team to look at the overall

design and the overall architecture of a system brings some real value, because they ask questions that sometimes the team didn't think about. They look at it in a way that is different from the team, and therefore it brings forward issues or identifies things that can be done better. So clearly the IV&V activity is a value added activity.

Mr. MOLLOHAN. Does it follow reason to conclude then that if such activities are curtailed or limited NASA's safety and mission critical software are placed at greater risk?

Mr. SCOLESE. I would have to go off and see what the limitations are. There is a very rigorous process that our team looks at for determining which missions don't get IV&V. So we try and make sure that all of our critical missions, where there is new development software, do in fact get IV&V. They try to limit the ones that don't get IV&V or get a minimal set of IV&V, for cases where there is true software reuse, where there isn't very much risk in the system. I don't have off the top of my head what the exact specifics are on that, but I am pretty sure that critical missions get the full IV&V, and that most missions get some fraction, some portion of the IV&V activity.

Mr. MOLLOHAN. Would you supply that for the record?

Mr. SCOLESE. We will.

Mr. MOLLOHAN. Please. IV&V has continuously sought funding to allow broader coverage of mission and safety critical software for each project selected for IV&V and to cover the cost increase to the agency security support contract. Why then has NASA headquarters consistently constrained the IV&V's annual budgetary requests?

Mr. SCOLESE. I am sorry, I misunderstood. The security support contract? I don't think I——

Mr. MOLLOHAN. Both security and software review, John is telling me here. IV&V has continually sought funds to allow broader coverage of mission and safety critical software for each project selected for IV&V and to cover the cost increase of the agency security support contract. Does that make sense to you?

Mr. SCOLESE. I can't answer the last part. We will have to probably go off and look at that. Well, I am not sure that I know what the latest request is. I would have to take that one for the record, sir.

Mr. MOLLOHAN. Okay, well let me understand it a little better too, and we will both come back to it.

Mr. SCOLESE. Okay.

Mr. MOLLOHAN. How is that? The budget for IV&V software has remained fairly constrained over the last several years, augmented mostly by Congress. However, would you agree that the requirements for IV&V are projected to increase—kind of referring to what you eluded to with regard to critical missions—significantly to constellation ramping up while existing programs, shuttle, ISS, and nominal science missions continue?

Mr. SCOLESE. Hard to answer that question. Clearly we would have to look at the mission profile as missions complete. Of course we don't need to do IV&V as the shuttle is coming down and constellation is going up. If we had a net increase in all of our missions I would say yes. But I have to look at how many missions

are coming down the activity and how many missions are going up in activity.

To a first order I would say we have been relatively flat with the number of missions that we have, but I mean, when you look at missions that are coming off their design and missions that are coming up the design curve. So about a flat level is about right for the software, as well as to our standing review boards. Looking at standing review boards is another way to look at it, and they stay about the same annually as well in terms of numbers. But again, we can get you the numbers on what the projected growth or projected number of projects is.

IV&V REQUIREMENTS FOR SCIENCE

Mr. MOLLOHAN. Dr. Weiler, would you anticipate that the requirements for IV&V will increase beyond planned rates as additional investments are made and are observing systems that were not projected in your fiscal year '09 budget?

[The information follows:]

INDEPENDENT VERIFICATION AND VALIDATION (IV&V)

The President's FY 2010 budget contains resources for the development phase of seventeen science missions each year on average. The President's budget also provides for nine STS launches during FY 2009 and FY 2010, as well as ongoing operation of the ISS through the outyears identified in the President's FY 2010 budget.

Exploration Systems projects in the President's FY 2010 budget are driven principally by the Constellation program, notably Orion, Ares I, and Ares V which is still in the early formulation stage. The budget for Exploration Systems contains resources for a robotics project through FY 2009 and it provides for Constellation-related modifications to ground-based infrastructure.

Considering this portfolio as a whole the trend, at least from a budgetary resources perspective, is that the Constellation program offsets, but only marginally, declines in the STS program, while science program and project activity remains approximately level.

Over each of the last three years through FY 2009 the Office of Safety and Mission Assurance has made IV&V services available to an average of more than sixteen programs and projects (including ISS operations and STS mission execution). NASA uses a systematic risk-based evaluation process to select projects for IV&V support. Under this approach IV&V activity levels do not directly correlate with the number of planned programs and projects in a particular year or over a period of time.

Mr. WEILER. Well, I can't give you a specific thing without going into every single mission, but what Chris said is probably accurate in space science too, because the budget, at least for the last three or four years, has been flat, so the number of missions being launched or coming out of development probably offsets the number of missions that are going into development.

So you know, what we will have to go now is with the earth science stimulus package and some acceleration in some of those missions, you know, we will have to look at our needs for IV&V, you know, in the future years. But in general for at least the past three or four years the space science, earth science budget has been flat and not even keeping up with inflation.

IV&V REQUIREMENTS FOR EXPLORATION SYSTEMS

Mr. MOLLOHAN. Dr. Cooke, do you anticipate that the requirements for IV&V will increase beyond planned rates as additional and new investments come on line?

Mr. COOKE. I am sure that as—is this working?

Mr. MOLLOHAN. If the button is lit, it is.

Mr. COOKE. It is. Okay. It wasn't working earlier.

I am sure that as we are defining the work and development of software we will be looking at the requirements for that in the future, and it will be weighed against other programs in the agency in terms of how that affects the overall budget.

Mr. MOLLOHAN. Will you say that again, please?

Mr. COOKE. Yes. We will be looking at our requirements for independent verification, validation, as we get into further development, and that will be weighed in as part of the overall agency requirements.

Mr. MOLLOHAN. Sure. I was asking about your anticipation for its potential increase given the increase.

Mr. COOKE. Well in terms of our part of it, possibly.

Mr. SCOLESE. If I can interject. Clearly as constellation goes up, because they are new projects there, they are going to have a demand for the IV&V services. At the same time shuttle demand and the station demand is going down. Those are the things that we have to look at, and we look at it every year. I can get you the results of that, but I can't recall it off the top of my head.

FY 2009 OBLIGATIONS APPROPRIATIONS

Mr. MOLLOHAN. What is your plan to fully obligate in this fiscal year '09 the $45 million provided in the fiscal year '09 appropriations?

Mr. SCOLESE. We intend to obligate—we are working to obligate close to 100 percent of our funding.

Mr. MOLLOHAN. So you are not planning on carrying over any funds?

Mr. SCOLESE. Well, that is different. We can obligate the funding, and if we need to carry over some fraction of that to carry us into the next fiscal year, whether it is for costing on fixed price contracts where you have to pay for the work ahead of time or whether it is a cost that will be accrued in the subsequent year, would have to be worked.

ARES/ORION

Mr. MOLLOHAN. The whole idea of closing the gap by accelerating Ares Orion, we are beyond that; is that correct? I think the date for making that decision to go with—attempting acceleration or not was March of '09.

Mr. SCOLESE. Yes, that is correct.

Mr. MOLLOHAN. But are we beyond that? That is no longer an option?

Mr. SCOLESE. Potentially yes. I mean, there is no significant acceleration that can occur.

Mr. MOLLOHAN. I mean it would not be possible to do it at this point; is that correct?

Mr. SCOLESE. Yes.

Mr. MOLLOHAN. Okay. Mr. Serrano.

MINORITY INSTITUTIONS FOR HIGHER EDUCATION

Mr. SERRANO. Thank you, Mr. Chairman.

Mr. Scolese, I commend you and those under your leadership at NASA for the strides that you have taken to engage young people in the sciences.

I would also like to recognize Joseph M. Joe Acaba, who you also mention in your written statement. I was looking at transcripts a couple a years ago wherein being very supportive of NASA. I said it would look good for the community if someone identified with the Puerto Rican community went up in space. A lot of jokes were made at that time, but here look what happened. And I commend you for that, because diversity is important. And I don't know if you saw the writings in New York, New Jersey, you know, Florida, and in Puerto Rico it was a great moment of pride. And not only because he of who he is, but because of his role as a schoolteacher for middle and high school students, and it conveys a powerful message to young people across the nation about the endless possibility within the realm of science.

Currently African Americans represent 12 percent of the population, but only 8.7 percent of bachelor degree recipients in the science and engineering fields in 2006. In addition, Hispanics now represent about 15 percent of the U.S. population, but only eight percent of students graduating with a bachelors degree in science or engineering field in the same year.

As you note in your written statement NASA has considerably ramped up its targeted educational support to research grants and universities, including minority serving institutions, as well as its efforts to provide students with opportunities in science, internships, and hands-on education.

I am also particularly pleased with the way NASA has embraced new technologies, such as Twitter and other online resources in an effort to engage young people in the exciting work that you do.

Can you talk a bit more about how NASA is helping to prepare young people for careers in the sciences and technology fields?

I would also be interested to hear your thoughts on how NASA might be able to further bridge the gap in terms of how space sciences relate to more well-known issues such as climate change and green technology.

Mr. SCOLESE. Certainly. And thank you for covering the items that you did. In fact, I just signed out our annual report that is coming over to the Congress on our support of minority institutions for higher education, so you should be getting those statistics here very shortly.

I think you covered well many of the things that we are doing. In addition to what you said, we have programs clearly where we allow, you know, have discussions with the crews on the space station where they take opportunities to talk to local schools, secondary schools, primary schools to relate directly to the students where they have an opportunity to talk to them. E-mail will be an opportunity as well.

We have been working as you noted with our websites to make them much more friendly, and we have a kids section on the NASA

website so that younger people can go off and be motivated by what is going on.

In addition to the societal end of things that you were talking about, NASA is very much engaged in climate research and in weather, in providing data to operational agencies, providing it to industry, providing it to universities for use in a broad range of activities.

In fact, it is probably almost too numerous to mention, but a few that come to mind is we have satellites that help us to better understand, predict, to track, and predict the severity of hurricanes. Tropical Rainfall Measuring Mission (TRMM). The satellite does that. It was an experimental mission. We intend to extend that, working with our partners in the international community and others in the U.S. government, it is called the Global Precipitation Mission. We have instruments and missions that are used by operational agencies. The MODIS instruments on AQUA and TERRA are very much used by the operational agencies in the prediction of weather and climate. There are many other instruments that do that as well.

We support other agencies around the world. In fact tracking forest fires is something that the MODIS instruments are very good at doing and have been used most recently in California in conjunction with unpiloted vehicles, UAVs, that we have to help firefighters better determine what fires they need to fight, where the fire front is, where to place their resources, and doing that with a combination of satellites and UAVs so that minimizes the risks to humans.

So I think there are lots of examples that we have out there. And in addition our website has many of these listed on it, plus some very practical home applications that NASA has been engaged in.

I hope that answers your question, sir.

Mr. SERRANO. Yes. I encourage you to continue to expand. I have been the recipient of your services, if you will, and astronauts and other folks visiting schools, and I would commend anyone if they know in their community that this is happening to go and see this. I don't know that there is a more exciting event to attend in a school, other than graduation maybe, or last day of school period, you know, than to see the astronauts. Everyone understands it, it is exciting, it is one of the few occasions—or it is an occasion, I am not going to say few—where the teachers are excited as the students, because you know, there is this romantic thing and dramatic and special.

So I would continue to expand your work within the schools. It is good for the agency, it is good for the children, it is good for the country. And you know whatever NASA can do to continue to encourage people from certain communities to study in sciences and math and to expand that horizon, that would be a good thing.

Mr. SCOLESE. Okay.

Mr. SERRANO. But I stand ready, as I have been in the past, and I am now a member of this Committee once again, to be supportive in every way I can.

Mr. SCOLESE. Thank you.

Mr. SERRANO. All right, thank you.

Mr. MOLLOHAN. Thank you, Mr. Serrano. Mr. Wolf.

TENOR OF NASA ADMINISTRATORS

Mr. WOLF. Thank you, Mr. Chairman.

Just a follow up on the question I had asked you about the length of service of the administrator. Can you kind of tell me what was the length of service? I mean, you know, Griffin was there certain time. What from your tenor that you have been there, how long did a general administrator generally stay, and what has been the longest that you know of since the beginning of NASA?

Mr. SCOLESE. I think Dan Goldin had the longest service at about ten years I think, and then Jim Webb was—who was I guess the second administrator in NASA was about eight or nine years. I would guess the average service is about four years, maybe a little more, a little less. In my recollection, in my tenor at NASA the administrators have been Admiral Truly, Dr. Fletcher, Dan Goldin.

Mr. WOLF. Who was the first administrator?

Mr. SCOLESE. The first administrator in NASA? Glennan I believe. T. Keith Glennan. Dr. Glennan.

Mr. WOLF. And how long was he there, do you know?

Mr. SCOLESE. He was there at the very beginning, and then Jim Webb came up, so I am not sure, maybe two years, three years. That was in the transition from the old NACA to NASA.

CYBERSECURITY

Mr. WOLF. Okay. I think I heard this question, but let me just elaborate a little bit more.

Last November Business Week published a very disturbing report about a string of cyber attacks on NASA's computer systems. "In 2005 NASA's computer networks were compromised, and it was only detected seven months later after millions of pages of information had been rerouted to Taiwan. Attacks have continued, including 2007." Do you continue to experience these attacks, number one?

Mr. SCOLESE. Our systems are attacked, and of course we take precautions against that and prefer not to discuss what we do in public.

Mr. WOLF. The NASA OIG was quoted that quote, "The scope, sophistication, and timing and characteristics of some of these intrusions indicate they are coordinated or essentially managed." The sources, do you know the sources of them? China, Russia?

Mr. SCOLESE. We know the sources of some of them, sir, and some of them are from foreign nationals. Again, this is something I would prefer to discuss——

Mr. WOLF. Sure.

Mr. SCOLESE [continuing]. You know, separately.

Mr. WOLF. But I wonder without asking you, what would the problem be as saying who it is though? I mean, it is probably China. China came in and stripped a number of members computers, the IR Committee's computers. It seems to me that the administration ought to just say who it is. But I am not going to press you on that. But you do know who it is?

Mr. SCOLESE. Yes, sir.

Mr. WOLF. Has there ever been a full assessment of who has gained what information, and what national security impacts are these—have these breaches had?

Mr. SCOLESE. Yes, sir. There have been.

Mr. WOLF. Have there been any accounting of the value of the intellectual property that has been stolen?

Mr. SCOLESE. Yes, sir.

Mr. WOLF. And have any criminal charges been filed?

Mr. SCOLESE. I know that there have been, I can't recall exactly who, but I know there has been at least a couple of cases where criminal charges have been filed, and there may have been more.

Mr. WOLF. Well without asking you, maybe some time we can chat about it privately. But my guess is that some of the progress that China has made has probably come from cyber attacks, you know.

Any way, thank you very much. Thank you, Mr. Chairman.

NATIONAL POLAR-ORBITING OPERATIONAL ENVIRONMENTAL SATELLITE SYSTEM (NPOESS)

Mr. MOLLOHAN. Thank you, Mr. Wolf.

Mr. Scolese, NPOESS. What are we going to do about NPOESS?

Mr. SCOLESE. Well let me take a step back. NPOESS is not a NASA project.

Mr. MOLLOHAN. No, I understand it is not a NASA project, it is NOAA, DOD, and NASA. And NASA——

Mr. SCOLESE. NASA's role in NPOESS is limited to two areas.

Mr. MOLLOHAN. You have no money in NPOESS I don't think. Yes.

Mr. SCOLESE. Yes. We do technology development, and we are also providing the what is called the NPOESS Preparatory Project. It is a satellite that is going to fly several instruments. That mission we directly know that NPOESS satellite and its instruments we know peripherally, and I can't give you great detail on those, other than to tell you that they are delayed.

Mr. MOLLOHAN. No, I know you can't, but you kind of have a unique background in the fact that you are not at the center of it. Kind of puts you in a position of I think maybe commenting on it more objectively.

Mr. SCOLESE. Okay. Let me start with the good parts, if I will.

Mr. MOLLOHAN. Sure.

Mr. SCOLESE. In NPOESS one of the things that has been demonstrated is a very strong relationship between NASA and NOAA. I think we have had a long-term relationship, as you may recall with the early polar orbiting satellites, TIROS and GOES. And NPOESS has demonstrated the importance of that relationship. I think it has strengthened the operational weather community to an extent as they see common need to data. So those are some of the good things that have come out of it.

I think the NPP, NPOESS Preparatory Project, as we call it, is a demonstration of the flexibility of what we can do given the resources and given the support of our sister agencies. While it hasn't flown yet because of delays in the beers instrument and the Chris instrument, we were able to add relatively quickly critical climate instruments, the series instrument and the OMPS, it is an ozone

monitoring instrument, LIM sounder to that mission relatively quickly. So when it launches it will be an addition to and help fill in the gaps that are anticipated from the aging of the EOS satellites that carry similar instruments.

The problems that we have experienced on NPOESS are serious. They threaten the continuity of our weather satellite system. That is of serious concern. Serious enough that NPP mission has now become a—I will put it in terms of quasi operational mission—it is required to make sure that there isn't a gap in the afternoon orbit now, and that was never the intent of the NPP mission. So that demonstrates flexibility, but it also demonstrates the frailty of the system that we have got.

We certainly need to look along the lines of what we were talking about earlier at how we got here. I think it is a combination of underscoping of the initial set of requirements when they were put together, and I think it demonstrates the need for strong government oversight over come flex developments.

And I probably can't go much more than that into it without speculating on the specifics of the NPOESS arrangement.

CONTRACT REGARDING WEATHER SYSTEM

Mr. MOLLOHAN. Well what observations, and you sit around and talk about it, what should happen? How should it move forward? I mean, if DOD and NOAA aren't working well together, and I don't know their budget overrun tolerances are different, what advise would you give, if you have any, for moving forward?

Mr. SCOLESE. I think the advise I would give would be to look carefully at the contract that is in place to make sure that we are getting the information and the responsiveness that is desired to get this system launched to minimize or eliminate the possibility of a gap in the weather record.

The clarity overall on the requirements. There is been an excellent process to define what the requirements are for this system, and we need to make sure that those are being satisfied, one. Second, that there is flexibility to deal with issues that come up with any development where you may not be able to achieve the optimum, the desired speck, but you can obtain a good enough, if you will. It is better than what we have today, but maybe not the ideal that everybody wants. And there has to be a process that would allow us to go off and do that.

We are working with the Department of Defense and NOAA on doing both of those things, but the specifics of the contract—again, those are my observations—you would have to ask them as to what to do specifically or what could be done specifically with the contract.

But those would be the two major things that I would say that we need to do. Take a good look at the contract and are we getting what we expected in terms of data, in terms of responsiveness? And if we are fine. If not, we should make changes. And second, we need to be able to look at the requirements, because we haven't launched the system yet, and determine how much flexibility we have in meeting those requirements so that we can minimize the probability of a gap in our weather.

Mr. MOLLOHAN. You are noted in the Aerospace Safety Advisory Board as saying quote, "The U.S. Air Force led NPOESS development delays represent a threat to NASA's science budget and ability to meet the earth science decay goals established by NRC and endorsed by Congress." Could you elaborate on that?

Mr. SCOLESE. Yes, sir. When the NPOESS project was originally conceived it was to do both weather and carry on the climate measurements of the EOS satellites. Those satellites were launched in the late '90s, 1999 and the early 2000s. Most of them, not all, but the two critical ones, TERRA and AQUA, from the prospective of NPOESS, are now at or well beyond their design life. So while they are operating fine now, when you are far beyond your design life you don't always know how much longer they are going to operate and how well they are going to operate beyond that design life.

So without these satellites to fill in when these sensors do eventually die we have a risk of losing that data, and it is a very critical data set for the climate community.

And as I mentioned earlier, it is something that is being used actively by the operational communities for weather and other services. So that is one risk that we obviously have in the loss of data.

What that has meant is that we may have to expend additional resources that we weren't planning on doing. The Decadle Missions assumed NPOESS would be there. NASA planning prior to that assumed NPOESS would be there. So now we have to go off and look at our plans to see if we need to fill in critical gaps. So that is one that puts the Decadles at risk.

And clearly NPP was supposed to have launched—three years ago—three or four years ago, and the satellite has been ready, so we have had to pay the carrying cost for that mission. So there is a direct cost associated with the delays in the NPOESS project and NASA, and that was what I was trying to get at.

ENHANCED USE LEASING AUTHORITY

Mr. MOLLOHAN. A different topic.

NASA's enhanced use lease authority was first enacted in 2003 and allowed NASA to enter into a demonstration project for EULs at two NASA centers. AIMS Research Center was selected as a demonstration center.

In 2007 and again 2008 NASA's EUL authority was amended to extent the EUL authority to allow NASA to use its authority in all of its centers, limited the consideration NASA may receive in cash and add a sunset date of ten years. These provisions of law became effective in July of '08.

The NASA Authorization Act of 2008 clarified how the funds should be expended, established percentages of the net revenue that were to remain at the center, 65 percent, with 35 percent being placed in the agency capital asset account.

NASA received $6.5 million in 2007 from EUL receipts, 9.8 million in 2008; we are advised, and a projection of 15.7 million in 2009; we were advised, and 15.7 million 2010, a projected 76.6 million is projected to be collected over the five-year budget horizon from Ames principally.

The fiscal year 2009 omnibus placed a limitation on EUL expenditures of $9 million. In February NASA headquarters placed a moratorium on all new EUL agreements.

Why did you do that?

Mr. SCOLESE. First, very simply, we completed the pilot and we needed to collect our lessons learned and understand where we were and where we were going if we were to expand it to the other centers for use to determine, better when enhanced use leasings are used, what that means, how are we going to go off and implement them efficiently? We had done it at two centers as you mentioned, as pilot projects. We learned from that. We had some legislation, as you also indicated, that we wanted to incorporate in it. We also wanted to understand where do we use enhanced use leasing versus Space Act agreements?

So we took a hiatus to go off and understand that and codify that and collect the lessons learned. We are about to lift the moratorium, very shortly here, with revised guidelines—clearer guidelines—for all of our organizations. So that is why we did it. We wanted to collect the lessons learned and understand where we are at. I might point out that we have learned a lot in those few years that we had the pilot projects. We are looking at some, I think, very good uses of land that had easements on them because we want to have them protected, either because of rocket tests, and you just can't use the land. So we are looking at some of our facilities in Plum Brook, Ohio, Kennedy Space Center, Florida, to put in green energy activities where we could allow industry to come in, whether those are enhanced use leases or Space Act agreements. We can now go off and address those questions and determine what makes the most sense. So we are looking to the future as well as looking to the past to see how we can go off and improve our use of enhanced use leases.

Mr. MOLLOHAN. During that time out you significantly changed the accounting of the enhanced use leasing program at Ames. Why did you do that?

Mr. SCOLESE. Actually we found an error. And if we want to go into details, I can ask the Comptroller to come forward. But the simple answer is that we incorrectly accounted for income from federal agreements with other federal agencies which we shouldn't do. They don't pay us rent, they just pay for the services that they use, as opposed to a commercial entity that would pay for rent. We incorrectly kept those in the account and we shouldn't have done that.

Mr. MOLLOHAN. What occasioned discovering that error?

Mr. SCOLESE. As I said, when we took the time out to go off and understand what we learned from the past, what we wanted to do in the future, and bringing into account all of the legislation that goes along with it, is when we discovered it.

EUL REVENUE

Mr. MOLLOHAN. Describe please the effect of the Committee's action on placing an obligation limitation of $9 million on the expenditure of EUL revenue in fiscal year '09.

Mr. SCOLESE. That was one of the things that allowed us to—as we were learning about EUL—one of the things that we considered

as we were looking at this moratorium. As it turns out, when we took out the federal expenditures, the $9 million was not a significant limitation on our ability to do things for that legislation. I just got a note here that says the total income projections that we anticipate is $7.9 million in total income.

Mr. MOLLOHAN. I thought it was 6 million.

Mr. SCOLESE. I have $6.1 in rental income, and $1.8 in reimbursable services, and if we need more than that I need the Comptroller to come up and explain that.

EUL DESK GUIDANCE

Mr. MOLLOHAN. NASA's EUL desk guidance provides direction on what costs can be considered as full costs for administering the leases. To what extent, if at all, does the facility's Engineering and Real Property Division or the Office of Program and Institutional Integration review and audit these costs as being appropriate and conforming to the guidance of the chief financial officer?

Mr. SCOLESE. If I may, sir, can I invite the Comptroller up?

Mr. MOLLOHAN. Please.

Mr. SCOLESE. David, do you want to?

Mr. SCHURR. Sure.

Mr. MOLLOHAN. You will want to identify yourself.

Mr. SCHURR. David Schurr, NASA comptroller.

The Office of Program and Institutional Integration is responsible for running the budget process that would encompass EUL as part of our formal budget submit, starting with the 2009 appropriation. We are required to incorporate this in the budget. So we have formalized it as part of our budget process. That office has the responsibility for collecting the requirements and vetting them across all of the centers once we get through the current stand down on new leases. So they are vetting the actual numbers that will be part of what you saw in the operating plan, as well as the budget. They will be submitted hopefully in the next week or so.

Then the Facility's Engineering office has got the overall responsibility for what they are using the funds for and ensuring that they are following their particular processes.

The Chief Financial Officer has got the general responsibility to make sure they are doing the accounting properly so it shows up in the proper accounts.

Mr. MOLLOHAN. The model of the general services administration which deposits rent and other receipts from its federal tenants into the federal buildings fund, and every year Congress provides authority to spend those funds—Why wouldn't that model be instructive to NASA's enhanced use lease receipts?

Mr. SCHURR. I think effectively with the direction of the 2009 appropriation that is what we are doing. You have asked us to provide to you a plan for what we are going to spend the monies on, the net receipts from the EUL activity, and that can be part of our submit.

Mr. MOLLOHAN. And is that a contingent precedent to you all spending it?

Mr. SCHURR. The other requirement we had is to submit to you a plan with the operating plan on the specifics of what we are spending it on, so I think both of those cover——

Mr. MOLLOHAN. It has no spending prior to the approval of that plan?

Mr. SCHURR. We have to take that one for the record. It was what we were doing in '09 prior to the passage of the '09 appropriations.

Mr. MOLLOHAN. But the limitation that we put in the bill didn't affect because the estimates were a lot higher—14 million—than what you are now coming up with; isn't that correct?

Mr. SCHURR. That is true. At the gross level that would be true.

Mr. MOLLOHAN. So we would have to do something else if we are going to impact that.

Mr. SCHURR. If we were going to limit the amount that was spent in '09 that number would not limit it' that is correct.

RELATIONSHIP BETWEEN NASA/NOAA & OTHER COUNTRIES

Mr. MOLLOHAN. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Gentlemen, I am always intrigued by the relationship between NASA and NOAA. And it seems to some of us at times like you are working on the same projects, but you certainly have different responsibilities.

So my question to you is—and you might have covered this and I apologize for this— in what areas is there joint work?

And then secondly as a side to that, one question that I ask all, just about all of our federal agencies that gather information, does our lack of diplomatic relations with certain places, say with Cuba or our tense relationship with places like Bolivia or Venezuela come into play when you have information that is actually good for the people in those areas?

I mean, I asked NOAA, you know, when you see a hurricane coming. And you know the Cubans are very good at knowing when these hurricanes are coming. But do you share some information? Do you let them know or does politics come into play and you have to hold back?

So the relationship between you and NOAA and then the——

Mr. SCOLESE. Yes, sir. NASA and NOAA have a long relationship going back to almost the formation of both agencies in the '50s and the '60s, so the NASA relationship with NOAA is multifaceted.

On the one hand we are their agent for providing the spacecraft and the instruments that collect the data on weather around the world. We have been the agent in the past for the polar orbiting environmental satellites originally called TIROS that started in the 1960s, and the last one was launched earlier this year, but we remain—and that was replaced now where the DOD is the agent for NOAA on the NPOESS project that we were just discussing.

We still do the geostationary orbit environmental satellites, the GOES satellites that are in geostationary orbit that actually is the image that you typically see on the evening news. So we do those directly for NOAA. NOAA funds those, we are their agent for procuring them, launching them, and doing initial check out.

In addition, we do research jointly with NOAA to improve severe weather forecasts. We provide data from our research satellites. I mentioned a couple of them earlier. The TRMM satellites and the

EOS satellites that provide data. So our research from those satellites is shared with NOAA so they can improve their models.

By the same token their researchers are looking at ours to help us determine which kind of instruments we should go off and develop. As far as the data, our data, and actually Dixon Butler is sitting in the back here, one of the things he did when he was at NASA was make sure that all of our data is available so that our data doesn't have political boundaries. If you want to get the data you can acquire it. The NASA data. Sometimes it is very esoteric, but because we don't typically do forecasts, but our data is made available. It is made available to researchers, it is made available to operational agencies around the world.

In addition many of our satellites have what we call a direct broadcast capability that allow, if you have a receiver on the ground, you can receive our data as the satellite is coming overhead and use it for your purposes. And clearly if desired we can deny that service. To my knowledge we have never been asked to deny that service. So we have it on basically continuously.

Mr. SERRANO. Thank you. Thank you, Mr. Chairman.

CHAIRMAN'S CLOSING REMARKS

Mr. MOLLOHAN. Thank you, Mr. Serrano.

Thank you, Mr. Scolese. I hope your make your flight.

Mr. SCOLESE. Thank you, sir.

Mr. MOLLOHAN. And we very much appreciate your terrific service and the great team that you have that is doing that in so many different ways, and we look forward to a new administrator, and I know you all are looking forward to a new administrator.

Mr. SCOLESE. Yes, sir.

Mr. MOLLOHAN. So thank you very much for your testimony today.

Mr. SCOLESE. Thank you, sir.

Mr. MOLLOHAN. Thank you. Hearing is adjourned.

BUDGET GROWTH AND OUT YEAR PROFILE

QUESTION 1:

Mr. Scolese, the budget proposes to increase funding for NASA in fiscal year 2010 by $700 million over the fiscal year 2009 enacted level, after which the budget would be flat for the next several years. The increase this year is notable and a welcomed change, but what is the effect of straight lining this budget into the out years on your program and project planning?

ANSWER 1:

While the top line of the Agency is flat from FY 2010 to 2014, the additional $2 billion in funding in FY 2009 to FY 2011 allows us to focus on critical execution milestones in Exploration and Earth Science that would otherwise need to be delayed. Earth Science and Aeronautics grow through this five-year budget, and Space Operations requirements are fully funded. Funding is provided to implement the initial elements of the Constellation program required to return to low-Earth orbit. How the FY 2010 request and outyear budget plan affects the Exploration architecture will be fully assessed in August 2009 upon the completion of the Review of U.S. Human Space Flight Plans currently underway.

QUESTION 2:

In testimony to the Subcommittee, Dr. Lenard Fisk stated that when he was on the Space Studies Board, they repeatedly pointed out that NASA is asked to do too much with too little. Do you feel that this is the case today, and what options is the agency studying in order to bring its missions and budget into line?

ANSWER 2:

The FY 2010 budget request for NASA carefully considers the full five-year funds projection in determining which missions can be included. Several important missions have not yet begun; because additional funding above the request level would be needed to successfully manage them to completion. Missions that have completed confirmation reviews following their preliminary design reviews are baselined in this budget request at a 70 percent confidence budget level. The FY 2010 NASA request is a careful balance of aggressively pursuing new scientific discovery within the available budget.

QUESTION 3:

Does this budget in any way – either by programmatic content or out year funding constraints -- change our Nation's current plans to return Americans to the moon by 2020?

ANSWER 3:

How the FY 2010 budget request and outyear budget plan affects the Exploration architecture will be fully assessed in August 2009 upon the completion of the Review of U.S. Human Space Flight Plans currently underway.

QUESTION 4:

What makes this budget different from its predecessors, for example, does it contain new areas of focus?

ANSWER 4:

The President's request for NASA in FY2010 is about **$18.7 billion**. This is about **$900 million – or 5 percent** -- more than the 2009 enacted level. And including Recovery Act funds, about **$2.4 billion** has been added relative to the enacted 2008 levels for NASA. This is a significant increase and represents a genuine injection of funding for the agency at a particularly beneficial stage for many NASA efforts.

- Science Mission Directorate - **$4.48 billion** in FY2010. Highlights include an increased commitment to Earth Science activities and global climate change research (including Recovery Act funds, the Earth Science budget increases by $1.2 billion over five years); funding for an outer planets flagship mission, a 2014 launch for the James Webb Space Telescope,and forthcoming Solar Dynamics Observatory and Radiation Belt Storm Probes missions.

- Aeronautics -- **$507 million** in FY2010, an increase of $450 million over five years (including the Recovery Act) relative to last request. The budget ontinues NASA's cutting-edge research in areas such as airspace systems, fundamental aeronautics, and aviation safety, and research in support of the "green aircraft initiative."

- Space Operations: **$6.176 billion**. Funds completion of the ISS, continues funding development and services arrangements for commercial resupply vehicles to support the ISS; adds a new Shuttle mission to launch the Alpha Magnetic Spectrometer spacecraft to the ISS.

- Exploration: **$3.96 billion** for a range of ongoing development activities. The Administration has requested that Norman Augustine chair an independent, blue-ribbon review of U.S. human space flight plans. This panel is to examine ongoing and planned NASA development activities and potential alternatives in order to present options for advancing a safe, innovative, affordable and sustainable human space flight program following the Space Shuttle's retirement. This will be a fresh and objective assessment to ensure that the nation is pursuing the best trajectory in this important area.

QUESTION 5:

Are the focused increases proposed in 2010 for aeronautics and earth science expected to be carried forward, or are these augmentations budgeted solely for this fiscal year?

ANSWER 5:

The increased investments, begun in FY 2009 under both the FY 2009 Omnibus Appropriations Act and the Recovery Act, are continued through 2014 for both Earth Science and Aeronautics.

QUESTION 6:

To the extent that the increases for earth science and aeronautics are annualized in a constrained budget, coupled with significant cost increases in missions such as MSL, what does that portend for the execution of the constellation program – how can it not translate into less resources, curtailed developmental activities and milestone delays than had been assumed for the next generation of human spaceflight?

ANSWER 6:

The short-term adjustments required for MSL are made within the Science portfolio of missions. Exploration budgets increase from $3.3 billion in 2008 to $4 billion in 2009 and 2010 and grow to $5.5 billion a year from 2011 through 2014. This provides more money up front than in the final Bush Administration request, but less money in the outyears. How the FY 2010 budget request and outyear budget plan affects future human spaceflight activities will be fully assessed in August 2009 upon the completion of the Review of U.S. Human Space Flight Plans.

Background

President Obama has proposed a 5 percent increase for NASA in 2010, which comes on top of $1 billion which was included in the Recovery Act. For fiscal year 2010, Obama seeks $700 million more than had been planned in the Bush out year budget. After fiscal year 2010, the budget for NASA is held flat, effectively reducing its annual budget by the rate of inflation.

(in billions of dollars)

	2009	Stimulus	2010	2011	2012	2013	2014
Obama	$17.8	$1.0	$18.7	$18.6	$18.6	$18.6	$18.9
Bush	17.6	---	18.0	18.4	18.9	19.3	19.8
Difference	+0.2	+1.0	+0.7	+0.2	-0.3	-0.7	-0.9

INVESTMENTS IN SCIENCE AND AERONAUTICS RESEARCH

At our earlier hearings on investments in science, both Dr. Ralph Cicerone and Dr. Lennard Fisk noted that NASA's science activities are not markedly different or less important than other science disciplines funded by NSF and NIST.

These activities, unlike NASA's science and aeronautics programs, are on a doubling path.

QUESTION 7:

Given your experience with NASA's science enterprise, would you agree with these gentlemen's assertions, and if so, why?

ANSWER 7:

NASA's science activities are important in their own right, and in fact, NASA, NSF, and NIST are in some cases coordinating our work on different aspects of the same problems, such as climate change, where there is plenty of work to go around. Like NSF, NASA engages the Nation's academic community in research on the frontiers of scientific understanding. Like NIST, NASA is engaged in defining measurement standards and calibration of scientific instruments. NASA's unique contribution to the Nation's scientific portfolio is the conduct of these activities in, and from, space that defines NASA's science programs vis-à-vis our sibling agencies. All three agencies contribute, in important and distinct ways, to the Nation's scientific standing.

QUESTION 8:

The preliminary budget documents indicate that new robust programs in earth science and aeronautics are planned at NASA. Please describe how your budget request augments existing activities in the areas of science and aeronautics research. Are these increases commensurate with those proposed for the NSF and NIST?

ANSWER 8:

The FY 2010 Budget request for Earth Science reflects a significant commitment to Earth Science on the part of the new Administration. The Decadal Survey Tier-1 Soil Moisture Active-Passive (SMAP) and Ice, Cloud and Land Elevation Satellite II (ICESat-II) missions have been accelerated to the maximum extent possible, and are planned for launch in late 2013/early 2014 and late 2014/early 2015, respectively. NASA is initiating a new series of competed "Venture-class" missions. These missions, which may include suborbital payloads, instruments to be flown on non-NASA spacecraft, or small dedicated spacecraft, will be selected via an Announcement of Opportunity. Selection of the first Venture-class mission(s) is planned for FY 2010. The budget for Landsat Data Continuity Mission (LDCM), planned for launch in December 2012, now includes the cost of a thermal infrared instrument, consistent with Congressional direction in the FY 2009 appropriation. NASA has already begun a new Airborne Science campaign, called IceBridge, to "bridge the gap" between ICESat I and ICESat II data. This activity, focusing on changes in Greenland and arctic ice, will continue in FY 2010 and beyond. Additionally, for the first time, all Science missions in development are conservatively budgeted at the 70 percent confidence level, which should help minimize future overruns and disruptions in the portfolio.

In FY 2010 budget request for Aeronautics, NASA will establish a new Integrated Systems Research Program (ISRP) to conduct research at an integrated systems-level on promising concepts and technologies and explore, assess, and demonstrate the benefits in a relevant environment. The FY 2010 budget request increase for Aeronautics Research Mission Directorate (ARMD) for the ISRP is approximately $62.4M. The ISRP program will include the Environmentally Responsible Aviation (ERA) Project, a "green aircraft initiative," which will develop new vehicle concepts and enabling technologies through system-level research to simultaneously reduce fuel burn, noise, and emissions in the large subsonic transport class of air vehicle. The research in the ISRP program will be coordinated with ongoing, long-term, foundational research within the three existing ARMD research programs, and will be closely coordinated with other Federal government agency efforts. The existing foundational research program includes research activities focused on environmentally friendly technologies, but at a subsystem and/or component level. The ISRP efforts augments this fundamental research by focusing research at the systems level and with the goal of enabling transfer of technologies to the U.S. aerospace industry. The ERA project will not only transfer knowledge and technology outward to this community so that aircraft and propulsion system manufacturers can confidently transition these technologies into new products, but will also transfer knowledge inward to the Fundamental Aeronautics Program when the need for further development at a foundational level is identified.

QUESTION 9:

Given the Obama Administration's recognition of the importance of climate change and satellite observations associated with its study, how will NASA restore its commitment to Earth science: through increased budget? Organizational change? Relative priority? Provision of first rate technical and engineering support to NOAA?

ANSWER 9:

NASA remains committed to Earth science. Over the five year horizon of the FY 2010 budget request, the Earth Science budget is increased 15 percent on average over the FY 2009 request. NASA continues to operate the 15 satellites comprising the Earth Observing System and is working to complete, launch and operate the 5 satellites now in development. Beyond these, NASA is moving to implement a new set of Earth science satellites recommended in the NRC Decadal Survey report. The first of these, SMAP, has entered formulation, and the second, ICEsat-II, will enter formulation this year. Engineering studies are underway for the other Tier 1 Decadal Survey missions, and science and technology definition studies are being conducted for the Tier 2 missions. NASA also continues with an aggressive program of research using data from the missions now in orbit via a Research and Analysis program that is the largest in NASA's Science Mission Directorate, and the largest Earth science investment among the Federal agencies in the U.S. Climate Change Science Program. NASA and NOAA are working closely together to assure that Earth observations developed by NASA can be continued, where appropriate, by NOAA.

QUESTION 10:

Given the intermittent strength of NASA's commitment to Earth observations, can NASA be trusted to play a major role in Earth science research and the development of affordable new satellite measurement systems and to put consistent high priority on Earth science for the next 50 years consistent with the nature of the climate change issue?

ANSWER 10:

NASA stands ready to implement the Nation's space-based Earth science research priorities with the resources appropriated for these purposes. NASA has advanced scientific Earth observation from space from its beginnings as an Agency, and pioneered the interdisciplinary field of Earth System Science that led to today's capabilities to characterize, understand, and predict climate change. NASA plans to stay at the forefront of Earth science, knowing that the view from space is essential for both science and society.

The Science Mission Directorate (SMD) uses "confidence level" budgeting to budget for developmental projects. This technique employs probabilistic estimates and Monte Carlo simulations to determine the probability that planned work can be completed at various budget levels. The Directorate then budgets at the level that has a 70 percent probability of achieving the planned work on budget.

According to SMD, budgeting at the 70% level results in reserves as high as 35% to 40% for the developmental components of some projects. The reason for this is that the base cost estimates for individual work activities tend, when analyzed through the confidence level approach, to have a confidence level well below 70%.

QUESTION 11:

In response to a question of Aerospace Safety Advisory Panel regarding the "top five" goals for the next Administrator, you noted your list would include:

- Reestablish NASA-wide research for science, human exploration, robotic exploration, aeronautics, and technologies that have breakthrough potential;
- Reinvigorate a program of ambitious measurements of our home planet Earth, starting with a new class of Earth Explorer missions relevant to climate, hazards, and sustainability of human resources, to be done in collaboration with NOAA, USGS and other agencies; and
- Complete and utilize the ISS to its fullest potential and continue to develop innovative mechanisms for funding research with NASA partners and fellow agencies.

Please expand on each of these recommendations, focusing in particular, on what you believe are the appropriate enhancements and annual financial resources necessary to address these current deficiencies.

ANSWER 11:

NASA currently funds Research and Technology (R&T) within the Science, Aeronautics Research, Exploration Systems, and Space Operations Mission Directorates, and in the Cross Agency Support (CAS) appropriation. NASA continuously assesses the adequacy of the current level of activity in terms of resources allocated, technology discipline emphases, mission-driven needs, and the balance of near-term to far-term payoff.

The FY 2009 Omnibus Appropriation, FY 2009 Recovery Act, and the President's FY 2010 budget request have allowed NASA to establish a new line of mission activities within the Earth System Science Pathfinder Program, the Venture Class. A solicitation is to be released in the early summer of 2009 calling for multiple airborne investigations, with a second solicitation two years later for spaceborne instruments. Some of the funding will be used to initiate the first two highest-priority Decadal Survey missions, the Soil Moisture-Active/Passive (SMAP) mission to launch in late 2013/early 2014, and the ICESAT-2 mission to measure land ice dynamics, planned for launch about a year after SMAP. Along with expanded technology development activities for the Tier-2 and Tier-3 Decadal Survey missions funded in part by the Recover Act and in part by the President's FY 2010 budget request and outyear budget, early studies for these Tier-2/3 missions are being conducted at an accelerate rate. NASA is thus embarked on a sustained effort to reinvigorate, and expand, the vital constellation of Earth-observing satellites, which provide key global information on the environment and climate change.

The assembly of the International Space Station (ISS) will be completed in FY 2010 and NASA is committed to ensuring access to, and use of, its research facilities. NASA has secured partnerships with other U.S. government agencies and private firms to utilize a portion of the ISS as a National Laboratory, as designated by the NASA Authorization Act of 2005. NASA's plan for the ISS National Laboratory, the National Lab Report, was submitted to Congress in May 2007. Approximately 50 percent of planned U.S. utilization resources on ISS could be available for non-NASA use. Firm interest in ISS use has been demonstrated in the areas of education, human, plant and animal biotechnologies, aerospace technologies, and defense sciences research. NASA has signed Memoranda of Understanding (MOUs) for use of the ISS with the National Institutes of Health and the U.S. Department of Agriculture, and has pre-existing agreements with Department of Energy, Department of Defense and Veterans Affairs. In addition, NASA issued an announcement of "Opportunity for Use of the ISS by Non-Government Entities for R&D and Industrial Processing Purposes" on August 14, 2007, and entered into Space Act Agreements (SAA) with three private firms and a university in 2008. NASA will support all partnerships established under the national laboratory initiative to the extent allowable under current financial resources. NPR 7120.5D on Program and Project Management, adopted in March 2007, established independent Standing Review Boards (SRBs) to ensure an unbiased assessment of project progress and plans prior to entry into each phase. NPR 7120.5D also establishes Key Decision Points (KDPs), which standardize lifecycle phases across the Agency's space-flight portfolio. Cost and schedule data have been standardized and Monthly

Baseline Performance Reviews (BPR) were established in December 2007 as a basis for assessing project performance on an on-going basis.

QUESTION 12:

Given your experience with that effort and what you know about the current tri-party arrangement developing NPOESS, what is not working and why?

ANSWER 12:

I think the current state of NPOESS is a result of under-scoping of the initial set of requirements when they were put together, and demonstrates the need for strong government oversight over complex developments.

QUESTION 13:

What changes would you recommend in today's management structure?

ANSWER 13:

An effective management structure would be one that can bring to bear the kinds of tools that NASA is finding effective in managing complex programs. These include: standardized project lifecycles with gateways that assure technical readiness to proceed to subsequent phases; use of Standing Review Boards to provide focused assessments at Key Decision Points; renewed emphasis on tools such as Earned Value Management to measure progress; the institution of strengthened acquisition planning and monthly reviews; and, the use of joint cost and schedule confidence levels in decision making.

QUESTION 14:

If you were solely in charge of NPOESS, what would you do and why? For example, would you recommend any changes in the programmatic content, in the platform, in the management, or in the financing scheme?

ANSWER 14:

First, NPOESS managers should take a good look at the contract to determine if the government is getting what it expected in terms of data, and in terms of responsiveness. If not, they should make changes accordingly. Second, they should look at the requirements, because the system is still in development, and determine how much flexibility exists in meeting those requirements so that they can minimize the probability of a gap in critical weather data.

QUESTION 15:

You noted in the Aerospace Safety Advisory Report that "the US Air Force led NPOESS development delays represent a threat to NASA's science budget and

ability to meet the Earth Science Decadal goals established by the NRC and endorsed by Congress." Please elaborate on your statement for the Committee. How?

ANSWER 15:

There are two principal ways that NPOESS impacts NASA's budget. First, Climate sensors planned for NPOESS and assumed in the Earth Science Decadal Survey have been removed from NPOESS due to its budget difficulties. As a consequence, NASA and NOAA have worked to accommodate the Clouds and Earth's Radiant Energy System (CERES) and the Ozone Monitoring and Profiling Suite (OMPS-Limb) instruments on the NPOESS Preparatory Project (NPP) mission. While the primary responsibility for funding these instruments resides with NOAA, NASA has contributed resources to address this problem, including half of the cost for building and flying OMPS-Limb on NPP and an additional accommodation cost for CERES on NPP.

Second, NASA's NPP mission is a partnership between NASA, NOAA and Department of Defense, through the NPOESS Integrated Program Office (IPO). NPP is planned to provide ozone measurements, atmospheric and sea surface temperatures, humidity sounding, land and ocean biological productivity, and cloud and aerosol properties. NPP represents a continuation of global change observations following the Earth Observing System missions Terra and Aqua. NPP will also provide the NPOESS with risk-reduction demonstration and validation for critical NPOESS sensors, algorithms, and processing. Consistent with this arrangement, the NPOESS IPO is developing the Visible Infrared Imaging Radiometer Suite (VIIRS) for NPP. The VIIRS instrument has had substantial development challenges. Because of the VIIRS issues, NPP has experienced a significant delay of 33 months in the launch readiness date from April 2008 to January 2011, producing an additional NASA cost of about $4M per month.

An independent review of NPOESS led by Tom Young has found the system of operational polar orbiting satellites to be fragile and to pose substantial risks of gaps in data, particularly for long-term climate records. The robust continuity of the system depends, to a considerable extent, on the continued operations of EOS Terra and Aqua, each of which has exceeded its 5-year design life.

QUESTION 16:

Are either of these satellites showing signs of declining capability, and what is your assessment of the lifetime we can expect from these valuable missions?

ANSWER 16:

While Terra and Aqua have both exceeded their designed lifetimes, recent analyses show that Terra is expected to function at least through 2013, and possibly several years beyond that, and Aqua is expected to function through 2016, and possibly several years beyond that. This analysis considers the health of the spacecraft and supplies of propellant. With the exception of the Shortwave Infrared channel on ASTER (a Japan-supplied instrument on Terra), a Shortwave channel on one of the

two CERES instruments on Aqua, and the Humidity Sounder-Brazil (a Brazil-supplied instrument on Aqua), all science instruments continue to operate well.

BUDGET EXECUTION

Unobligated balances

Recognizing the scale of end-of-year carryover of unobligated balances over the years, the House and Senate Committees have proposed rescissions or reductions in program levels in NASA's annual budget requests. In response, NASA has endeavored to reduce its annual carryover of unobligated balances, as suggested in the following data:

FY 2004 carryover	$1,720,000,000
FY 2005 carryover	1,905,700,000
FY 2006 carryover	2,082,900,000
FY 2007 carryover	1,898,000,000
FY 2008 carryover	564,800,000

For fiscal years 2004 through 2007, carryover balances represented between 11 and thirteen percent of available appropriations. In fiscal year 2008, carryover balances as a percent of available appropriations dropped to just below 3 percent. Levels of end-of-year unobligated balances dropped 70 percent between 2007 and 2008.

QUESTION 17:

The Committee is aware that NASA Headquarters has impressed upon its program managers the timely obligation of their program funds. How have program managers changed their management of funds?

ANSWER 17:

NASA undertook an assessment of funds execution practices beginning in FY 2007, with a focus on ensuring that processes resulted in timely execution of the Agency's programs and projects. Management focused attention on the budget execution process, which included making more timely decisions to support execution of procurement actions, and also modified certain processes leading to earlier management decisions.

One component of this improvement effort was to identify the steps within the procurement cycle that could be taken while under a continuing resolution, when the final budget for a certain project is still unknown, thus enabling the Agency to be prepared to award grants, construction projects, and contracts, once the initial operating plan is completed. This has permitted activities to be awarded in the current fiscal year, which would otherwise have been delayed into the next fiscal year. With NASA's introduction of funds usage metrics into the Agency's monthly management councils, there has been enhanced emphasis on funds execution at the program and project levels at all Centers, which has improved overall performance.

In summary, with a combination of timelier decision-making, faster funds distribution, and better procurement planning resulting from active management process monitoring by NASA program managers, NASA has been able to improve obligation performance during FY 2008.

QUESTION 18:

I understand that NASA has set ambitious targets again for fiscal year 2009 – a 99% obligation rate. Would it encourage your program managers to maintain these improved levels if the Committee converted some of your accounts to one-year availability?

ANSWER 18:

NASA wants Agency program managers to be driven to execute timely decisions focused on accomplishing as much as possible within their limited budget authority. Changing to one-year NASA appropriations accounts would not support good management behavior. In fact, it could accomplish the opposite, given the Research and Development aspect of NASA's work, resulting in less efficient use of NASA's limited resources. Further, NASA depends upon its procurement and finance professionals to make progress in improving program and project management, a GAO high-risk initiative. To do this, a stable environment is of great importance. NASA has undergone three very complex appropriation account restructurings in the last five years. Each was a significant disruption, and resulted in diverted attention from program and project management to implement these complex restructurings. Without compelling improvement in the Agency budget execution, NASA management strongly believes that diverting finance and procurement from their focus on program and project management to undertake yet another appropriations account restructuring would be imprudent.

NASA strives to make effective use of the budget authority provided. The Agency makes progress in accomplishing its mission by putting funds to work as quickly as possible, so the Agency continues to emphasize the implementation of timely decisions needed to keep NASA projects on schedule. NASA also recognizes that, in a Research and Development environment, not everything goes as planned. Thus, NASA management believes that demanding 100 percent obligation of funds would result in an increased focus at the end of the fiscal year on maximizing spending, rather than on allocating funds to the highest technical priorities. NASA's average target for obligations of regular FY 2009 funding is 98 percent.

Converting any of NASA's appropriations accounts to one-year availability will not improve the effectiveness of obligations, as NASA managers are obligating as much as they can effectively use already with the current emphasis. As a result, an increase to 100 percent obligation could only be met with a focus on less-important, end-of-year spending to ensure no loss of funds.

More importantly, limiting NASA funds availability to one year would constrain funds execution for most of the funding to just the specific year due to bona fide

needs constraints. This would seriously impact the ability to execute the Agency's activities. Almost all of NASA's programmatic and institutional projects have activities that take longer than the end of the fiscal year to complete, and about 25 percent of the Agency's activities (excluding grants and construction) are not completed in the initial fiscal year. Under a one-year appropriation, these funds would expire before the work was performed, causing significant disruption to NASA projects and contracted workforce at all 10 Centers.

The exception to NASA obligation targets for FY 2009 will be obligation of Recovery Act funding. Because of the timing of enactment of the Act, the Agency did not have a typical budget cycle to formulate plans in advance of the appropriation. Although planning was expedited following passage of the Act, it did take time to integrate those plans with the regular FY 2009 appropriation, and NASA has not yet released funding while we complete consultation with the Committees on our initial FY 2009 Operating Plan.

QUESTION 19:

While program accounts face greater uncertainty associated with developmental and operational projects than the Cross Agency Support account, even in 2004 to 2007, your programs were obligating 80 to 90% of appropriations. Could we convert the program accounts to one-year funding, with a reasonable set-aside of two-year funding to deal with unexpected developments?

ANSWER 19:

NASA wants Agency program managers to be driven to execute timely decisions focused on accomplishing as much as possible within their limited budget authority. Changing to one-year NASA appropriations accounts would not support good management behavior. In fact, it could accomplish the opposite, given the Research and Development aspect of NASA's work, resulting in less efficient use of NASA's limited resources. Further, NASA depends upon its procurement and finance professionals to make progress in improving program and project management, a GAO high-risk initiative. To do this a stable environment is of great importance. NASA has undergone three very complex appropriation account restructurings in the last five years. Each was a significant disruption, and resulted in diverted attention from program and project management to implement these complex restructurings. Without compelling improvement in Agency budget execution, NASA management strongly believes that diverting finance and procurement from their focus on program and project management to undertake yet another appropriations account restructuring would be imprudent.

The period of availability is not driven by the timing of the obligation, but by the timing of the work to be performed. NASA requests the amount of budget authority that the Agency needs and can execute in the fiscal year of the request. NASA strives to obligate all of the funding authority provided each year, ensuring maximum progress on Agency programs, but the work often cannot be completed in the original fiscal year, thus the two-year availability is required.

There is no mechanism to be able to mix one-year and two-year funds on NASA projects on an ad hoc basis without replicating the entire work breakdown structure on every contract for each potential fund source. This would create an exceptional level of complexity that would most likely be unmanageable, requiring hugely expensive modifications to all NASA contracts, and adding no increase in budget execution efficiency. Even with NASA's current two-year authority, the Agency must remain vigilant to ensure that projects are executed within the bona fide needs rules.

QUESTION 20:

In the new budget structure, the Cross Agency Support (CAS) account is primarily an administrative, salaries and expenses account. Across the government, such accounts are often one-year accounts. Leaving aside the construction of facilities funding in the CAS account, is there any reason to leave this account as a two-year account?

ANSWER 20:

NASA wants Agency program managers to be driven to execute timely decisions focused on accomplishing as much as possible within their limited budget authority. Changing to one-year NASA appropriations accounts would not support good management behavior. In fact, it could accomplish the opposite, given the Research and Development aspect of NASA's work, resulting in less efficient use of NASA's limited resources. Further, NASA depends upon its procurement and finance professionals to make progress in improving program and project management, a GAO high-risk initiative. To do this a stable environment is of great importance. NASA has undergone three very complex appropriation account restructurings in the last five years. Each was a significant disruption, and resulted in diverted attention from program and project management to implement these complex restructurings. Without compelling improvement in Agency budget execution, NASA management strongly that diverting finance and procurement from their focus on program and project management to undertake yet another appropriations account restructuring would be imprudent.

CAS includes many more Agency activities than simply administrative functions and salaries. It includes all Agency-wide activities, including many that are Research and Development-related activities. It includes all Center support to programs and projects, as well as the engineering and science laboratories and test facilities, and must be flexible to meet the requirements of the programs and projects as they change throughout the fiscal year. CAS includes all Agency-wide safety, engineering, and independent software validation activities that must vary tasks as Research and Development projects change activities. CAS includes Research and Development facility management and innovative technology development that are dependent upon Research and Development project requirements to set and update their funding priorities. CAS also includes all Small Business Innovative Research/Small Business Technology Transfer Research funding and Congressional earmarks, which cannot always be fully obligated within one year due to the typical lateness in enactment of the annual appropriation.

Due to the complex nature of Research and Development activities, funding has always been two-years in duration for NASA Research and Development. In a Research and Development environment, requirements are not sufficiently known at the beginning of each fiscal year to contract for all services in advance. Under modern procurement practices, NASA typically contracts tasks for delivery of products based upon completed requirements; thus, tasks are incrementally added throughout the year as projects progress, and new requirements are identified and contracted for. Up to 28 percent of the CAS budget is contracted for activities that are not delivered until the second fiscal year. Converting CAS to a one-year appropriations account would cause very serious disruption to NASA's existing projects and contracted workforce.

QUESTION 21:

Both the Space Shuttle and the Station ended FY 2008 with large reserves. While I recognize that a prudent manager will maintain some reserve, but ending the year with so large a reserve seems excessive. Did we overfund the Space Station in 2008?

ANSWER 21:

International Space Station FY 2008 Performance:

FY 2008 reserves for ISS were estimated at $11M in December 2007. During the year, reserves were reduced as some threats were realized. However, reserves were also increased as the program realized savings and efficiencies, and content was reduced and deferred. As an example, ISS prime contract negotiations resulted in lower than estimated labor rates, which translated into additional program reserves. However, the most significant increases in reserves were the result of content deferrals or deletions related to the purchase of replacement spares for ISS. Program independent government cost estimates for cargo transportation and on-going negotiations with Russia for crew transportation and rescue indicated the budget set aside for ISS Crew Cargo Services in FY 2009 and FY 2010 would be inadequate. In balancing program risk, the program manager made the decision that the greatest risk to the program was inadequate funding for ISS Crew Cargo Services. The program manager deliberately deferred production of some spares, based on the latest on-orbit performance data available, in order to build reserves in the near term to ensure ISS would have enough available reserves to fully fund ISS Crew Cargo Services. In some cases, planned spares were deleted altogether. This decision increased long-term program risk, since any spares that are unavailable when needed will likely cost more, impacting on-orbit vehicle performance. However, not fully funding ISS Crew Cargo Services carried a much greater program risk. If spares are available, but spares and crew cannot be transported to the ISS, nothing has been solved.

The program is continuing to monitor the situation and evaluate on-orbit vehicle performance. Based on the current program reserve posture, it is likely that ISS will need to defer or delete additional spares in FY 2009 and beyond. However, if the

performance for some systems degrades, ISS may need to accelerate spares production or, in some cases, re-start production lines. These actions would likely result in additional program costs in the future or temporarily impact on-orbit performance. At the end of FY 2008, reserves were estimated at $199M, but these reserves were largely encumbered to cover the ISS Crew Cargo Services budget shortfall as well as spares and other content that was deferred into FY 2009. More than half-way through this fiscal year, FY 2009 reserves are currently estimated at $ 63M out of a $2B budget. NASA does not believe ISS was overfunded in FY 2008.

Space Shuttle Program (SSP) FY 2008 Performance:

FY 2008 reserves for SSP were estimated at $167M in December 2007. Reserves at the end of FY 2008 were $77M, and more than half-way through this fiscal year currently are estimated at $43M. During the year, reserves were reduced as some threats were realized as well as funding additional threats that were identified. However, reserves were also increased as the program realized efficiencies, synergies with the Constellation program utilizing the civil service workforce and content that was reduced or deferred for Transition and Retirement. In balancing program risk, the program made the decision that the greatest risk to the program was the production of flight hardware to support the remaining manifest. The SSP deferred some early work on Transition and Retirement activities until closer to the end of the program, when the timing of that work would be more appropriate. In some cases, planned Transition and Retirement work was also deleted when additional efficiencies or alternative solutions were developed. These decisions lowered the long-term program risk and allowed the program to continue to maintain the option to extend the SSP program life if it was directed to do so during FY 2008.

A significant portion of the FY 2008 reserves ($30M out of $77M) were required in order to maintain the ability not to preclude the extension of the program life beyond FY 2010. This included the costs for retaining additional content, especially the maintenance of Pad B, and to conduct additional mission processing for the STS-125 mission. The remaining FY 2008 reserves were encumbered to deal with the other remaining program threats. SSP was not overfunded in FY 2008. The SSP program is continuing to evaluate its ability to maintain the manifest and retain critical workforce. SSP is no longer protecting for life extension and, based on the current program reserve posture, the SSP has sufficient reserves to meet the current set of threats in FY 2009.

QUESTION 22:

The 2008 budget did not reflect explicit allowances for the Shuttle or Space Station. Where did the reserves come from?

ANSWER 22:

Please refer to the response to Question 21.

QUESTION 23:

It seems that cost overruns in Science projects are more common than not, even at the 70% confidence level. Why not budget at an 80% or 90% confidence level?

ANSWER 23:

The NASA Administrator directed use of the 70 percent Confidence Level (CL) as the best balance between tying up excessive funding in development projects, and providing sufficient funding that projects have a reasonable chance to complete development without cost or schedule overruns.

NASA has been budgeting to the 70 percent CL for only two years; since most development projects take four years or longer to complete development, NASA has not yet had any projects begun under the 70 percent CL concept complete development. While NASA believes this cost management strategy will be effective, it will be several more years before we can judge its impact.

QUESTION 24:

What would be the effect of budgeting at an 80% or 90% confidence level?

ANSWER 24:

Budgeting at 80 or 90 percent confidence levels would mean that more funds would be tied up in development projects, and fewer new projects could be initiated. Unobligated and uncosted carryover levels could rise, and science output could be reduced.

QUESTION 25:

The confidence level technique generally results in creation of a reserve within a project. Why are these reserves left with individual projects, rather than being pooled at the Theme or Mission level?

ANSWER 25:

Funds added to projects to bring their cost estimates from project-estimated levels to 70 percent confidence levels are held by Headquarters, not by the individual projects.

QUESTION 26:

Doesn't the current approach encourage project managers to spend down the reserves, whether they need to or not?

ANSWER 26:

No. If the current approach results in budget levels greater than requested by the project manager, the difference is held at Headquarters and is not controlled by the Project Manager, who must justify any request for these funds. This does not

fundamentally change the pre-existing dynamic between Project Managers and NASA Headquarters.

QUESTION 27:

Would pooling of reserves (and risks) provide greater control of reserves and permit a lower reserve level?

ANSWER 27:

Once NASA begins to see the results of the 70 percent confidence level budgeting approach in a few years, NASA may consider this.

QUESTION 28:

Please describe how the Constellation program employs reserves in its budget execution, given the differences between SOMD and SMD.

ANSWER 28:

As part of the budget formulation process, NASA maintains a limited amount of financial reserves commensurate with programmatic, technical, cost, and schedule risks. ese reserves are available for approved changes in project technical requirements, resolution of known threats, and for the unforeseen problems inevitable in most spaceflight Research and Development programs. It is important to note that reserves are not excess funds; rather, they are funds that are required to be fully expended to successfully complete the program. Reserves represent the difference between what the Program is expected to cost at a particular confidence and the projected cost of the management decisions that have been made to In general, reserve dollars are purposefully held at the Program level wh Program manager has a rigorous risk management process to mitigate threats and allocate reserves in a disciplined fashion.

As part of the FY 2009 budget, the Constellation Program moved a portion of its reserve funds to the Ares I and Orion projects to reduce risk in specific content areas. This allowed the projects to better manage those risks, using reserves as part of their overall risk mitigation approach and enabling them to more accurately identify their trade space.

Recoveries and accrual of costs

QUESTION 29:

I understand that NASA anticipates the recovery of some $700 million in fiscal year 2009, nearly double the level recovered last year. What accounts for this significant swing?

ANSWER 29:

NASA estimates recoveries before the fiscal year begins, and recoveries are historically estimated very conservatively to ensure a large enough range for operating margins, and so that updates and reapportionment for recoveries are not a frequent occurrence (it can take up to 30 days to increase a recovery apportionment). Actual recoveries are monitored throughout the year, and apportionments are adjusted higher only if NASA sees actual accrual data that approaches the recovery limit for any account. At the end of the year, unused recovery authority is cancelled.

For instance, in FY 2008, recoveries authority was $674.5M. Within these limits, actual recoveries in FY 2008 totaled only $306.3 M.

Similarly, for FY 2009, recoveries for the initial apportionment were requested at $711.7M for all accounts. For the first 6 months of FY 2009, recoveries of FY 2008 funds in FY 2009 total only $124.9M, which is about half of the rate used in FY 2008.

Clearly, NASA's previous estimates for recoveries have been too high, and will be adjusted downward in the future.

QUESTION 30:

Another way to look at NASA's improved obligation rate is to determine if such actions resulted in more work being accomplished. However, an examination of NASA's accrual of costs and outlays (which are a good measure of work accomplished because they record the point in time when the work is finished) reveals that they grew only slightly faster than the increase in new budget authority and lagged significantly behind the increase in obligations (when constellation is excluded). What accounts for this lag – or does it suggest that the improved rate of obligation is an artificial effort to improve obligations in response to Congressional concern?

ANSWER 30:

The question suggests an incorrect understanding of the Agency's reports for FY 2008. In FY 2008, NASA outlay rates as a percentage of budget authority were increased for almost every project. The largest increase, as expected and communicated to the Congress in prior years, was for Exploration Systems, as it transitioned to development. On a dollar basis, NASA outlaid $2B more in FY 2008 than it did in FY 2007, even as the budget increased by only $1.3B. This was an increase of $1.3B in the current year fund outlays, and $0.7B in prior year fund outlays. NASA's increasing focus on making decisions to put funds to work is evident in both the higher obligation rates, and also in higher accruals and outlays.

QUESTION 31:

Doesn't the significant swing in recoveries estimates also support the notion that obligations are being booked but not costed?

ANSWER 31:

As stated above, actual recoveries of FY 2008 funds in the first 6 months of FY 2009 is $124.9M. This amount represents only 0.7 percent of NASA FY 2008 budget authority. Furthermore, this amount represents half of the rate seen in the previous year. FY 2007 funds recovered in the first six months of FY 2008 were $222.7M, or were 1.4% of FY 2007 NASA budget authority. This would indicate that funds were even more effectively put to work in FY 2008 than in the prior year.

Clearly, NASA's previous estimates for recoveries have been too high, and will be adjusted downward in the future.

APPROPRIATIONS STRUCTURE FOR CONSTRUCTION

QUESTION 32:

Why does NASA request and budget funding for construction projects required for specific programs in the respective mission directorates and not in a consolidated account?

ANSWER 32:

Program-funded construction projects primarily provide new capabilities specifically required by the funding program. Mission Directorates prioritize these construction projects along with the other technical requirements of the programs, the funding profile, and the program schedule. Mission Directorates determine whether specific construction projects are the best use of program funds, whether or not the capability provided by the construction project is essential to the success of the program, and whether or not the construction schedule will provide the required capability in time to meet program needs. This process of evaluating construction projects directly links program-funded construction projects to program needs and resources.

QUESTION 33:

What does NASA view as the benefits of budgeting of mission specific construction activities within the respective mission directorate?

ANSWER 33:

The prioritization required to decide to invest in a new programmatic facility is different than the prioritization of repair across the Agency institutional facilities. It is difficult to rate the two categories on a similar scale for making funding decisions. Since program construction is paid for from the program budgets, the benefiting program must prioritize the construction projects against the needs and requirements for the other elements of its program. If program construction were funded by an Agency central account, it would be "free" to the program manager, causing the program to propose and argue for more expensive solutions to the program's needs than might otherwise be found.

With program-funded construction, programs are required to cover any cost overruns, especially those caused by changes in the program requirements as the program matures through its life-cycle. This helps instill stronger requirements discipline from the program, than if there were no cost to the program to modify requirements. Institutional construction rarely modifies requirements after awarding the project.

With programs funding all of their construction requirements, program managers have a very strong incentive to find alternatives to building new facilities, examining capabilities at all of NASA's Centers, as well as outside the Agency, assessing modifications to existing facilities instead of building new capabilities, or even conducting verification through alternative capabilities that may not require major facilities.

QUESTION 34:

A review by the Committee revealed that while NASA has a comprehensive prioritization process for institutional construction of facilities, there is no comparable agency-wide process for prioritizing programmatic construction of facilities which are generated by program managers and funded by programs. Without a consistent agency-wide prioritization process, how does Headquarters assure that the highest priority projects are funded or that the scope of the project that is funded is the most efficient and effective?

ANSWER 34:

Prior to the FY 2011 program, program-funded projects were reviewed and approved by the Mission Directorate responsible for the technical requirement and funding. An in depth cross agency review of these projects was not completed. Beginning with the FY 2011 program, the Agency's Facilities Program Board will review and approve program-funded facilities projects. This board will provide an executive-level review, representing all of NASA's various mission interests. The Board is charged with managing the Agency's long-term facilities strategy.

Program-funded projects are prioritized to meet program technical and schedule requirements so that the facility will be ready to meet specific program needs at the time it is needed. NASA's regulation governing program management, NPR 7120.5D, NASA Space Flight Program and Project Management Requirements, requires programs to complete a business case analysis and select the project alternative that is the most effective solution to meeting requirements when a "brick and mortar" solution is anticipated. Business case analyses that follow the NASA Business Case Guide for Facilities Projects comply with OMB Circular A-11 requirements for economic analyses. Currently, NASA Mission Directorates are required to comply with NPR 7120.5D and the NASA Business Case Guide for Facilities Projects. Starting with FY 2011, program-funded projects will receive the additional review and approval of the Facilities Program Board.

QUESTION 35:

What would be the practical impact if the Committee were to consolidate all construction activates into a single account? What benefits or impediments to this approach can you foresee?

ANSWER 35:

Consolidating all NASA construction activities into a single account has three major drawbacks:

1) As noted in the response to Question 33, by making construction funds free to program, it would remove any incentive to find lower-cost solutions to technical problems, and reduces requirements discipline by no longer holding program managers responsible for cost overruns.
2) Institutional construction requirements would receive lower priority if forced to compete with programs. Accomplishing the programmatic mission always has the priority when working with external stakeholders, as well as internal to NASA. Over time, the deterioration in institutional facility investments would result in an increasingly larger backlog in deferred maintenance.
3) Decisions on requirements for programmatic construction are tied to the development cycle of the program hardware, and tend to occur much later than the prioritization decisions on institutional investment. This mismatch in timing of the decisions makes it very difficult to compare priorities between the programmatic and institutional construction.

QUESTION 36:

Would this approach not provide greater clarity to NASA's stakeholders and Congress?

ANSWER 36:

NASA believes that consolidating all construction activities into a single account would result in important information regarding the full cost of programs being lost. Programmatic construction has been a significant component of many of the programs, especially in human spaceflight.

QUESTION 37:

Falling short of consolidation all construction activities within a single account, a specific amount of funds for construction could be set aside with an extended period of availability within the appropriations account for each mission directorate. How would this approach differ from NASA's current execution of construction activities within each of the mission directorates and the cross agency support appropriation?

ANSWER 37:

While this approach would maintain the NASA-recommended separate approaches to programmatic and institutional construction, and would reflect the full cost of the construction activities within the program itself, it would eliminate any flexibility for

the program to identify late construction requirements. While rarely used for institutional construction, it is not uncommon for programs to identify new requirements for execution-year construction, either due to failures that have occurred since the budget submittal, or as the spacecraft design matures as it progresses through its design cycle. If the program is required to wait until the next budget cycle, it could cause up to a 12-month delay in the program.

ENHANCED USE LEASE AUTHORITY

NASA's enhanced use lease (EUL) authority was first enacted in 2003, and allowed NASA to enter into a demonstration project for EULs at two NASA centers. Ames Research Center and Kennedy Space Center were selected as the two demonstration centers. In 2007 and again in 2008, NASA's EUL authority was amended to extend EUL authority to allow NASA to use its authority at all its centers, limited the consideration NASA may receive to cash only (no-in kind consideration after December 2008), and added a sunset date of ten years (December 2017). These provisions of law became effective on December 31, 2008. The NASA Authorization Act of 2008 clarified how the funds should be expended, established percentages of the "net" revenue that were to remain at the centers (65 percent), with 35 percent being placed in an agency capital asset account.

NASA received $6.5 million in 2007 from EUL receipts; $9.8 million in 2008; a projected $15.7 million in 2009 and $15.7 million in 2010. A projected $76.6 million is projected to be collected over the 5-year budget horizon from just Ames and Kennedy.

The FY 2009 omnibus placed a limitation on EUL expenditures of $9,000,000. In mid-February, NASA headquarters placed a moratorium on all new EUL agreements.

QUESTION 38:

Please describe the effect of the Committee's action on placing an obligation limitation of $9,000,000 on the expenditure of EUL revenue in FY 2009.

ANSWER 38:

The limitations on obligations of expenditure of EUL revenue in FY 2009 will not have an impact on the NASA Centers. After careful review, it was determined that the NASA original estimates provided to Congressional staff for EUL revenue mistakenly included reimbursable services for Federal tenants. Since Federal tenants do not pay rent, and their reimbursable services are not procured through EUL authorities, they should not have been included in the original estimates.

With this correction, total estimated revenues from EUL decrease to: $3.3M for FY 2007; $5.1M for FY 2008; $6.2M for FY 2009 and $7.1M for FY 2010. Since FY 2009 revenues are less than $9M, they are not constrained by the limitation.

QUESTION 39:

NASA's EUL desk guidance provides direction on what costs can be considered as full costs of administering the leases. To what extent, if at all, does the Facilities Engineering and Real Property Division or the Office of Program and Institutional Integration review and audit these costs as being appropriate and conforming to the guidance of the Chief Financial Officer?

ANSWER 39:

Starting with the FY 2010 budget cycle, the Office of Program and Institutional Integration reviews revenue and cost projections as part of the Agency budget process. The Facilities Engineering and Real Property Division does not review nor audit these costs, but the division does review each lease agreement for conformity with Agency policies. In addition, each Center has an office responsible for carrying out the requirements for appropriate use of resources in accordance with guidance established by the NASA Chief Financial Officer.

QUESTION 40:

Do you believe it is appropriate that Ames is charging the costs of its entire developmental office against its EUL receipts? Should it not only charge the daily costs of managing the *existing* leases?

ANSWER 40:

The Facilities Engineering and Real Property Division and the Office of the Chief Financial Officer worked together with the support of the Office of General Counsel in the development of guidance to the Centers on the expenditure of funds in support of EUL. NASA Policy Requirements state that funds may be utilized to cover lease management and administration charges which may include, but not be limited to, personnel and other expenses incurred by the Center for administrative, legal, and other services for EUL support activities (i.e., contract support, contract management, financial management). These lease management and administration charges are a recurring charge and a part of the full cost of the lease.

Even though NASA's civil service account managers oversee day to day management of the existing leases, NASA has elected not to charge any of its civil service management activities to the EUL income, and to leave them as part of the Center Management and operations costs.

QUESTION 41:

How was Headquarters unaware that Ames was proceeding in this way?

ANSWER 41:

NASA Headquarters was aware that Ames was planning to use EUL receipts to fund personnel in and actions by the development office. NASA will release new policy by FY 2010 which will prohibit usage of EUL receipts for civil servant salaries.

QUESTION 42:

What were the determining factors in NASA's decision to place a moratorium on all new EUL agreements, effective February 17, 2009?

ANSWER 42:

The moratorium was put in place to provide time for the Agency to review its facility and financial policies relevant to EUL before expanding EUL across all the Agency's Centers. This activity followed demonstration projects at two Centers since FY 2003, providing a prudent opportunity to review Agency policies prior to expanding implementation to additional Centers. Agency management wanted to ensure that all the lessons learned from prior activities would be incorporated in Agency policies and procedures. Implementing the moratorium provided time for those study efforts to be completed, analysis conducted, and recommendations and revisions to the Agency policies and procedures relating to EUL usage across the Agency to be implemented.

QUESTION 43:

The desk guidance states, "As part of the yearly Planning, Programming, Budgeting and Execution process, Centers are to provide the Office of Program and Institutional Integration (OPII) with their projection of EUL revenue and a proposed spend plan for spending the EUL revenue.....Realistic *forecasting of anticipated revenues and expenditures* (emphasis added) is critical in submission of the NASA budgeting and for reports to Congress." Why could this forecast and proposed expenditure of receipt collections not be submitted to Congress for annual review and approval as part of NASA's annual appropriation?

ANSWER 43:

Centers annually submit their projections of EUL revenue and a proposed investment plan for EUL revenue to NASA Headquarters. This information is used in the development of the budget that is submitted to Congress. If specific repair projects are not known at the time of the budget submission, NASA will submit details for the specific projects with the initial operating plan.

QUESTION 44:

I would like to call your attention to the model of the General Services Administration, which deposits rent and other receipts from its federal tenants into the Federal Buildings Fund and every year Congress provides authority to spend those funds. Why would this model not be instructive for NASA's enhanced use lease receipts?

ANSWER 44:

NASA's process for receipt and expenditure of funds, under the expanded EUL authority is similar to the GSA model. Under the expanded EUL authority, NASA will deposit the net proceeds into an Agency capital asset account managed by Headquarters. The funds will then be distributed back to the Center (65 percent of the revenue) for use on projects submitted by the Center and approved by Headquarters. Approved projects will be submitted to as part of the normal NASA budget process and in line with the authorities for Construction of Facilities projects at NASA.

INDEPENDENT VERIFICATION AND VALIDATION

NASA maintains an internal, independent verification and validation process that it applies to its mission critical software. This assurance process is performed in addition to, and not in lieu of, software design and project verification and validation. This process is independent of the project design team and seeks to answer several questions: (1) did the design team miss anything? (2) did the design team design the right thing? and (3) does the design system work? Today, the IV&V facility supports dozen of projects across the mission directorates. Each year, however, program coverage is restricted as insufficient funds have been requested each year by NASA, significantly increasing agency risk related to safety and mission critical software rework.

QUESTION 45:

IV&V's customers have identified the "value added" of IV&V work, noting, "IV&V has unequivocally become some of the best systems engineers on the Program. Their depth of knowledge contributes continually." "IV&V discovers issues that no one else is capable of discovering." "Your IV&V staff demonstrates an outstanding ability to know when to bring forward issues to be resolved." Mr. Scolese, do you share the same opinions as those I have just reiterated and that IV&V adds valuable review of NASA's systems, and accordingly contributes costs savings and to mission success?

ANSWER 45:

Yes, the Agency believes that IV&V adds a valuable review to the software development effort for critical software capabilities in NASA projects, and funds IV&V as an Agency-level program. NASA agrees that an independent third party review of critical software reduces the opportunity for that software to adversely impact safety or mission success while enabling cost savings.

QUESTION 46:

If you agree that IV&V provides value and reduces risks and costs in the projects that it reviews, does it not follow reason to conclude that if such activities are

curtailed or limited, NASA's safety and mission critical software are placed at greater risk?

ANSWER 46:

The IV&V process provides an additional, independent assurance of safety/mission-critical software capabilities, in part by identifying issues with those capabilities that could adversely impact safety or mission success. The IV&V program is an additional means for assessing and managing software risks, but the level of IV&V that NASA has been funding is enough to cover human safety critical software capabilities, and much of the mission success critical software capabilities. Agency management has to balance the greater need for funds to execute missions against the need for funds to provide IV&V for the most critical software capabilities. If the IV&V budget was to be curtailed, NASA's response would be to implement risk-informed reductions of IV&V services for mission critical/mission success capabilities, and of course, this would necessarily reduce the opportunity for mitigating the unknown residual risk for affected projects. But the IV&V budget would have to be cut significantly before it would impact critical human safety services, and, even then, if the IV&V services were deemed necessary for a program's human safety, NASA would fund the IV&V services out of the program's budget.

QUESTION 47:

IV&V has continually sought funds to allow broader coverage of mission and safety critical software for each project selected for IV&V and to cover the cost increase of the Agency security support contract. Why then has NASA headquarters consistently constrained the IV&V's annual budgetary requests? Is not the budget the most obvious statement of management expectations and priorities?

ANSWER 47:

NASA does give full consideration to the IV&V Program's benefits and requirements during the annual budget formulation process. The Agency supports the IV&V Program. In FY 2008, the Agency allocated incremental budgetary resources to support supplemental IV&V needs identified by the senior level IV&V Advisory Board. The Agency realigned available budgetary resources to support the phase-in of the Agency-wide security contract at the IV&V Facility in FY 2009. Executive Management seeks to provide the resources needed to sustain top-quality professional capabilities at the IV&V Facility. NASA seeks to allocate resources for the needs of IV&V, balanced with the allocation of resources to adequately support our principal missions and mandates. NASA will continue to evaluate the budget requirements for IV&V on an annual basis.

While the budget may be the most quantifiable statement of management's expectations and priorities, the Agency also expresses expectations and priorities through its strategic plan and the execution of its policies, including those that cover software engineering and the use of IV&V.

QUESTION 48:

The budget for IV&V of software has remained fairly constant over the last several years, augmented mostly by Congress. However, Mr. Scolese, would you agree that the requirements for IV&V are projected to increase significantly due to Constellation ramping up while existing programs (Shuttle, ISS and nominal science missions) continue?

ANSWER 48:

Please also refer to response to Question 47. The IV&V Program does not plan work by mission or project, but instead by safety/mission critical capabilities of the software within that project. As a result, the Agency program/project mission model is, at best, only a rough predictor of the amount of future IV&V work. Also, given that the Constellation program is still early in its development, (2) the Space Shuttle Program is ramping down, and (3) the magnitude of the software changes envisioned by the ISS program continues to decline by about 10 percent per year in 2011 and 2012, it is more effective to review and assign IV&V requirements annually, using a risk-based assessment process, than to estimate the level of IV&V needs based on fixed, out-year budget predictions or mission models.

QUESTION 49:

Do you also anticipate the requirements for IV&V will increase beyond planned rates as additional investments are made in earth observing systems that were not projected in your FY 2009 budget?

ANSWER 49:

At this time, it is too early to forecast how NASA's increased emphasis on Earth Observation systems will impact the overall NASA mission profile or the amount of safety/mission critical software within those systems (and in turn the level of IV&V's tasks). However, the senior level IV&V Advisory Board reviews the IV&V Program's scope at least annually and will identify increases as potential critical software IV&V needs are identified in these new systems.

QUESTION 50:

What is your plan to fully obligate in this fiscal year the $45 million provided in the fiscal year 2009 appropriation? Why are any funds anticipated to be carried over?

ANSWER 50:

The Agency plans to obligate all but a fraction of the $45M by the end of FY 2009. The largest portion of the available budgetary resources will be obligated on the prime IV&V contracts. $5.0M will be obligated in conformance with the FY 2009 appropriation's language regarding small businesses.

DECADAL SURVEY MISSIONS

The FY 2009 omnibus appropriations provided $150 million, an increase of $50 million above the request to accelerate the development of Earth decadal survey missions. In addition, the Recovery Act provided $400 million for the Science Mission Directorate, of which an amount to be determined was to be available for Earth science missions. These funds are intended to achieve a level of system development more consistent with the National Academy of Sciences' recommendations.

QUESTION 51:

How much of the $400 million provided for Science in the Recovery Act will be applied to accelerating Earth decadal missions, and how did NASA come to recommend this level of investment?

ANSWER 51:

Recovery Act funds will be used, to the extent possible, to accelerate the implementation of the recommendations of the Decadal Survey, which includes completing several missions currently in development at NASA as well as beginning a new set of missions and sensors. This includes rapid deployment of a suite of Earth-observing satellites to leverage existing missions and provide cutting-edge measurements of key parameters relevant to climate change while preserving the balance between all of the elements of the overall NASA Earth Science Program, including the spaceflight missions, technology development, research and analysis, and science applications.

Consistent with the recommendations of the 2005 Interim Report and 2007 Decadal Survey, NASA will use Recovery Act funds for the following mission classes:

- Continue the remaining Earth Science foundation missions, including a Thermal Infrared Sensor (TIRS), now under development to lay the groundwork for the new Decadal Survey missions, ($120.2M).
- Accelerate or begin development of Tier I Decadal Survey missions and initiate studies for Tier II missions ($75.4M).
- Initiate funding for Venture-class missions ($21M)

An additional $108.4M of Recovery Act funds will be applied to Earth Science activities necessary to ensure a robust and balanced program, also emphasized in the recommendations of the Decadal Survey, including airborne science, technology, modeling, and Applied Sciences. The remaining, $75M was provided to JWST in 2009 to be repaid to Earth Science in FY 2010-2012, per the FY 2009 Operating Plan.

QUESTION 52:

How does this level compare to what the Administration is seeking for Earth decadal missions in FY 2010?

ANSWER 52:

The FY 2010 request took into account the amount of funds appropriated for Earth science activities in the 2009 regular appropriations and the Recovery Act and outyear projections, providing the amount of funding the agency could most effectively spend on the recommended new missions in 2010. The FY 2010 budget request includes $110M for Tier 1 Decadal Survey missions ($70M for SMAP and $39.2 for ICESat-II). Also, the request includes $46M for Earth science technology, much of which is invested in technologies needed for the Tier II Decadal Survey missions. Finally, the FY 2010 request includes $13M for Venture-class missions. Page SCI-23 in the NASA FY 2010 budget document shows the breakdown of funding for the foundation missions currently in development.

QUESTION 53:

The Earth Decadal Survey recommended the advancement of four missions for the time period 2010 through 2013: CLARREO, SMAP, ICESat-II and DESDynI. In total, at the time of the survey these missions were estimated to cost $1.5B. We received testimony that these costs estimates have risen by as much as $700M and are delayed until 2014 to 2016. Can you tell the Committee what the cost growth has been by mission?

ANSWER 53:

There has been no cost baseline established, and thus no cost growth; what we have at this early stage is a difference in cost estimates. The NRC estimates included in the Decadal Survey were made in the early concept stage, before any substantial engineering analysis or formal independent cost estimates could be generated. The NASA process to develop a formal life-cycle cost (LCC) estimate follows a mission Preliminary Design Review, and includes 70 percent confidence-level considerations and independent cost and schedule estimates to establish a firm baseline by Key Decision Point C. For both the SMAP and ICESat-II missions, the NRC estimated the mission costs to be $300M. SMAP is currently in formulation and ICESat-II is in pre-formulation. The NRC estimated the NASA portion of CLARREO to be $200M, and DESDynI to be $700M. Both of these missions are currently being funded as engineering studies.

In testimony before this Subcommittee, Dr. Berrien Moore stated that missions selected for Tier 1 were chosen because they relied on well-established technology. The strategy behind the study's recommended sequence of missions was to reduce cost and risk through technology development of the Tier 2 missions during the implementation of the Tier 1 missions.

QUESTION 54:

Why have the costs of the Tier 1 missions grown and their schedules slipped?

ANSWER 54:

No formal baseline has yet been established to serve as a baseline from which to measure cost and schedule performance. Upon receipt of the Decadal Survey report, NASA developed initial "rough" life-cycle cost (LCC) estimates as a reliability check on the Decadal Survey "rough" LCC estimates. For only one Decadal Survey mission, Snow and Cold Land Processes (SCLP), was the NASA LCC less than the Decadal Survey LCC. The range of individual differences between NASA and Decadal Survey LCCs was very large, ranging from -1 percent (SCLP) to +125 percent (Geostationary Coastal and Air Pollution Events (GEO-CAPE). This statistical feature is not surprising, considering the difference in available resources, including time, and basic assumptions that the Decadal Survey and NASA used to estimate each "rough" LCC. For example, the Decadal Survey assumed the availability of low cost, medium-class launch vehicles, but there is great uncertainty in the cost and availability of these launch vehicles. This makes a comparison of Decadal Survey and NASA estimated LCCs difficult. Developing a credible LCC at this early stage is a challenge because it must include all design, development, verification, production, operation and maintenance, and disposal costs. The NASA process to develop a formal LCC includes 70 percent confidence-level considerations and independent cost and schedule estimates to establish a more reliable baseline by Key Decision Point C.

At the present time, more refined, estimated costs and launch readiness dates have been developed and will continue to be refined for Decadal Survey Tier 1 missions. But it is important to note that NASA does not establish an official cost baseline and launch readiness date until the completion of the Phase B design and technology studies, which frequently occurs 1-2 years after a mission begins Phase A formulation studies. The SMAP mission began Phase A in FY 2009 and the ICESat II mission will begin Phase A no later than early FY 2010. For planning purposes, the preliminary working-level launch readiness dates for SMAP and ICEsat II are late 2013/early 2014 and late 2014/early 2015, respectively.

QUESTION 55:

Please describe NASA's technology work on the Tier 2 missions and tell us how it will lead to better cost and schedule control.

ANSWER 55:

NASA is funding over 20 investments in technology development that support the Tier II Earth science Decadal Survey missions. These include advanced remote sensing instrument developments such as lidars to measure carbon dioxide (for ASCENDS); thermal spectrometers to measure minerals and water resources and an interferometric synthetic aperture radar to measure ocean topography (for SWOT), a radiometer to measure carbon monoxide, a Fourier transform spectrometer to measure trace gases, and a polarimetric aerosol imager (for GEO-CAPE), a cloud profiling radar, and an ocean color radiometer (for ACE). There are also many component technologies funded, such as lightweight, deployable telescopes and antennas, optical receivers and detectors, and radio frequency receivers.

By investing early, it is possible to raise the readiness level of technologies prior to the start of a mission, which lowers the risk of problems during development. This then lowers the probability of schedule slips that result in increased project costs, because a technology problem on any one item in a complex project slows the whole project, leading to increased costs in all areas of the project as they wait for the problem to be resolved.

QUESTION 56:

Dr. Moore and Dr. Anthes testified before our Committee that it was their belief that external independent cost reviews and project evaluations conducted by non-advocates were necessary before continuing. Do you share their opinion, and if so, who would be appropriate for conducting those reviews?

ANSWER 56:

Yes. NASA project formulation processes require Non-Advocate Reviews and multiple independent cost estimates as part of the Mission Confirmation Review process before the Agency commits to development of any space flight mission. NASA uses scientific and technical experts from outside the Agency, and from inside the Agency, but outside the subject project, and also outside organizations such as the Aerospace Corporation (a USAF Federally Funded Research and Development Center).

QUESTION 57:

Are the technologies necessary for successful and cost-effective missions more mature for a particular mission recommended in the 2010 through 2013 time period so as to change the relative order recommended by the decadal survey, and if so, how?

ANSWER 57:

NASA considered technology readiness along with other factors in choosing SMAP to proceed first, followed closely by ICESat-II. Engineering analyses, including technology readiness, are still in progress to determine the order of the next two missions, DESDynI and CLARREO.

QUESTION 58:

Given the cost growth, is NASA considering asking the National Academies to reexamine the priorities that the decadal survey had established?

ANSWER 58:

NASA believes the Decadal Survey recommendations are adequate to guide formulation and development of the Tier I missions, initiation of the Venture class missions, and science and engineering studies of the Tier II missions.

QUESTION 59:

Given our experience in several satellite development programs (Glory, VIIRS and NPOESS, for example), in your opinion, is there a tipping point at which the contractor community cannot absorb additional resources for the timely development and delivery of climate sensors and hardware, and if so, when will we reach that point?

ANSWER 59:

There is a limit to the capacity of the national industrial base—both the NASA Centers and the aerospace contractors—to take on new missions in parallel. However, NASA believes that the slate of missions identified in the FY 2010 budget request is executable within that capacity. The FY 2010 request took into account the amount of funds appropriated for Earth science activities in the 2009 regular appropriations and the Recovery Act as well as outyear projections, providing the amount of funding the agency could most effectively spend on its proposed set of missions in 2010.

LAUNCH PLATFORMS AND PAYLOADS

The launch failure of the Orbiting Carbon Observatory (OCO) will delay improved understanding of the sources and sinks of carbon dioxide – the principal anthropogenic greenhouse gas. Research mission formulations involving multiple instruments traditionally group instruments onto spacecraft sized to launch capabilities. I understand that you were instrumental in changing the design of the Earth Observing System from a single large platform to the three-satellite Terra, Aqua, Aura configuration during a meeting with a review committee.

QUESTION 60:

In general, should multi-instrument missions be flown on more, smaller satellites in order to better support reliable delivery of data for research and operational use and to lower the costs of replacing satellites due to launch and early mission failures?

ANSWER 60:

These decisions are the result of analyses that take into account the cost of spacecraft platforms, the cost and reliability of launch vehicles in the relevant classes, and the requirements for simultaneity or near-simultaneity of measurements. In fact, the trend of recently developed missions vis-à-vis the EOS missions of 5-10 years ago has been in the direction of smaller payload complements on each spacecraft. This has been enabled, in part, by the successful demonstration of "formation flying" of spacecraft, as demonstrated with the "A-train," comprising Aqua, CALIPSO, Cloudsat, France's PARASOL mission, and soon, NASA's Glory mission. One factor that is rising in significance is the availability of medium-class launch vehicles at prices mission planners have come to expect. A movement toward larger launch vehicles, all other factors being equal, would tend in the direction of multiple instrument spacecraft or co-manifested spacecraft. The success of new commercial

entrants into the medium-class launch vehicle market would be a welcome development, and one that is being facilitated for other reasons by NASA's COTS program. As a gap-filler until that time, NASA is working with the Department of Defense on the availability of the Minotaur family of launch vehicles on a case-by-cased basis.

QUESTION 61:

How robust and reliable is the US fleet of rockets to launch research and operational satellite missions?

ANSWER 61:

The U.S. fleet of expendable launch vehicles is very robust and reliable. Of the vehicles currently utilized by NASA, the 1990-2009 flight history is as follows:

	Total Flights	Successes	Failures	Success Rate
Pegasus XL	30	27	3	90.0%
Taurus	8	6	2	75.0%
Falcon-1	4	1	3	25.0%
Delta II	139	137	2	98.6%
Delta IV	9	9	0	100.0%
Atlas V	12	12	0	100.0%

This tally includes all users, not just NASA. Of the launch failures listed, the following have been NASA missions: one Pegasus XL (HETE/SAC-B in 1996); and one Taurus (the OCO mission in 2009). The other Taurus launch failure, in July 2001, was a non-NASA mission. Its primary payload was a commercial satellite, but NASA's QuikTOMS spacecraft was being carried as a secondary payload.

QUESTION 62:

Are the capabilities of proven, reliable launch vehicles conducive to the cost-effective implementation of the full range of research payloads, particularly those of the less expensive missions?

ANSWER 62:

While existing launch vehicles support a range of research payloads, including those which are part of less expensive missions, there is a limited commercial market for small- and medium-class launchers, and the medium-class Delta II line is being discontinued. This leaves NASA Science missions without a proven, reliable source of medium-class launch vehicles at traditional prices. New commercial launch vehicles in this class are in development or have recently been flown, supported by NASA's Commercial Orbital Transportation Services program; however, these have not yet come to maturity. NASA is working with the Department of Defense on the use of Minotaur launch vehicles as a gap-filler on a case-by-case basis.

QUESTION 63:

Should the United States Government and the European Space Agency explore the potential of reciprocal back-up of launch vehicles so that a launch failure would not dictate prolonged stand-downs for all subsequent missions while the failure is reviewed and systems fixed?

ANSWER 63:

As stated in the U.S. National Space Policy authorized by the President on August 31, 2006: "The United States is committed to encouraging and facilitating a growing and entrepreneurial U.S. commercial space sector. Toward that end, the United States Government will use U.S. commercial space capabilities to the maximum practical extent, consistent with national security."

Even were this not the case, there would be practical difficulties with ensuring a European back-up capability for U.S. missions. Payloads are designed and tested for specific launch vehicles, which have different mass and volumetric constraints, and create different vibrational environments during ascent. In addition, U.S. and European launch sites have different handling and integration processes that would require that parallel procedures and schedule milestones be developed. The cost of making a science payload compatible with different launchers and launch sites would be prohibitive for the relatively small advantage of gaining some redundancy in the system. In addition, the need to have a back-up launcher available would also impose a manifesting burden on the redundant launch provider, who would potentially have to hold open a slot on the manifest for a mission that might never require the back-up capability.

ORBITING CARBON OBSERVATORY (OCO)

On February 24, a rocket failure sent NASA's Orbiting Carbon Observatory (OCO) into the ocean off the coast of Antarctica, depriving climate scientists of measurements meant to bridge data collected by a seven-year-old satellite and a more advanced spacecraft not expected to launch for at least several years. This satellite was to map the Earth's carbon dioxide concentrations in unprecedented detail.

QUESTION 64:

Please describe for the Committee the breadth of data that was to be collected by the OCO and how critical is this data gap for the study of climate change and for treaty enforcement?

ANSWER 64:

The global coverage, spatial resolution, and accuracy of OCO measurements would have provided a basis to characterize and monitor the geographic distribution of CO2 sources and sinks and quantify their variability. Based on these measurements, scientists should have been able to map the natural and man-made processes that

regulate the exchange of CO2 between the Earth's surface and the atmosphere on both regional and continental scales. Further improvements in the understanding of these processes would enable more reliable forecasts in the measure of atmospheric CO2 column abundance and the impact of these changes on the Earth's climate.

The OCO mission would have contributed to a large number of additional scientific investigations that are related to the global carbon cycle. Those studies included:

- The dynamics of ocean carbon exchange;
- The seasonal dynamics of northern hemisphere terrestrial ecosystems in Eurasia and North America;
- The exchange of carbon between the atmosphere and tropical ecosystems due to plant growth, respiration, and fires;
- The movement of fossil fuel plumes across North America, Europe, and Asia;
- The effect of weather fronts, storms, and hurricanes on the exchange of CO2 between different geographic and ecological regions; and,
- The mixing of atmospheric gases across hemispheres

Recently, the climate policy community has become more interested in OCO measurements as one means to inform or to demonstrate tracking compliance in proposals to limit CO2 emissions. OCO was implemented as a research mission and, while it could have pointed the way toward a CO2 monitoring strategy, an operational series of sensors or missions would be required to obtain such measurements for routine treaty enforcement purposes.

QUESTION 65:

Several options have been suggested following the loss of the Orbiting Carbon Observatory (OCO): extend the operations of the Atmospheric Infrared Sounder (AIRS) instrument aboard the Aqua spacecraft, launched in 2002; accelerate the development of the follow-on spacecraft, ASCENDS, which is currently not slated until after 2013; and building and flying another OCO. What does NASA believe to be the best option to pursue at this time, and why?

ANSWER 65:

NASA tasked the OCO Science Team to re-examine the science case for CO2 measurement and to examine options to advance carbon cycle science in the face of the loss of OCO. On April 9, 2009, the OCO Science Team's thoughtful, well-documented report was completed. The science team concluded that an OCO re-flight or a functionally equivalent mission is necessary to advance carbon cycle science and to provide the basis for thoughtful policy decisions and societal benefits. NASA will continue AIRS measurements, as they are essential for both climate research and to improve weather forecasting. However, while recent research shows AIRS data can measure CO2 distribution in the middle troposphere, AIRS data does not enable accurate estimation of surface fluxes (sources and sinks) at regional scales, which was the primary advance to be achieved by OCO. While ASCENDS was proposed as a logical next step after OCO, it is a different mission concept,

which uses a different technology to answer a different set of science questions. ASCENDS will require new technology development and, thus, will take longer to implement and be more expensive than an OCO replacement. Thus, NASA believes an OCO replacement is the best option.

NASA tasked its engineering teams to examine several options for rapid mission implementation, and identified the top three candidate approaches as: (1) rebuilding an OCO mission with as few changes as possible and launching the so-called "Carbon Copy" into its planned orbit as an element of the "A-Train," the constellation of five U.S. and international satellites flying in close formation to make a "virtual observatory" with highly synergistic, near-simultaneous measurements; (2) combining a near-copy of the OCO instrument with a Thermal Infra-red (TIR) sensor on a single spacecraft, to be launched into close constellation with the Landsat Data Continuity Mission (LDCM), presently under construction for launch in December 2012; and (3) building a near-copy of the OCO instrument for launch to and flight on the International Space Station (ISS).

Each of these options has challenges, ranging from electronic parts obsolescence which preclude any complete identical rebuild of the OCO instrument and spacecraft, to significantly degraded coverage from the ISS orbit and the need to provide a dedicated pointing mechanism for the OCO instrument, and accommodation issues associated with the flight of both a TIR and an OCO-like instrument on the same spacecraft. At present, our understanding of the Carbon Copy option is most mature, while the OCO/TIR combined mission is being studied vigorously to refine its parameters. The scientific degradations associated with the flight of OCO on the ISS discourage near-term focus on this option. It is our objective to have solid technical and programmatic understandings of both the Carbon Copy and combined OCO/TIR missions in July 2009. However, no funds for an OCO recovery mission are included in the NASA FY 2010 budget request.

QUESTION 66:

To what extent can Japan's Ibuki carbon-mapping spacecraft and European weather satellites which are equipped with atmospheric sounding interferometers compensate for the loss of the OCO?

ANSWER 66:

In parallel with investigation of OCO reflight options; NASA has been collaborating substantively with our Japanese colleagues to expand and accelerate previously planned U.S. contributions to the validation of GOSAT/IBUKI CO2 measurements and to utilize GOSAT/IBUKI data to help refine existing high-level OCO algorithms. While the accuracy and sampling characteristics of GOSAT/IBUKI are insufficient to allow key OCO science and policy questions to be addressed adequately, the use of the GOSAT/IBUKI measurements to help refine OCO algorithms now will accelerate the production of quality products from a future mission. European weather satellite data face similar limitations to AIRS data, as described above; they do not enable estimation of CO2 sources and sinks at regional scales.

QUESTION 67:

What is your informed judgment on the cost and schedule of building and flying a replacement OCO? What assumptions with respect to the launch vehicle are inherent in this estimate?

ANSWER 67:

Analysis of the options is underway (see response to Question 65 above), and should be complete in July 2009.

MARS SCIENCE LAB (MSL)

Over the past year, MSL has experienced significant cost growth – over $200 million thus far or a 26 percent increase in development costs – because of technological and engineering problems. These technical challenges contributed to MSL's launch delay from October 2009 to October 2011, the next optimal Mars launch window. As a result of this delay, costs are reported to grow by an estimated $400 million, bringing the project's total cost to $2.3 billion.

QUESTION 68:

What are the estimated annual fiscal requirements for MSL for fiscal year 2009, 2010 and 2011? Are the amounts provided in the FY 2009 omnibus in excess to this year's requirement and if so, how will these "excess" funds be expended in fiscal year 2009?

ANSWER 68:

As reported to the Congress in December 2008, NASA's shift of the MSL launch date from 2009 to 2011 avoided any budget increase in FY 2009, but does require an additional $400M in total across FY 2010-2014. A breakdown of estimated costs in FY 2009-2011 is provided below.

	FY 2009	FY 2010	FY 2011
FY 2010 President's Budget	$223.3 M	$204.0 M	$194.6 M

QUESTION 69:

What are the significant cost drivers in the $400 million increase?

ANSWER 69:

Although the MSL project workforce has been cut in half from its November 2008 peak, workforce remains the primary cost driver with a two-year extension of the development, integration and test phase for the new 2011 launch date. Work to be completed includes delivery of the mechanical actuators, avionics subsystem integration and test, flight software, instrument integration and test, spacecraft-level

integration and test, and spacecraft launch processing. The launch vehicle delay and launch vehicle processing will also incur additional costs.

QUESTION 70:

These cost increases will surely put a cramp in the planetary science budget, which in total amounts to about $1.3 billion annually. Please describe specifically what program reductions and deferrals are necessary in the planetary science portfolio to accommodate the increase in cost and schedule slippage for MSL.

ANSWER 70:

No missions currently in formulation or development in the Planetary Division were delayed or cancelled to accommodate the added cost of slipping the MSL launch date to 2011. Within MEP, the impacts included elimination of technology development funding to begin development of Mars Sample Return mission technologies, reduction in the Mars-2016 mission budget, and reduced carry-over between fiscal years. Outside the MEP, rephasing of funds in FY 2010-11 occurred on New Frontiers future missions, and Outer Planets Flagship studies. These rephased funds were applied to MSL, but Mars pays them back in later years.

QUESTION 71:

Are cuts or delays in the next rover mission (scheduled for 2016) or in the Juno mission planned?

ANSWER 71:

The MSL budget augmentation required reductions in the Mars-2016 mission budget, resulting in changing this mission from a lander to an orbiter. The orbital mechanics of 2016 are less favorable than 2018 for a lander, so re-planning the lander mission to 2018 did not create any negative impacts to the continued progress of exploration at Mars. Juno reserves were re-allocated without impact to cost or schedule.

QUESTION 72:

Why did NASA approve this program to go forward into implementation with so many unknowns about technology?

ANSWER 72:

When developing one-of-a-kind missions to other planets, NASA diligently addresses foreseeable risks and budget accordingly. MSL is a particularly challenging mission, where past experience has been only partially useful in predicting the engineering challenges. NASA approved MSL in August 2006, with what were thought to be known risks at that time. Over $80M had been invested prior to 2006 for advanced technology development, including throttled engines and precision entry guidance critical to a soft landing on Mars. Technologies that were

thought to be well-understood were actuator design and heat shield designs, similar to those that were successfully used for the Mars Exploration Rover (MER) missions. Unfortunately, ongoing analyses and tests as part of the regular MSL development process revealed that the MER heat shield design would fail under MSL entry conditions, and that the initial MSL actuator design would not meet the mission lifetime requirements. In addition, it was found that the experience building the MERs was not directly scalable to MSL and, thus, several design and fabrication tasks were significantly underestimated.

QUESTION 73:

What technical or other challenges remain on MSL which could threaten its cost containment?

ANSWER 73:

One type of actuator on MSL remains a concern-- those that drive the robotic arm and associated tools. A Tiger Team was formed by the new Project Manager, and has been investigating the actuator issues since February. They will be reporting status and plans for completion to NASA's independent review board in May. Avionics maturity, which was another complication in meeting the 2009 launch date, is also progressing well, with expected completion by the end of FY 2009. Otherwise, MSL is progressing well, with most instruments delivered, the entry and descent system nearly complete, and plans for test being finalized.

QUESTION 74:

It has been reported recently that NASA has made changes to its MSL management team. Please describe these changes. Why were these changes necessary and what improvements in MSL program management and budget execution are anticipated with these changes?

ANSWER 74:

NASA has made important changes in MSL project management, including bringing in the project manager who successfully delivered the two Mars Exploration Rovers, Spirit and Opportunity. JPL has also restructured the MSL system engineering office to strengthen the team, and align it more appropriately with the work left to accomplish. NASA expects these changes to not only strengthen management oversight, but improve cost estimating and provide more disciplined and predictable schedule execution.

QUESTION 75:

How would NASA handle the MSL program differently today, under the framework of improvements in high-risk acquisition that you outlined previous to today?

ANSWER 75:

Many of the tools identified to improve high-risk acquisitions were implemented on the MSL project. While MSL has suffered cost overruns and a launch date slip, the review and monitoring tools provided NASA the information necessary to identify and address problem areas. NASA identified MSL as a high-risk mission in its pre-formulation phases. As stated in the response to Question 72, substantial investments were made in technology to reduce technical risk. In addition, NASA implemented an independent Standing Review Board, performed a Preliminary Non-Advocate Review (PNAR) at the end of the Mission Concept phase, and a Non-Advocate Review (NAR) at the Preliminary Design Review with independent cost estimates, which led to NASA Key Decision Point C (KDP-C) committing to the project's content, cost, and schedule baseline. Earned Value Management (EVM) was implemented at KDP-C, was closely monitored on a regular basis, independently checked, and was, in fact, an early indicator of technical and schedule problems.

However, MSL was confirmed prior to implementation of the NASA policy requiring probabilistic cost and schedule methods, which should better address impacts associated with contingencies, uncertainties, and unforeseen events. While this approach may have yielded a more accurate cost estimate for a 2009 launch, it is unlikely that it would have precluded the slip to 2011, which was driven by technical issues.

QUESTION 76:

The Director General of the European Space Agency has advocated that NASA and ESA work together to launch at least one mission to Mars every two years when the planets align to enable such missions. He has further stated that robotic exploration of Mars should not be held hostage to problems with manned exploration of the Moon.

Does NASA share this view and aspiration for Mars exploration?

ANSWER 76:

NASA has accomplished most of the "easier" tasks in Mars exploration, and dramatically changed the scientific view of the planet—a warm and wet past, habitable areas, and a real potential for past and/or present life. The missions the scientific community has defined to advance to the next steps in discovery are in the greater-than-$1B category. The most realistic approach to accomplish them is to combine forces with ESA, whose goals are similar to ours. We have reached an understanding with ESA at the top-level, and are working in earnest to identify possible joint program architectures and missions. The FY 2010 budget request includes funding to launch a mission to Mars every 26 months through 2020 in partnership with ESA.

SOFIA

SOFIA will be the largest airborne observatory in the world and will make observations that are impossible for even the largest and highest of ground-based

telescopes. A modified Boeing 747 flying out of Dryden Research Center, SOFIA will operate in excess of 41,000 feet and will study the universe in the infrared spectrum and will allow scientists to study the chemistry of the universe and the formation of stars and distant galaxies. It will operate with US and German instruments. In late January, NASA informed the Committee that the program will be delayed by nine months to September 2014, triggering a major program annual report (MPAR) to Congress. Project development costs are now estimated to be almost $950 million.

QUESTION 77:

The current cost and schedule estimates recently reported to the Committee reflect the inability of SOFIA's prime contractor (Maryland-based Universities Space Research Association) to execute the original plan. What specific problems has the contractor encountered?

ANSWER 77:

The former prime contractor for the SOFIA program, Universities Space Research Association (USRA), did not have sufficient expertise in aircraft modification and development to address the technical and programmatic challenges that arose. Consequently, when USRA subcontracted the majority of aircraft modification and development work, USRA was not able to adequately monitor and control subcontractor performance, which significantly contributed to the cost and schedule growth in the program.

Delays in the completion of the SOFIA observatory led NASA, in 2006, to charter a comprehensive review of the technical status and development plans of the program. This review included representation from the international partner in the SOFIA program, the German Aerospace Center (DLR). One of the primary findings from this review was that the program should be converted from a prime-contractor led program (led by USRA) to a NASA-led program, so as to enable NASA to have more insight and control over the technical developments of the program.

The program was restructured into a NASA-led program in late 2006, with all contractors reporting directly to NASA. This enables direct insight and control over the work, without an intermediate prime contractor interface. Converting from a prime contractor led program to a NASA-led program required detailed replanning of the work necessary to complete the safe development and flight testing of the highly-modified 747SP aircraft that contains the telescope. As part of the replanning, NASA Headquarters directed program management to accelerate science community usage of SOFIA during development, to take advantage of its capabilities as soon as they were available. Incorporating more extensive science community involvement, with tangible scientific results, during 2010-2013 is the principal cause of the delay to the Full Operations Capability milestone into the second half of 2014. In July 2007, the new SOFIA development plan and schedule were approved by the NASA Program Management Council.

QUESTION 78:

What is the status of the two-ton primary coated mirror that will be used in the experiments? Has it been returned yet to the Dryden facility for reinstallation? [planned for September 2008]

ANSWER 78:

The 2.7 meter diameter primary mirror was coated in a vacuum chamber with a reflective aluminum coating in June 2008, returned to the Dryden Aircraft Operations Facility (DAOF), and was reinstalled on the aircraft in October 2008. The telescope with the coated mirror was used, in December 2008, to observe the night sky from the ground as part of overall system testing. For more information on the coating and installation of the mirror, please see http://www.nasa.gov/centers/dryden/news/NewsReleases/2008/08-50.html

QUESTION 79:

What is the status of system checkouts and tests leading to the second phase of flight testing with the telescope cavity door open to determine the aero-acoustic effects on the telescope system and the aircraft? [testing was supposed to have started in the fall of 2008]

ANSWER 79:

Late delivery of engineering and flight software from the vendor (MPC Products Corporation) to operate the observatory cavity door motor controllers has led to a delay in systems integration and testing, and a delay in open-door flight testing. At present, engineering model software for the door motor controllers has been received by NASA and is now undergoing testing by NASA. The flight model software for the door motor controller software is being tested by the vendor, and this testing is proceeding on schedule. Once this flight software is delivered by the vendor, NASA will conduct testing and do the remaining systems integration and testing work necessary before the commencement of open-door flight testing. The open-door flight testing is being carefully planned in detail so as to be able to flight test the aircraft's operational flight envelop with the large cavity door open as safely and expeditiously as possible. Aero-acoustic effects are part of open-door flight testing, and much design and sub-scale testing of models and wind tunnels has been completed to reduce the probability of an aero-acoustic problem involving the open cavity in-flight. The open-door flight testing is no earlier than August 2009, and the early science flights are no earlier than March 2010.

QUESTION 80:

The MPAR indicates that based on the development progress in FY 2008 the SOFIA mission has a "reasonable" chance of completing on cost and on schedule for the replan. What has development progress in FY 2009 to date revealed? And what is "reasonable"?

ANSWER 80:

At the time the MPAR was written, program budget and schedule reserves had been estimated so as to provide a reasonable likelihood of being sufficient to develop and flight test the unique SOFIA airborne observatory based on known risks at the time the estimate was made. Since that time, much was accomplished in 2008 on schedule and on budget, including full flight-envelop flight testing with the observatory cavity door closed, coating of the primary mirror, installation of telescope cavity insulation and cavity door motors, aircraft and telescope heavy maintenance, telescope modal survey, and installation of the auxiliary power unit ductwork through the telescope cavity.

Very important risk reduction work was completed in FY 2009 (December 2008) by operating the telescope with an imaging instrument on the aircraft to view the night sky from the ground. This risk reduction work enabled testing of many of the systems that will be needed in flight to operate the telescope and instruments, and enabled early identification of system issues so that those issues can be worked well prior to open-door flight testing.

QUESTION 81:

The new schedule for SOFIA also accelerates the initial science returns from SOFIA using a subset of SOFIA instruments, almost two years earlier than the baseline plan. Please describe the potential for earlier science returns which NASA indicates "significantly influenced" its decision to adopt the project's revised schedule and cost.

ANSWER 81:

Prior to restructuring of the SOFIA program in 2006, the program plan was to develop all instrument and aircraft systems to be ready for a high rate of flying for science observations. However, at the time of program restructuring, actual instrument development status was varied (some highly developed, some less so), and it was recognized that not all instruments require all flight system capability (altitude, etc). Consequently, in the interest of achieving science observations as early as possible, NASA decided to complete development of two instruments that were already highly developed, and to focus aircraft development to be able to fly and make observations within a subset of the eventual flight envelop.

These two instruments are FORCAST, which will provide multi-color imaging of the galactic center, dust clouds and star formation in other galaxies, and GREAT, which will provide very sensitive and high-resolution spectroscopy to better estimate deuterium abundance in the universe, which will in turn improve models of how the universe evolved after the Big Bang.

This strategy allows a methodology of doing system development, flight testing, science observations on an iterative basis until all instruments and flight systems are

fully developed and tested. This strategy is similar to that used on other airborne science projects, and is similar to how ground-based observatories increase their science capabilities over time. The actual science targets that will be observed by the two early science instruments will depend on the timing of the early science flights.

QUESTION 82:

In the FY 2009 budget, it was noted that "SOFIA does not yet have a comprehensive operations plan. Costs associated with the operations phase are not fully understood." I understand that NASA has now conducted a comprehensive independent operations review in order to fully understand the costs and to budget them accordingly. What are those findings and how will they be implemented?

ANSWER 82:

NASA chartered a team to review the science operations phase of the SOFIA program. This review included representation from the international partner in the program, the German Aerospace Center (DLR). The findings from this review have been incorporated into planning for the operations phase of the program, including the budget for that phase. One of the principle findings was that, for the benefit of the overall science community, the accessibility and usability of SOFIA science data should be improved by placing flux-calibrated science data into the SOFIA archive (not just raw data). This finding has now been incorporated into SOFIA planning and budgeting. Also, although not specifically covered in this review, understanding of the unique inspection and maintenance requirements of the highly modified 747SP aircraft and the large telescope and supporting hydraulic systems has led to improved estimation of inspection and maintenance costs during the operations phase of the SOFIA program.

CONSTELLATION

NASA intends to complete Constellation in 2015 in time to service the Space Station and close a 5-year gap in US human space flight. Over the past year, GAO reports and other studies have pointed to risks in the Ares and Orion programs that call into question whether the 2015 date can be met. Reports indicate that the program is facing potential schedule delays of up to eighteen months. The GAO has cited specific concerns about (1) the risk posture of the program baseline (2) the technical and design challenges facing the program, (3) the cost growth within the program's developmental contracts, and (4) the adequacy of the planned test program. In fact, due to insufficient funding profiles, lack of adequate program reserves in 2009 and 2010, changes in certain contracts, and unfunded design changes, there is a shortfall of at least $2 billion between the available funding and the technical baseline. Media reports indicate that some top space exploration advocates, policy experts and scientists, including some who initially supported the program, are questioning whether it can ever achieve its goals at a price taxpayers will accept. The Transition Team sought data and clarification about costs and alternatives to the Constellation program.

Mid-course review

QUESTION 83:

Your predecessor was adamant that a mid-course review of the Vision would be counterproductive and that the current plan was executable within existing funding constraints. Since his statement, costs have continued to skyrocket (e.g., Ares I IOC now slated to cost $44 billion compared to $28 billion alone), eroding available resources. When is such a revisit appropriate and necessary?

ANSWER 83:

NASA is continuing the existing program per direction of OSTP and believes that IOC can be achieved by 2015 with current planned resources. NASA routinely conducts reviews to assess technical and programmatic progress and has initiated an independent review of U.S. Human Space Flight Plans to ensure that the Nation is pursuing the best solution for future human spaceflight – one that is safe, innovative, sustainable and affordable. The review will assess current plans and potential alternatives, and examine the capabilities of a number of architecture options to support the ISS and Exploration missions. The review committee will take into consideration a number of parameters, including crew and mission safety; life-cycle costs; development time; and industrial base and workforce impacts. The panel will also consider options to extend ISS beyond 2016. Additionally, the review will address international cooperation and account for U.S. industrial base considerations and U.S. competitiveness implications. The results of the committee review will support an Administration decision on how best to proceed with NASA's human spaceflight programs. NASA will fully support the review, and the Agency looks forward to working closely with the committee and with the Administration during this process. As Acting NASA Administrator Christopher Scolese stated on May 7, 2009, following the release of the FY 2010 budget request, "The thousands of workers who have given so much over the years to bring human spaceflight to where it is today deserve nothing less than a full assurance their commitment will be applied in the smartest and most practical ways."

Cost estimates from ESAS and through each consecutive budget and design cycle have continued to mature. NASA has not established formal Constellation cost baselines. The projects are still in their formulation phase, when requirements will continue to be refined and the hardware designs will continue to evolve. The Preliminary Design Review (PDR) is the point when the formulation phase will have been completed and when a formal baseline is approved and authorization to enter the implementation phase is given.

ESAS included assumptions for Constellation systems design based on a Shuttle-derived architecture. Therefore, as part of the study, the authors took care to note that the study's conclusions with regard to initial concepts for a next-generation human space transportation system would need to be further analyzed and refined. They also took care to note that the assumptions regarding program architecture and costs would evolve once additional analysis was performed. For example, ESAS assumed that the next-generation human spaceflight system would be Shuttle

derived. As such, ESAS concluded the system to reduce the human spaceflight gap would be a four-segment Solid Rocket Booster (SRB) and a Space Shuttle Main Engine (SSME). Upon further analysis, NASA determined that, to save development costs and increase commonality between the crew launch vehicle and the heavy lift launch vehicle, the Ares I vehicle configuration would need to be a five-segment vehicle with a J-2X upper stage engine to be consistent with what is needed for the Ares V. The Program also decided to change the Ares V core stage engines from the SSME to a enhanced Delta IV's Rs_68 engines. As a result of these changes, more cost will be incurred up front in the IOC phase, but the positive tradeoff is that overall lifecycle costs will be lower.

NASA estimates that it would cost approximately $35B at 65% confidence level to achieve IOC by 2015 using the baselined architecture. This figure includes funding for the systems and hardware necessary to achieve IOC by 2015, and also includes funding for performance enhancements and design modifications that have been made to the Constellation architecture since the preliminary, Shuttle-derived ESAS concept. In comparison, the Constellation Program as a whole was budgeted at approximately $44B through the IOC March 2015. This $44B figure included the $35B cost for IOC, plus production for flights to the International Space Station following IOC, plus early development work on Lunar systems such as the Ares V cargo launch vehicle and the human Lunar lander. The $44B figure is the assumed in the FY 2009 President's budget request for FY 2009-2013 plus an estimate for FY 2014 through March 2015, and the figure is based on public information.

Since 2007, NASA has consistently stated that our ability to meet aggressive internal schedule goals of 2013, and later 2014, was unlikely without additional early funding beyond the President's budget request, as well as adequate time to achieve technical milestones. NASA had estimated that $2 billion total in FYs 2009 and 2010 beyond the President's budget would be needed to achieve the 2013 schedule with reasonable confidence. Since the additional funding has not been appropriated, March 2015 is the earliest achievable IOC date. This additional 18 months of effort added approximately $5B to IOC costs, and is included in the $35B estimate for IOC by March 2015.

QUESTION 84

Do you share his perspective that a course re-evaluation is "the wrong answer for the space program"?

ANSWER 84:

NASA is continuing the existing program per direction of OSTP and believes that IOC can be achieved by 2015 with current planned resources. NASA routinely conducts reviews to assess technical and programmatic progress. In addition to our standard review processes; NASA has initiated an independent Review of U.S. Human Space Flight Plans to ensure that the Nation is pursuing the best solution for future human spaceflight that includes utilization of the ISS as well as the plan for Constellation to assure that we have a program that is safe, innovative, sustainable and affordable. ESMD, and in particular the Constellation Program, look forward to

being active participants in the review, and to providing significant input to the review. NASA believes that the review will be a prudent analysis of the Agency's long-range plans and investments in human spaceflight. Such a review is neither unprecedented nor unexpected. Under the highly respected leadership of Norm Augustine, it is very possible that the review committee will provide novel suggestions on ways to improve our program. NASA looks forward to working closely with the review committee and with the Administration during this process. NASA will fully support whatever decision the Administration makes as a result of the review.

QUESTION 85:

The Aerospace Safety Advisory Panel noted that the "Constellation program in particular should be subjected to periodic reviews and course corrections," noting that the significant investment in the program necessitates an assessment of the current approach and that NASA can better control cost, risk and schedules by leveraging periodic reviews. Do you agree with these assertions?

ANSWER 85:

NASA agrees that appropriate periodic reviews can serve a useful purpose in program management, and the Constellation Program is regularly assessed via internal and external reviews. For example, NASA in its Program and Project management policy, NPR 7120.5D, requires the conduct of reviews at developmental milestone to ensure that each Project reaches the appropriate level of maturity before proceeding further. The Constellation Program adheres to this policy, including all of the independent reviews that it prescribes, requiring a Standing Review Board comprised of independent consultants assessing the readiness of the program or project to proceed to the next design milestone. Many of these independent reviews have identified recommendations for improvements and NASA has implemented such recommendations.

Additionally, last year, NASA asked that the NASA Engineering and Safety Center (NESC) perform an independent analysis to assess whether the Constellation Program could be accelerated. As part of that Constellation Acceleration Study, NESC made several recommendations for streamlining processes and technical content adjustments to help accelerate the schedule of the Constellation Program. NASA is evaluating these changes, and has already taken action to implement several of them.

The Constellation Program also undergoes frequent review by external groups. Since its inception, the Constellation Program has undergone 16 quarterly reviews by the NASA Advisory Council; 10 quarterly reviews by the Aerospace Safety Advisory Panel; 3 major reports and a letter by the Congressional Budget Office; 6 U.S. Government Accountability audits; and 10 audits by the NASA Office of the Inspector General.

In addition, NASA has initiated an independent Review of U.S. Human Space Flight Plans to ensure that the Nation is pursuing the best solution for future human

spaceflight – one that is safe, innovative, sustainable and affordable. The review will assess current plans and potential alternatives, and examine the capabilities of a number of architecture options to support the ISS and Exploration missions, taking into consideration a number of parameters, including crew and mission safety; life-cycle costs; development time; and industrial base and workforce impacts. NASA welcomes this review and looks forward to working closely with the review team and with the Administration during this process.

QUESTION 86:

At what point do cost increases in the Constellation program make alternatives (such as EELVs) as cost effective as the current program?

ANSWER 86:

NASA has chartered the Review of U.S. Human Space Flight Plans Committee led by Norm Augustine to assess ongoing Constellation activities as well as alternatives. The Agency expects the Committee will evaluate the cost effectiveness of the current program, as well as alternative architectures such as those involving EELVs.

It is important to remember that a formal cost baseline for the Constellation Projects will be established following the Constellation Systems Preliminary Design Review (PDR), which has not yet occurred. This is the point when the development phase will have been completed and when an independent advisory committee will review each Project's work. Then, after all of this is completed, NASA will formally establish a baseline cost for each Constellation Project.

Risk posture of program baseline

NASA elected to pursue shuttle-derived options and use heritage systems and established technology as much as possible to accelerate development and minimize costs and risk. In its budget request for fiscal year 2007, NASA indicated that the first human flight of the Orion vehicle to the International Space Station was targeted for no later than 2013, but the agency would strive to bring that date as close as possible to 2010—the planned retirement date for the Shuttle. An initial flight to the Moon was targeted for 2018 but no later than 2020.

NASA's target dates for a first human flight have slipped several times. In December 2008 you reported to the Congress that the current program baseline, with a March 2015 first human flight, is high risk and that the program would need substantial additional funding (billions of dollars) to reduce risks associated with meeting this date to acceptable levels.

QUESTION 87:

What has led to the Constellation program's current risk posture?

ANSWER 87:

Based on the FY 2010 budget request, NASA has sufficient funds within the total Exploration Systems budget to meet the March 2015 IOC date using the baselined architecture. However, there remains little to no flexibility to react to any major problems or deviations from that plan. In addition, the results of the Review of U.S. Human Space Flight Plans could have an effect on final requirements and mission goals. Funds will continue to be constrained until the Shuttle is retired. While there are technical challenges associated with the Constellation Program, these technical challenges are being addressed within the existing budget and schedule. These technical challenges are a natural part of the development phase of any Program, and they are risks that NASA is actively managing through its risk mitigation and Program review process. In addition, reductions to the Exploration budget have limited NASA's ability to mitigate risk to the Constellation IOC schedule. NASA has retired many risks and continues to work toward retiring others. As a result, some activities such as testing have been performed in parallel rather than serially, which has not been optimal because it has increased schedule risk for the program. Furthermore, as testing has been shifted to the right to years when funding will be available, this has shortened the time available for a Project to incorporate lessons learned from a test, particularly if the test does not go as planned. The addition of Recovery Act funds in FY 2009, and the increase in the FY 2010 budget request above what had been planned for FY 2010 in the FY 2009 request, will be used to pull some of these tests and long-lead procurements back to the left, thereby reducing the risk posture.

) and FY 2010, the Constellation Program and its Projects are at the PDR
i the design cycle, which is when the Projects are at the near peak of their required funding profiles for the developmental phase. As such, NASA will continue to perform detailed budget and schedule analysis to ensure that each Project's budget and content are optimized to successfully meet the March 2015

QUESTION 88:

What specific technical challenges have contributed to this cost and schedule growth?

ANSWER 88:

While there are technical challenges associated with the Constellation Program, these technical challenges are being addressed within the existing budget and schedule. These technical challenges are a natural part of the development phase of any Program, and they are risks that NASA is actively managing through its risk mitigation and Program review process. In addition, reductions to the Exploration budget have limited NASA's ability to mitigate risk to the Constellation IOC schedule. NASA has retired many risks and continues to work toward retiring others.

With regard to Ares I technical challenges, please see Q 92. The Ares I-X test flight later this year will address uncertainties with the stressing environments and validate the performance of the guidance systems. J-2X engine development has remained a

priority and is well past the Critical Design Review (CDR) phase and into hardware fabrication. The first test-engine hardware will be ready for testing next year.

The Orion spacecraft is progressing well toward its planned PDR later this year. The Orion team has overcome technical challenges related to vehicle mass, contingency land landing, crew support post landing under contingency conditions, vibroacoustic environments, thermal protection system material selection, parachute system development, and stressing load cases during ascent and entry.

QUESTION 89:

To what degree has integrating known technologies and heritage systems proven more difficult than NASA originally assumed?

ANSWER 89:

In choosing a Shuttle-derived architecture, NASA recognized that some of the heritage hardware would need to be modified or replaced so as to improve performance and lower lifecycle costs. Leveraging systems that have a proven track record and are already human-rated reduces the uncertainties and risks associated with developing a new human-rated crew launch vehicle. While there are still challenges associated with using existing technologies, the benefits outweigh the challenges. For example, the J-2X engine, which will be utilized by both the Ares I and V, is an evolved version of two historic predecessors: the powerful J-2 engine that propelled the Apollo-era Saturn I-B and Saturn V rockets, and the J-2S, a simplified version of the J-2 that was developed and tested in the early 1970s. By utilizing the J-2X, NASA eliminates the need to develop, modify, and certify an expendable Space Shuttle engine for the Ares I. Changing from the four-segment First Stage solid rocket motor to the five-stage segment for the Ares I also represents a significant and direct down payment on the Ares V. Although the J-2X is based on the J-2 and J-2S engines used on the Saturn V, it also leverages knowledge from the Delta IV's RS-68 by incorporating manufacturing techniques from the RS-68 to the J-2X engine.. Therefore, NASA has taken steps to mitigate J-2X risks by increasing the amount of component-level testing; procuring additional development hardware; and working to make a third test stand available to the contractor earlier than originally planned.

QUESTION 90:

What other potential technical challenges does the Constellation program face in integrating these known technologies and heritage hardware into a new system?

ANSWER 90:

The Constellation Program, with the use of heritage systems, focuses on system engineering and incorporating modern approaches to modifying these heritage systems. NASA has a risk-management process that identifies technical challenges early in the process and aggressively works solutions. While there are technical challenges facing the Program, NASA is confident in its ability to mitigate these

challenges and, as such, the Agency has active mitigation plans in place to address these challenges.

For example, the Ares I has two main technical risks that NASA is currently working: thrust oscillation on the First Stage; and, achieving specified performance from the J-2X Upper Stage. While NASA had originally intended to utilize a Shuttle four-segment reusable solid rocket motor (RSRM) for the First Stage and an Space Shuttle Main Engine-based Upper Stage engine, based on analysis in early 2006, NASA elected to move to a five-segment RSRM for the First Stage and a J-2X Upper Stage engine so as to increase commonality with the future Ares V heavy-life vehicle. Doing so is expected to save the Agency more than $1.1B in life cycle costs. Given this trade, NASA is experiencing some anticipated challenges with the Ares I First Stage and Upper Stage. However, active mitigation plans are in place and NASA is making significant progress in mitigating these risks.

More specifically, for the Ares I First Stage, the main risk is thrust oscillation. This phenomenon is a characteristic of all solid rocket motors. NASA, however, has made significant progress in identifying both primary and backup approaches to mitigating the oscillation effect. With regard to the Upper Stage, the J-2X engine remains a priority, with the focus being on achieving needed performance requirements while also incorporating modern approaches (e.g., materials, manufacturing, electronics, etc) into this Apollo-era heritage hardware. However, from the beginning, NASA had identified the J-2X as a key challenge and has thus taken steps to mitigate known risks by increasing the amount of component-level testing; procuring additional development hardware; and working to make a third test stand available to the contractor earlier than originally planned. In summary, both of these Ares I challenges fall within the norm for space system developments, and their respective mitigations are within the Constellation budget.

QUESTION 91:

If NASA were to delay the first human flight in order to reduce risk to acceptable levels and stay within the available budget, how many months would the launch be delayed?

ANSWER 91:

Based on the FY 2010 budget request, NASA has no plans to delay the first crewed flight of Orion and Ares I to the ISS. Rather, NASA is taking steps to enhance the robustness of the March 2015 IOC date without additional funds. For example, NASA recently completed a technical contents review to look at the activities within each project to ensure content is optimized to meet IOC. Additionally, NASA is strengthening program integration and systems engineering to identify areas to optimize efficiency, developing a segmented crew module for the Orion, deferring software required for the lunar program that is not needed for ISS operations to defer development costs, and reviewing the ground and flight test strategy in order to affirm an optimized set of flight test requirements.

As directed, NASA is proceeding as planned with current Exploration activities, including Ares I, Orion, and Commercial Crew and Cargo efforts. Following completion of the Review of U.S. Human Space Flight Plans by August 2009, the Administration will make a determination on the way forward and provide an updated request for Exploration activities, as necessary.

QUESTION 92:

The technical challenges that the Constellation Program faces are many and varied; from thrust oscillation to the launch abort system to the manufacturing of the common bulkhead. What are the most significant technical challenges currently facing the Constellation program?

ANSWER 92:

NASA has identified clear mitigation strategies for the key technical challenges that have been identified, such as those listed below. All launch vehicle development efforts encounter technical challenges as the design evolves. This is part of the design process and normal engineering practices. As such, NASA is actively working these risks, and has made great progress in mitigating many of them.

Specific issues:

- Ares I Thrust Oscillation: This is not an uncommon problem in solid rocket motors. In November 2007, NASA chartered the Thrust Oscillation Focus Team to precisely define the frequency spectrum and oscillation amplitudes that the five-segment motor is expected to produce. The team's analysis has already led to several mitigation strategies, including propellant dampening, spring isolator concepts, and an aft skit tuned vibration absorber. The team's final analysis and recommendations for incorporation of thrust oscillation mitigation designs will be presented during the Constellation PDR, which is scheduled to begin late this year and continue through early next year.

- Liftoff Clearance / Launch Drift: All launch vehicles experience drift during launch. Ares I preliminary drift analysis identified potential contact with the top of the Mobile Launch Platform and certain heavy plume damage under certain off nominal conditions if mitigation steps are not taken. The driving issue for Ares I is 34 knots winds from the south, which only occurs 0.3 percent of time. NASA believes it can minimize potential plume damage through a combination of steering the vehicle based on wind direction and restricting wind speeds to 30 knots, which is currently implemented today for EELVs and Shuttle (Shuttle wind speeds are acceptable to 24 knots) – mitigations that date back to the Saturn V era. Therefore, after significant analysis, NASA now considers this risk to be resolved.

- Orion Mass: Orion continues to refine its design and has made several design changes that reduce the overall spacecraft mass to establish the PDR Point of Departure configuration for the Orion spacecraft. For example, the power

distribution system was redesigned to a distributed system configuration achieving considerable mass reduction. Also, a passive loads attenuation system for contingency land landing was selected, thereby eliminating weight of an airbag system.

- Orion Loss of Crew / Loss of Mission (LOC/LOM): Orion is utilizing a thorough Probabilistic Risk Assessment (PRA) process to assess risks to LOC and LOM and utilizing the results of this process to drive the design process. The results of the PRA analysis influence the ongoing design analysis cycle through identification of risk drivers and areas of needed focused assessment by the design team. The principle challenge to meeting NASA's ambitious LOC/LOM goals for the ISS mission is the threat from micrometeoroids and orbital debris impacts. While this threat can be mitigated with the addition of shielding such as that utilized on the ISS, this drives increased mass and complexity into the Orion design.

- Orion Vibro-Acoustics impacts to design: The vibro-acoustics loads on Orion during ascent and during aborts are relatively high. This could require vibration isolation and/or ruggedizing for sensitive Orion components to ensure they can survive and operate under these loads, which increases mass and complexity.

- Common bulkhead manufacturing risk: The Ares Project continues to perform subscale and full scale testing of manufacturing and inspection techniques for the common bulkhead to mitigate any development risks.

Technical and Design Challenges

Although NASA has made progress, the agency still faces significant challenges in developing both of the Constellation systems—the Orion crew exploration vehicle and the Ares I Crew Launch Vehicle. NASA posits that the development issues facing the Constellation program are typical of those found in the development and integration of any human spaceflight system. However, human spaceflight system development is inherently complex and difficult by nature, and the compressed nature of the Constellation program acquisition strategy compounds the difficulty of the tasks at hand because it may not allow sufficient time to fix design problems.

QUESTION 93:

What is the level of cost and schedule risk currently associated with these challenges?

ANSWER 93:

The schedule and cost risks associated with these challenges are part of the current Program cost and schedule plan and are not book kept separately. Such challenges are characteristic of space system developments and, hence, accounted for in formulation of budgets and schedules. The Constellation Program generally carries

reserves at the program rather than project levels. Reserves are used to mitigate these challenges, and to resolve other technical and schedule issues that crop up in development for Ares I and Orion as well as other projects such as Ground and Mission Operations that are developing content for IOC. Managing reserves at the program level allows the program maximum flexibility to manage future reserve allocations across Projects. For more information about reserves, please refer to response to Question 28.

QUESTION 94:

We understand that certain requirements, such as the ISS Loss of Crew/Loss of Mission for the Orion Crew Vehicle, may be unattainable under current conditions. How are these requirements compounding the challenges facing the Orion project in developing a vehicle design that meets requirements for both safety and mass?

ANSWER 94:

While design solutions that increase safety often add mass, volume or complexity, the Constellation Program believes its goal of increasing astronaut safety tenfold relative to Shuttle missions is attainable within the current Constellation architecture. For example, improving LOC/LOM estimates from micrometeorite debris can mean adding shielding or redundant systems, which can add mass. However, the Orion Project is continuing to refine its design to improve the LOC/LOM estimate and, as such, the Project is confident that it will achieve that objective with some margin.

QUESTION 95:

If NASA were to relax these requirements, what effect would it have on the Orion project's ability to overcome technical challenges?

ANSWER 95:

Constellation does not intend to relax the original requirement to improve astronaut safety tenfold for missions to ISS. Rather, the Program is conducting an in-depth re-assessment of the current LOC/LOM "1 in X" requirements that were meant to implement the tenfold improvement. These "1 in X" values were estimated as part of ESAS in 2005, and the Program has since greatly improved its LOC/LOM modeling techniques. The results of the re-assessment are likely to produce updated and more accurate "1 in X" target values for the original tenfold improvement requirement.

QUESTION 96:

How would relaxing these requirements impact astronaut safety?

ANSWER 96:

Please refer to response to Question 95. Astronaut safety will not be affected by the re-assessment of LOC/LOM target values, since the tenfold improvement

requirement will stand. It is also expected that the Program's designs for Ares and Orion will meet or exceed this tenfold improvement.

QUESTION 97:

How would relaxed requirements compare to the safety requirements of the Space Shuttle for the ISS mission?

ANSWER 97:

Please refer to response to Question 95. NASA will not relax the requirements for Constellation to improve astronaut safety tenfold for missions to ISS relative to Space Shuttle. The requirement updates in work are a refinement of the technique for translating the tenfold improvement into actual LOC/LOM "1 in X" values, based on a much matured understanding of modeling and analysis methods.

QUESTION 98:

The Constellation Program is currently developing Ares I and Orion with two separate requirements in mind; one requirement is for the International Space Station, and the other requirement is for the Lunar mission. How does having two sets of requirements affect technical challenges related to the adequacy of the thermal protection system and mass growth within the crew module?

ANSWER 98:

NASA has designed a transportation architecture that maximizes commonality between crew access to ISS and the Lunar program. Benefits of this common-design approach include a comprehensive decrease in Design, Development Test and Evaluation non-recurring expenses, and lower recurring vehicle manufacturing, logistics, processing, and maintenance costs realized through commonality of tooling, ground support equipment, launch pad interfaces, and mission scenarios.

Wherever possible and practical, Orion is designing the ISS version and Lunar versions of the crew module to be common. In most cases, the driving case for system designs is the Lunar mission, so the Lunar requirements are being accommodated in the common design. For example, the thermal protection system (heat shield) to be used for both configurations will be capable of the more stressful Lunar return thermal conditions. Similarly, mass margins and mass-related decisions are generally being made with the more challenging Lunar case in mind.

In some cases, Lunar requirements will be addressed via a "block upgrade" or mission kit approach, where a capability is added later for just the Lunar missions. Recent decision to reduce the crew size for ISS from a crew of 6 to a crew of 4 is consistent with Lunar requirements for a crew size of 4. Other examples of Lunar mission capabilities that will be incorporated as later upgrades include Lunar mission software, Lunar lander software power transfer system, and structural optimization. Ares I requirements are the same for ISS and Lunar.

QUESTION 99:

How does having two sets of requirements affect cost and schedule growth?

ANSWER 99:

Development of requirements for both the ISS and Lunar missions has always been part of the plan, and has been factored into schedule and cost estimates. Continuing efforts to maximize commonality and implement optimal phase-in of Lunar capabilities are underway to improve cost and schedule confidence for IOC in 2015. In general, we have one set of requirements that is implemented in phases. Lunar requirements that could potentially adversely impact cost and schedule for IOC will be evaluated as part of a block upgrade (please refer to response to Question 100).

QUESTION 100:

Given that the ISS is due to be retired in 2016 and the Constellation ISS capability will not be available until 2015, and risks associated with meeting that date, what costs and benefits would result from focusing solely on meeting the Lunar mission? the ISS mission?

ANSWER 100:

ISS-only focus: Focusing only on ISS would mean that the Nation would lose the ability to launch heavy payloads or crew beyond LEO because the Ares V heavy-lift vehicle is not needed for ISS missions – only the Ares I and Orion are needed for ISS. As a result, workforce implications would have to be reassessed because many of the Centers were planning on Lunar-related work for employees coming off the Shuttle Program. The following Lunar-related work had already been assigned: Lunar workforce related to Ares V and associated ground and mission operations support; the Lunar lander; and Lunar surface systems and Lunar communication systems. While there would be cost savings associated with this approach, if Lunar work were to be turned on later, NASA would lose out on many of the commonalities it is building into the joint missions today, thereby having the potential to greatly increase costs for a Lunar mission later on.

A Lunar mission will drive us toward new technologies; will enable a new area of economic activity; will strengthen our National security; will engage our technical and engineering workforce; will provide an opportunity to collaborate on important missions with our international partners; and, will inspire a new generation of scientists and engineers to participate in America's space program. In essence, an Exploration program with a goal beyond LEO will ensure that our Nation's space program continues to organize and inspire the best of our energies and skills for generations to come.

Lunar-only focus: With regard to focusing only on a Lunar mission and, therefore, finding some other transportation system to service ISS, it is important to understand that NASA's Constellation system involves a building block approach where Ares I and Orion are fundamental to transporting humans in LEO and missions beyond

LEO i.e., Lunar, Mars etc. Currently, a Lunar mission is envisioned in the following manner: Ares I will carry Orion to LEO, and the Ares V will be used to carry cargo and the Lunar lander. Orion will then dock with the Lunar lander in Earth orbit, and then the Ares V's Earth Departure Stage will propel both the Orion and the Altair on their journey to the Moon. Once in orbit around the Moon, the Lunar lander will separate from the Orion and carry astronauts to the surface. Therefore, if NASA were to focus only on Lunar instead of ISS, factoring in the consideration that Ares I would still be used for the Lunar mission, another alternative for crew delivery to ISS post Shuttle retirement would need to be explored and the cost associated with that option factored in.

The balance between the focus on ISS missions and missions beyond low Earth orbit will be assessed as part of the Review of U.S. Human Space Flight Plans.

QUESTION 101:

If NASA were to defer Lunar requirements, what activities and requirements would be deferred beyond the ISS baseline? How would this impact both the near term and long term costs of the Constellation program? Do the cost estimates in the upcoming budget reflect these requirements, or not?

ANSWER 101:

If directed to defer Lunar missions, NASA would have to assess in detail all options and develop the optimal program plan that balances technical requirements and long-term cost pros and cons (for later modifications and upgrades) within the new schedule direction and associated funding profile. Such an analysis may be influenced or modified by the options presented by the Review of U.S. Human Space Flight Plans and subsequent direction by the Administration. However, in general, it can be said that, in cases where the designs for Lunar and ISS missions are common, deferring Lunar requirements will not affect costs. In terms of prioritizing Lunar activity based on the current plan, NASA would focus as many resources as possible to complete heavy lift capability and Lunar lander work, and accomplish Lunar surface system and outpost related activity as funding allows. The FY 2010 budget request for Exploration Systems provides enough funds for Constellation IOC in March 2015. However, this would require that most lunar development be deferred.

QUESTION 102:

We know that NASA takes steps to mitigate risks, and we are confident that NASA takes risk mitigation seriously, yet we are concerned that all identified risk mitigation steps within the Constellation program may not be fully funded. What level of risk mitigation is identified but not funded within the Constellation program?

ANSWER 102:

NASA has an active risk-management process that identifies technical challenges early in the process and aggressively works solutions. The program identified key risks during the risk management process and associated meditation steps to inform

the designs. Technical risks are identified by likelihood of occurrence and consequence. Not all the identified risks require budgeted funds but rather help inform risk-based designs. All key risks identified in responses to Questions 89 and 92, for example, have funded mitigation steps. In addition, NASA has identified cost risks that are also tracked in terms of likelihood of occurrence and tracked against Program reserves.

QUESTION 103:

What are the potential consequences associated with not funding these risk mitigation activities?

ANSWER 103:

Per the response to Question 102, key identified risks have funded mitigation steps. If budget is not available to mitigate risks, and these risks are realized requiring expenditure of funds to modify design or require further work, then the result would be a schedule slip. There is not budget assigned to every risk that the program carries, since some risks are worked off with planned design and analysis work. A probabilistic analysis of the risks that might be expected to be realized defines how much budget is carried to cover them. It can be expected that these funds will be needed to fix these problems that normally occur during design and manufacture.

QUESTION 104:

Is a 2015 date for initial operating capability a realistic one given the considerable technical unknowns in the program?

ANSWER 104:

NASA is making progress toward IOC in March 2015. Technical challenges will still arise, but NASA does not believe that there are "considerable technical unknowns." At this point in the program, most technical issues are identified and are being resolved through the considerable engineering analysis, design and testing that is behind us. Ares I has completed its PDR, and NASA is confident in its design. Orion is very close to PDR, where its design will be baselined.

NASA is still working towards the March 2015 IOC, and as stated earlier, Recovery Act funding and the FY 2010 increase will help NASA reduce the schedule risk posture. NASA also is taking steps to enhance the robustness of the March 2015 IOC date without additional funds. For example, NASA is:

- Strengthening program integration and systems engineering to identify areas to reduce risk and optimize efficiency;
- Developing a segmented crew cabin for the Orion Spacecraft to allow easier manufacturing, integration, and reduce life cycle cost;
- Deferring software required for the Lunar program that is not needed for ISS operations to defer development costs;

- Conducting a content assessment activity to look at the activities within each project to ensure content is optimized to meet IOC; and,
- Reviewing the ground and flight test strategy in order to affirm an optimized set of flight test requirements.

QUESTION 105:

NASA received $1 billion in the stimulus bill, of which $400 million is marked for the Exploration Directorate. How do you plan on using this additional funding to reduce risk within the Constellation Program?

ANSWER 105:

NASA appreciates the $400M in additional funding provided for Exploration needs as part of the Recovery Act. As identified in NASA's initial FY 2009 Operating Plan, submitted to the Committee on April 24, 2009, $250M is planned to be applied to Constellation Systems for critical mission activities that will improve NASA's ability to maintain the March 2015 IOC date. Recovery Act funding will be applied to Constellation activities as follows:

- Acceleration of the Orion Ground Test Articles (GTA), the construction of the Service Module GTA, and the overall improvement of their level of fidelity. The additional funding provides critical data to mitigate risks for structural and component qualification and provides early data for model correlation and uncertainty reduction, improving schedule confidence towards IOC;
- Design the specialized systems and equipment for the Mobile Launcher, which are a critical part of the overall structure. The Mobile Launcher is a large platform with a tower used to transport, service, and launch the next generation launch vehicle and spacecraft (Ares I and Orion);
- Accelerate delivery schedules for various Orion Engineering Development Units, reducing the cost and schedule risk to the development program; and,
- Accelerate development of J-2X engine components.

The remaining $150M is proposed to be applied to Commercial Crew and Cargo Program (C3P) risk mitigation activities. Many of the risk mitigation activities have dual benefits to both C3P and Constellation. For example, items such as streamlined human rating requirements and accelerated docking station for the ISS are needed for both Constellation and C3P.

QUESTION 106:

Reducing mass in the Orion system design has driven the agency to incorporate new design concepts into the system. For example, NASA reduced Orion's mass by about one-thousand pounds by incorporating load-bearing fairings that shield the Orion Service Module from the external environment during the launch and separates shortly before upper stage separation into the Orion design. To what degree is NASA including new design concepts into the Orion and Ares I vehicles?

ANSWER 106:

NASA is incorporating modern, high technology equipment and manufacturing techniques into Ares I and Orion. Ares I examples include replacing the 1970's vintage electronics on the First Stage, using proven, lightweight composite structures in the First Stage and Upper Stage, using automated, robust friction stir welding approaches in the upper stage and modern materials and manufacturing techniques on the J-2X engine. Similarly, Orion is incorporating innovative design solutions to optimize vehicle mass. These include a passive load attenuation design for contingency land landing, distributed power and avionics via common electronics boxes, and use of a high temp composite system with titanium honeycomb core for heat shield backshell panels.

QUESTION 107:

How are these new concepts impacting cost and schedule growth?

ANSWER 107:

Since NASA is using design-ready technologies, these are not impacting cost and schedule growth – they are included in the overall Constellation development strategy. The resulting vehicles will be "state of the art," but they are not driving significant technology developments.

QUESTION 108:

Systems integration is a complex and difficult discipline. When systems are integrated together unforeseen challenges often arise. These challenges sometimes prove difficult and costly to meet. To what degree are systems integration issues compounding the difficulty of integrating these heritage systems and technologies?

ANSWER 108:

All major aerospace programs require a strong systems integration effort to address the complexities associated with these difficult endeavors. Heritage systems and technologies are selected that have positive attributes which lowers the overall risk to the program. A heritage system has well-understood performance characteristics. This can actually help with the system integration since the system attributes will be more accurately modeled and interfaces are already established. As the system is defined and analyzed, the designer begins to understand better the integrated performance of the system and make the trades necessary to integrate the new and heritage systems. These heritage designs are combined with newer technologies to eliminate obsolescence, and result in integrated efficient designs. Our systems integration processes are in place to identify the integration issues, trade solutions, and resolve them.

QUESTION 109:

How are the technical challenges associated with thrust oscillation and vibro-acoustics tied to systems integration?

ANSWER 109:

Systems integration has been integral to first, understanding the phenomena associated with both the thrust oscillation and the vibro-acoustics environment, and, second, assure the environments are accurately modeled and distributed to the systems and sub-system designers to determine the impact of the environment and to incorporate design or operational changes to the new environments. This system engineering approach is worked through a planned, scheduled set of Design Analysis Cycles (DAC). NASA has established an Ares Integrated Stack team, under the Constellation System Engineering and Integration and the Ares Vehicle Integration Offices to address these two issues.

The thrust oscillation phenomenon is a characteristic of all solid rocket motors. The challenge comes in how the First Stage acoustic mode couples with the structural mode of the entire Ares I/Orion stack in the last 10-20 seconds of First Stage flight. Because the Integrated Ares I/Orion Vehicle is a highly coupled system, NASA is taking a comprehensive, integrated strategy to address this issue – including changes to Ares I (to reduce the magnitude of the oscillations and to decouple the motor from the structural response of the integrated system) and Orion (ensuring adequate crew situational awareness).

The vibro-acoustics is also an environment associated with solid rocket motors. All systems designed for use on launch vehicles need to be designed to withstand the high vibro-acoustics environment. Through our normal System Integration DAC, the vehicle design matured and was integrated with the launch pad. The models were updated and some levels were shown to have some negative impacts on some select systems. Scale and sub-scale tests are planned to help anchor the models to increase precision. The projects are trading solutions which will address the increased levels. Ares I-X is instrumented to measure the vibro-acoustics at launch, again to help anchor our models. System integration is evaluating additional sound suppression approaches on the launch pad.

QUESTION 110:

What other unforeseen challenges have arisen in the development of the Constellation vehicles?

ANSWER 110:

Technical challenges are to be expected in the design of complex space flight vehicles. Please refer to the response to Question 92 for a discussion of current technical challenges for the Constellation Program.

Contract Cost Growth

Overcoming the Constellation Program's technical challenges has significantly increased the estimated costs for the Constellation developmental contracts. As NASA has added new effort to existing contracts in response to technical challenges, the value of the sole-source, cost-reimbursable developmental contracts, has increased dramatically. Furthermore, NASA has allowed these high value modifications to the Constellation contracts to remain undefinitized for extended periods. Undefinitized contract actions authorize contractors to begin work before reaching a final agreement on contract terms. The contractor has little incentive to control costs during this period, creating a potential for wasted taxpayer dollars. The value of the Constellation program's developmental contracts has already increased by at least $2 billion.

QUESTION 111:

What are the root causes of these dramatic cost increases?

ANSWER 111:

NASA has not established a formal baseline for the cost of each Project. The projects are still in their formulation phase, when requirements will continue to be refined and the hardware designs will continue to evolve. The Preliminary Design Review (PDR) milestone is the point when the formulation phase will have been completed and when a formal baseline is approved and authorization to enter the implementation phase is given. While NASA anticipates technical challenges as a natural part of the development phase of any program, NASA is actively managing them through its risk mitigation and program review process, and mitigation of currently identified technical challenges is being pursued within the available budget. Already, NASA has retired many risks and continues to work toward retiring others within the current Constellation budget profile.

QUESTION 112:

Specifically, the value of the Orion developmental contract has already increased by $1.8B. What steps is NASA taking to mitigate the risk of future contract cost growth?

ANSWER 112:

The recent contract modification is a reflection of the need to update and add refined requirements so that the contractor is not forced to work with obsolete requirements. The initial Orion concept vehicle has continued to evolve during its formulation phase because advanced technologies have been developed and requirements, including budget and schedule, have been further refined. However, these changes are a natural result of the trade decisions in the formulation phase for any major spaceflight vehicle. Consequently, from the beginning, NASA had anticipated that it would need to modify the original Orion contract at several points so as to incorporate refined requirements that would lead to an updated Orion configuration and an eventual Project cost baseline following the Constellation Systems PDR. NASA budgeted for the anticipated cost of future contract changes within the

Constellation Program. In addition, NASA believes its budget is adequate to support the currently assumed content and schedules, as well as additional contract modifications that NASA will likely exercise before design, development and testing of the Orion are complete.

With regard to the modified contact cost, NASA held the line on the cost of the modification. NASA performed a deliberative and detailed review of the contractor's proposal to do the NASA defined scope of work. NASA also performed an independent cost analysis of the proposed content change that provided a sound basis for the final negotiated contractor costs.

The proposal was meticulously analyzed and negotiated with the contractor so that the contract value was accurate and fair while meeting mission requirements and includes only costs associated with added or modified NASA requirements. That is, the modified contract cost does not include increases for meeting the original requirements.

To mitigate the chances of experiencing cost growth, the Constellation Program continuously evaluates options to improve confidence in cost and schedule plans, such as performing content scrubs to either delete or defer content that does not directly contribute to (IOC) in March 2015. This is being done in the context of having achieved a design that is Lunar capable, and thus providing clear strategies for evolving Orion and Ares to conduct missions beyond Low Earth Orbit in the years following 2015.

Please see Q 113 and Q 119 for more information about what NASA is doing as an Agency to provide effective management oversight of contracts.

QUESTION 113:

What specific steps is NASA taking to increase Congress' confidence in the agency's current estimates of the time, money, and effort necessary to bring the Constellation program to fruition?

ANSWER 113:

NASA puts great effort into managing the cost, schedule, and technical uncertainty inherent in unique, high-risk programs such as Constellation. To this end, NASA has made significant improvements to its policies and practices over the last two years in order to strengthen performance. NASA NPR7120.5D on Program and Project Management, adopted in March 2007, establishes independent Standing Review Boards (SRBs) to ensure an unbiased assessment of project progress and plans prior to entry into each phase. The Constellation Program SRBs are providing independent input at each of the key decision points (KDPs) established in the updated NPR 7120.5D on program and project management. Monthly Baseline Performance Reviews (BPR), established in December 2007, provide NASA senior managers performance assessments between each KDP.

QUESTION 114:

The NASA Federal Acquisitions Regulation Supplement establishes a goal of definitizing undefinitized contracts within 6 months of issuance. In one ongoing instance the Orion developmental contract has remained undefinitized more than 15 months. Why has NASA allowed this and other developmental contracts within the Constellation program to remain undefinitized for extended periods?

ANSWER 114:

The 180-day timeline is a goal. However, in this case, NASA believes that conducting one larger modification, which took longer than the 180-day goal, was the most efficient option given that would have taken additional manpower and effort to negotiate and definitize several separate modifications, which in turn, could have negatively impacted schedule. NASA and Lockheed Martin worked as efficiently as possible to understand and incorporate the most current information in the modification. As such, the recent Orion contract modification was closely monitored to ensure that only urgent requirements changes were incorporated and to ensure that proper attention was given to closing the action while achieving a fair and reasonable settlement prior to definitization. Ultimately, our goal was to assure the greatest success for the upcoming Orion PDR in August, leaving a minimum of outstanding contract actions leading to CDR early next year, and we believe we achieved that goal.

QUESTION 115:

What are the programmatic risks associated with allowing these contracts to remain undefinitized?

ANSWER 115:

Until contract changes are definitized, the costs associated with the technical changes that will be made to the contract are estimates. Therefore, there is some risk that actual definitized costs could be higher than estimated. However, NASA mitigates this risk by working closely with the contractor in estimating what the costs will be by applying NASA's experience with similar changes executed in the past; and by fencing off reserves (additional funding) at the project level to mitigate any cost increases that were not anticipated. Sometimes, the final definitized cost is actually less than the amount budgeted that was based on the early estimates, as was the case with recent Orion contract change.

QUESTION 116:

Past NASA budget requests have noted that problems with contractor performance have led to cost overruns and schedule delays. In the case of the Constellation Program it seems that history is repeating with costs growing at least $2 billion and the schedule delayed at least 2 years from 2013 to now 2015. Are these cost overruns and schedule delays related to contractor performance?

ANSWER 116:

Since 2007, NASA has consistently stated that our ability to meet aggressive internal schedule goals of 2013, and later 2014, was unlikely without additional funding beyond the President's budget request, as well as adequate time to achieve technical milestones. NASA had estimated that $2 billion beyond the President's budget would be needed to achieve the 2013 schedule with reasonable confidence. NASA aligned its work against these more aggressive dates so as to challenge the joint NASA-industry team to produce the work earlier in the formulation phase. NASA's internal goals were just that – internal goals – and they did not impact the Agency's commitment to achieve IOC no later than 2015. When it became clear to program management that additional resources would not be forthcoming it was clear that we could not achieve our internal aggressive goals, NASA needed to formally realign the contracts to a later date. Again, these contract modifications did not change NASA's 2015 commitment as outlined in the FY 2010 budget request.

QUESTION 117:

Why was the contractor for the attitude control motor within the Orion launch abort system replaced?

ANSWER 117:

The launch abort system attitude control motor (LAS ACM) has proven to be a particularly challenging design. Although the technical approach has been used before on classified programs, it has not been used at the larger scale required for Orion. Early in the ACM's development (in 2007), Orion's prime contractor Lockheed Martin, in concert with their Orbital Sciences subcontractor, judged that the project would be better served by changing vendors from Aerojet to ATK. Therefore, they made the decision to change vendors. Although it is the prime contractor's responsibility to select their subcontractors, NASA concurred with the change in this case. The ACM development has continued to be a pacing item for the LAS, but recent successful subscale test firings have shown the development is technically feasible and is now progressing well. Nevertheless, NASA has continued to consider alternative designs as backup solutions.

QUESTION 118:

What was the total cost to NASA of replacing the contractor for the attitude control motor within the Orion Launch abort system?

ANSWER 118:

This is difficult to quantify precisely, since it was a risk mitigation action taken by the prime contractor and one of its subcontractors early in the development process for this motor. Aerojet expended approximately $16M during the time they were contracted for this work. As the Orion prime contractor assessed the technical performance of the ACM contractor, Lockheed Martin and Orbital Sciences felt it was best to switch to a more capable subcontractor in order to meet the schedule and technical parameters defined in the contract. However, NASA and the Orion prime

contractor believe that, in the long run, this action was actually cost avoidance as the new vendor had higher technical readiness for completing the development successfully. Qualitatively, NASA believes ACM development would have experienced cost growth well in excess of the $16M expended had the prime contractor stayed with their original subcontractor for the work.

QUESTION 119:

What management efforts is NASA undertaking to ensure better contractor performance on the Constellation Program given repeated problems with contractors on major projects?

ANSWER 119:

NASA has been very pleased with the performance of its prime contractors supporting Ares and Orion. To enhance the relationship between NASA and the contractor, NASA has instituted regular meetings with corporate leadership. The purpose of these meetings is to ensure good communication and direct attention to emerging problems, issues, and challenges with the industry team supporting Constellation. To date, these regular meetings have been quite effective and well received by all parties. NASA also conducts monthly Baseline Performance Reviews (BPRs) with senior NASA leadership where these and other potential performance issues are discussed. The OMB Deputy Director for Management observed a NASA BPR for insight into the BPR process and found the process to be a Federal government performance best practice. NASA was further requested to present the BPR process to the government-wide Performance Improvement Council as a model for other agencies.

Testing

Expecting and planning for test failures is a key element in recognizing the uncertainties inherent in the development of complex systems such as Ares I and Orion. For example, GAO reported in 2007 that the J-2 X engine developers, Pratt and Whitney Rocketdyne, recognized that some level of development anomaly and/or test failures are inherent in all new engine development programs and was planned accordingly for 29 rework cycles during development. In Summer 2008 the Constellation program made several changes to its program baseline including deleting and deferring planned tests and minimizing the flight test program to an aggressive success oriented program with no room for test failures. Recognizing that the discovery of problems in complex products is a normal part of any development process, and testing is perhaps the most effective tool for discovering such problems.

QUESTION 120:

What is NASA rationale for deferring and deleting test content?

ANSWER 120:

Constellation's flight test program is designed to provide risk mitigation opportunities by providing in-flight assessments of the design and operational characteristics of the hardware from early development through the first crewed flights. Based on the FY 2010 budget request, NASA has sufficient funds within the total Exploration Systems budget to meet the March 2015 IOC date with the appropriate test flights to assure mission success using the baselined architecture. While NASA was aware from the beginning that Constellation funding would be constrained during the years when Shuttle was still operational, the funding plan for the Constellation Program and has led to an aggressive, success-oriented plan for ground and flight testing that defers construction; manufacture of engineering support development units; tooling and ground support equipment and wind tunnel testing until later in the Program's development cycle. With regard to the deletion of tests, NASA has considered doing this only in cases where a test is deemed to not be beneficial to the program or where requirements can be accomplished via other means. Constellation, for example, is conducting a flight test strategy review to ensure that the test flights planned make the most sense, based on programmatic needs and the availability of resources. As part of this review, NASA is reassessing the Ares I-Y test flight, and considering moving the majority of the primary Ares I-Y flight objectives to the first flight-like hardware configuration launch, termed Orion 1, and adding an additional abort test for assessing other abort environments. The Orion 1 flight is planned to be the first dress rehearsal for the end-to-end flight of the entire integrated Ares and Orion vehicle using all actual flight hardware. These decisions will be made with the objective of having a rational set of effective, high-fidelity tests that answer the key questions in leading to flying crews safely on this system.

QUESTION 121:

Modeling and simulation are key tools in the development of complex systems. What steps is NASA taking to ensure that the models used in the development of the Constellation systems reflect the actual operational environment and actual system performance?

ANSWER 121:

NASA has invested heavily in risk reduction hardware and activities that will help calibrate and refine our models and simulations related to the Ares I and Orion. The Ares I-X test flight and Orion Pad Abort 1 test are two examples of how early testing will inform the designs before they are considered 'finished' at the Critical Design Review point. Each test flight includes several hundred measurement points to characterize the actual operating environment and system performance in these most stressing of cases. For some areas where testing has not been completed to support model development, models will be developed with conservatism to assure system performance envelopes expected fight conditions and has adequate performance and safety margins. As tests are completed and data analyzed, our models will be updated, allowing us to reduce conservatism and potentially improve systems performance.

QUESTION 122:

How has the deferral of testing impacted these steps?

ANSWER 122:

Constellation deferred some testing and long-lead procurement items until later in the Program development cycle in order to reflect available funding. As a result, some activities such as testing have been, or will be, performed in parallel rather than serially, which is not optimal because this can increase schedule risk for the Program. As testing shifts to the right during years when funding is available, this then shortens the time available for a project to incorporate lessons learned from a test, particularly if the test does not go as planned. The deferral of tests also delays the anchoring of models and simulations with actual flight data and can potentially miss the opportunity to influence design changes for the next flight test due to concurrent work. NASA is trying to complete more work serially, rather than in parallel, depending on program costs and funding availability. The addition of Recovery Act funds in FY 2009 and the increase in the FY 2010 budget request above what had been planned for FY 2010 in the FY 2009 request will be used to pull some of these tests and long lead procurements back to the left, thereby reducing the risk posture.

In addition, NASA is looking at ways to streamline work and find efficiencies. For example, ESMD is revising the integrated test strategy to balance the technical requirements and methodology with existing resources to minimize overall programmatic and technical risk. The risk-based test and verification strategy will help us balance our test risks and assure systems are tested adequately and that the systems safely meet performance needs. At the Constellation Program PDR planned for March 2010, a Constellation Integrated Test and Verification Plan will be baselined.

QUESTION 123:

It appears that the new baseline defers a lot of testing originally planned for FY 2009 and 2010 until 2011 and later. What is the impact of compressing so many test activities into the 2011-2014 window?

ANSWER 123:

Constellation deferred some testing and long-lead procurement items until later in the Program development cycle in order to reflect available funding. As a result, some activities such as testing have been performed in parallel rather than serially, which has not been optimal because it has increased schedule risk for the program. Therefore, as testing has been shifted to the right during years when funding is available, this then shortens the time available to a project to incorporate lessons learned from a test, particularly if the test does not go as planned. The addition of Recovery Act funds in FY 2009 and the increase in the FY 2010 budget request above what had been planned for FY 2010 in the FY 2009 request, will be used to pull some of these tests and long-lead procurements back to the left, thereby reducing the risk posture.

It is important to note, however, that despite the challenging test schedule, NASA is making progress toward achieving IOC by March 2015. The Constellation Program is still in a dynamic phase of development and there will continue to be changes in our test and verification strategy to optimally meet the requirements up until the Program's PDR early next year when the Integrated Test and Verification plan will be baselined.

QUESTION 124:

How does deferring these tests to later in the developmental timeline affect program risk?

ANSWER 124:

In any complex development program, the schedule could be impacted due to discovering latent design issues close to or after CDR. Constellation's System CDR is now planned for FY 2011. Significant test failure could result in costly rework and/or delays. To mitigate this threat, NASA is prioritizing its risk mitigation work to ensure early testing occurs on its highest risk components (e.g. Ares J-2X and First Stage, and the Orion Launch Abort System). NASA is also crafting an integrated flight and ground test program that addresses the highest risk areas of the Ares and Orion designs. Priority has been given, for example, to getting the J-2X into testing as early as feasible, and the engine is already past the CDR milestone and currently in fabrication. The bottom line is that NASA is committed to ensuring that each piece of hardware reaches the appropriate level of technical maturity at each milestone before proceeding further.

QUESTION 125:

How would a failure during any of these tests affect the rest of the program?

ANSWER 125:

Not every subsystem development is on a program "critical path," and test programs at the subsystem and system level are typically planned with at least some margin to deal with small problems, as is the nature of testing. Therefore, much depends on the type of the failure and what later milestones are affected by the failure. A significant test failure could result in rework and/or delays.

QUESTION 126:

It is widely understood that concurrency in the development, testing and production of any new system increases the risk of cost and schedule growth. Does the new Constellation baseline increase the level of concurrency within the program?

ANSWER 126:

NASA understood from the beginning that integrating the diverse systems (Orion, Ares, Ground Systems, and Mission Control etc.) would be one of the biggest challenges for the Constellation Program. With this in mind, the Constellation Program established a robust and diverse System Engineering and Integration Organization to put in place the plans, processes, and procedures for establishing and maintaining the program technical baseline for the lifecycle of the Program. These plans, processes and procedures were established in compliance with standing NASA policies and procedures.

Concurrency is a given in any large scale development, and the key to managing it is tight systems engineering and integration (or SE&I). The Constellation Program is developing all of the elements of its program concurrently in order to achieve a reasonable timeframe for completion while also staying within budget. If the various Constellation elements were designed in series, all systems needed to support the launch crew to the ISS would take decades to complete since each system requires on the average of 5-7 years for development. The new Constellation baseline may increase the concurrency of development activities slightly; however, the organization and processes are in place to mitigate any risks. Through well-established Program SE&I processes, the program has established high confidence that integration issues are being identified in a timely manner and they are being addressed.

QUESTION 127:

What are the specific risks associated with pursuing an increasingly concurrent baseline?

ANSWER 127:

NASA disagrees with the premise that the baseline is "increasingly concurrent." In fact, with the alignment of our internal schedule to the external commitment date, we have been successful in getting more design done before we commit to hardware. This helps reduce risk for a system that is largely a systems integration job that doesn't depend on cutting edge or new technologies. The highest value risk reduction activities have been retained in the current Constellation plan for FY 2009 and FY 2010.

QUESTION 128:

The baseline test schedule includes only one test of a fully integrated system prior to the first manned flight. What level of confidence will the program have that the system has satisfactorily demonstrated it meets all requirements based on one integrated flight test?

ANSWER 128:

Flight testing is only one facet of the test program; therefore, assessing the validity of a test program cannot be measured solely on the basis of the number of flight tests. NASA's flight and ground test strategy ranges from component qualification through

full up system level testing. At each step, NASA has a rigorous review process to ensure that the component or spacecraft being tested does not advance to the next level of system complexity until it has fully completed the rigorous requirements for its current level. Similar to the Mercury, Gemini and Apollo approach to testing, Constellation will be testing the spacecraft and launch vehicle elements through all environmental extremes on the ground, and will also structurally test a full scale, integrated version of the Ares I and Orion stack in a special ground test called the Integrated Vehicle Ground Vibration test as well as a high-fidelity flight test, also known as Orion 1.

QUESTION 129:

How much would an additional integrated test flight of the whole system increase the confidence levels?

ANSWER 129:

The Constellation Program's flight test program is robust and it meets mission needs. The flight test program is designed to provide risk mitigation opportunities by providing in-flight assessments of the design and operational characteristics of the hardware from early development through the first crewed flights. However, additional testing within any Program or Project can yield benefits. Additional test flights could provide opportunities in three areas. First, an additional unmanned orbital flight would allow objectives to be shared across two flights, and would provide a built-in opportunity to retest given the reasonable expectation that we will experience in-flight technical anomalies. Further, given the early formulation phase of the development, Orion 1 flight planning is not yet mature enough to know which test objectives can't be accomplished on a single flight and must be deferred to subsequent crewed flights. Second, additional test flights would provide additional experience and data on the inherent reliability of the launch system, including data on the critical staging event and test of the upper stage and modified J-2X engine. Finally, an additional orbital flight test would allow a second re-entry test using alternate or backup controls on a dispersed or emergency trajectory to assess stability and heat shield performance.

QUESTION 130:

How much would it cost to fly an additional integrated flight test or to expand the Ares 1-Y test into a fully integrated flight test?

ANSWER 130:

NASA has not costed an additional test flight nor an expansion of the Ares I-Y flight objectives. Currently, Constellation is conducting a flight test strategy review to ensure that the test flights planned make the most sense, based on programmatic needs and the availability of resources. As part of this review, NASA is reassessing the Ares I-Y test flight and is considering moving the majority of the primary Ares I-Y flight objectives to the first flight-like hardware configuration launch called Orion 1 and adding an additional abort test for assessing other abort environments. Orion 1

flight is planned to be the first dress rehearsal for the end-to-end flight of the entire integrated Ares and Orion vehicle using all actual flight hardware.

QUESTION 131:

What are the implications in terms of cost, schedule, and technical risk to planned manned flights if there are performance shortfalls or failures during the unmanned integrated flight?

ANSWER 131:

Much would depend on what went wrong and what risk the failure poses to crew safety or mission success. Generally, with any flight test, there are always some anomalies that crop up, and when they do, NASA analyzes them to determine the degree to which corrective action is needed. Just because there is an anomaly does not mean that the reliability of the entire system should be called into question. NASA's history with something as complex as the Space Shuttle gives us confidence that it would be unlikely for the Constellation Program to need a second unmanned test flight, barring some major failure on the Orion 1 flight. Most of the potential issues with hardware performance and failures will be discovered through extensive ground testing of the flight components.

QUESTION 132:

The current baseline test schedule is success oriented and leaves little to no room for dealing with developmental anomalies or test failures. What are NASA's plans for dealing with the test failures that are sure to come?

ANSWER 132:

Not every subsystem development is on a Program "critical path," and test programs at the subsystem and system level are typically planned with at least some margin to deal with small problems, as is the nature of testing. Therefore, much depends on the type of the failure and what later milestones are affected by the failure. A significant test failure could result in rework and/or delays.

NASA is prioritizing its risk mitigation work to ensure early testing occurs on its highest risk components (e.g. Ares I's J-2X and First Stage, and the Orion Launch Abort System). We are also crafting an integrated flight and ground test program that addresses the highest risk areas of the Ares and Orion designs. We have given priority, for example, to getting the J-2X into testing as early as feasible, and the engine is already past the CDR milestone and currently in fabrication.

Accelerating Constellation

QUESTION 133:

Advocates of accelerating the Constellation program have stated that $2 billion would advance the IOC from March 2015 to September 2014, minimizing the gap

and dependence on Russian services. Isn't this figure misleading as the shortfalls in the current baseline and technical baseline changes which total $2 billion must be addressed irrespective of acceleration?

ANSWER 133:

Today, NASA is at the point where acceleration earlier than March 2015 is no longer possible because acceleration is not merely a funding matter. The potential for acceleration is also influenced by hardware development and testing schedules, and NASA has reached the point where the development schedule for some systems cannot be accelerated due to testing needs and limits on the ability to further accelerate procurements.

With regard to the Constellation Acceleration Study, NASA believes the report offered good advice, and as such, ESMD has already begun to implement some of the efficiencies identified in the report. However, some clarifications regarding the findings of the Constellation Acceleration Study may be useful. First of all, the study assumed a baseline IOC of September 2014, which was the internal, aggressive goal of the Constellation Program, instead of the public commitment date of March 2015. Additionally, the study assumed no use of funds planned for the Lunar phase of the program. The study also included in the estimate for "baseline budget shortfalls" items that are either no longer part of core content, or for which less expensive mitigations for risks are already in work so that the "baseline budget is likely to be much less than stated in the study. For instance:

- SI unit implementation is no longer part of the baseline;
- An alternative power distribution system for Orion is being developed; as a result of this change to Orion, NASA has saved both mass and funding;
- Ares I thrust oscillation issue can be mitigated through less expensive tuned dampers not active dampers; and,
- Nozzle extension will not be pursued at this time.

The study authors also identified additional content /cost savings that could be achieved – some of which NASA was already working on to enhance the robustness of the March 2015 IOC date without additional funds. For example, NASA is:

- Strengthening program integration and systems engineering to reduce risk and identify areas to optimize efficiency;
- Developing a segmented crew cabin for the Orion to allow easier manufacturing, integration, and reduce life cycle costs;
- Deferring software required for the Lunar program that is not needed for ISS operations to defer development costs;
- Conducting a content assessment activity to look at the activities within each project to ensure content is optimized to meet IOC; and,
- Reviewing the ground and flight test strategy in order to affirm an optimized set of flight test requirements.

Constellation has identified additional cost savings and efficiencies that will be assessed during a scheduled budget review.

QUESTION 134:

The Acceleration Report states, "the opportunity for acceleration is a limited window.....[and] any delay in an acceleration decision beyond mid-2009 would preclude any significant acceleration." Based upon long lead time procurements and other impediments, when would you anticipate meeting that "line in the sand" when acceleration is no longer an option?

ANSWER 134:

NASA is at the point where acceleration earlier than 2015 is no longer possible because acceleration is not merely a funding matter. It is also an issue with hardware development and testing schedules. The development schedule for some systems cannot be accelerated due to testing needs and limits on the ability to further accelerate procurements from contractors.

The Constellation Acceleration Study, which was released in 2008, examined options to enable the earliest possible IOC for Ares I and Orion, while also preserving the capability of the Orion/Ares I system to allow future missions to the moon. However, NASA believes the window for these options has closed, given that additional funding would have been needed by April 2009, as noted in the study. In addition the current Recovery Act funding and the FY 2010 budget request do not provide the level of funding that the study identified to accelerate IOC.

QUESTION 135:

Aside from several technical issues we discussed earlier, is it not logical to conclude today that given (1) the current budget availability (to date and projected); (2) known and unknown threats against cost and schedule; and (3) the fact that the Administration has not given the authority to proceed by April 1 (as identified by the report), the Constellation program cannot be accelerated to achieve IOC before 2015 without significant changes to program content, such as deferring Lunar capability?

ANSWER 135:

Based on the FY 2010 President's Budget, NASA has sufficient funds within the total ESMD budget to meet the March 2015 IOC date, but it is no longer possibly technically to accelerate IOC before 2015 using the baselined architecture. NASA's plan to return humans to the Moon is being assessed by the Review of U.S. Human Space Flight Plans.

QUESTION 136:

The Aerospace Safety Advisory Panel in mid-April noted that it is not convinced that the Ares I and Orion initial operating capability dates can be improved appreciably by additional resources. Does NASA now share this opinion as well?

ANSWER 136:

NASA would agree that the opportunities for any substantial acceleration is no longer possible as acceleration is no longer merely a funding matter at this point. Additional funding would have assisted in accelerating the program if received at an earlier time. See Q 133 and 134.

QUESTION 137:

The Constellation Acceleration Report of December 2008 indicated that shuttle transition dates will need to be maintained or accelerated. As of this date, what specific transition dates must be maintained or accelerated so as to permit the acceleration of the Constellation program?

ANSWER 137:

As previously stated, acceleration of the Constellation Program is not likely at this point as we are past the time when additional funds would result in acceleration. Earlier transition of assets would not have an accelerative impact on the program at this point. Transition of assets at Kennedy Space Center (KSC) in Florida, Michoud Assembly Facility (MAF) in Louisiana, and Stennis Space Center in Mississippi are occurring in close coordination with the Space Shuttle Program. These are facilities for manufacturing, testing, and processing/launching the Ares and Orion. Constellation and Space Shuttle programs have worked closely to identify need dates and transition strategies that meet Constellation Program needs while maintaining sufficient capacity to safely fly out the Shuttle manifest. FY 2010 is a critical year of transition for these assets, so that conversion and re-tooling can occur to support Constellation production and operations.

QUESTION 138:

How has the delay in the Hubble servicing mission, the most recent shuttle delay, or the decision to fly an additional mission for AMS limited NASA's ability to accelerate Constellation?

ANSWER 138:

The additional AMS mission will have minimal impact on NASA's ability to accelerate Constellation IOC. The Hubble Servicing Mission delays have primarily impacted the availability of Space Shuttle Program assets to support the Ares I-X test flight, which is not on the program's critical path. Addition of the AMS flight, from an asset management perspective, does not presently pose any identified impact to Constellation.

COTS

NASA's COTS program is designed to involve new, innovative suppliers in the government space arena and also to produce viable commercial spacecraft to the

International Space Station. Two participants under the program – SpaceX and Orbital Sciences – are being paid to develop spacecraft. A number of other providers are working with NASA under a non-paid status. NASA also recently awarded contracts for ISS resupply services to both SpaceX and Orbital, but this award was contested by a losing bidder. COTS-D (human capability) is to bridge the gap created as the Shuttle is retired in 2010 and the initial operating capability of Orion (currently assumed for 2015).

CARGO (COTS A-C)

QUESTION 139:

Please describe the progress made to date by SpaceX and Orbital in developing space transportation capabilities to service the Space Station. Will both partners make their cargo demonstrations in March and December 2010, respectively, as planned?

ANSWER 139:

NASA is pleased with the progress that our funded COTS partners have made to date in meeting the terms of their Space Act Agreements (SAAs). Both commercial partners continue to make steady progress in achieving their cargo demonstration milestones. While each has experienced some milestone delays, this is not unexpected, since both partners have aggressive, success-oriented schedules, and are facing challenges typical of a space flight development program. As such, NASA sees no reason to doubt either company's ability to achieve its desired objectives – that of demonstrating commercial cargo delivery to and from the International Space Station.

As of July 2, 2009, SpaceX had completed the first 14 of 22 milestones on or ahead of schedule and has received a total of $234M in payments, with $44M available for the remaining milestones. SpaceX has completed the majority of Dragon capsule qualification testing. Technical progress is being made and qualification testing is progressing on the Falcon 9 launch vehicle as well. SpaceX has begun manufacturing the flight Dragon capsule and Falcon 9 to be used for the COTS demonstration flight 1. Recently, SpaceX notified NASA that the company expects delays in completing its three demonstration flights. According to the terms of the current SAA, SpaceX is supposed to complete its first demonstration flight in June 2009 so as to allow additional time for Falcon 9 manufacturing and testing programs. SpaceX now expects to complete its first demonstration flight in January 2010, with the second and third flights now planned for June 2010 and August 2010, respectively.

Orbital has completed eight of its planned 19 milestones and has received a total of $100M to date with an additional $70M available for future milestones. The Orbital demonstration flight is currently planned for March 2011 due to the company's decision to change its cargo transportation architecture from an unpressurized (external) cargo system to a pressurized (internal) cargo system.

It is important to note that NASA will not pay for any milestone until the milestone is successfully completed per the SAA and approved by NASA. Should a milestone be missed, NASA will evaluate partner progress made and recommend future actions that are in the best interest of the Government.

QUESTION 140:

What is the status of the bid protest for ISS resupply? Will this bid protest have any impact on the schedule for COTS?

ANSWER 140:

The bid protest concerned the ISS CRS contracts and not the COTS agreements. Therefore, the COTS demonstration schedule was unaffected by the protest. With regard to the CRS, on April 22, 2009, GAO issued its decision in the PlanetSpace protest, denying the protest in its entirety. NASA does not believe that this protest will have a significant schedule impact for the development of the CRS cargo vehicles, as the vendors were able to continue work on the contract during much of the protest.

QUESTION 141:

What happens to the ISS in the event that the Shuttle is retired; the COTS providers are late and Ares/Orion are late?

ANSWER 141:

After the Shuttle retires in 2010, and until a credible commercial crew transport provider or the Ares I/Orion system becomes operational, the United States will continue to rely on Russian Soyuz spacecraft to transport crew, and serve as a rescue vehicle for ISS. The Russian Federal Space Agency (Roscosmos) is under contract with NASA to provide these services through spring of 2012, and discussions are ongoing to extend this contract. These discussions are authorized under the exception to the Iran, North Korea and Syria Nonproliferation Act (P.L. 106-178, as amended, [50 U.S.C. 1701 note]) provided by Section 125 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329). NASA will purchase comprehensive Soyuz support, including all necessary training and preparation for the launch, crew rescue, and landing, consistent with U.S. obligations to Canada, Europe and Japan. The Agency does not purchase Soyuz launches or the spacecraft themselves, but rather a "seat" or crew rotation service.

Two companies, Space Exploration Technologies (SpaceX) and Orbital Sciences Corporation have funded Space Act Agreements with NASA as part of the COTS project to demonstrate cargo transportation to ISS. At this time, SpaceX plans to demonstrate cargo supply to ISS by 2010, and Orbital Sciences Corporation by 2011. The actual purchase of cargo services to ISS is being conducted through the separate ISS Commercial Resupply Services (CRS) procurement effort. NASA recently awarded CRS contracts to SpaceX and Orbital Science Corporation for cargo delivery beginning as early as late 2010. NASA will pre-position spares onboard the

ISS with the final logistics flights to provide some margin for delay in commercial cargo services. Beyond that, there is no planned back-up capability for ISS commercial cargo. Timely commercial cargo capability is critical for effective ISS operations. Without commercial cargo capability, the crew size and research operations planned for ISS would need to be reduced.

NASA will also rely on the transportation capabilities of Russia, the European Space Agency (ESA) and Japan to transport cargo to ISS. Russia's Progress vehicle has been providing cargo services to ISS through a contract with NASA. The ESA Automated Transfer Vehicle (ATV) had a successful initial flight to the Space Station in 2008. The Japanese HII Transfer Vehicle (HTV) is scheduled to have its first flight in 2009. ESA's and Japan's services are provided through barter agreements. It should be noted that NASA does not plan to continue to procure Progress cargo resupply services after 2011, opting instead to rely on U.S. commercial cargo delivery capabilities provided through Commercial Resupply Services contracts.

QUESTION 142:

To what extent would additional appropriations for COTS cargo demonstrations help ensure that the capabilities in development would be available by the time the Shuttle retires? What amount of funding would be appropriate?

ANSWER 142:

NASA does not believe that providing additional Government funds to the funded COTS partners – SpaceX and Orbital – would significantly advance the current development plans for either partner prior to their currently negotiated operational dates of late 2010 and early 2011, respectively. It is important to remember that, from the beginning, NASA intended to be only an investor in these commercial efforts, and that the commercial entities were required to provide the remaining funding themselves or through other fundraising efforts.

Acceleration also would be dependent on each company's ability to achieve technological milestones on schedule. From a technological perspective, both funded COTS partners continue to make progress toward demonstrating their cargo capabilities. However, as with any spaceflight development program, technical challenges could occur in the future.

QUESTION 143:

While I understand that a different launch vehicle was involved in the loss of the OCO, does this failure impact Orbital's efforts to develop a new launch vehicle for COTS?

ANSWER 143:

The failure of the OCO launch vehicle will not have any impact on COTS or the Commercial Resupply contract.

Earlier this year, Orbital experienced a hardware failure of the OCO launch vehicle (Taurus I) and an investigation into the failure is ongoing. While the Taurus II launch vehicle that is being developed by Orbital to support the COTS demonstration efforts as well as the follow-on Commercial Resupply contract is not the same vehicle as used during the OCO launch, Orbital has informed NASA that it would apply any applicable lessons from the OCO investigation to its Taurus II development efforts, should any commonalities be deemed to exist.

QUESTION 144:

Are both providers also working on a vehicle to deliver humans to space? If so, what would be the rough costs of those efforts and how do they compare to the costs of Ares/Orion?

ANSWER 144:

SpaceX is the only funded partner that is working toward a crew transportation capability, but is doing so on its own volition. NASA is not currently funding SpaceX for a commercial crew transportation capability.

With regard to the actual costs expected to be needed for developing such capabilities, those figures are considered to be sensitive proprietary information owned by individual companies that are considering developing this capability. Therefore, it is not within NASA's power to release that information publicly.

With regard to drawing a direct comparison between COTS' and Constellation's costs, that is a difficult task for several reasons. First, the COTS and Constellation architectures support very different missions. The currently negotiated milestones for the COTS funded partners relate to cargo transportation capability to the ISS and not crew, where as the Constellation architecture is being designed to provide crew and limited cargo transportation to the ISS, the Moon and beyond. Second, each venture uses very different business models with regard to personnel, infrastructure etc. For example, NASA is utilizing heritage hardware and infrastructure to build the Constellation architecture.

QUESTION 145:

To what extent could NASA accelerate COTS capability D? What would you anticipate the overall federal commitment to be – both in terms of financial support and time? How much would be needed on an annual basis?

ANSWER 145:

Currently, NASA does not have funding to initiate crew transportation demonstrations and, therefore, cannot accelerate COTS Capability D, nor is funding currently identified in the FY 2010 budget. Therefore, should NASA be directed to conduct a competition for a crew transportation capability, additional funds beyond

the President's budget submit would be required to avoid impacts to other programs such as the Constellation Program.

With regard to the extent that COTS D could be accelerated, please see response to Question 142. In terms of a Government investment in developing such a capability, funds needed would depend on the number of commercial partners selected and estimates of the cost and schedule to develop the capability.

QUESTION 146:

If funds were made available for COTS-D in fiscal year 2010, what would these funds enable NASA to accomplish this year? Would NASA expect to solicit new proposals or execute options on the existing COTS contracts?

ANSWER 146:

If funding were provided and NASA was directed to initiate COTS-D, our approach would be to hold a competition that could take 6-8 months from the time of receiving such funding. Therefore, depending on when such funds were received, it is likely that some funds could be used in FY 2010 to begin crew transportation system DDT&E efforts and conduct subsystem testing, with the bulk more likely to be needed in FY 2011-2012.

QUESTION 147:
What additional benefits will NASA derive from the efforts of SpaceX and Orbital to produce new launchers?

ANSWER 147:

Additional NASA benefits derived from the SpaceX and Orbital launch vehicle efforts include the potential for lower-cost launch capabilities. For example, there would be an increased number of launch services available to support NASA Science and other missions.

QUESTION 148:

The Aerospace Safety Advisory Panel concluded that the private sector cannot bridge the gap. The report when on to say: "There is no evidence that COTS vehicles will be completed in time to minimize the gap. COTS vehicles currently are not subject to the human-rating requirements standards and are not proven to be appropriate to transport NASA personnel and the capability of COTS vehicles to safely dock with the ISS still must be demonstrated." How does NASA respond to the assertion that the private sector cannot bridge the gap?

ANSWER 148:

The COTS effort was initially designed to spur the U.S. aerospace market by providing limited NASA investment in commercial ventures. As stated previously, NASA is pleased with the progress the partners have made, but NASA is also

mindful that developing human spaceflight vehicles is a difficult and complicated venture. NASA respects the opinion of the ASAP members, but the Agency recognizes that even its own estimates of cost and schedule implications for a commercial crew transport capability are extremely premature and would need further study.

To address the gap, NASA will utilize redundant systems for crew transport and emergency crew return. In December 2008, after a full and open competition, NASA awarded SpaceX and Orbital Commercial Resupply Services contracts to provide cargo transport following the retirement of the Shuttle. NASA will rely on these systems to resupply the ISS. It is important to note that the development of commercial cargo systems will focus vendors on creating technologies and techniques that would be required for the development of future commercial crew transportation systems (e.g., proximity operations and docking).

With regard to human rating of vehicles, the FY 2009 Recovery Act funds will provide a start to a commercial human spaceflight capability by supporting the development of long-lead and risk mitigation technologies that would be required, should COTS-D demonstrations be funded. One of the tasks identified by NASA for Recovery Act funds will be to develop a consolidated set of NASA human rating requirements that will be applicable to both Constellation and commercial partners should NASA receive the funds required to pursue a commercial crew transportation capability.

LIFE SCIENCE AND MICROGRAVITY

Dr. Fisk testified before the Committee that investments in life science and microgravity have suffered "far more egregious" and disproportionate reductions in investments than any other science discipline at NASA. From a high of nearly $450 million in fiscal year 2005, investments in life science and microgravity now total about $45 million.

QUESTION 149:

In testimony before this Subcommittee, Dr. Lenard Fisk stated that with microgravity research in particular, NASA had committed "scientific genocide." NASA is not really planning to use the Space Station because it has dropped the support required to sustain the existence of a microgravity research community. Does this reveal that NASA never truly believed in the research use of the Space Station and that its many repeated claims to the contrary were prevarications?

ANSWER 149:

NASA is currently utilizing the ISS to mitigate biomedical, technological, and operational risks associated with long-duration exploration missions. The ISS mission objectives corresponding directly to these Agency needs are summarized as follows:

1. Research, Development, Test, and Evaluation of Biomedical Protocols for Human Health and Performance on Long-Duration Space Missions.
2. Research, Development, Test, and Evaluation of Systems Readiness for Long-Duration Space Missions.
3. Development, Demonstration, and Validation of Operational Practices and Procedures for Long-Duration Space Missions.

While it is true that funding for microgravity and life sciences research has decreased over the years, funding for NASA's Human Research Program (HRP) and the Exploration Technology Development Program (ETDP) has remained relatively stable since their inception in 2005. As such, both programs have been able to support a balanced portfolio of activities that are aligned against the highest-priority mission needs of the Constellation Program. The balance between R&D for long-term human space exploration and direct development of new human space flight vehicles will be assessed by this summer's Review of U.S. Human Space Flight Plans.

QUESTION 150:

Do you share that opinion: is this scientific community destroyed? If not, why not? If so, should it be reinvigorated?

ANSWER 150:

NASA recognizes that there are many funding challenges facing our country today, and therefore, the Agency has tried to be a wise steward of taxpayer dollars by investing its research dollars wisely. NASA has a balanced research portfolio related to its ETDP and HRP programs that will benefit future explorers. Within the current resource envelope, NASA is funding approximately 250 investigations related to ISS research and exploration that include approximately 80 active flight investigations. In order to maintain the existing ISS flight experiments and support ISS utilization in the short-term, NASA has not undertaken new flight hardware developments. In the long-term, the ISS research program will have to be reinvigorated to support flight experiment hardware developments and future ISS flight experiments.

Investigators in life sciences do not solely depend on NASA for the totality of their research funding. Most NASA funded investigators in the field of life sciences, for example, also receive funding from other agencies, including the National Science Foundation, the National Institute of Health (NIH), the Department of Defense, and the Department of Energy for related research efforts.

NASA also recognizes that it is important to leverage the scientific expertise outside of the Government, which is why the Exploration Systems Mission Directorate uses NASA Research Announcements, or NRAs, to solicit research designed in support of NASA Exploration missions, thereby helping to fund exciting work in the scientific community. These NRA solicitations, for example, provide an opportunity for universities, non-profit and commercial organizations to provide high-quality research that will directly benefit the Agency and create more effective research partnerships between NASA and the national biomedical research community. HRP,

for example, currently supports approximately 100 grants at $35M per year for ongoing work from solicitations that address crew health and safety risks associated with exploration missions.

QUESTION 151:

Without a national program in gravitational and space biology, how will NASA mitigate the identified and documented health risks for human exploration beyond the International Space Station?

ANSWER 151:

NASA recognizes the value of undertaking research in gravitational and space biology, and as such, NASA utilizes both ground-based and space-based experiments to try to document the health risks to future explorers. Recently, NASA was directed by Congress to have the National Research Council conduct a Decadal Survey to help the Agency establish priorities and provide recommendations for life and physical sciences research in microgravity and partial gravity for the 2010-2020 decade. NASA expects the report to be completed by Fall 2010.

Within NASA, HRP is responsible for all research and development activities associated with astronaut health and performance. For long-duration exploration missions, the long-term health risks associated with the space environment (low gravity, environmental factors, and radiation) represent substantial challenges, and NASA needs to understand these challenges better to move forward with long-duration human exploration. HRP has the goal of developing and delivering research findings, health countermeasures, and human systems technologies for future Exploration missions.

While it is true that the ISS is not a perfect analog for long-term human exploration effects beyond low-Earth orbit, the ISS is a valuable tool in NASA's research arsenal. The ISS, for example, will support human return to the Moon by providing a reduced gravity environment for studying human health effects and effective countermeasures. While the Moon does have gravity, it is unknown if its small fractional gravity will be enough so that normal physiological function can occur over longer durations. Information from ISS will provide a basis for the types of countermeasures that we will need to develop for long-range lunar habitation and the eventual long-transit journeys to Mars and beyond. NASA will adjust these countermeasures as we get additional data from initial lunar human explorers.

NASA also uses ground-based analogs to help us gain additional insight into fractional gravity and its effect on astronaut explorers.

In upcoming years, additional research will need to be completed on the lunar surface if NASA plans to conduct human missions beyond low-Earth orbit. Conducting these experiments on the lunar surface will allow NASA to adjust and develop additional countermeasures for longer-duration human space exploration.

QUESTION 152:

Given the annual reductions proposed in NASA's life sciences, should this Committee assume that NASA does not anticipate long duration human space flight beyond the space station?

ANSWER 152:

With regard to NASA's life sciences budget, these programs and projects are projected to have stable funding. NASA does anticipate long-duration human space flight beyond the International Space Station. As explained in greater detail in earlier responses, NASA has an active research program related to studying the prolonged exposure to reduced gravity, space radiation and isolation during exploration missions, while also developing and validating a suite of human health countermeasures to facilitate its plans for future long-duration space travel.

QUESTION 153:

Should gravitational and space biology be pursued by NASA solely or by other another agency, such as NIH? Should both agencies share in such research?

ANSWER 153:

NASA is the Nation's hub for space and gravitational research expertise, and is using this expertise to pursue its gravitational and space biology research programs. NASA also is very proud of its collaborative work in these areas with other Federal agencies, including the NIH. NASA and NIH both have programmatic strengths that offer opportunities for synergy for accelerating basic knowledge and technology development which can be applied to humans in space and on Earth. Therefore, NASA welcomes the participation of NIH in gravitational and space biology because NASA believes that the space environment is useful for understanding the mechanisms of some diseases.

The NASA Authorization Act of 2005 designated the U.S segment of the ISS as a national laboratory and directed that NASA develop a plan to "increase the utilization of the ISS by other Federal entities and the private sector..." As the Nation's newest national laboratory, the ISS will further strengthen relationships among NASA, other Federal entities, and private sector leaders in the pursuit of national priorities for the advancement of science, technology, engineering, and mathematics. The ISS National Laboratory will also open new paths for the exploration and economic development of Space. In September 2007, NASA and the NIH signed a joint memorandum of understanding (MOU) to work on space-related projects that would create an intellectual environment where unanticipated breakthroughs could occur. In support of this joint MOU, NIH has released a call for proposals to facilitate research consistent with the NIH mission in general public health.

QUESTION 154:

Would this science not be more appropriately considered in the context of other science within the Science mission directorate vice in the Exploration Systems mission directorate where it currently resides?

ANSWER 154:

NASA believes that the fundamental life and physical sciences research program is best managed by the Exploration System Mission Directorate (ESMD) because it supports the development of advanced capabilities for Exploration. Key capabilities needed for Exploration include surface mobility and extravehicular activity, life support and habitation, thermal management and cryogenic fluid storage, in-situ resource utilization, maintaining human health, and enabling scientific discovery. Understanding how the underlying mechanisms of life and physical sciences affect system function will be critical in achieving these capabilities.

In ESMD, crosscutting fundamental research in life and physical sciences is integrated within the mission-focused ETDP. Research themes in this program include partial gravity effects on human health and performance, radiation protection, human factors, toxicity of lunar dust, growth of microbes, and biological life support. The crosscutting physical sciences research themes include heat transfer, combustion, multiphase fluid flow, granular media, chemical processes, and high performance materials. All of these themes are closely aligned with NASA's future Exploration missions, which is why ESMD and not the Science Mission Directorate, is the best location for this NASA-driven research.

QUESTION 155:

I understand that life sciences were included in the Science mission directorate years ago. What precipitated its move from SMD to ESMD?

ANSWER 155:

NASA realigned this work in 2005 to meet national goals established by the U.S. Space Exploration Policy and the NASA Authorization Act of 2005, both of which directed NASA to begin developing a next-generation human spaceflight system that would be capable of returning Americans to the Moon. As such, NASA's life and physical science research programs were transferred from the Office of Biological and Physical Research (OBPR) to ESMD where they are currently aligned against the highest-priority mission needs of the Constellation Program. During this realignment, research activities from OBPR that were not closely aligned with Exploration needs were ended, while new activities were initiated to address critical Exploration needs.

SPACE SHUTTLE

At this time last year, NASA had planned a very aggressive tempo for the Space Shuttle, not seen since the *Columbia* accident. Six Shuttle flights were planned in fiscal year 2008, five to service the international space station and one for servicing the Hubble telescope. In fiscal year 2009, five Shuttle flights were scheduled, and 2

additional logistics flights were planned before the Shuttle's retirement in 2010. Since our hearings last year, the Hubble servicing mission has been delayed until May 2009 and other servicing flights had been delayed pending review of a flow control valve which was damaged during *Endeavor's* November 2008 flight. That review, now complete, paved the way for the recent March 12 shuttle launch. During *Endeavour's* launch, a piece of one of three flow control valves chipped off, apparently from high-cycle fatigue.

QUESTION 156:

The Multi-Program Integrated Milestones (MPIM) chart currently shows 5 flights in FY 2009 and 6 flights in FY 2010, including a potential AMS flight in the last quarter of FY 2010. How has this schedule been impacted by the flight readiness review prompted by the flow control valve issue?

ANSWER 156:

While the Flow Control Valve (FCV) issue delayed the flight of STS-119, NASA is on track to fly five Shuttle missions in 2009, and five in 2010, including the AMS flight to ISS.

QUESTION 157:

Last year NASA indicated that, at that time, there was "some flexibility" still remaining in the schedule to address unanticipated events. Today, what, if any, flexibility remains in the launch schedule?

ANSWER 157:

Per direction in the NASA Authorization Act of 2008 (P.L. 110-422) and the President's FY 2010 budget overview, NASA has added a Shuttle mission. That mission, which will carry the Alpha Magnetic Spectrometer (AMS) to ISS, is notionally scheduled for launch September 16, 2010. The schedule flexibility is therefore fairly limited, though the Agency plans to fly out the remaining eight missions even if one or more slips into FY 2011. However, there is currently no budget to support a manifest delay into FY 2011.

QUESTION 158:

In light of these and of the Shuttle delays that have routinely occurred since the Shuttle's return to flight after the *Columbia* accident, how realistic is it to assume that the Shuttle will be able to complete all the remaining missions on its manifest by October 2010?

ANSWER 158:

The Shuttle manifest is a challenging but achievable schedule, and it is important that the workforce remain focused on flying out the remaining missions safely and completing assembly of the ISS. NASA believes the manifest can be achieved by

the end of FY 2010. If one or more missions slip into FY 2011, the Agency will still proceed with those flights, per Administration policy. There is currently no budget to support a manifest delay into FY 2011.

QUESTION 159:

What is the tipping point at which a determination must be made that any remaining Shuttle flights cannot be completed by the end of FY 2010, and how likely is it at that time that the Administration would pull the plug on those flights given the investments made to date in the activities supported by those flights?

ANSWER 159:

The timing of such a "tipping point" would depend on the timing and nature of a possibly significant delay. In any case, if one or more Shuttle flights were to slip beyond 2010, the Agency would still proceed with those flights, consistent with current Administration direction, though there is currently no budget to support a manifest delay into FY 2011.

QUESTION 160:

Given this scenario, how does NASA ensure equity and protect its other programs, like investments in science and aeronautics, which have taken their lumps already for the benefit of the Constellation program?

ANSWER 160:

As a general rule, NASA attempts to address issues that emerge in a particular program or Mission Directorate with funds from elsewhere in that program or Mission Directorate. In cases where a significant challenge cannot be addressed in this manner, Agency management must balance tradeoffs across NASA's portfolio with the aim of ensuring that all of the Agency's missions are achieved.

Shuttle Extension

QUESTION 161:

The NASA Authorization act of 2008 required you to outline the options, impacts and associated costs to extend the safe and efficient operation of the Space Shuttle to support the International Space Station operations and resupply both in the near term (1 to 2 years) and a longer term (3 to 6 year) extension. What can you tell the Committee are the annual fixed and marginal costs to extend the Shuttle, based upon your studied review?

ANSWER 161:

As directed in Section 611(e) of the NASA Authorization Act of 2008 (P.L. 110-422), NASA's Report on Impacts of Shuttle Extension assessed two "bounding cases" for potential extension of the Space Shuttle, as described below.

Bounding Case 1 would add 3 flights and extend the Space Shuttle through 2012. Case 1 would use the existing inventory of External Tank components, but would require additional Solid Rocket Booster material and other procurements. Case 1 would require that approximately $4.7B be added to the NASA budget or redirected to the Shuttle from other NASA programs through FY 2012. The cost estimate includes all costs associated with maintaining production, sustaining engineering, and critical workforce skills needed to safely fly out this scenario.

Bounding Case 2 would maintain a capability to fly 3 missions per year through 2015, or a total of 13 missions beyond 2010. Case 2 could only potentially eliminate the interval between Space Shuttle and Constellation operations if about $14B were added to NASA's budget through FY 2015. Extending Space Shuttle operations to 2015 would introduce serious challenges to the existing schedule for the Constellation Program's Ares V lunar capability and might not allow for any "retooling" period between the last flight of Shuttle and the first flight of Ares I/Orion. The cost estimate includes all costs associated with maintaining production, sustaining engineering, and critical workforce skills needed to safely fly out this scenario.

QUESTION 162:

What is the probability risk assessment of a catastrophic accident before completion of the Space Shuttle program, based upon the review required by the NASA authorization act?

ANSWER 162:

The purpose of the Shuttle's Probabilistic Risk Assessment (PRA) is to provide a useful risk management tool for the Shuttle Program to identify strengths and possible weaknesses in the Shuttle design and operation. The PRA is an excellent tool for getting a sense of the relative risk of systems, but is less useful for providing point-estimates of risk for a particular system. A more valid approach is to use the range generated by the PRA, rather than the mean. The PRA calculates the probability of Loss of Crew and Vehicle (LOCV) during a nominal Shuttle mission to be between 1 in 45 and 1 in 130 per mission with 90 percent confidence. The mean calculated risk is 1 in 77 missions; this ratio is accurate, regardless of the number of missions flown

QUESTION 163:

There have been conflicting risk assessment evaluations that in one case translates to a 1 in 8 chance of losing a crew and vehicle over a span of 10 flights. However, we have also been told that that there is a 98 percent probability of success for each individual flight and this is a higher probability of success than the Russian Soyuz. How to you rectify the discrepancy between these different conclusions?

ANSWER 163:

The Space Shuttle has experienced two mission losses in 125 missions to date. This corresponds to a reliability greater than ~0.98. The 1:8 ratio corresponds (with rounding) to the mean PRA figure of 1:77 LOCV. Please see discussion about using PRA point-estimates, rather than ranges, in the response to question 162. The two ways of portraying risk are not inconsistent.

QUESTION 164:

The Columbia Accident Investigation Board recommended that the Shuttles be recertified if they were to flown beyond 2010. Last year NASA indicated that it would have to reassess its response to the CAIB recommendation and may need to conduct additional recertification activities, which could be potentially both costly and time consuming. What is the status of this reassessment; when will it be complete and what are the estimates of cost to recertify?

ANSWER 164:

The Space Shuttle Orbiters are all certified to fly out the current manifest. As part of the examination that supported the NASA Shuttle Extension Study directed by Congress (and the earlier return-to-flight review), NASA Shuttle managers determined that a complete vehicle recertification would not be necessary to fly past 2010, but that the certification packages and materials generated to support the study would need to be reassessed and updated to ensure that there were no time and cycle or material age-related issues or other potential safety considerations. Further, required inspections and testing during vehicle processing would provide opportunities to constantly monitor the health of Orbiter systems and to mitigate any performance degradation before it could become a safety of flight concern.

NASA's current assessment is that the remaining manifest can be achieved by the end of FY 2010. If one or more missions slips into FY 2011, the Agency would still proceed with those flights, consistent with current Administration direction, though there is currently no budget to support a manifest delay into FY 2011. NASA is not assessing the need to conduct recertification activities to fly the Orbiters beyond this point.

QUESTION 165:

It is argued that the Space Shuttles are old and wearing out and hence are less safe, but isn't it true that each shuttle orbiter in the fleet was designed for 100 missions: Discovery has flown only 35 missions; Atlantis has flown only 29 missions, and Endeavour has flow only 23 missions. Therefore wouldn't you agree that that the Space Shuttles are not old in relation to their age or mechanical condition?

ANSWER 165:

The Shuttle Orbiters were designed to be flown up to 100 missions. However, over the course of 125 missions flown since the STS-1 launched on April 12, 1981, experience has demonstrated the need for more intensive post-flight maintenance than was originally anticipated. While the Orbiters could be made to fly more

missions with continuing maintenance and overhaul activities, as well as systems upgrades, it would not be cost effective to do so. This is particularly true given that the primary mission requiring the Shuttle's unique abilities – completion of the assembly of the ISS – is almost concluded.

QUESTION 166:

The Committee understands that each orbiter goes through a rigorous teardown and refurbishment after each mission, and that this reset process, combined with meticulous maintenance between each flight, helps ensure structural and systems integrity. Please comment on this process from a safety perspective.

ANSWER 166:

Post-flight Shuttle maintenance activities are very important to ensuring the continued safe operation of the Orbiters. There are over 7,000 requirements that govern a normal Shuttle processing flow, from the moment of wheels stop at touchdown to launch of the vehicle's next mission. Hundreds of thousands of labor hours are needed to inspect, test, and validate the systems on the Orbiter alone. Every five and half years, the Orbiters have been taken out of service for an even more intensive series of inspections, a process known as an Orbiter Maintenance Down Period (OMDP). An OMDP includes invasive inspections not normally covered in a normal processing flow, and also provides an opportunity to perform major vehicle upgrades. All three Orbiters have completed their final OMDP and are certified for flight through 2010.

QUESTION 167:

Given your studied review, can NASA safely fly the Space Shuttle beyond 2010?

ANSWER 167:

With continued vigilance, yes, but flight well beyond 2010 would require the Agency to investigate component obsolescence, restart the fleet leader program, and consider upgrades to help ensure that the vehicle would be flown effectively.

QUESTION 168:

Are we able to gain maximum use of the International Space Station for science without using the Shuttle for up and down logistics?

ANSWER 168:

In order to keep the ISS operational and productive in the post-Shuttle environment, NASA is relying on two commercial cargo resupply providers to develop automated spacecraft to the point where they can reliably deliver cargo to the ISS on a routine basis. NASA awarded two Commercial Resupply Services (CRS) contracts in December 2008 to Orbital Sciences Corporation (OSC) and Space Exploration Technologies (SpaceX), and has reallocated $160.4M in its FY 2009 budget from

ISS Operations to ISS Cargo Crew Services to support this procurement. NASA is working to determine how best to provide "upmass" and "downmass" to ISS researchers in order that they may take full advantage of the various laboratories on the Station.

QUESTION 169:

Do you believe it is in the United States' interest to narrow the gap between the retirement of the Space Shuttle and the operational capability of Aries I in order minimize job loss and maintain our leading role in human space flight?

ANSWER 169:

NASA has explored options to shorten the period in which the United States does not have a domestic capability to launch astronauts, including extending Space Shuttle operations past 2010, accelerating the development of the Ares I/Orion system, and supporting new commercial cargo and crew transportation systems. These options address, but do not eliminate, the interval in U.S. human space launch capabilities, and do not fully alleviate the technical hurdles presented by the transition.

NASA is working with its industry partners and local governments on an array of efforts designed to retain the skills needed to fly the Shuttle safely through its retirement, complete the ISS, develop Constellation, and minimize disruption to our highly skilled, experienced, and geographically dispersed workforce. The Agency's strategic approach to ensuring that critical skills are retained is fundamentally simple: provide a clear career path to challenging and exciting follow-on work in Constellation and on other programs, maintain NASA's quality workplace by providing a collaborative and creative environment, and support career development and learning opportunities.

NASA is committed to transitioning the key Space Shuttle civil servant workforce to other Agency programs, as necessary, using tools such as workforce synergy, matrixing, detailing, and retraining. In addition, Centers will identify opportunities for the placement of employees with needed skills in other organizations.

QUESTION 170:

Mr. Scolese, in the recently released Aerospace Safety Advisory Panel Report, you stated: "Shuttle extension – I see this as the single biggest threat to the US future in space. There are people availability implications, spare parts availability etc. that have safety implications. There will never be a painless time to end the shuttle and extending it now won't make it any easier to end it gracefully later. To cast off my Pollyanna persona for a minute, extending the shuttle now makes it likely that we will end the shuttle only when we have another serious accident or at best, a close call that wakes everyone up. Frankly, a much better strategy is to go to a real "ISS Block 1/Lunar Block 2" strategy and accelerate the capability as much as possible.

Mr. Scolese, is your statement regarding risk, a statement about safety risk or a statement about programmatic risk to the Constellation program?

ANSWER 170:

This is primarily a statement about the programmatic risk to the Constellation Program and U.S. space exploration policy of delaying the transition and availability of Shuttle Program resources.

Alpha Magnetic Spectrometer (AMS) flight

QUESTION 171:

The budget documents indicate that the Administration supports an additional shuttle flight to deliver the AMS to the Space Station before the termination of the Shuttle. What options have been identified in order to protect the option to fly in 2010 and what are the costs in fiscal year 2009?

ANSWER 171:

The President's FY 2010 budget request includes funding for an additional Shuttle mission, which will carry the Alpha Magnetic Spectrometer (AMS) to ISS. This flight is scheduled notionally for launch in September 2010. NASA's current assessment is that the remaining manifest can be achieved by the end of FY 2010.

The FY 2010 budget request includes $300M to procure flight hardware and maintain processing and sustaining engineering capability to support the AMS flight in FY 2010.

If one or more missions slips into FY 2011, the Agency will still proceed with those flights, per Administration policy, though there is currently no budget to support a manifest delay into FY 2011.

QUESTION 172:

How does NASA plan to fund those requirements?

AMSWER 172:

NASA plans to fund the AMS launch requirements from within the Space Operations Mission Directorate. These costs are included in the President's FY 2010 Budget Request.

QUESTION 173:

Has NASA's current estimate of the cost to fly an additional Shuttle mission for AMS grown at all from last year's estimate of $300 million?

ANSWER 173:

NASA continues to estimate the cost of flying an additional Shuttle mission for AMS to be approximately $300M.

QUESTION 174:

NASA informed the Committee last Fall that "some action and funds would be needed by February 2009 in order to meet the 18-month mission planning lead time requirement" and to complete the mission by 2010. By the end of March, the Committee had not been notified of any plan or funding requirement needed to preserve the option. What has changed; have we effectively moved the date of Shuttle retirement out?

ANSWER 174:

NASA began preliminary planning for the AMS mission starting in January 2009. This planning activity was initiated pursuant to the direction provided by Congress in the NASA Authorization Act of 2008 (P.L. 110-422). No new funds are needed in FY 2009 to continue this planning activity, but the FY 2010 budget request includes $300M to procure flight hardware and maintain processing and sustaining engineering capabilities to support this flight, targeted for September 2010.

QUESTION 175:

Does NASA remain committed to flying this mission even if it meant extending the Shuttle beyond FY 2010?

ANSWER 175:

NASA's current assessment is that the remaining manifest can be achieved by the end of FY 2010. If one or more missions slips into FY 2011, the Agency would still proceed with those flights, consistent with current Administration direction, though there is currently no budget to support a manifest delay into FY 2011. NASA is not assessing the need to conduct recertification activities to fly the Orbiters beyond this point.

QUESTION 176:

NASA has stated previously that the driving consideration for carrying out the Hubble servicing mission is the availability of the Space Shuttle, not the condition of the telescope. Is that still the case?

ANSWER 176:

The STS-125 mission was launched on May 11, 2009, successfully serviced HST, and landed safely on May 24, 2009.

QUESTION 177:

Please describe for the Committee the requirement to have two vehicles available to do this mission at an equivalent measure of safety to the rest of the manifest and how this requirement drives your schedule planning.

ANSWER 177:

Per the Columbia Accident Investigation Board (CAIB) recommendation that NASA have a rescue option in place for Shuttle missions, the Shuttle Program has planned the launch manifest in such a way as to ensure each flight will have a Launch On Need (LON) mission available in case a Shuttle is damaged during a mission in such a way that it cannot be repaired in orbit. This is true of both STS-125 – the final Hubble Space Telescope servicing mission – and the remaining missions to the ISS. In the case of the ISS missions, NASA has more time, if necessary, to implement a rescue because the Shuttle crew can stay at ISS for some time. That time gives the Agency the ability to use the next scheduled Shuttle flight on the manifest as the rescue mission for the previous flight. In the case of STS-125, which did not go to ISS, NASA had a second Shuttle stack on another launch pad, ready to conduct a rescue mission, if needed. Both vehicles had to be processed simultaneously, which drove a number of scheduling requirements. Two examples are illustrative. First, given that the STS-125 mission effectively monopolizes two Shuttles and NASA has only a limited surge capacity at the Kennedy Space Center, the Shuttle manifest had to account for a two-month gap between STS-125 and the prior Shuttle mission, STS-119. Second, turnover of the LC-39B launch pad from Shuttle to Constellation for Ares I-X was delayed until the STS-125 LON flight is released, which impacts the Constellation Program test schedule. This turnover occurred on May 31, 2008.

QUESTION 178:

The Constellation Project will need to convert one of the Space Shuttle launch sites and mobile launch platforms for initial test flights of the Ares 1. At this time, when does NASA expect that a second launch site for the Shuttle would be unavailable for the Hubble servicing mission due to the requirements of Constellation?

ANSWER 178:

With the completion of the STS-125 Hubble servicing mission, the second Shuttle launch pad has now been turned over to the Constellation Program for the conversion of Ares I. This enabled NASA to use the second pad for the potential LON mission for STS-125. The second pad is no longer required by the Shuttle Program following the STS-125 mission (please see response to Question 177, above).

QUESTION 179:

Administrator Griffin had said that he would not consider a one-pad option for the Hubble servicing mission, as doing so would diminish safety. Has NASA changed its position on a one-pad option, and if so, why?

ANSWER 179:

NASA employed a two-pad approach for the Hubble servicing mission.

AERONAUTICS

QUESTION 180:

In past budgets, annual increments in aeronautics research provided by the Congress were scaled back, and those augmentations were invested in activities selected solely based on one-year's funding availability. Given the requested increase in aviation research, what is your expectation that the augmentation provided in the fiscal year 2009 appropriations act will be applied to longer-term, multi-year research and development activities?

ANSWER 180:

Aeronautics Research Mission Directorate (ARMD) will invest $133M of Recovery Act funds and $53.5M of Congressional augmentation funds to enhance and expand fidelity of current ARMD foundational research activities; ensure the availability of aeronautical test facilities; and accelerate integrated system level research activities supporting NextGen. The vast majority of the funding will be utilized to enhance existing, ongoing fundamental research activities across the four ARMD programs, and will enable and facilitate the transition of certain technologies and activities to the new Integrated Systems Research Program/Environmentally Responsible Aviation Project starting in FY 2010.

We are also investing $11 million of Recovery Act funds within the Aviation Safety Program (AvSP) into validation and verification (V&V) of flight critical systems on the vehicle and in the air traffic management system. This funding is to support new activities to define, integrate and conduct initial research efforts in V&V of flight critical systems to respond to a JPDO-identified gap in key national capabilities. AvSP will assess the value of the V&V research as it is ongoing. If it is determined to be of high value, then the program will assess how to allocate funding for the activity within its current budget.

We are also conducting a planning exercise related to Unmanned Aerial Systems (UAS) with $6M of Recovery funding. In cooperation with other federal government agencies, NASA will develop concept of operations requirements and analysis for government-owned UAS access to the National Airspace (NAS) in near term and for civil UAS access in the long term. The initial research and development into the concept of operations has been coordinated with the FAA's Associate Administrator for Aviation Safety and is of high value.

QUESTION 181:

NASA has been directed to establish an R&D initiative involving universities, industry and other research organizations to enable discoveries in commercial aircraft performance, namely in the areas of noise, energy and nitrous oxide reductions. What is the status of this initiative and what are its annual budgetary requirements for each of the next five years?

ANSWER 181

In FY 2010 NASA will establish a new Integrated Systems Research Program (ISRP) to conduct research at an integrated systems-level on promising concepts and technologies and explore, assess, or demonstrate the benefits in a relevant environment. The research in the ISRP program will be coordinated with on-going long-term, foundational research within the three other ARMD research programs, and will be closely coordinated with other Federal Government agency efforts. The ISRP program will include the Environmentally Responsible Aviation (ERA) Project, a "green aircraft initiative," which will explore and assess new vehicle concepts and enabling technologies through system-level research to simultaneously reduce fuel burn, noise, and emissions. The project will transfer knowledge outward to the aeronautics community so that aircraft and propulsion system manufacturers can confidently transition these technologies into new products, as well as transfer knowledge inward to the Fundamental Aeronautics Program when the need for further development at a foundational level is identified.

The initial research plan for the ERA Project will be discussed at a Meeting of Experts convened by the National Research Council in May, 2009 at the request of the Aeronautics Subcommittee of the NASA Advisory Council. This meeting will provide stakeholders from industry, academia, and other government agencies an opportunity to provide input to NASA's ERA research plan. The ERA Project will be funded from the increase to the ARMD in the FY 2010 President's budget. The Project will be conducted in collaboration with universities, industry, and other government agencies through major investments in out-of-house research using NASA Research Announcements (NRA), Space Act Agreements, Inter-Governmental Agency Agreements, and competitive procurements.

QUESTION 182:

Last year, the Science Advisor testified before the Committee that NASA's aeronautics research and development programs and profile had changed. Given the new Administration and the renewed focus on aeronautics research, how will NASA's aeronautics research and development programs and profile change, if at all?

ANSWER 182:

The FY 2010 budget request includes an augmentation for ARMD of $59.5M in FY 2010, $61.6M in FY 2011, $64.3M in FY 2012 and $61.3M in FY 2013. Based on several external mandates and recommendations and NASA's own assessment, ARMD has decided to allocate this entire augmentation to the new Integrated Systems Research Program (ISRP), and it's Environmentally Responsible Aviation Project (ERA). ISRP and ERA are discussed in detail in the response to Question 181.

QUESTION 183:

What investments is NASA making in "green" research directed at noise emissions improvements and energy consumption reduction in fiscal year 2009 and how do these investments compare to those planned for fiscal year 2010?

ANSWER 183:

Research directed at noise emissions improvements and energy consumption reduction in 2009 is being conducted in the Fundamental Aeronautics Program at a foundational research level. This research includes assessment in propulsion wind tunnels at the Glenn Research Center of the noise characteristics of ultra-high bypass ratio fans and open-rotor propulsors. Both of these systems hold promise for significant fuel burn reduction compared to conventional turbofans. However, their fuel burn and noise characteristics are traded off against propulsion-airframe integration issues and the investigations in 2009 will expand our knowledge of this trade space. Work also continues on development of surface treatments for nacelles and fan surfaces to reduce fan noise for conventional shrouded fans and to build a database of acoustics measurements for open-rotors for use in validating the latest aeroacoustics prediction methods. Work is also continuing in 2009 on the design and evaluation of alternate combustor fuel injectors to enable lower NOx combustors. Fundamental research also continues in 2009 on achieving laminar flow on commercial aircraft surfaces. The inability to maintain smooth laminar flow is the largest contributor to aircraft drag, which increases fuel burn. In the past laminar flow has only been tested in flight, which is expensive. The National Transonic Facility is capable of attaining flight conditions in a ground-test facility, but has background noise not present in the atmosphere which can disrupt the ability to maintain laminar flow. We will assess the ability of the NTF to conduct laminar flow research at significant cost savings compared to flight research in 2009.

In 2010 the Fundamental Aeronautics Program will continue foundational research on fuel burn and emissions reduction. The new ERA Project (see answer to question 181), will conduct systems research on concepts such as laminar flow, low NOx combustors, airframe noise reduction, structural concepts for reduced airframe weight, and propulsion concepts for reduced noise and improved fuel burn. ERA will assess the potential of these concepts to simultaneously achieve emissions, noise, and fuel burn reductions through integrated systems research in relevant environments.

QUESTION 184:

Please describe the level of investment and the activities planned in fiscal year 2009 and 2010 for the Next Generation Air Transportation System (NextGen). How do these efforts supplement or supplant the activities of the Federal Aviation Administration?

ANSWER 184:

All of the activities planned in the Airspace Systems Program are aligned with the research needs of NextGen as defined by the multi-agency Joint Planning and Development Office (JPDO). These research activities compliment the near and

mid-term system improvements conducted by the FAA, and build the foundation for the long-term system developments to be implemented by the FAA with its contractors. Airspace System Program researchers are currently working in close collaboration with the FAA to build transition paths for several key NASA developed technologies. The Research Transition Teams (RTT) are developing capabilities and plans to move research from NASA laboratories to the national airspace system in close coordination with FAA implementers. Areas of initial focus include: efficient flow into congested airspace, integrated arrival/departure/surface, multi-sector planner, and dynamic airspace configuration. In FY 2009 the RTTs will develop their initial Plans for Implementing the Common Vision and in FY 2010 will detail the nature and substance of technology to be transferred. In addition, Airspace Systems researchers are conducting studies to address JPDO-identified NextGen technology gaps in the following areas: allocation of operational functions between ground-based and airborne control authorities, integration of weather information into ATM decision support tools, and integrated concepts for arrival, departure, and airport surface movement management.

Examples of FY 2009 activities:

- NASA and FAA will conduct joint human-in-the-loop simulations of NASA's En Route Descent Advisor (EDA) through the FAA Three Dimensional Path Arrival Management (3D PAM) activities.
- For San Francisco International Airport (SFO) Stratus and Flow Scheduling, NASA will develop models to recommend key parameters for establishing Ground Delay Programs. This research will use probabilistic weather data from the National Weather Service, and leverage FAA's operational ground delay program modeling system.
- NASA will develop work plans for test-bed upgrades and concepts and technologies to be evaluated for Integrated Arrival, Departure, and Surface concepts and synchronize them with the FAA plans.

- Examples of FY 2010 activities:
- Conduct EDA prototype field tests at FAA's Denver Air Traffic Control Center in front of sector controllers for real-time, operational decision support.
- Conduct analysis and integration for a field evaluation of a model at the FAA Air Traffic System Command Center to enhance Ground Delay Program decision making with probabilistic stratus clearance time forecasts at SFO.
- Develop initial algorithms for System Oriented Runway Management, Collaborative Arrival Departure, and Metroplex operations and establish their technology transfer process to the FAA.

Even with all of the improvements enabled through improvements in air traffic management, the expected growth in air travel could be constrained if the environmental impact of aircraft cannot be reduced compared to today's levels. To address this issue, the Fundamental Aeronautics Program's Subsonic Fixed Wing Project will continue to pursue foundational research in FY2009 and FY2010 toward achievement of aggressive goals for reducing fuel burn, NOx, and noise emissions. This research is developing and maturing new approaches to aircraft drag reduction, airframe noise reduction, and aircraft weight reduction. Propulsion system research

is targeting core engine efficiency improvements and engine architecture changes such as open-rotors and ultra-high bypass ratio turbofans to reduce fuel burn which will directly reduce CO2 emissions. New combustor design concepts are being developed to reduce NOx emissions. Engine-airframe integration and new acoustic treatments are being explored to reduce engine noise. In addition the Subsonic Rotary Wing (SRW) Project is pursuing research to enable large high speed rotorcraft capable of providing increased mobility and relieving congestion at major hub airports. The Supersonics Project continues to conduct research to enable supersonic fuel efficient aircraft that generate sonic booms which are weak enough to offer the promise of supersonic flight over land with acceptable boom annoyance. Supersonic flight over land would also increase mobility.

Starting in FY 2010 a new program, the Integrated Systems Research Program, and a new project, the Environmentally Responsible Aviation (ERA) Project, will continue to mature selected concepts drawn from the Fundamental Aeronautics Program and from university and industry that show promise for simultaneously reducing emissions, noise, and fuel burn. The ERA Project will pursue research at a higher level of development than that used in the Fundamental Aeronautics Program. ERA will assess concepts at a systems-level in relevant environments in order to further mature the concepts, expand the well-informed design trade space, and reduce technical risk so that industry can confidently adopt the concepts in new products. The goals for the ERA Project are derived from the National Plan for Aeronautics Research and Development and Related Infrastructure that were based upon an extensive national outreach campaign.

Beginning in FY 2009, the Aviation Safety Program (AvSP) is focusing and expanding its current activities in verification and validation (V+V), a specific technical gap area that JPDO has identified within the path to implementation of NextGen. The gap is the cost and difficulty of performing V+V on the complex systems, both on-ground and airborne, that will be required in NextGen. The objective of this research activity in V+V for Flight Critical Systems is to identify and develop advanced tools and methods. The research will leverage other work in V+V areas including academia, industry, and other government agencies. Once developed, the tools and methods will be available for application to new flight critical systems by industry and the FAA.

QUESTION 185:

The Aerospace Safety Advisory Panel noted that NASA should fund a prompt and thorough assessment of its aging fixed-wing aircraft fleet and aircraft support facilities. Does NASA agree that such an assessment is necessary, and if so, how long would it take to complete such an assessment?

ANSWER 185:

NASA does agree that such an assessment is necessary. It will take at least a year to complete as it will likely involve a contracted effort. NASA has already begun to build a statement of work.

HIGH RISK CONTRACT AND ACQUISITION MANAGEMENT

GAO's recent report on major NASA projects identifies a number of system issues associated with NASA's ability to contain costs and manage its projects effectively. These include persistent optimism in cost and schedule estimates, moving projects forward into implementation with unknowns about technologies and design, problems with contractor performance, requirements changes, and funding instability. While the report identified a relatively modest average cost increase of 13 percent across the projects GAO reviewed, the baselines for those projects were just set 2 or 3 years ago and we are all aware that a number of the projects included in the report had significant overruns before the baseline.

QUESTION 186:

What corrective actions is NASA taking to ensure that current and future major acquisition projects do not exceed the Congressionally-mandated cost and schedule thresholds?

ANSWER 186:

NASA puts great effort into managing the cost and schedule, as well as technical uncertainty inherent in the unique, high risk missions NASA pursues. Over the last two years, NASA has made significant improvements in its policies and practices in order to strengthen performance. NASA Policy Directive (NPD) 1000.5 on Acquisition Policy, adopted in January 2009, includes a new requirement to manage program joint cost and schedule confidence levels (JCL) on an ongoing basis; these JCLs allow cost and schedule estimates to incorporate the impact of technical and other performance risks on project costs and schedule.

QUESTION 187:

How long will it be before we see the effects of these improvements?

ANSWER 187:

NASA will apply improved assessment and reporting processes to current missions, but also recognizes that a number of these baseline commitments were made prior to the introduction of the changes described in the response to Question 186, above. As a result, we anticipate that it will be some time prior to realizing the full results of the changes. Nonetheless, improvements will be evident over the next few years as new projects are baselined and become part of the portfolio of projects in development.

QUESTION 188:

Why haven't these measures been put in place before or taken root?

ANSWER 188:

NASA already has some new or enhanced tools in place to facilitate the new measures described in the response to Question 186, but also has plans to incorporate additional tools and make better use of existing tools and processes to improve our delivery of missions on cost and on schedule. The monthly baseline performance reviews (BPR) and NPR 7120.5D program and project management changes are in place, although improvements in implementation will continue as NASA gains experience with these new approaches. Methodologies, tools and implementation details are being developed, piloted and rolled-out for the Joint Confidence Level baseline.

QUESTION 189:

What are NASA's views on the systemic problems identified by GAO; haven't similar problems been identified by NASA's own studies?

ANSWER 189:

As noted in the NASA's March 5, 2009, testimony before the House Committee on Science and Technology on this matter, optimism with respect to assumptions about technological heritage or maturity (a feature of project planning in every sector) is an important planning issue. The measures described in the response to Question 187, above, are designed, in part, to address these matters. A more complete picture of the factors affecting cost and schedule performance includes partnership performance, launch capabilities, and funding stability.

Contractor performance

QUESTION 190:

Numerous times NASA notes that problems with contractor performance have led to cost overruns and schedule delays. What corrective actions is NASA undertaking to ensure better contractor performance and improve its contractor oversight for major acquisition projects?

ANSWER 190:

Because NASA pursues high-risk, untested missions, NASA missions frequently utilize cost plus award fee contracts. Twenty five percent of the available award fee pool is typically used to measure and incentivize the contractor in the area of cost performance management. As a part of the NASA monthly BPR, all large contracts and task orders from NASA's major projects are tracked for current value compared to original value, award fee status, current and upcoming significant procurement actions (e.g., undefinitized contract actions). Planned procurements that are within a six-month horizon are also highlighted and discussed.

QUESTION 191:

Why does NASA blame its contractors for its problems in the budget and not itself – aren't you partners with your contractors? Shouldn't you be?

ANSWER 191:

NASA identifies the reasons for changes in project cost, schedule, or content, but does not intend these explanations to be interpreted as assigning blame. Rather, NASA strives to identify the root causes for changes in performance from plan to identify areas that could benefit from improved approaches or processes. For example, NASA and the aerospace industry work in partnership to assess and strengthen industrial base capabilities essential to NASA's mission.

QUESTION 192:

Mr. Scolese, you indicated to the Aerospace Safety Advisory Panel that mid-level project management types are still too prone to just go to a contractor. How do you change this mentality, and what does this bode for the future of NASA if this is the disposition of the next crop of program managers?

ANSWER 192:

This question appears to be taken out of context. To clarify, NASA's mid-level project managers are very competent and well trained. Before these NASA personnel become project managers, they must demonstrate they possess the skills and abilities to be effective. NASA has recently implemented a project management certification process to further support and document the abilities and credentials of the project management workforce. In addition, NASA's Academy of Program and Project Leadership (APPEL) has been a longstanding best practice within government. APPEL provides a development structure with clearly defined competencies and offers various forums for continued development, including formal classroom curricula, masters forums, the Project Management Challenge, and project team performance enhancement opportunities. Finally, the changes to NASA acquisition and program management procedures described in the response to Question 186 provide a framework supporting project managers.

Launch delays

QUESTION 193:

NASA has indicated that launch delays contribute to cost and schedule slippages. If such launch delays are typical given NASA's launch priority, why can't those systematic launch delays be calculated, even roughly, into cost and schedule estimates?

ANSWER 193:

NASA does consider launch delays to be a cost and schedule risk for flight projects and tries to understand the specific implications and take appropriate action. Launch delay may be identified as a project threat, and mitigation plans may be developed when the cost impact is high relative to project budget. Just as NASA does for other threats, the project may set aside funding for unbudgeted future expenses based on the estimated cost and the likelihood of occurrence of the delay. NASA calls this procedure Qualitative Risk Assessment. Launch delays are unique threats because they usually occur at a point in the life cycle where cost and schedule reserves are likely to be nearly depleted.

Launch delays of a few days to a week can generally be covered with available budgets without creating a problem. The issue arises with missions such as Solar Dynamics Observatory (SDO) which is incurring delays measured in months. The Atlas system has a required spacing of at least 60 days between launches, and the manifest is very full through the 2011-2012 timeframe. The Atlas system recently executed its first launch in about 12 months due to a combination of fleet issues and issues with DOD payloads ahead of SDO in the launch manifest.

The crowded manifest has been exacerbated by the phase out of the Delta II launch vehicle as DOD moves its payloads to the EELVs. Historically, the Science Mission Directorate has relied primarily on the workhorse Delta-II launch vehicle. Until a replacement capability is available in this medium performance class, payloads that would previously have been flown on the Delta II will be flown on EELVs.

QUESTION 194:

How much does NASA have to pay DOD for launch delays, i.e., what costs are there to NASA for satellites that need to "wait" at the launch pad?

ANSWER 194:

NASA does not pay DOD for launch delays. By policy, NASA procures launch services for its spacecraft from commercial providers whenever possible. Where the launch provider must arrange for use of a DOD launch pad, the ELV provider, NASA, and DOD settle on a mutually agreeable launch date with consideration for contingency situations that might arise. The NASA launch services contracts include provisions for compensation if either party is the cause of a delay that falls outside of the agreed launch window.

Launch delays can result in additional costs to NASA. Removal, storage, retest and reinstallation on the launch vehicle are potential costs. Retention of project personnel and research investigators beyond the time period contemplated in the project plan other examples.

QUESTION 195:

Roughly what percentage of launch problems is attributable to the EELV program and other types of launch services, such as Ariane or Orbital's Minotaur?

ANSWER 195:

NASA has launched 56 missions over the past 10 years on U.S. launch vehicles. Only two of these, Mars Reconnaissance Orbiter (MRO) and New Horizons were launched on EELVs, both on Atlas Vs. (EELVs came into service in 2002.) The MRO mission was launched as planned on August 10, 2005. The New Horizons launch was delayed approximately seven days for Atlas V-associated issues. The Lunar Reconnaissance Orbiter (LRO) mission on an Atlas V was scheduled for October 2008, but has been delayed until June 2009, primarily because of Atlas V manifest conflicts with high priority DOD payloads. NASA is concerned that its increased reliance on Atlas EELV in place of the discontinued Delta II, coupled with an already crowded manifest, pose future problems for the Agency which must be addressed. NASA is working with emerging launch providers and leveraging our experience with launch service providers under the Commercial Orbital Transportation Services agreements and the International Commercial Resupply ices contracts for potential new providers of services in this performance class could be available for science payloads in the future.

NASA has limited experience with spacecraft launches on an Ariane ELV or on a Minotaur. The NASA James Webb Telescope is planned to be launched on an Ariane in 2013, the first NASA mission on Ariane since TOPEX/POSEIDON in '. The Lunar Atmosphere and Dust Environment Explorer (LADEE) is planned unch on a Minotaur V in 2011.

ost and schedule estimating

QUESTION 196:

GAO testified before the House Science Committee that NASA needs to better manage external risk factors, such as contractor deficiencies, launch manifest issues, partner performance and funding instability, which NASA asserts are outside its control. These unforeseen events contribute to significant cost and schedule growth. Why is NASA unable to address these issues in project-level, budgeting and resource planning through the development of adequate levels of contingency funds, as suggested by the GAO?

ANSWER 196:

NASA is using the research on historical cost and schedule performance to identify factors which contribute to changes in project cost or schedule. These may include factors within the control of project managers, those that are usually within the control of the overall program or Agency, and those which are external to the Agency. Where possible, NASA seeks to mitigate the attendant risk with respect to external as well as internal factors. For example, NASA has been working with its commercial launch service providers to identify strategies for mitigating the impact of congested launch manifests on NASA missions. The use of Joint Confidence Level tools provides a basis for incorporating the remaining impact of external

factors on project costs and schedule. Finally, each of these external risk factors are being tracked as cross-cutting issues at the Agency's monthly Baseline Performance Reviews (BPRs), providing the information necessary to take actions to reduce or mitigate the effect of these factors on project performance.

QUESTION 197:

Cost estimating seems to be a recurring issue, but if what the GAO is saying, programs are moving forward into implementations with many unknowns about technologies, requirements, contractors, etc., then how can anyone really expect a cost estimate to be accurate? Moreover, how can your cost estimating improvements make a difference if a program does not yet know whether the path it is pursing is achievable within available resources?

ANSWER 197:

With few exceptions, each NASA mission is a prototype at launch. This means that the standard business model of retiring risk prior to entering implementation cannot be utilized at NASA. The Agency's challenge, therefore, is to make risk-informed decisions as its projects proceed towards launch. The Agency accomplishes this in several ways. Under the recently-adopted NPR 7120.5D, a Standing Review Board assesses project progress and remaining challenges prior to each Key Decision Point (KDP) for authorization to enter a new phase in the project lifecycle. The probabilistic, or confidence level, approach required by the Agency's new acquisition policy (NDP 1000.5) was chosen precisely because it accounts for the risks and uncertainties associated with moving a space flight project forward and allows the Agency to build these uncertainties into project cost estimates.

QUESTION 198:

Currently NASA only provides a lifecycle cost estimate to the Congress for its projects upon entering what is termed as the implementation phase and has provided GAO a range of lifecycle costs for projects that are in the formulation phase, which can range from 2-5 years or longer before implementation. Given the importance of the early stage of a project, what benchmarks can NASA provide the Congress to enable us to monitor projects and provide some accountability for cost growth during the entire project life-cycle?

ANSWER 198:

During formulation, NASA provides preliminary project parameters and scope, deliverables, schedule, management strategy, acquisition strategy, independent review plans, and project risk management, and an estimated five-year budget run-out, in addition to an estimated cost range after Key Decision Point (KDP) B review following the project System or Mission Definition Review. Earlier estimates, such as those included in Decadal Surveys, are not based on even a preliminary

characterization of scope. NASA commits to the project content, cost, and schedule baseline only after successful completion of the Key Decision Point C (KDP-C). At that point in the lifecycle, following the completion of the Preliminary Design Review, project management has a more thorough understanding of the technological maturity, complexity, and risk associated with the project. As a number of risks have been retired by that point, and the implications of the project requirements are better understood, the baseline established at KDP-C provides a more meaningful basis for measuring cost and schedule performance.

QUESTION 199:

NASA has removed the indirect costs from its project budgets for fiscal year 2009 and is accounting for this information in a separate appropriations account. Given the history of changes to your accounting practices over the past several years, do you have the ability to track accurately project life cycle costs, including indirect costs?

ANSWER 199:

Yes. NASA updates all of its cost estimates to reflect the budgeting and financial management approach used in its most recent budget request. This assures an apples-to-apples comparison of cost estimates over each project's lifecycle as well as an ability to compare changes in cost estimates across the Agency's portfolio.

STANDING REVIEW BOARDS

NASA is revamping six expert panels created to conduct independent reviews of its human spaceflight-hardware development programs following an internal IG finding that each committee had at least one member with a vested interest in efforts they were assessing. The investigation revealed that 21 of the 66 nongovernmental members on the six review boards either consulted or worked for contractors with ties to the programs; others owned stock. These conflicts of interests precipitated the re-competition of a $745 million spacesuit contract and threaten a ground processing contract at Kennedy Space Center. Conflicts of interest have arisen from a screening process that "lack[ed] in both vigor and accuracy for determining independence" and a failure, on the part of the Independent Program Assessment Office, to consult with NASA's general counsel.

QUESTION 200:

NASA suspended the work of its standing review boards this past fall. What has NASA done to develop and implement a new policy, and in your answer, please describe the agency's new policy?

ANSWER 200:

An Agency team, including representatives from the Office of Program Analysis and Evaluation (PA&E), the Office of the Chief Engineer, the Office of General Counsel,

and the Office of Procurement, have developed a draft independence policy (Policy on Standing Review Board Composition, Balance, and Conflicts of Interest) that describes the principles governing both personal and organizational conflicts of interest. The policy also describes the processes for regularly assessing conflicts of interest, approaches toward mitigation plans, and waiver procedures. The Agency is presently in its final review of a revision to NASA Procedure Requirement (NPR) Spaceflight Program and Project Requirements 7120.5D which will enact the new independence policy. Additionally, the SRB Handbook is being revised in parallel with NPR 7120.5D to include detail discussions of conflicts of interest and processes for identification and mitigation of conflicts.

QUESTION 201:

When will these new guidelines be in place?

ANSWER 201:

The new draft policy has been implemented on all the Constellation Standing Review Boards (SRBs) and is being implemented on all other SRBs managed by the Agency's Independent Program Assessment Office (IPAO). Revisions to NPR 7120.5D and the SRB Handbook to include the new policy will be complete in August 2009.

QUESTION 202:

How will NASA ensure that board members provide impartial and unbiased opinions on a project's success in meeting technical, schedule and cost-related milestones, and how often will that independence be re-evaluated?

ANSWER 202:

NASA's independence policy defines "conflict of interest" to mean any financial or other interest which conflicts with the individual's service on an SRB because it: (1) could significantly impair the individual's objectivity; or, (2) could create an unfair competitive advantage for any person or organization. This policy addresses two different types of conflicts. The first type of conflict, known as an organizational conflict of interest, is based upon the interests of the individual's employer. The second type of conflict, known as personal conflicts of interest, is based upon the personal interests of the individual. No individual that has a conflict of interest , as determined by NASA to likely impair their judgment relative to the functions to be performed, can be appointed to serve (or continue to serve) on an SRB. In some cases, such as unique expertise, it may be in the best interest of the government to approve potential SRB members despite the presence of conflicts of interest but in these cases conflicts will be mitigated and/or waived appropriately.

To facilitate collection of information from non-Federal members, the "*Background Information and Confidential Conflict Of Interest Disclosure*" form is used by appropriate contracting officers and contractors to collect the information. Disclosure of relevant information is a *continuing obligation* for the duration of the

SRB, for which the "*Background Information and Confidential Conflict Of Interest Disclosure*" form was prepared. Annually, inquiries for updates of this information will be made and reviewed. Additionally, if during an individual's period of service on the SRB, it becomes apparent to the individual that there have been changes in the information disclosed, or that there is new information that needs to be disclosed, such information must be reported promptly to the Review Manager for the program/project for which the form was completed. For proposed Federal SRB members, the Office of Government Ethics (OGE) Form 450 or Standard Form (SF) 278 (as appropriate) will be used. In either case, civil servant or contractor, the Office of General Counsel is involved in the review of independence process.

QUESTION 203:

How have the standing review boards of the Constellation program been affected and when will they be reconstituted?

ANSWER 203:

At the Program level, the review of the Constellation Program SRB independence was completed in March 2009 and that SRB is back in operation. At the Project level, the Constellation Project SRBs have been re-configured to consist of civil servant SRB members with support from contracted technical experts. SRB Chairs for the Constellation Project SRBs have been reviewed for independence and are in the process of finalizing nominations for the SRB members and technical experts that will also be reviewed. All technical experts from the previous Constellation Project SRBs have been reviewed to establish eligibility for the reconstituted board. All of the Constellation SRBs are planned to be fully operational by June 2009.

QUESTION 204:

To what extent will the findings of the audit impact the Constellation's program ground processing contract at Kennedy Space Center?

ANSWER 204:

The Standing Review Boards review the programs and projects not the contracts. Although NASA has revised our independence and conflict of interest screening procedures in response to the audit findings, these revisions should have no substantive effect on the Constellation program ground processing contract procurement at Kennedy Space Center. It has always been a NASA requirement, consistent with the Federal acquisition regulations, that contractors that provide standing review board (SRB) members be restricted from competing for contracts on the specific project or program being reviewed. These restrictions also apply to each individual SRB member. These restrictions were in place prior to the audits; however, due to NASA's increased attention to independence and conflict of interest issues with respect to SRB participation, the Agency has taken a number of steps to ensure our contractors understand and comply with these restrictions, as well as ensuring that individual SRB members receive training on these restrictions.

INFORMATION TECHNOLOGY (IT) SECURITY

Since 2006, NASA has been reporting IT security as a material weakness in the Administrator's annual Statement of Assurance. This determination was made based on security deficiencies identified by agency-wide security reviews of the Office of the Chief Information Officer (OCIO) and ongoing Inspector General audits and investigations. Based on the agency's progress, the OCIO concluded that IT was no longer a material weakness.

Last May, NASA informed the Committee of its critical need for improved IT security and identified, in particular, an incident (which is classified) that revealed ongoing material weaknesses in its IT security. NASA appealed to this Committee to restore an affordability reduction of $26.4 million recommended in its fiscal year 2009 budget request for agency IT services, citing that incident. Since that time, NASA has been largely operating under a continuing resolution. On September 30, 2008, NASA reported to OMB that NASA's CIO and IG found no discrepancies in NASA's IT security program.

QUESTION 205:

What has changed since May 2008 and the submission of NASA's performance and accountability report in November 2008 that would indicate that NASA does not still have a material weakness in its IT security?

ANSWER 205:

In November 2006 the NASA Office of Inspector General's addendum to the NASA Administrator's Statement of Assurance cited an IT Security material weakness due to, "...weaknesses in controls." NASA's Chief Information Officer (CIO) ordered a review of the agency IT Security Program in January 2007 and found significant challenges similar to those the OIG had identified. As a result, the CIO prepared a Corrective Action Plan (CAP) in March, 2007 to address the controls weaknesses identified.

Most of the CAP items were management control actions such as security policies and procedures, incident management procedures, Standard Operating Procedures for implementation of the enterprise-wide Security Operations Center (SOC) and development of an updated IT security clause for NASA contracts. NASA's progress on the CAP was the principle motivation for the OIG to remove the material weakness in IT Security in November 2008. Although improvements were realized, the OIG's 2008 report did note, "...to ensure continued focus on IT security deficiencies as well as ensure that sufficient management attention and adequate resources are provided, we continue to report IT security as a management and performance challenge."

Also as a result of the agency IT security review, technical initiatives were recommended to strengthen the network perimeter by reducing external connections, to implement a series of security zones, and to implement two-factor authentication through approved smart cards. In response, NASA's FY 2009 appropriations and

FY 2010 budget contained resources to implement these technical initiatives, while also replacing aging and less secure network infrastructure at NASA Centers. These initiatives are considered vital components in defending NASA's information and information technology and addressing the OIG concerns regarding IT security.

QUESTION 206:

How did NASA's OCIO and its IG conclude that NASA's IT security should no longer be reported as a material weakness?

ANSWER 206:

NASA's material weakness in IT security has been upgraded to "Other Weakness" and is formally tracked on a quarterly basis by the NASA Senior Assessment Team (SAT), the NASA internal controls governing body. In April 2008, the Chief Information Officer (CIO), having made demonstrable progress in completing actions within the material weakness corrective action plan (CAP), having adequately met the requirements of the Federal Information Security Management Act (FISMA) for FY 2007, and having executed key enterprise IT infrastructure improvements, sought to dispose of the material weakness and categorize the condition as an Other Weakness.

The Office of the Inspector General (OIG) at the request of the SAT and the CIO took an action to assess the progress of the Agency against the CAP by initiating a 90 day review of the CAP evidence and artifacts. At the conclusion of the 90 day assessment, the OIG concurred that the Agency had made demonstrable progress against the CAP and agreed that the material weakness should be categorized as an Other Weakness condition until such time that the Agency had completed actions to the satisfaction of the SAT and the OIG. The SAT, upon confirmation by the OIG, designated the IT security condition as an Other Weakness with mandatory progress reporting to the SAT on a quarterly basis.

QUESTION 207:

Can NASA assure this Committee that the incursions into its IT systems revealed to this Committee in May 2008 and feared by its systems managers cannot now happen?

ANSWER 207:

While there is a reduced likelihood of suffering similar incursions as revealed to the Committee in May 2008, NASA cannot assure that incursions into its IT systems cannot now happen. NASA is aware that adversaries are well funded, motivated and constantly evolving. They employ new and evolving attack methodologies that require proactive and agile controls and monitoring to detect and mitigate. NASA further understands that security controls degrade over time and that controls implemented 18 months ago may no longer be effective at repelling the motivated attacker. However, NASA remains committed to improving its security posture by reducing its number of external connections, deploying new security technology and

zones, deploying smart cards, continuously developing security policies and procedures, further enhancing its incident management process and engaging in information sharing and collaboration with other Federal agencies.

QUESTION 208:

How did NASA address the critical need to improve IT security that was to be financed in its fiscal year 2009 budget when NASA has been operating under a continuing resolution from the beginning of the fiscal year until early March 2008 [sic]

ANSWER 208:

While the five month delay in realizing the 2009 IT budget delayed some initiatives to improve IT security, others, such as Phase I of the Security Operations Center were able to move forward due to FY 2008 project funding. In addition, implementation of new policies and procedures were possible through prioritization of available funding. However, some technical initiatives, such as implementation of log aggregation, deployment of intrusion detection sensors and upgrades to Center network infrastructure, experienced delays due to funding shortfalls during the period of the Continuing Resolution. With funding received, these initiatives are now progressing through the systems engineering lifecycle.

QUESTION 209:

What funds are requested this year to address NASA's IT security? What is the total cost and the budget profile needed to rectify the current weaknesses and deficiencies? Why are these funds necessary given the CIO's and IG's findings?

ANSWER 209:

Across NASA's $1.87B IT portfolio for FY 2009 (all appropriations), funds totaling $110.93M were provided to address IT security, per the NASA Exhibit 53 submit to OMB. For FY 2010, the IT request is $1.69B, with $92.8M requested for IT security. Specifically, using the IT security criteria outlined by OMB, the total FY 2009 NASA IT budget request was $1,874.5M, of which 6 percent was for IT Security. In FY 2010, the budget request is $1,698.53M, of which 5 percent is for IT Security. It includes the costs of:

- Risk assessment;
- Security planning and policy;
- Certification and accreditation;
- Specific management, operational, and technical security controls (to include access control systems as well as telecommunications and network security);
- Authentication or cryptographic applications;
- Education, awareness, and training;
- System reviews/evaluations (including security control testing and evaluation);
- Oversight or compliance inspections;

- Development and maintenance of agency reports to OMB and corrective action plans as they pertain to the specific investment;
- Contingency planning and testing;
- Physical and environmental controls for hardware and software;
- Auditing and monitoring;
- Computer security investigations and forensics; and
- Reviews, inspections, audits and other evaluations performed on contractor facilities and operations.

Within the Agency IT Services (AITS) budget under the Cross Agency Support Program (CASP), IT security-related funding in FY 2009 is $27.1M. Requests in future budget submits are: $24.2M in FY 2010, $24.3M in FY 2011, $25.1M in FY 2012, $24.7M in FY 2013, and $25.5M in FY 2014. The funds will be utilized for:

- third party penetration testing
- advanced incident response analysis
- computer forensics incident analysis
- cyber threat identification
- IT security awareness and training
- IT security documentation system
- IT security line of business under the federal E-gov initiatives
- IT security tools engineering
- IT vulnerability scanning
- NASA Agency security configuration standards (ASCS)
- Central patch management and reporting
- Federal desktop core configurations
- Proactive IT security threat monitoring
- Security operations center

Collectively, these investments are necessary to provide the combination of measures required to proactively protect NASA's information and technology. If not funded in the future, NASA will not be able to address the security challenges that remain. In fact, it is quite likely its IT security posture will regress to a material weakness condition.

INSPECTOR GENERAL

QUESTION 210:

What skills and abilities would you like to see in the next NASA Inspector General?

ANSWER 210:

The Inspector General (IG) Act of 1978, as amended, addresses the qualifications of Inspectors General. The Act states that IGs should be appointed solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. These are the skills and abilities we would like to seek in the next NASA Inspector General.

QUESTION 211:

Please describe the ideal working relationship that should exist between the Administrator and the Inspector General?

ANSWER 211:

The unique nature of the IG function can present a number of challenges for establishing and maintaining effective working relationships. To promote a constructive and mutually beneficial working relationship, the NASA Administrator and the Inspector General should define the elements of a productive working relationship and strive to:

- foster open communications at all levels
- recognize the mission and priorities of the Agency and the OIG
- interact with professionalism and mutual respect
- be thorough, objective, fair, and independent
- be engaged
- provide feedback

QUESTION 212:

What results would you like to see from the NASA's IG's audit reports?

ANSWER 212:

The OIG should provide quality products and services that maximize value in improving economy, efficiency and effectiveness of the Agency's programs and operations. The reports should be clear, accurate, timely, relevant, and responsive to NASA decision-makers, Congress, and other stakeholders. Additionally, the OIG should ensure that its resources are targeted to address NASA's most important activities, including the issues identified as the Most Serious Management and Performance Challenges, those on the U.S. Government Accountability Office's (GAO) High Risk List, U.S. Space Exploration Policy, Science and Aeronautics Research.

BUDGET EXECUTION

QUESTION 213:

What accounts for the significant increase in obligation rates in this last year alone?

ANSWER 213:

NASA undertook an assessment of our funds execution practices beginning in FY 2007, with a focus on ensuring that our processes resulted in timely execution of the Agency's programs and projects. Management focused attention on the budget execution process, which included making more timely decisions to support execution of procurement actions, and modified certain processes leading to earlier management decisions.

One component of this improvement effort was to identify the steps within the procurement cycle that could be taken while under a continuing resolution, when the final budget for a certain project is still unknown, thus enabling the Agency to be prepared to award grants, construction projects, and contracts, once the initial operating plan is completed. This has permitted more activities to be awarded in the current fiscal year, which would otherwise have been delayed into the next fiscal year. With NASA's introduction of funds usage metrics into the Agency's monthly management councils, there has been enhanced emphasis on funds execution at the program and project levels at Centers, which has improved overall performance.

In summary, with a combination of timelier decision-making, faster funds distribution, and better procurement planning resulting from active management process monitoring by NASA program managers, NASA has been able to improve obligation performance during FY 2008.

QUESTION 214:

Given the precipitous drop in unobligated balances in fiscal year 2008, coupled with the late enactment of the fiscal year 2009 appropriation, does NASA expect similar obligation rates in fiscal year 2009, or are they likely to return to historical levels?

ANSWER 214:

NASA improved its obligation performance by 9 percent last year, by focusing management attention on making timely decisions to support execution of Agency programs. Approximately 97 percent of NASA funding was obligated in the first year of availability. This focus on the financial execution of Agency programs is consistent with improving overall program management at NASA, and is not a cause for concern.

The late enactment of the regular appropriation makes it difficult to make complete plans until final allocations are known around mid-year. By having a well-thought out plan ahead of time, we are able to make most acquisition decisions when funds are available. Additionally, NASA has improved funds distribution processes so that authorized funds are made available quickly to programs upon enactment of the annual appropriation and apportionment. Given these conditions, NASA anticipates that programs are well-positioned to execute their funding plans in FY 2009, and that obligation rates will be similar, or slightly better than in FY 2008.

As of the end of April 2009, obligation rates were slightly ahead of rates as of April 2008, as a percent of total appropriation, which is consistent with similar, or slightly better, end of year performance as last year.

The exception to NASA obligation targets for FY 2009 will be obligation of Recovery Act funding. Because of the timing of enactment of the Recovery Act, the Agency did not have a typical budget cycle to formulate plans in advance of the appropriation. Although planning was expedited following passage of the Act, it did take time to integrate those plans with the regular FY 2009 appropriation, and NASA

has not yet released funding while we complete consultation with the Committees on our initial FY 2009 Operating Plan.

QUESTION 215:

Has OMB or CBO changed NASA's outlay rate for any of NASA's mission directorates for fiscal year 2010 given the increase in obligation rates experienced in fiscal year 2008?

ANSWER 215:

NASA does not adjust outlay rate projections due to obligation rates, but does adjust outlay projections based on assessments of recent actual outlays, trends, and anticipated activity levels in the future. NASA works with CBO to assist them in understanding any changes in outlay performance, such as the recent increases in Exploration Systems outlay rates as the program enters the development phase, and how to estimate rates for the new appropriations accounts directed by Congress in FY 2009, which were increased slightly due to the higher Agency outlays in FY 2008. While outlay performance was slightly higher for almost every appropriations account in FY 2008 compared with FY 2007, NASA will wait until there is a definitive trend, including FY 2009 outlays, before making any additional significant adjustments. (Exploration Systems projections have been increased due to anticipated expenditures as the program enters the development phase.)

QUESTION 216:

Given the lateness in the enactment of the final appropriations for fiscal year 2009, what levels of unobligated carryover do you anticipate carrying into fiscal year 2010?

ANSWER 216:

As of the end of April 2009, obligation rates were slightly ahead of rates as of FY 2008, as a percent of total appropriation, which is consistent with similar, or slightly better, end of year performance as last year. We expect to obligate 97-98 percent of the regular FY 2009 appropriation by the end of the year.

QUESTION 217:

In your judgment, what are appropriate balances of unobligated end-of-year balances, expressed as a percent of new annual appropriations, for a research and development agency like NASA? On what do you base your judgment?

ANSWER 217:

If program plans are well-developed, acquisition strategies and contracts are in place, internal distribution policies and processes are efficient, and funding is enacted in a timely manner, unobligated balances should be low. Three percent of the Agency's budget, which equates to about 1.5 weeks of activity, is a reasonable target, given no

major changes of direction in the Agency's appropriation. Late appropriations enactment, with significant changes and program augmentations, will typically result in larger balances in affected programs. For example, in FY 2008, several new grant projects were established within the Education account, which could not be executed by the end of the fiscal year. These balances remained unobligated until all of the required acquisition steps could be properly completed.

Unobligated balances will also vary by type of program, which is appropriate. For instance, programs with grants, cooperative agreements, and construction acquisitions will typically obligate at a slower pace than development and operations contracts due to planning, solicitation, and evaluation processes that rely on knowing final budget allocations.

QUESTION 218:

Given the increase in obligation rates, does NASA expect there to be a commensurate increase in its annual accruals and outlays, as well as recoveries?

ANSWER 218:

Obligations enable accruals and outlays, but both are dependent on the pace of contract performance. Due to the long FY 2009 Continuing Resolution, with some of the programs' execution rates constrained, FY 2009 funds obligation rates for the first six months of FY 2009 approximated FY 2006 and FY 2007 levels. While NASA expects to be able to catch back up to FY 2008 end-of-year obligation rates, these procurement actions will not have as much time to accrue and outlay as they would otherwise, so NASA may not see additional increases in outlay rates this year.

In FY 2008, NASA was able to improve execution, not only for FY 2008 funds, but also for older funds still available. In total, NASA accrued and outlaid almost $2B more in FY 2008 than in FY 2007, with $1.3B increase in outlays of the current year funds, and $0.7B increase in outlay of prior-year funds. While NASA expects to maintain this higher rate of first-year outlays, the higher rate for prior-year funds represents a reduction in the backlog of funding, which is expected to be mostly complete in FY 2009.

For the first six months of FY 2009, recoveries of FY 2008 funds total only $124.9 M, which is about half of the rate used in FY 2008. NASA does not expect to see any growth in recovery rates due to the increased obligation rates.

QUESTION 219:

What are the annual levels of recoveries for the last five fiscal years?

ANSWER 219:

	(in millions)
FY 2004 Recoveries	0

FY 2005 Recoveries	0
FY 2006 Recoveries	253
FY 2007 Recoveries	358
FY 2008 Recoveries	306

Note: NASA's financial system was not able to report recoveries in FY 2004 or 2005.

NASA'S CONSTRUCTION NEEDS AND EXPENDITURES

NASA's construction of facilities program is financed through the mission directorates and the cross agency support appropriations. Funding for construction projects required for specific programs is included within each mission directorate. Components of NASA's basic infrastructure and institutional facilities are budgeted as institutional construction projects and requested in the cross agency support appropriation. Appropriations for the mission directorates and the cross agency support accounts are available for two years; however, appropriations language authorizes NASA to administer most construction (and environmental compliance) funds as no-year funds at the time of apportionment, consistent with existing appropriations language, except for institutional minor revitalization and construction and institutional facility planning and design which are authorized to be administered as three year funds.

In FY 2009, a total of $345.7 million was requested for the construction of facilities, of which $233.9 million was requested within the cross agency support appropriation; the bulk of the remaining request ($95.5 million for exploration) was requested in mission directorates. Annual amounts provided for construction average around $360 million for the last three years. Similarly, roughly $75 million annually has been provided for environmental compliance and restoration activities.

QUESTION 220:

What is the current estimate in dollars of the deferred maintenance backlog identified by NASA?

ANSWER 220:

The condition assessment that was conducted in the summer of 2008 estimated NASA's total deferred maintenance to be $2.46B. This is a 6 percent increase from the 2007 estimate of $2.32B. Deferred maintenance is estimated annually based on a condition survey of all NASA facilities conducted during the summer. NASA has initiated its 2009 survey but will not have the results of that survey until fall 2009.

QUESTION 221:

How is this backlog addressed – by the annual requests for construction activities in the mission directorates or by the annual appropriations request for institutional construction, or both?

ANSWER 221:

The deferred maintenance estimate, along with the details of the annual facilities condition assessment, is used as input in several areas of facilities management and planning. Centers utilize the data in the annual condition assessment to develop and prioritize annual institutional Construction of Facilities project requests, which are submitted to NASA Headquarters and prioritized across the Agency using risk assessments. Centers also use the data when developing and prioritizing their annual work plans and selecting repair projects funded from Center Maintenance and Operations accounts.

When programs require modifications and upgrades to facilities to meet specific program needs, the facilities assessments are used as indicators of risk areas that may require additional assessment and funding to ensure that the facility can reliably meet program needs. Programs are generally expected to include necessary repairs in program funded modification projects. Historically, the Space Shuttle Program funded repair projects for facilities that were part of the Shuttle ground infrastructure. The annual condition assessments were used by the Shuttle Program, along with detailed assessments of specific facilities and Shuttle mission risk assessments to determine funding levels and priorities for the Shuttle's infrastructure revitalization program.

QUESTION 222:

How are these estimates developed? Does this approach ensure consistency across the agency? How are these requirements addressed – by the annual requests for programmatic construction; minor revitalization and construction; and demolition projects or by the annual appropriations requested for institutional construction; minor revitalization and construction; and demolition or both?

ANSWER 222:

To calculate NASA's deferred maintenance, NASA conducts an annual visual inspection of every NASA facility (every building/every Center). A condition assessment is made of 9 major systems within each facility. Independent assessment teams managed by Headquarters are used to ensure that assessments are consistent across Centers, but Center system experts provide some limited input to the teams to ensure that the teams are provided with sufficient data to properly assess each facility.

Condition ratings are entered into a parametric estimating model that uses the facilities estimated Current Replacement Value (CRV) along with the Parametric Cost Estimating System (PACES) developed for Department of Defense and the industry accepted RS Means estimating system to estimate the deferred maintenance for each facility.

By using independent assessment teams and industry accepted estimating systems, NASA ensures that the estimates are consistent across the Agency. NASA's approach to estimating deferred maintenance meets the Federal Accounting Standards Advisory Board's requirements for deferred maintenance reporting for Federal facilities and NASA is one of the few Federal agencies which conducts a full review annually.

Agency Facilities Study

QUESTION 223:

I understand that there is an ongoing Agency Facilities Study commissioned by the Strategic Management Council. Please describe what the study is to determine – for example, is the study to identify the excess or underutilized facilities in NASA's inventory?

ANSWER 223:

The NASA "Agency Facilities Study" was chartered by the Office of the Administrator in August 2008, and led by the Office of Program Analysis and Evaluation (PA&E). The Facilities Study was an Agency-wide effort that assessed the current state of NASA facilities and equipped Agency leadership with the necessary information to choose the best facilities strategy for the future. A broad spectrum of alternatives were considered and evaluated to ensure that the appropriate resources are invested in facilities.

In particular, the study helped develop a new Agency governance model for making facilities and infrastructure decisions and setting Agency priorities; established a process for identifying facilities no longer required for any Agency mission; and provided senior leaders with options to consider when determining the best facilities strategy for current and future mission needs. More than 100 facilities were entered into NASA's disposition process, and this may increase with Shuttle retirement and transition activities. This will permit the gradual recapitalization of existing facilities and reduction of the Agency's deferred maintenance backlog.

QUESTION 224:

What is the status of this study? When will it be completed? What are its preliminary findings?

ANSWER 224:

The study is complete. Primary outcomes of the study include (1) reaffirming the Agency's intent to renew and modernize its facilities to sustain its capabilities to meet current and future mission requirements, and to accommodate those capabilities in fewer, more efficient facilities, (2) changing facilities governance to better integrate facilities strategy and investment decisions across the Agency, (3) refining the basis for entering into agreements with tenants within NASA real property, and

(4) establishing a robust agenda of issues for further investigation. NASA's selected facilities strategy and tenant policy are in concert with the overall strategy and mission of the Agency.

QUESTION 225:

Is NASA planning to use this information to propose BRAC-like reductions to its facilities footprint? If not, why not?

ANSWER 225:

No BRAC-like process is planned for the implementation of the Agency's facilities strategy.

As a result of the study, NASA has chosen a facilities strategy and tenant policy that is in concert with its overall strategy and mission. The outcomes of the Facilities Study are guiding the renewal and modernization of its facilities to sustain its capabilities to meet current and future mission requirements, and to accommodate those capabilities in fewer, more efficient facilities.

Increases in deferred maintenance

QUESTION 226:

In its financial statements, NASA reported an increase in its deferred maintenance of $143 million between 2007 and 2008. Please explain this increase.

ANSWER 226:

The increase in deferred maintenance between 2007 and 2008 represents a 6 percent increase across the Agency. Deferred maintenance at two Centers, Stennis Space Center and Marshall Space Flight Center decreased. This decrease is attributed to repairs at Stennis and Marshall Space Flight Center's Michoud Assembly Facility following Hurricane Katrina, replacement of a few large facilities at Marshall Huntsville, and an active demolition program at Marshall.

There was an increase in deferred maintenance at four Centers, Ames Research Center, Dryden Flight Research Center, Goddard Space Flight Center, and Johnson Space Center.

Ames Research Center: In general, the facilities were in similar condition as in 2007. The increase in deferred maintenance is primarily attributed to: declining conditions at Camp Parks and Crows Landing, which are in abandoned status (NASA is in the process of completely exiting these facilities and transferring or selling these properties); declining condition of five major facilities, including a wind tunnel scheduled for demolition, a wind tunnel that is currently not in use, and a wind tunnel that is currently leased to the Air Force.

Dryden Flight Research Center: Dryden's primary operational facilities are generally in good to very good condition. The increase in deferred maintenance is primarily attributed to degradation of roofing systems and HVAC systems in Dryden's highest-value facilities.

Goddard Space Flight Center: Increase in the deferred maintenance at Goddard Space Flight Center is primarily attributed to decline in the condition of roofs, HVAC and electrical systems. This decline is the result of system age and obsolescence of some HVAC controls and equipment.

Johnson Space Center: Increase in deferred maintenance at Johnson Space Center is primarily attributed to the condition of a few high value facilities that were in the process of modification or were awaiting modifications. Some major systems in these buildings were not functioning at the time of the survey.

QUESTION 227:

Has NASA seen an improvement in its facilities conditions with the current process and the level of investment? If not, what is NASA's plan to arrest deterioration of its facilities?

ANSWER 227:

The 2008 assessment, which took place in the summer of 2008, estimated NASA's deferred maintenance to be $2.46B. This is an increase of 6 percent over the 2007 estimate. Although the overall condition of NASA's facilities is declining, our annual assessment indicates that the condition at some Centers is improving. The condition of facilities at three sites--Michoud Assembly Facility, Stennis Space Center, and Marshall Space Flight Center--has improved. The improvement at Marshall Space Flight Center is attributed to the construction, and refurbishment of several facilities as well as the demolition of older facilities. The improvement at Stennis Space Flight Center and Michoud Assembly Facility is attributed to post-Katrina repair work at those sites.

NASA is analyzing the condition of its facilities and examining both its repair requirements, which are estimated in its annual facilities assessment, and the funding level of its annual maintenance. As a result of this analysis, NASA expects to be able to estimate the additional resources required in both capital repair funds (Construction of Facilities) and maintenance funds to improve the Agency's condition of facilities over time.

Construction activities

QUESTION 228:

What factors do NASA's Facilities Engineering and Real Property Division or the Office of Program and Institutional Integration use to rank institutional construction

projects in priority order – relative urgency, expected return on investments, other factors? Are these factors weighted in any way, and if so, how?

ANSWER 228:

The primary factor that NASA uses to prioritize its construction projects is risk to NASA's missions. Centers identify repair projects that will mitigate facilities-based risks to programs, people or operations. These projects are prioritized based on the likelihood of the risk and the consequences of the risk were it to materialize. Projects that mitigate the most likely risks with the greatest consequence to mission, operations, or personnel safety are given the highest priority within the program. Other factors that are considered in determining priority are: improvements to operational efficiency, reduction in Agency infrastructure, improvement of infrastructure reliability, increasing sustainability, and criticality to Center operations.

The risk assessment score is not weighted. Projects with the highest combined probability and consequence score are rated highest. Once all projects have been ranked using the risk assessment, the other factors listed above are used to determine the relative priority of projects with equal risk scores.

QUESTION 229:

What factors do NASA's Facilities Engineering and Real Property Division or the Office of Program and Institutional Integration use to rank programmatic construction projects in priority order – relative urgency, expected return on investments, other factors? Are these factors weighted in any way, and if so, how?

ANSWER 229:

Projects funded by NASA programs are not prioritized by either the Facilities Engineering and Real Property Division or Office of Program and Institutional Integration. Program-funded projects are prioritized by the Mission Directorates to ensure that facility capabilities will be ready to meet specific program technical and schedule needs. Programs are required to complete a business case analysis in accordance with NASA NPR 7120.5D, NASA Space Flight Program and Project Management Requirements, when a "brick and mortar" solution is anticipated. Programs select the alternative that is the best solution to meet the program requirements based on the business case analysis and other trade studies completed within the program. Business case analyses that follow the NASA Business Case Guide for Facilities Projects comply with OMB Circular A-11 requirements for economic analyses. Currently, NASA Mission Directorates are required to comply with NPR 7120.5D and the NASA Business Case Guide for Facilities Projects. Starting in FY 2011, program-funded projects will receive the additional review and approval of NASA's Facilities Program Board.

QUESTION 230:

Why are these processes different?

ANSWSER 230:

NASA's institutional construction program primarily funds large repair projects, the replacement of facilities that can no longer be efficiently maintained, or projects that improve Center operational efficiency or security. The institutional construction program is used to mitigate risks caused by unreliable facilities, potentially unsafe conditions, or cost risk caused by increasing operating costs. NASA has determined that the best way to prioritize projects in the institutional program is to evaluate the mitigation provided by each project and rank them on their relative risk reduction.

Program-funded construction projects primarily provide new capabilities specifically required by the funding program. Mission Directorates prioritize these construction projects along with the other technical requirements of the programs, the funding profile, and the program schedule. Mission Directorates determine if specific construction projects are the best use of program funds, whether or not the capability provided by the construction project is essential to the success of the program, and whether or not the construction schedule will provide the required capability in time to meet program needs. This process of evaluating construction projects directly links program funded construction projects to program needs and resources.

QUESTION 231:

Is a similar process in place to determine the priority of environmental compliance and restoration activities? To what extent, if at all, do court orders affect such rankings?

ANSWER 231:

The Headquarters Environmental Management Division (EMD) uses a similar risk-based process to prioritize its Environmental Compliance and Restoration (ECR) program activities. In addition to evaluating risks to mission, cost, schedule and performance, EMD ranks projects in terms of regulatory risk. The highest risk category is reserved for those sites listed on the Environmental Protection Agency (EPA)'s National Priorities List or that have a consent or court order in force with Federal or state regulators and where contamination has impacted off site properties.

In an effort to preclude court orders, NASA attempts to negotiate agreements with regulatory agencies whenever possible. For example, at the Jet Propulsion Laboratory (JPL) in California, NASA has signed a Federal Facilities Agreement with EPA Region 9 and the state of California. We have also negotiated agreements with local water purveyors to prevent further chemical migration and to provide treated water to the community. Groundbreaking for construction of a new NASA-funded groundwater treatment system for the City of Pasadena was held on March 17, 2009. Construction is expected to be completed during 2010.

QUESTION 232:

Why does NASA request and budget funding for construction projects required for specific programs in the respective mission directorates and not in a consolidated construction account?

ANSWER 232:

(Please refer to response to Question 32)

QUESTION 233:

What does NASA view as the benefits of budgeting mission specific construction activities within the respective mission directorate?

ANSWER 233:

(Please refer to response to Question 33)

QUESTION 234:

What would be the practical impact if the Committee were to consolidate all construction activities into a single account? What benefits or impediments to this approach can you foresee?

ANSWER 234:

(Please refer to response to Question 35)

QUESTION 235:

Would this approach not provide greater clarity to NASA's stakeholders and Congress?

ANSWER 235:

(Pleases refer to response to Question 36)

QUESTION 236:

Falling short of consolidating all construction activities within a single account, the Committee could recommend, within the appropriations account for each mission directorate, to set aside a specific amount of funds for construction and provide an extended period of availability. How would this approach differ from NASA's current execution of construction activities within each of the mission directorates and the cross agency support appropriation? What would be the impact of a designated amount and specific availability of construction funding?

ANSWER 236:

(Please refer to response to Question 37)

QUESTION 237:

In the past, the budget for institutional construction has requested funds within the cross agency support account for labor and travel. Since, by definition, this activity supports agency-wide, non-program specific construction, why are these labor and travel costs not budgeted within Agency Management and Operations?

ANSWER 237:

Labor and travel to support management of the Institutional Construction of Facilities Program were transferred from Center Management and Operations to Institutional Construction of Facilities during NASA's transition to full cost accounting.

QUESTION 238:

In fiscal year 2009, Congress provided $15 million less for institutional investments than requested by the prior administration. How was this reduction allocated amongst the proposed activities and projects?

ANSWER 238:

Two Discrete projects were reduced, for a total of $8M. The project "Renovation of Operations and Checkout Building" at KSC was reduced $4.5M. This is the fourth of five phases, with the final phase planned for FY 2010. Residuals from Phases 3 and 4 will be used to offset this reduction. The project, "Replace Asbestos Siding and Provide Energy/Safety Upgrades, Building 4707," at MSFC, was reduced $3.5M due to the receipt of good bids. The remaining $7M resulted from reductions to Facility Planning and Design ($6.4M) and labor ($.6M).

Tabular material

QUESTION 239:

For each of the last five fiscal years (including the budget year), provide by mission directorate and cross agency support, the amount requested for each project, the amount provided for each project, the amount needed to complete the project and any unobligated balances assigned to the project. Such tabular material shall be similar to the tables found on pages Sup 3-4 of the FY 2009 budget submission.

ANSWER 239:

(See Attached File w/ Excel Tables)

QUESTION 240:

Are there any unobligated construction funds that have been available for more than five years? If so, what is that amount? Why are such funds still unobligated?

ANSWER 240:

Yes, $4M in unobligated construction funds has been available for more than five years. These funds are residuals from FY 2004 and prior Construction of Facilities projects that have been completed. They were reallocated to additional projects with Congressional notification via the Operating Plan process. The latest such notifications were in the FY 2009 initial Operating Plan, which identified $2M being reallocated from the FY 2004 "VAB Doors" project at KSC for a Shuttle minor revitalization project and $.6M of various discrete residuals the discrete project, "Rehabilitate Building 60," at GRC. These projects will be awarded this fiscal year with only a small balance required to complete the projects unobligated at the end of the year.

QUESTION 241:

Please provide for the record NASA's current capital construction and deferred maintenance requirements by project and amount, in priority order.

ANSWER 241:

Center	Project Title	Risk Score
MSFC	Replace Asbestos Siding and Provide Energy Upgrades to Building Systems (4707), Phase 2	*
KSC	Renovation of O&C Building, Phase 5 of 5	*
GSFC	Construct Shipping and Receiving Facility	*
GRC	Construct Centralized Office Building	*
JSC	Revitalize Administrative Support Building 12	*
JPL	Data Center Restoration, B230, Phase 1 of 2/1	1
GRC	Security Requirements for GRC Lewis Field Main Gate Area, Phase 3	1
ARC	Emergency/Fire Water Storage and Valves	1
ARC	Restoration Electrical Distribution System (REDS), Phase 8	1
DFRC	Repair Primary Electrical Distribution-Phase 6	1
DFRC	Repair ATF B4982 Facilities	1
GRC	Repair Raw Water System, Plum Brook Station	1
GRC	Repair Boiler, Electric Power Laboratory, Building No. 301	1
GSFC	Repair Central Power Plant Equipment, Building 24, Greenbelt	1
GSFC	X-141 Switching Station Refit, Wallops	1

GSFC	Replace Roofs, Various Buildings, Greenbelt & Wallops	1
GSFC	Fire Alarm System Upgrades, Various Buildings, Greenbelt	1
JSC	Upgrade Sanitary Sewer System, WSTF	1
JSC	Upgrade Site Electrical Distribution System, JSC	1
JSC	Rehabilitate Emergency Electrical Systems (Var. Areas) and 300 Area Substation, WSTF	1
JSC	Replace Potable Water Piping Distribution System, JSC	1
KSC	Repair Center Wide Fire Monitoring, Detection and Alarm System, (Phase 1 of 2)	1
KSC	Revitalize and Upgrade Water & Waste Water Systems, Various Locations, Phase 2	1
LaRC	Replace Unit Substations, various facilities	1
LaRC	Repair Underground Utility Tunnels #1 & #2, and Steam Distribution Systems and Components in UT #1 & #2	1
MSFC	Electrical Distribution Repair, Site Wide, Phase 2	1
SSC	Refurbish test stand fire main system, phase I	1
GRC	Repair High Voltage System, Plum Brook Station, Phase 2	1
DFRC	Repair Hangar, Fire Protection and Electrical, B4820	1
KSC	Install Pier Scour Protection, Various Bridges	1
GSFC	Launch Facility Protection, Wallops Island	1
JSC	Upgrade Utility Tunnel for Hurricane Protection	1
SSC	Repairs to high & low voltage electrical sitewide	
KSC	Revitalize High and Medium Voltage Electrical Distribution Systems	1

Total Requirement Listed: $217.8 million

Project Locations:
ARC: Ames Research Center, CA
DFRC: Dryden Flight Research Center, CA
GRC: Glenn Research Center, OH
GSFC: Goddard Space Flight Center, MD
JSC: Johnson Space Flight Center, TX
JPL: Jet Propulsion Laboratory, CA
KSC: Kennedy Space Center, FL
LaRC: Langley Research Center, VA
MSFC: Marshall Space Flight Center, AL
SSC: Stennis Space Center, MS

Risk Score: Projects are ranked based on the level of mission risk that the project will mitigate. Projects are ranked 1 – 5.

* Follow on phase to previously approved project.
1. Project mitigates very high mission risk
2. Project mitigates high mission risk
3. Project mitigates moderate mission risk
4. Project mitigates low mission risk
5. Project mitigates very low mission risk

QUESTION 242:

For each of the last five years, provide a table that illustrates, by mission directorate and year, the amount of funds requested for programmatic construction of facilities vice the amount allocated in the operating plan, and the change.

ANSWER 242:

(See Attached File w/ Excel Table)

ENHANCED USE LEASE AUTHORITY

QUESTION 243:

Are any expenditures of the collections made under EUL authorities subject to annual appropriations?

ANSWER 243:

The authorizing legislation for NASA's EUL program provides the authority for the expenditure of the funds collected. The FY 2009 appropriations bill established a ceiling or limit on the expenditure of the proceeds from EUL of $9M in FY 2009.

QUESTION 244:

Are the collections available until expended?

ANSWER 244:

Yes, in accordance with the authorizing legislation for NASA's EUL program, the funds are available until expended per sections b.2.B(i) and (ii), which states, in part, "shall remain available until expended."

QUESTION 245:

For each year over the next five years, what does NASA project to be the "net" level of receipts; i.e., the amount of receipts in excess of the full costs of administering the leases?

ANSWER 245:

Ames projects net receipts (i.e. capital asset account contributions) to be as follows:

FY 2009: $3.3M; FY 2010: $2.3M; FY 2011: $3.2M; FY 2012: $2.6M; FY 2013: $2.2M

These projections exclude any Federal leases or civil service costs as discussed previously.

Kennedy Space Center projects net receipts (i.e. capital asset account contributions) to be as follow:

FY 2009: $.04M; FY 2010: $.04M; FY 2011: $.05M; FY 2012: $.05M; FY 2013: $.05M

Projections of receipts for other NASA Centers have not been developed, since they are just beginning to explore the potential use of Agency-wide EUL authority.

QUESTION 246:

NASA's desk guidance provides direction on what costs can be considered as full costs of administering the leases. To what extent, if at all, does the Facilities Engineering and Real Property Division or the Office of Program and Institutional Integration review and audit these costs as being appropriate and conforming to the guidance of the Chief Financial Officer?

ANSWER 246:

(Please refer to response to Question 39)

Implementation

QUESTION 247:

In a directive to all NASA Centers dated February 17, 2009, the Associate Administrator indicated that "NASA will review the Agency's experience with, and lessons learned from, the EUL program." What is the status of this review – for example, when will it begin; when is it expected to be completed; what is its scope; and what measures will NASA be using to determine the effectiveness of the EUL demonstration program?

ANSWER 247:

The review of the experience and lessons learned from the EUL demonstration program mentioned in the letter from Acting Administrator Christopher Scolese, dated February 17, 2009, has been carried out in several parts. The first part involved gathering data for development of the annual EUL report to Congress. The second part involved interviews with the Centers during the site visits and telephone conferences conducted by the Facilities Engineering and Real Property Division as

part of the development of a study on leasing practices requested by Congress in the NASA Authorization Act of 2008. Additional review of lessons learned, review of the policies of other Federal agencies having similar authority, and clarity of the Agency's facilities strategy was collected as part of the Agency Facilities Study commissioned by the Strategic Management Council. The review of the EUL program is complete, and the Facilities Engineering and Real Property Division is working closely with the Office of Program and Institutional Integration and the Office of the Comptroller to integrate changes and modifications to the policies and practices controlled by each of the groups into a comprehensive set of management directives.

QUESTION 248:

What were the determining factors in NASA's decision to place a moratorium on all new EUL agreements, effective February 17, 2009?

ANSWER 248:

(Please refer to response to Question 42)

QUESTION 249:

The directive implies that such a moratorium is necessary to await completion and assessment of an Agency-wide facilities study, currently underway. The study is a broad-based review of current Agency policies to determine the current state of Agency facilities, governance structure, and requirements to support NASA missions. Why would this study not have been completed prior to the implementation of any EUL leases?

ANSWER 249:

Although the recently completed Facilities Study was helpful to review processes used by NASA to out-lease its facilities, it was by no means the first study to address questions about the use of NASA's under-utilized facilities. In August 2003, NASA published a study conducted by the Staubach Company, the NASA Real Property Opportunities Report, that addressed the potential for out-grants of under-utilized facilities at NASA Centers. Additionally other NASA real property documents, notably the NASA Real Property Asset Management Plan, provide guiding principles for the management of NASA Real Property. These guiding principles include promoting full and appropriate utilization, disposing of unneeded assets, and providing appropriate levels of investment. The Facilities Study, mentioned in the February 17 letter, is an example of how NASA continuously seeks to improve its management processes, including real property management processes. Studies similar to the Facilities Study have been previously completed. These other studies were used to form the initial 2003 NASA demonstration authority for EUL.

QUESTION 250:

The directive further requires that the Centers shall submit all EUL proposal to headquarters for review to ensure that *new* EUL authority is being used appropriately and effectively. Is this a new requirement? Have all leases heretofore not been submitted to headquarters for review and approval? If not, why not?

ANSWER 250:

Under 40CFR1204.504, Center Directors have delegated authority to award out-leases of property under their control for a period not to exceed 5-years. When NASA initially received EUL authority as a demonstration program, NASA Headquarters selected Ames Research Center (ARC) and Kennedy Space Center (KSC) as the two demonstration sites. When those Centers were selected, they were told that all EUL leases would have to be submitted to the Facilities Engineering and Real Property Division for review and approval before they were awarded. This direction was implemented to ensure that the leases were properly developed and coordinated, and that the government's interest and property were protected. In May 2005, after ARC and KSC had both awarded several EULs and the Facilities Engineering and Real Property Division believed that the two Centers understood the processes and policies involved with EUL, a release from this restriction was provided to ARC and KSC. However it was not a blanket release, and applied only to those EULs that were non-controversial in nature and whose revenue was less than $50,000 per year. All EULs above that amount were to be submitted to the Facilities Engineering and Real Property Division for review and concurrence before award. With the expanded EUL authority for all NASA Centers, the restriction has been put back in place for all Centers, including ARC and KSC. In working with the Committee, NASA has realized that some of the processes in place need to be changed so that the EUL program can be strengthened.

Lease management and administration

QUESTION 251:

Lease management and administration has been a cost which was covered originally in the center management and operations budgets (now in Cross Agency Support). Are these lease management and administration costs now financed from collection of EUL receipts?

ANSWER 251:

At Ames Research Center, lease management and administration costs are covered from the EUL receipts. At Kennedy Research Center, these costs are not covered from the EUL receipts. The Facilities Engineering and Real Property Division is working with the Comptroller to provide consistency between the Centers.

QUESTION 252:

If that is the case, to date how many FTE and associated costs have been reduced from the CMO budgets to reflect this new accounting? What savings have we achieved in the CMO budgets?

ANSWER 252:

The Agency has decided that civil service management of the EUL lease programs will remain within the CMO budgets, so no civil servants are charging to EUL proceeds.

QUESTION 253:

How does Headquarters ensure that amounts requested for center management and operations (CMO) budgets are adjusted for costs transferred from the CMO budget to EUL lease costs?

ANSWER 253:

Not applicable due to the response to Question 252.

QUESTION 254:

Please provide a crosswalk showing fiscal and personnel data by fiscal year of costs and FTE that had been carried in annual CMO budgets that have been and are planned to be financed from EUL receipts.

ANSWER 254:

Not applicable due to the response to Question 252.

Center revitalization and improvement activities

QUESTION 255:

Sixty-five percent of the "net" collections are to be available to the respective center for maintenance and capital revitalization and improvements at that center, subject to the concurrence of the Administrator. Has the Administrator delegated this approval to anyone, and if so, to whom?

ANSWER 255:

Yes, as part of budget development, Headquarters' offices, including the Office of Program and Institutional Integration and the Facilities Engineering and Real Property Division, review these projects. These offices may approve or not approve the execution of the projects in accordance with NASA requirements.

QUESTION 256:

Is this concurrence provided on a project by project basis, or on a slate of projects by center?

ANSWER 256:

Concurrence by the Facilities Engineering and Real Property Division will be on a project by project basis.

QUESTION 257:

How does Headquarters ensure that each center's expenditures fund the highest priority in the maintenance backlog and are evaluated on relative urgency and expected rate of return?

ANSWER 257:

The Center is given the latitude to determine whether the project is submitted to Headquarters for approval of Headquarters funds, in which case it will be ranked with other submitted projects, or if the project will be funded within the Center funding authority. If the project is funded at the Center level, the Center takes into account the mission requirements they are supporting as well as backlog requirements.

QUESTION 258:

Are projects evaluated using the same criteria used in determining which projects are financed through appropriations made for minor revitalization of facilities at various locations? If so, why or how are they different?

ANSWER 258:

Yes, if a project is submitted by the Center for central funding, it is reviewed by the same process. If a project falls within the Center's funding authority, the determination on using EUL funds for the project is left to the Center. However, as previously stated, all planned expenditures of EUL funds are to be submitted by the Centers for review by Office of Program and Institutional Integration (OPII) and Facilities Engineering and Real Property (FERP).

QUESTION 259:

In the past, the Committee was told that the centers use these funds on items that they otherwise would not get funding for, for example the bird deterrent system at Kennedy. The Committee was told that such a system was a low priority for Headquarters and that Kennedy would not get funds from Headquarters, so the center used its EUL receipts. This being the case, how does NASA reconcile this singular finding, and in particular that Center EUL expenditures are approved by the Administrator and that they are only for the highest priority activities?

ANSWER 259:

The authority for determining which facilities and operational projects are to be funded in support of Center operations is delegated to the Center Director. Within that authority, the Center Director is able to make decisions on which projects will be funded. The central account funding that Headquarters allocates for Center projects is allocated based on prioritization. In this instance and in compliance with the current EUL authority, the funds are available, by delegation, to the Center Director. The bird deterrent project would not have been ranked competitively against projects from the other Centers for the centrally managed funds that are allocated by the Facilities Engineering and Real Property Division, and so the Center Director made a determination to use other funds at his discretion to fund a project that the Center needed to support its operations.

QUESTION 260:

The remaining 35 percent of the collections are to be deposited in a capital asset account, again to be available for maintenance and capital revitalization and improvements throughout NASA's complex. What factors does NASA use to determine the appropriate allocation of these balances? Are any of these factors weighted?

ANSWER 260:

These funds would be allocated based on the needs of the Agency. Projects to be funded from the 35 percent account would be prioritized using the same process as other institutional projects within the limits established in the EUL legislation. These projects would be weighted on risk to mission and probability of occurrence, and then on energy reduction, and reduction to deferred maintenance.

QUESTION 261:

How are these collections used to "buy down" NASA's backlog of deferred maintenance projects? How does NASA ensure that such funds are made available for the highest priority deferred projects if those centers participating in the EUL program (currently only 2) are given weighted consideration?

ANSWE 261:

The revenue from EUL funding can be used to "buy-down" the backlog of deferred maintenance at the Centers, but this is not a requirement for the use of the funds. Projects that reduce deferred maintenance may score higher in that category of the prioritization process, but that does not mean that their total prioritization score will be higher than other projects. Factors other than deferred maintenance are taken into consideration during prioritization of projects, particularly risk to mission and probability of the risk materializing. Further the Center Director has latitude to determine which projects at his Center should receive EUL or other Center level funds.

QUESTION 262:

Is there a list of high priority deferred projects to be financed with EUL receipts and a separate and distinct list of high priority deferred projects that are funded annually from Institutional Investments' minor revitalization of facilities at various locations? If so, why? If not, again, how does NASA ensure that projects undertaken by each center are on the Agency-wide list of high priority deferred projects?

ANSWER 262:

No, there is not a separate list of projects to be funded with EUL receipts. The Center Director has latitude to determine which projects at his/her Center should receive EUL or other Center level funds. Projects that reduce deferred maintenance may score higher in that category, but that does not mean that the total prioritization score will be higher than other projects. Factors other than deferred maintenance are taken into consideration during prioritization of projects.

Revenue forecasting and expenditures

QUESTION 263:

The desk guidance states, "As part of the yearly Planning, Programming, Budgeting and Execution process, Centers are to provide the Office of Program and Institutional Integration (OPII) with their projection of EUL revenue and a proposed spend plan for spending the EUL revenue.....Realistic *forecasting of anticipated revenues and expenditures* (emphasis added) is critical in submission of the NASA budgeting and for reports to Congress." Why then does NASA assert that it can only provide historical data on EUL receipts and not prospective estimates of collections and expenditures by project and activity?

ANSWER 263:

NASA has been providing information based on current leases and estimated future revenue from current leases. However NASA cannot project revenues from non-existent leases into the future.

QUESTION 264:

Why could this forecast and proposed expenditure of receipt collections not be submitted to Congress for annual review and approval as part of NASA's annual appropriation?

ANSWER 264:

NASA provided its forecast for FY 2010 in the budget submittal. These are estimates to the best of our current understanding of current leases. Actual results could be higher or lower.

QUESTION 265:

Why is the annual data not submitted each year in a recognizable, consistent format?

ANSWER 265:

NASA is now using a consistent format for reporting and forecasting EUL revenues and costs.

In-kind considerations

QUESTION 266:

After December 2008, NASA's centers are no longer able to accept in-kind contributions. However, just prior to that sunset, Ames was able to squeak through two large leases – Planetary Ventures (Google) and University Associates (which is a group of universities) which received 45 acres on which to build on and Ames will receive in-kind consideration. What is the value of these considerations?

ANSWER 266:

Both of these leases had been under development for several years. In-kind consideration was always considered to be part of both projects. After December 31, 2008, NASA is only authorized to enter into new EULs where cash fair market value rent is paid. Leases previously executed under the prior version of the authority are unaffected. Please note that the premises demised under the University Associates lease is approximately 75 acres, not 45.

There is a total of $425,000 of in-kind consideration per year for the first three years of the Planetary Ventures (Google) lease. This in-kind consideration is for specific pre-infrastructure projects (water tank, park and gate project) that benefit Ames Campus as well as the development of Google's new campus.

Under the University Associates lease, certain of the tenant's predevelopment costs incurred through the first year of the initial term are eligible for in-kind consideration. The portion of rent that may be satisfied with such in-kind consideration is limited to 50 percent of the total annual rent due. During the pre-development period (which is expected to continue until December 31, 2013), the annual rent amount is approximately $1.77M. If the tenant has incurred sufficient eligible costs, then up to $888K (approximately) of the total annual rent during the pre-development period may be satisfied with in-kind consideration.

QUESTION 267:

Are they accounted separately?

ANSWER 267:

These are two separate leases and each is accounted for separately.

QUESTION 268:

Material provided to the Committee indicates that in-kind considerations of nearly $1 million at Ames from University Associates are not booked until, and only in, FY 2011; however, the Committee understands that this material may be incorrect. What are the in-kind considerations at Ames, by fiscal year?

ANSWER 268:

Under the University Associates (UA) lease, up to 50 percent of the total annual rent may be satisfied with in-kind consideration. The annual rent amount during the predevelopment period is approximately $1.77M (of which 50 percent or $888K may be satisfied as in-kind consideration).

This is a substantial project with significant up-front predevelopment costs in unprecedented financial conditions. The consortium of universities needs to retain a master developer to move the project forward and to bear the costs. Accordingly, the parties agreed that predevelopment rent would be paid annually in arrears. Further, in order for tenant to satisfy up to 50 percent of that rent with in-kind consideration, the eligible costs need to be incurred. This structure, given the practical realities, facilitates accurate accounting and tracking of in-kind considerations.

Also, during the predevelopment period, the annual lease period is on a calendar year basis and not government fiscal year basis. Accordingly, FY 2011 is the first year where in-kind consideration is expected to be recorded. The in-kind consideration schedule for UA is:

FY 2009: $0; FY 2010: $0; FY 2011: $888K; FY 2012: $888K; FY 2013: $888K

Deferral of rent income

QUESTION 269:

NASA's desk guide indicates that in some instances it may be appropriate to delay payment of rent by the tenant, but the guide gives little guidance. What are such appropriate instances?

ANSWER 269:

The EUL Desk Guide states that Centers may request that payments under EUL be delayed. Requests for delayed payment must be submitted to Headquarters for review and approval. Instances in which this may be appropriate include land leases in which the tenant is using its capital to improve the land to be able to sub-lease parcels to tenants. In this instance, the NASA tenant would not have sufficient cash flow in the initial years of the lease and may propose delayed payments until their cash flow for sub-leases is established.

QUESTION 270:

The Headquarters Facilities Engineering and Real Property Division must approve delayed payments. What delayed payments have been approved? What are pending?

ANSWER 270:

The University Associates EUL of Ames Research Center property includes delayed rent provisions. NASA Headquarters approved the University Associates EUL prior to execution. No other ARC leases with delayed rent provisions are pending. There have been no delayed payments at KSC.

QUESTION 271:

For what period of time can centers defer rental payments?

ANSWER 271:

That is dependent on the lease. NASA will work with the tenant to ensure that payments start as early as possible give the tenant's business plan. NASA has determined that in some instances it is appropriate to delay payment of rent by the tenant. Rent can only be delayed when sufficient justification is provided to NASA Headquarters and Headquarters approves.

QUESTION 272:

How are the rents caught up at a later date? Is there an interest penalty with such delay?

ANSWER 272:

That is dependent on the lease. The terms of "catching-up" on delayed payments will need to protect the interest of the government, and insure full payment for the lease. Under the University Associates lease at ARC, if the tenant elects to delay payment of a portion of the first years rent, that amount is paid in the second year. There is no "interest penalty" or interest charge on this payment under this lease. This is not applicable at KSC as there have been no delayed payments.

QUESTION 273:

Do you anticipate revising the desk guidance to provide additional guidance or clarity on deferred payments?

ANSWER 273:

Additional guidance is not planned for this section. This section informs the Centers that they can approach Headquarters with a proposal for delayed payment and that they need to provide justification for delayed payment. The Center and Headquarters would then discuss the potential for delayed payments in terms of the specific lease and business case.

Alternative financing and accounting structure

QUESTION 274:

Please provide a rationale to this Committee why expenditures totaling over $76 million should not be subject to annual review and approval but rather be available solely at your discretion, given some of the findings we have learned from the Committee's review and your statements today.

ANSWER 274:

NASA plans to submit details regarding projects to be undertaken with EUL revenues in its annual Operating Plan.

QUESTION 275:

I would like to call your attention to the model of the General Services Administration, which deposits rent and other receipts from its federal tenants into the Federal Building Fund and every year Congress provides authority to spend those funds. Why would this model not be instructive for NASA's enhanced use lease receipts?

ANSWER 275:

(Please refer to response to Question 44)

QUESTION 276:

Please detail for the Committee what authorities – other than the EUL authority -- provide for the lease of excess property.

ANSWER 276:

For clarification, NASA does not lease excess property. When a property is declared "excess" by a Center, that excess property is surveyed for use by other Centers. If no other Centers express a need for the property, the property is reported to GSA as excess.

The property that NASA out-leases under EUL is considered non-excess, under-utilized property. There are two types of leases that NASA would use for its non-excess, under-utilized property. The first is a standard lease as allowed by Section 203.c of the Space Act. Under a standard lease, revenue from the lease would be

turned over to the U.S Treasury. The other type of lease is the Enhanced Use Lease (EUL), in which the terms may be similar to a standard lease but the revenue is retained by NASA. These standard leases and EULs, as well as other agreements by which NASA allows others to use its real property, are all considered out-grants of real property.

There are several other types of out-grants other than leases available to NASA. These include reimbursable and non-reimbursable Space Act Agreements as allowed by the Space Act. NASA also has authority to engage other Federal agencies under the National Historic Preservation Act, which permits NASA to out-grant historic property. The National Historic Preservation Act allows NASA to retain revenues to maintain and preserve a Center's historic infrastructure. It also allows for a tenant to make improvements at the tenant's expense. Additionally NASA may enter out-grants with other Federal agencies. Agreements with other Federal agencies are usually under memoranda of agreements. The agreements with other Federal agencies are entered under the requirements of the Economy Act, by which one agency can charge the other agency only for its costs. However, payment by one Federal agency to another may also include payments for common services provided to all tenants on a NASA Center as well as payments for demand services such as use of personnel and specialized services that the NASA Center provides.

INDEPENDENT VERIFICATION AND VALIDATION

QUESTION 277:

Provide a list of each civil servant and their title funded by the IV&V Program as of January 1, 2009, and the location of that position.

ANSWER 277:

	NAME	TITLE	LOCATION
1	Alvaro, Natalie	Resource Analyst	West Virginia
2	Blaney, Gregory	Deputy Director; Chief, Operations	West Virginia
3	Bodeau, Melissa	Project Lead	West Virginia
4	Caffall, Butch	Director, NASA IV&V	West Virginia
5	Carrier, Meagan	Project Lead	West Virginia
6	Costello, Kenneth	Architecture Product Line Lead	West Virginia
7	Cunningham, Tara	Budget Analyst	West Virginia
8	Davis, Brian	Information Technology Specialist	West Virginia

9	Deadrick, Wes	Project Lead	West Virginia
10	Ferguson, Stephanie	Deputy Chief, Operations	West Virginia
11	Fisher, Marcus	Chief Engineer	West Virginia
12	Gatto, Leigh	Chief, IV&V Integration	West Virginia
13	Gilley, Gerald	Computer Engineer	West Virginia
14	Grigg, Richard	Computer Engineer	West Virginia
15	Harris, Roger	Computer Engineer	West Virginia
16	Hinkle, John	Mission Directorate Lead, Space Operations	West Virginia
17	Huy, Frank	Verification Product Line Lead	West Virginia
18	King, Stephanie	Administrative Assistant	West Virginia
19	Kinney, Scott	Project Lead	West Virginia
20	Macaulay, Thomas	Project Lead	West Virginia
21	Medley, Peter	Computer Engineer	West Virginia
22	Millson, Kathleen	Public Affairs Specialist	West Virginia
23	Moats, Christina	Chief, Plans and Programs	West Virginia
24	Montgomery, Lisa	Chief, Research	West Virginia
25	Morris, Justin	Computer Engineer	West Virginia
26	Nicklow, Lisa	Project Lead	West Virginia
27	Northey, Jeff	Computer Engineer	West Virginia
28	Ozburn, Donna	Chief, Resource Management; Chief, Outreach	West Virginia
29	Powers, Michael	Business Manager	West Virginia
30	Pukansky, Stephen	Chief of Staff	West Virginia
31	Raque, Steven	Validation Product Line Lead	West Virginia
32	Raymond, Raju	Computer Engineer	West Virginia

33	Reynolds, Kaci	Chief, Knowledge Management	West Virginia
34	Seekins, Donald	Budget Analyst	West Virginia
35	Sheldon, David	Building Manager	West Virginia
36	Simmons, Shirley	Administrative Assistant	West Virginia
37	Sims, Jerry	Project Lead	West Virginia
38	Solomon, Daniel	Computer Engineer	West Virginia
39	Stanton, William	Computer Engineer	West Virginia
40	Stiltner, Deborah	Mission Directorate Lead, Exploration	West Virginia
41	Sylvania, Eric	Project Lead	West Virginia
42	Trexler, Nina	Budget Analyst	West Virginia
43	Vorndran, Kenneth	Mission Directorate Lead, Science	West Virginia
44	Various	HR & Resource Support (1.3 FTE)	Maryland

QUESTION 278:

Provide a list of each contractor and their title funded by the IV&V Program as of January 1, 2009, and the location of that position.

ANSWER 278:

Note: Information below represents persons on contract, not Work Years			
	NAME	**TITLE**	**LOCATION**
1	Asbury, Michael	Information Specialist	West Virginia
2	Ault, Rustin	Student Intern	West Virginia
3	Berns, Anita	Software Engineer	West Virginia
4	Blackhurst, Jason	Engineer	West Virginia
5	Bolyard, Danette	Secretary	West Virginia
6	Bradbury, John	Space Shuttle IV&V Project Manager	West Virginia
7	Brammer, Matthew	System Support Specialist	West Virginia
8	Broadwater, Charles	Software Engineer	West Virginia
9	Broadwater, Jill	Software Systems Engineer	West Virginia
10	Cain, Sara	Information Specialist	West Virginia
11	Cain, Shirley	Environmental Services	West Virginia
12	Carvell, Gary	Senior Software Engineer	West Virginia
13	Casdorph, Van	Principal Systems Engineer	West Virginia
14	Cavanaugh, Rick	Senior Network Engineer	West Virginia
15	Colbert, Susan	Administrative Secretary	West Virginia
16	Cooper, Jason	Software Engineer	West Virginia
17	Copeland, Randolph	Senior Systems Engineer	West Virginia
18	Cottrell, Gregory	Database Analyst	West Virginia
19	Courtney, Rochelle	Administrative Assistant	West Virginia
20	Cox, Jacob	IV&V Analyst	West Virginia
21	Crawford, Jared	Associate Software Technician	West Virginia
22	Cukic, Bojan	Assistant Professor	West Virginia
23	Dalton, James	Principal Analyst	West Virginia
24	DeBastiani, Wesley	Security Officer	West Virginia
25	Dehlin, Mark	Subject Matter Expert	West Virginia
26	Dial, David	WVU Program Manager	West Virginia
27	Dicks, John	Program Manager	West Virginia
28	Dressler, Harmony	Research Intern	West Virginia
29	Driskell, Stephen	Senior Systems Engineer	West Virginia
30	Dunkerley, Darilyn	Systems Engineer	West Virginia
31	Dymm, David	Senior Software Engineer	West Virginia
32	Eagle, Christy	Facility Technician	West Virginia
33	Eagle, Rose	Environmental Services	West Virginia
34	Eickleberry, David	Software Applications Specialist	West Virginia
35	Elson, William	Tools Lab Software Engineer	West Virginia
36	Ensign, Todd	Secondary Education Specialist	West Virginia
37	Facemire, Michael	Chief Systems Engineer	West Virginia
38	Fluharty, Jeffery	Security Officer	West Virginia

39	Foley, John	Security Officer	West Virginia
40	Forquer, Ricky	System Engineer	West Virginia
41	Fotta, Michael	SETA Program Manager	West Virginia
42	Fout, Jesse	Junior Software Engineer	West Virginia
43	Freeman, Patricia	Financial Analyst	West Virginia
44	Friend, Amy	Student Intern	West Virginia
45	Frost, Leonard	Principal Systems Engineer	West Virginia
46	Gallardo, Ramona	Senior Software Engineer	West Virginia
47	Garnett, Paul	Senior Engineer	West Virginia
48	Gmeindl, Frank	Program Manager	West Virginia
49	Grippin, James	Facility Technician	West Virginia
50	Guerra, Nicolas	Chief Systems Engineer	West Virginia
51	Guinn, Christopher	Systems Engineer	West Virginia
52	Haga, Heath	Senior Systems Engineer	West Virginia
53	Hamill, Margaret	Research Intern	West Virginia
54	Haught, Kenneth	Subject Matter Expert	West Virginia
55	Haymond, Robert	Security Officer	West Virginia
56	Hemler, Debra	Science Education Coordinator	West Virginia
57	Hempler, Thomas	Senior Systems Engineer	West Virginia
58	Hibbs, Tracey	Senior Software Engineer	West Virginia
59	Honaker, James	System Administrator	West Virginia
60	Hoops, Roger	Help Desk Lead	West Virginia
61	Hurley, Kristin	Junior Software Engineer	West Virginia
62	Husty, Stephen	Technical Program Manager	West Virginia
63	Inscoe, Robert	Principal System Engineer	West Virginia
64	Jarrett, Robert	Project Manager	West Virginia
65	Johnson, Anyika	System Engineer	West Virginia
66	Johnson, Scott	IV&V Analyst	West Virginia
67	Jones, Christopher	Business Manager	West Virginia
68	Jones, Valerie	Requirements Analyst	West Virginia
69	Kehl, Kurt	Risk Specialist	West Virginia
70	Kelley, Benjamin	Business Manager	West Virginia
71	Kisner, Stephen	Security Officer	West Virginia
72	Kranz, Donald	Senior Systems Engineer	West Virginia
73	Kuhn, Rodney	IV&V Analyst	West Virginia
74	Kurcaba, Samuel	Software Engineer	West Virginia
75	Layton, Bree	Office Manager	West Virginia
76	Lindsey, Denise	Senior Systems Engineer	West Virginia
77	Loftis, Phillip	IV&V Analyst	West Virginia
78	Long, John	Senior Systems Engineer	West Virginia

79	Long, Lorin	Software Engineer	West Virginia
80	Long, Pier	Software Engineer	West Virginia
81	Lovstuen, Gary	Chief Systems Engineer	West Virginia
82	Mascaro, Tina	Program Manager	West Virginia
83	Mason, Kristine	WVU Administrative Associate	West Virginia
84	McCaugherty, Daniel	ProLogic Vice President	West Virginia
85	Medina, Kayla	Research Intern	West Virginia
86	Menzies, Timothy	Software Engineering Research Chair	West Virginia
87	Montgomery,	Senior Network Engineer	West Virginia
88	Moore, Jeffrey	Financial Analyst	West Virginia
89	Morgan, Amy	Day Porter	West Virginia
90	Morton, Thomas	Research Intern	West Virginia
91	Myers, Bradley	Systems Administrator	West Virginia
92	Narayanan, Anand	Student Intern	West Virginia
93	Ohi, Donald	Lead Engineer	West Virginia
94	Orrego, Andres	Senior Systems Engineer	West Virginia
95	Pauley, Keith	Matrix President	West Virginia
96	Petersavage, Jarrod	Systems Engineer	West Virginia
97	Phillips, Amy	Librarian	West Virginia
98	Pokrzywa, Chad	Software Engineer	West Virginia
99	Pratt, Anthony	Senior Systems Engineer	West Virginia
100	Queen, Jacqueline	Research Intern	West Virginia
101	Queen, Rodney	Research Analyst	West Virginia
102	Radabaugh, Debra	HRL / Office Manager	West Virginia
103	Radabaugh, Jon	Power Systems Analyst	West Virginia
104	Rajagopal, Pavan	Tools Lab Project Lead	West Virginia
105	Raol, Marcie	Elementary Education Specialist	West Virginia
106	Reyes, Timothy	Senior Systems Engineer	West Virginia
107	Richards, Jarrod	Security Officer	West Virginia
108	Robison, Richard	Program Manager	West Virginia
109	Rosier, Aaron	Systems Engineer	West Virginia
110	Rousseau, Gregory	Principal Software Engineer	West Virginia
111	Ryan, John	Systems Engineer	West Virginia
112	Sallmen, Joseph	Senior Software Engineer	West Virginia
113	Savarino, James	Senior Systems Engineer	West Virginia
114	Savarino, Shirley	Senior Systems Engineer	West Virginia
115	Schield, Scott	Systems Engineer	West Virginia
116	Schmidt, John	Software Engineer	West Virginia
117	Seeger, Steven	Software Engineer	West Virginia
118	Sengupta, Abhijit	IV&V Analyst	West Virginia

119	Shackelford, Jeremy	Security Officer	West Virginia
120	Sherer, Anna	Tools Lab Paraprofessional	West Virginia
121	Slider, Phillip	Account Manager	West Virginia
122	Smith, Jack	Senior Research Scientist	West Virginia
123	Smith, James	Senior Scientist	West Virginia
124	Starn, Ryan	Analyst	West Virginia
125	Stewart, Zachary	Identity Manager	West Virginia
126	Stonestreet, Joshua	Web Developer	West Virginia
127	Tharp, Joel	Security Officer	West Virginia
128	Theeke, Patrick	Chief Engineer	West Virginia
129	Thompson, Donald	Security Officer	West Virginia
130	Titus, Jeremy	Security Supervisor	West Virginia
131	Ullom, Lawrence	Principal Systems Engineer	West Virginia
132	Vandegrift, Cheryl	QA Auditor	West Virginia
133	Vincent, Patrick	Environmental Services	West Virginia
134	Walker, Bryan	Software Engineer	West Virginia
135	White, Jesse	Education Outreach Program Manager	West Virginia
136	White, Stephanie	Executive Administrative Assistant	West Virginia
137	Wilhelm, Thomas	Network Administrator	West Virginia
138	Williams, Justin	Associate System Administrator	West Virginia
139	Williams, Llew	Software Systems Engineer	West Virginia
140	Yazdankhah, Hirad	Engineer	West Virginia
141	York, Joel	Senior Help Desk Technician	West Virginia
142	Chamberlain, James	Principal Systems Engineer	Alabama
143	Miele, Debra	Engineer	Alabama
144	Moon, James	Team Lead	Alabama
145	Micke, Jeffrey	Subject Matter Expert	Arizona
146	Wilhelmi, Patrick	Systems Engineer	Arizona
147	Brown, Samuel	Chief Systems Engineer	California
148	Dawson, Travis	Consultant Systems Engineer	California
149	Dedoes, Dirk	Program Manager	California
150	Drusinsky, Doron	Associate Professor	California
151	English, Donald	Senior Technical Manager	California
152	Houk, Paul	Systems Engineer	California
153	Olguin, Patrick	Chief Software Engineer	California
154	Otani, Thomas	Associate Professor	California
155	Schipper, John	Principal Systems Engineer	Colorado
156	Sivertson, Daniel	Systems Engineer	Colorado
157	Wilson, John	Software Engineer	Colorado
158	Aument, Karen	IV&V Analyst	Florida

159	Rockwell, Frank	Senior Consultant Systems Engineer	Florida
160	Wilkins, Wendell	IV&V Analyst	Florida
161	Ritchie, Kenneth	Senior Systems Engineer	Georgia
162	Gandhi, Jitesh	Software Engineer	Kansas
163	Coletti, Alessandro	Senior Systems Engineer	Maryland
164	Dixit, Padmini	Principal Software Engineer	Maryland
165	Izumi, Deborah	Chief Systems Engineer	Maryland
166	Lateef, Khalid	Project Manager	Maryland
167	Leatherman, Jamie	Office Manager	Maryland
168	Susarla, Sarma	Chief Systems Engineer	Maryland
169	Frank, Karl	Subject Matter Expert	Massachusetts
170	Murray, Jennifer	Junior Engineer	Michigan
171	Felsing, John	Software Engineer	Montana
172	Williams, Jerry	Principal Software Engineer	Ohio
173	Williams, Kimberly	Senior Administrative Support Specialist	Ohio
174	Brockway, Reid	Chief Systems Engineer	Oregon
175	Frazier, David	IV&V Analyst	Oregon
176	Albores, Margo	Receptionist	Texas
177	Arriola, Melissa	Principal Systems Engineer	Texas
178	Barber, Gary	Senior IV&V Analyst	Texas
179	Barrington, Rodger	IV&V Team Lead	Texas
180	Bradshaw, Garlan	Project Manager	Texas
181	Calderon, Lorena	Analyst	Texas
182	Choe, Chul	Principal Software Engineer	Texas
183	Cole, Reva	Senior Administrative Assistant	Texas
184	Dabney, James	Consultant Systems Engineer	Texas
185	Dell, James	Principal Systems Engineer	Texas
186	Gauer, Todd	Systems Engineer	Texas
187	Hehir, Jeny	Principal Systems Engineer	Texas
188	Hoang, Dennis	Analyst	Texas
189	Mai, David	Software Engineer	Texas
190	McCray, Burnell	Senior Systems Engineer	Texas
191	McLaughlin, Stacy	Principal Systems Engineer	Texas
192	McSwain, Grady	System Engineer	Texas
193	Moore, Fay	Principal Systems Engineer	Texas
194	Nguyen, Kiet	System Engineer	Texas
195	Ortiz, Luis	Analyst	Texas
196	Patel, Bimal	Principal Systems Engineer	Texas
197	Perez, Rosalba	Secretary/Librarian/Custodian	Texas

198	Price, Charles	Senior Systems Engineering Consultant	Texas
199	Rother, Melvin	Principal Systems Engineer	Texas
200	Sinha, Prasun	IV&V Analyst	Texas
201	Soto, David	Chief Engineer	Texas
202	Stewart, Valerie	Principal Software Analyst	Texas
203	St. John, Robert	Consultant Engineer	Texas
204	Tran, Irene	Senior Software Specialist	Texas
205	Vo, Paul	Senior Engineer	Texas
206	Wingo, Larry	Software Engineer	Texas
207	Wolf, Richard	System Engineer	Texas
208	Cutcher, Dorothy	Senior Test Engineer	Virginia
209	Mann, Michael	L-3 Vice President	Virginia
210	Marshall, Thomas	IV&V Engineer	Virginia
211	Mathieu, Charles	Analyst	Virginia
212	Miller, Gregory	Program Manager	Virginia
213	Woodham, Kurt	Chief Systems Engineer	Virginia
214	Danielson, Frederic	Principal Engineer	Washington
215	Gullion, Thomas	Subject Matter Expert	Wisconsin
	GENERAL NOTES		
1	Of these persons, the equivalent of twelve are funded by OSMA's Software Assurance Research Program (SARP), and eight are funded by reimbursable activities.		

QUESTION 279:

Provide a description of the reimbursable work that the IV&V Program is conducting or plans to conduct in FY 2009 and FY 2010.

ANSWER 279:

- Reimbursable activities and estimated funding:

	FY 09	FY 10
1. United States Army, Automated Biometric Identification System (Leased facility space and services)	$72K	$659K
2. NOAA, NWS, Master Ground Station & Network Control Facility (Leased facility space and services)	$150K	$182K
3. NOAA, NWS, National Centers for Environmental Prediction	$625K	$873K

(Leased facility space and services)		
Subtotal	**$847K[1]**	**$1,714K[3]**
• Reimbursable funds for direct costs of lease space, tenants (estimate)		
4. NOAA, NWS, National Centers for Environmental Prediction	$725K[2]	$629K[4]
Total	**$1,572K**	**$2,343K**

[1]This $847K of reimbursable funding funds approximately eight O&M personnel.
[2]This $725K is a direct charge for electricity costs associated with NOAA's systems and does not affect NASA's budget or costs.
[3]This $1,714K of reimbursable funding funds approximately eight O&M personnel; the rest is for construction activities.
[4]This $629K is a direct charge for electricity costs associated with NOAA's systems and does not affect NASA's budget or costs.

QUESTION 280:

Provide a spending plan for FY 2009 funds. Include in that explanation how many new employees will be hired at the facility, whether they are civil servants or contractors, and the programs and activities on which IV&V work will be performed in FY 2009, broken down by NASA account (exploration, space operations, science).

ANSWER 280:

2009 Omnibus Appropriations Act:

> *Provided further, That not less than $45,000,000 shall be available for independent verification and validation activities, of which $5,000,000 shall be available to develop core verification and validation competencies with small businesses, and $40,000,000 shall be available for operations of the independent verification and validation facility.*

NASA IV&V Program Spending Plan Background

- At the start of FY 2009, under a CR, IV&V entered FY 2009 at an annual spend rate of $33.3M, which maintained the contractor workforce that had surged in FY 2008 due to the Constellation ramp-up.
- The FY 2009 Omnibus Appropriations Act
  - Increases NASA IV&V Program available to spend to $45M (i.e., a $15.6M increase above the FY 2009 request).

- Requires $5M of $45M be targeted to Small Business to develop core competencies in validation and verification.

NASA IV&V Program Spending Plan

- NASA plans to obligate all but a fraction of the $45M in FY 2009. However, with only 4 months effectively remaining in FY09, these funds will be costed across both FY 2009 and FY 2010. Under this plan, the funds that will be available to spend in the current and next fiscal years are:

  - FY 2009 - $34.73M. (original request of $29.4M +$5.33M)
  - FY 2010 - $34.97M. (original request of $29.7M +$5.27M)

Note that the plan for application of the $5M related to small businesses is described separately in the response to Question 281, but will add to the above totals in FY 2009 and FY 2010.

Plan for Application of Increased Funding in FY 2009 Omnibus Appropriations Act

- FY 2009
  - Maintain contractor staffing at FY 2008 level: $4.0M
    - Hire 5 additional contractors for remaining FY09 $0.33M
  - Facility Roof Replacement: $1.0M
  - Total increase: $5.33M

- FY 2010
  - Maintain contractor staffing at FY 2009 level: $4.12M
    - Maintain FY09 contractor increase $1.15M
  - Total increase: $5.27M

Note that the plan for application of the $5M related to small businesses is described separately in the response to Question 281, but will add to the above totals in FY2009 and FY2010.

Total FY 2009 and FY 2010 Funding

- By NASA accounts
  - Exploration $16.2M
  - Space Operations $17.4M
  - Science $11.0M

QUESTION 281:

Provide an explanation of how the $5M for the development of "core Verification and Validation competencies" in the small business community will be expended.

ANSWER 281:

NASA IV&V Small Business Investment Plan

NASA is currently defining the parameters for the participation of Small Businesses in our Software Assurance competency development and improvement efforts. NASA intends to use existing procurement vehicles, including the GSA schedule, to task Small Businesses as the language states to create methodologies, tools and training to support Validation and Verification competencies.

Because it's late in the fiscal year, NASA will initiate this activity in FY 2009 and continue in FY 2010.

QUESTION 282:

How much funding did the IV&V Program carry over from FY 2008 to FY 2009? What was the cause of this carryover?

ANSWER 282:

NASA IV&V Carryover from FY 2008 to FY 2009

- The NASA IV&V Program carried over $0.3M of PY 2008 unobligated funding into FY 2009.
- This carryover is to assure a smooth transition across the FY's to cover civil service salaries and travel for the beginning of FY 2009.

QUESTION 283:

How much funding is estimated for the IV&V Program to carry over from FY 2009 to FY 2010, if any? If funds are planned to be carried over, please provide a justification.

ANSWER 283:

NASA IV&V estimated carryover from FY 2009 to FY 2010

- The NASA IV&V Program estimates $0.8M of unobligated carryover of PY 2009 unobligated funding into FY 2010.
- This carryover is to assure a smooth transition across the FY's to cover civil service salaries and travel for the beginning of FY 2010.

FUNDING OF ADMINISTRATIVE FUNCTIONS

Pursuant to direction in section 525 of the FY 2008 Commerce, Justice, Science Appropriations Act, NASA's budget structure has been revised. In the new structure, funding for administrative functions, including operation of the Agency's Centers, is consolidated in the Cross Agency Support account. However, NASA programs continue to pay for a significant number of administrative personnel, including 34% of the agency procurement FTEs, 16% of finance and budget staff, and 16% of IT FTE.

QUESTION 284:

The Office of Program and Institutional Administration (OPII) has defined the core services that the Agency's Centers should provide to programs. These include procurement, finance and IT services. Yet programs continue to pay for a significant number of personnel in these administrative areas despite the termination of full cost budgeting and the consolidation of Center funding in the new Cross Agency Support account. What is the thinking behind this anomaly?

ANSWER 284:

Cross-Agency Support is not an administrative account. It contains significant research and development activities, and funds Agency-wide and Center functions required to execute the Agency's mission, including engineering management, safety, software verification, advanced technology development, facilities management and construction, as well as administrative functions required to manage the Centers and Headquarters as institutions.

Just as the Cross-Agency Support projects require a mix of technical and non-technical skills, so do the Agency's programs and projects. Programs and projects require non-engineering skilled staff to help manage the business applications, cost estimating, budgeting, procurement and information technology that is central to managing a successful program. Programs and projects are responsible for funding their own direct requirements for support in these areas, just as in engineering. These personnel may be matrixed from a central division within the Center, same as for engineering, or they may work directly for the program. It is essential that program and project managers be held accountable and responsible for all aspects of executing their program or project, including making good business decisions. We hold these managers responsible for technical requirements as well as cost and schedule commitments. Improving the business management functions within program and projects is key to improving high-risk program management at NASA.

While there may be common OPM series personnel in both Cross-Agency Support projects as well as mission projects, just as there is in engineering and science job series, the experience and skills needed are often quite different, and the functions supported are quite different. That these are not considered to be common administrative personnel is not an anomaly.

QUESTION 285:

It appears that many programs receive procurement, finance and IT services without charge, while other programs are required to pay for the same services. This makes it difficult to compare program costs on a liketo□like basis. Is there any reason that programs should not be treated consistently?

ANSWER 285:

Almost all programs pay the complete cost for procurement, finance and IT support for their programs and projects. There are some instances where the support provided for very small projects is minimal and is not charged directly, but that would be the exception to standard practice. As we identify any projects that through historical practices at a specific Center, are not following our standards, we make adjustments through the budget process.

QUESTION 286:

Please provide for the record the amounts, by program and Center, that programs pay for services that are within OPII's core service definitions?

ANSWER 286:

As stated in the answer to question 284 above, programs and projects are responsible for funding all of their direct requirements to successfully manage their programs and projects to deliver on schedule and under budget. They do not fund any of the staff that is necessary to operate the Centers or Headquarters, and there is no overlap with the core services at the Center.

CENTER MANAGEMENT AND OPERATIONS BUDGET EXECUTION

In its FY 2009 budget, NASA provided project level data on 13 Center Management and Operations (CMO) projects in the Cross Agency Support account. These included Institutional Administration, Facilities Services, and Information Services. At NASA's request, the Explanatory Statement accompanying the FY 2009 allows NASA group the 13 projects into 2 projects: City Management and Technical Capability. However, NASA will continue to track the more detailed 13 items as sub-projects within its accounting system.

QUESTION 287:

Does NASA's FY 2009 initial operating plan assume funding levels for any of the 13 CMO sub-projects that are different from the amounts proposed in the FY 2009 budget?

ANSWER 287:

Yes, the appropriated funding level required a $21.3M reduction to Center Management and Operations. This required re-prioritizing activities throughout Center Management and Operations. Additionally, other adjustments were made to accommodate execution priorities.

QUESTION 288:

If yes, please provide for the record a table showing the amount originally proposed for each of the 13 sub-projects and the amount for each assumed in the initial operating plan.

ANSWER 288:

Activity	2009 Pres Bud	Initial Op Plan
Environmental Management	$28.3	$29.3
Facility Services	$486.1	$467.6
Information Services	$255.7	$222.1
Institutional Administration	$591.0	$597.0
Safety and Mission Assurance	$43.5	$27.2
Other Personnel Costs	$76.1	$84.6
Security Program	$110.8	$116.2
Total City Management	**$1,591.6**	**$1,544.0**
Center Investments Account	$81.3	$70.5
Fabrication	$7.0	$7.0
Science and Engineering	$206.4	$220.4
SMA Technical Authority	$25.4	$48.5
Technical Excellence	$117.0	$117.0
Test Services	$16.9	$16.9
Total Technical Capabilities	**$454.0**	**$480.3**
Total Center Management & Operations	**$2,045.6**	**$2,024.3**

QUESTION 289:

For each sub-project now funded above the amount proposed in the budget, what is the justification for the increase? At which Center (or Centers) will the increased funding be used?

ANSWER 289:

Increases in Environmental Management (+1.0M), Institutional Administration (+$6.0M), Other Personnel Costs (+$8.5M), Safety & Mission Assurance (+$6.8M) and Security Program (+$5.4M) are the result of execution adjustments necessary due to changing costs in the year of operations. These adjustments occur at all Centers.

The increase to SMA Technical Authority (+$23.2M) represents a transfer of content at all Centers from the Safety and Mission Assurance activity – activities previously

included under Safety and Mission Assurance are better aligned with the SMA Technical Authority activity.

The increase to Science and Engineering (+$25.8M) represents a transfer of content at Langley and Glenn Research Centers from the Information Services account to align funding for IT desktop support with the organization using the service.

QUESTION 290:

For each sub-project now funded below the amount proposed in the budget, what impact will the reduction have? Will the reduction affect employment levels funded by each sub-project?

ANSWER 290:

The reduction in Safety and Mission Assurance ($-23.2M) includes a transfer of content at all Centers from the Safety and Mission Assurance activity – activities previously included under Safety and Mission Assurance are better aligned with the SMA Technical Authority activity.

The reduction in Information Services (-$25.8M) includes a transfer of content at Langley and Glenn Research Centers to the Science and Engineering activity to align funding for IT desktop support with the organization using the service.

The reduction in Center Investments (-$10.8M), Science and Engineering (-$11.8M) and Information Services (-$5.0M) represents decreases necessary to offset increases to Environmental Management, Institutional Administration, Other Personnel Costs, Safety and Mission Assurance, and Security Program. These adjustments occur at all Centers.

The reduction in Facilities Services (-$18.5M) and Information Services (-$2.8M) represent content reductions required to meet appropriated fund levels. These reductions occur at all Centers and will result in elimination or deferral of contracted facilities and IT repairs and investments. The reduction will not affect civil servant employment levels.

QUESTION 291:

If the Institutional Administration sub-project is among those for which additional funding is assumed in the initial operating plan, will this result in additional Institutional Administration FTE? At which Center or Centers?

ANSWER 291:

No change to Institutional Administration civil servant FTE is anticipated.

QUESTION 292:

If Facilities Services is among the sub-projects reduced, can the Agency assure the Subcommittee that this reduction will not adversely affect the level or timeliness of ongoing maintenance activities? Will there be any reduction in preventive maintenance, planned repair projects, programmed maintenance, replacement of obsolete items, or restoration/modernization associated with building systems/components? What affect will the reduction have on the Agency's facilities backlog?

ANSWER 292:

Facilities Services has been reduced in order to meet appropriation reductions. The reduction will result in a reduction in planned repair projects and replacement of obsolete items, increasing the Agency's facilities backlog.

QUESTION 293:

QUESTION 293:

If the reserves were created by deferring planned work, what exactly was deferred? What was the impact of these deferrals on the programs?

ANSWER 293:

Risk is inherent in project management. The answer to question 21 describes the items that were deferred and the program risks. Risk management is required because projects are not completely predictable. Reserves are an integral component of a project risk mitigation plan and are used to mitigate threats, improve the probability that project goals are achieved, and ultimately ensure mission success. Most projects have reserves, whether or not they are explicitly identified as such. While some projects refer to these as "contingency funds," SOMD identifies these as "reserves." Reserves are established based on acceptable risk, degree of uncertainty, and the desired confidence levels for meeting baseline requirements. There is a direct correlation between risk and complexity, and, therefore, complex tasks require more reserves. Probability of occurrence, potential dollar impacts, and potential technical impacts are considered when quantifying risk as a reserve amount, and these impacts are assessed and reviewed on a regular basis by project and program management. Additionally, reserves are necessary to deal with unknown, unanticipated risks.

Testimony by the General Accountability Office (GAO) before the House Committee on Science and Technology, Subcommittee on Space and Aeronautics, on March 5, 2009, regarding the management of NASA projects stated:

> "More steps also need to be taken to manage risk factors that NASA believes are outside of its control. NASA asserts that contractor deficiencies, launch manifest

> issues, partner performance, and funding instability are to blame for the significant cost and schedule growth on many of its projects that we reviewed. Such unforeseen events, however, should be addressed in project-level, budgeting and resource planning through the development of adequate levels of contingency funds. NASA cannot be expected to predict unforeseen challenges, but being disciplined while managing resources, conducting active oversight of contractors, and working closely with partners can put projects in a better position to mitigate these risks should they occur. Realistically planning for and retiring technical or engineering risks early in product development allows the project to target reserves to issues NASA believes are outside of its control."

The most effective and efficient way to manage limited resources is to establish contract and performance baselines that are well defined and understood. One result is identification and understanding of known threats, and an ability to analyze and quantify impacts in order to estimate appropriate reserve levels and potential contingency planning. Experience has shown that, while some threats will be realized, it is highly unlikely that all threats will be realized. Planning for known threats allows for some flexibility to deal with unknown threats. An alternative is to budget, in full, for all known program threats and potentially set aside funds for unknown threats. This approach could significantly increase NASA's budget request and lead to an inefficient allocation of resources. Both the International Space Station (ISS) Program and Space Shuttle Program (SSP) have clearly identified budgeted reserve levels during past and present briefings to Congress regarding pending budget requests.

ISS and SSP proactively identify and assess program threats. The programs assess both the financial impact of a threat as well as its probability of occurrence. Level 1 threats are considered more than 50 percent likely to occur. Level 2 threats are considered less than 50 percent likely to occur. Level 3 threats are considered unlikely to occur. A Quantitative Risk Assessment (QRA) is performed to estimate the threats that will likely be realized. The QRA is an objective risk assessment tool used to project threat impacts. It provides a probabilistic estimate of the magnitude of consequences for each identified budget threat and is summarized into a total probabilistic budget threat estimate. The QRA systematically determines the likelihood of threats occurring and evaluates the cost of the occurrence. As stated previously, reserves are established to cover known and unknown threats.

ISS reserves are reviewed by program management on weekly, monthly, and six week intervals. On a weekly basis, ISS reserves (current year plus five years) are reviewed at the Space Station Program Control Board (SSPCB). On a monthly basis, reserve metrics are presented at the ISS Monthly Program Review (IMPR). Reserves are assessed for the current year, against programmatic threats (six year profile) and against the program's cost plan. Every six weeks, a Program Risk Advisory Board (PRAB) is held to review threats that are not in the current baseline that could impact reserves. SSP utilizes a similar reserves review process.

Both the ISS and SSP programs also monitor actual performance on a monthly and quarterly basis for opportunities to improve the current year reserve posture by deferring or reducing content and identifying efficiencies. SOMD cannot reasonably estimate at this point in time how much reserves the ISS or SSP program will carry at the end of FY 2009. However, both the ISS and SSP programs will need to build additional reserves by finding efficiencies, reducing content or deferring content in FY 2009 and/or FY 2010 in order to address threats, achieve management challenges, and remain executable. The table below shows the level of reserves, on a fiscal year basis.

ISS and SSP Reserves - FY 2010 President's Budget Request

($ in millions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Total
ISS Reserves	53	-78	76	-48	31	40	74
% of Budget	3%	-4%	3.%	-2%	1%	2%	1%
Known Threats	37	165	112	82	72	69	537
QRA	11	52	32	26	25	24	170
SSP Reserves	53	236	0	0			289
% of Budget	2%	7%	0%	0%			4%
Known Threats	87	187	671	101			1,046
QRA	52	141	396	50			639

QUESTION 294:

What are the current 2009 reserves for the two programs?

ANSWER 294:

Please refer to the table included in the response to Question 293.

QUESTION 295:

What is your estimate of the reserves that the programs will carry at the end of fiscal year 2009?

ANSWER 295:

Both the International Space Station (ISS) and Space Shuttle (SSP) programs monitor actual performance on a monthly and quarterly basis for opportunities to improve the current year reserve posture by deferring or reducing content and identifying efficiencies. The Space Operations Mission Directorate cannot reasonably estimate at this point in time how much reserves the ISS or SSP program will carry at the end of FY 2009.

However, both the ISS and SSP programs will need to build additional reserves by finding efficiencies, reducing content or deferring content in FY 2009 and/or FY 2010 in order to address threats, achieve management challenges, and remain executable. The table included in response to Question 293 shows the level of reserves, on a fiscal year basis.

QUESTION 296:

What reserve assumptions are embedded in the 2010 budget?

ANSWER 296:

Please refer to the table included in the response to Question 293.

QUESTION 297:

What contingencies and threats have you assumed in the 2010 reserve assumptions?

ANSWER 297:

Please refer to the table included in the response to Question 293 and the attached Threat charts.

Science

QUESTION 298:

Please explain the "confidence level" budgeting technique that is used to budget for developmental projects in the Science Mission Directorate.

ANSWER 298:

In January, 2009, the NASA Administrator directed that projects prepare a Joint Cost and Schedule Confidence Level, which is a cost and schedule that, taken together, has a 70 percent probability that the project will not overrun in either cost or schedule. While many methods exist to do this, the simplest is that a cost estimate and a separate schedule estimate are prepared at low work breakdown structure levels for each element of a project that is known at the time. For these elements, the "most optimistic" cost, the "most likely cost," and the "most pessimistic" cost are identified, as well as the "most optimistic," "most likely," and "most pessimistic" schedule dates. These lower level estimates are combined using Monte Carlo simulations to produce a probabilistic cost distribution and a probabilistic schedule distribution for the entire project. The 70 percent cost confidence level estimate is obtained from this, as well as the 70 percent schedule confidence level estimate. The two confidence levels are then mathematically combined to produce the Joint Cost and Schedule Confidence Level estimate used to budget the project.

QUESTION 299:

The Science budgets developmental projects at the 70% confidence level. Why is this the appropriate level?

ANSWER 299:

Please see response to Question 23.

QUESTION 300:

It seems that cost overruns in Science projects are more common than not, even at the 70 percent confidence level. Why not budget at an 80 percent or 90 percent confidence level?

ANSWER 300:

Please see response to Question 24.

QUESTION 301:

What would be the effect of budgeting at an 80 percent or 90 percent confidence level?

ANSWER 301:

Please see response to Question 24.

QUESTION 302:

The confidence level technique generally results in creation of a reserve within a project. Why are these reserves left with individual projects, rather than being pooled at the Theme or Mission level?

ANSWER 302:

Please see response to Question 25.

QUESTION 303:

Doesn't the current approach encourage project managers to spend down the reserves, whether they need to or not?

ANSWER 303:

Please see response to Question 26.

APPROPRIATIONS PERIOD OF AVAILABILITY

QUESTION 304:

We have heard that NASA believes that the bona fide needs rule may be a problem for reverting to one-year funding, even for the CAS account. Why is this?

ANSWER 304:

The period of availability is not defined by how quickly funds are to be obligated, but by how quickly they are to be put to work (e.g. costs are accrued). Due to the complex nature of Research and Development activities, NASA funding has always been two-years in duration. In a Research and Development environment, requirements are not sufficiently known at the beginning of each fiscal year to contract for all services in advance. Under modern procurement practices, NASA typically contracts tasks for delivery of products based upon completed requirements; thus, tasks are incrementally added throughout the year as projects progress, and new requirements are identified and contracted for. Up to 25 percent of the Agency's total budget is contracted on activities that cannot be delivered until the second fiscal year. This applies as much to the Cross-Agency Support (CAS) account as the program accounts, including Science, Aeronautics, Exploration Systems, Space Operations, and Education. As noted in the response to Question 20, many of the CAS activities are regular Research and Development functions that serve an Agency-wide purpose, and are not administrative in nature.

QUESTION 305:

There is general Government-wide authority that allows an exception to the bona fide needs rule for 12 month service contracts, as long as they begin within the fiscal year for which funding is appropriated. Doesn't this solve your bona fide needs problem?

ANSWER 305:

This authority is not available to NASA. The Federal Acquisition Streamlining Act of 1994 added this flexibility to Title 41 of the U.S. Code (Chapter 4, Subchapter IV, section 253l) starting in 1995. The 1998 National Defense Authorization Act modified Title 10 of the U.S. Code (Subtitle A, Part IV, Chapter 141, section 2410a) to allow the Department of Defense and Coast Guard to make use of this provision, but did not include NASA. Since NASA is governed by Title 10, it does not currently have this authority.

However, even under this authority, NASA has very few 12-month service contracts, and it would provide very limited relief to the concerns identified in the previous section.

This authority cannot be used for NASA scientific and engineering contracts that are longer than 12 months due to the long-term commitments required for Research and Development activities, even within Cross-Agency Support. A significant re-structuring of the Agency's contracts would have to be under-taken to be able to take advantage of this authority even in selected instances, and NASA cannot unilaterally convert its multi-year contracts into the 12-month contracts/options.

QUESTION 306:

If not, what legislative language would be necessary?

ANSWER 306:

The limitations of the current bona fide needs rulings from the Comptroller General, as well as restrictions in existing statutes, are complex, and would require an in-depth review by NASA finance, legal and procurement experts. NASA has not undertaken this level of review, and does not propose any legislative language.

PROPERTY MANAGEMENT

In May 2008, NASA implemented its new asset management system—PP&E Module—to improve the efficiency of many of its financial and management functions. NASA estimated that the new PP&E Module will generate annual cost savings of approximately $19 million by eliminating manual processes and increasing the reutilization of equipment. GAO issued a report on January 30, 2009, (GAO-09-187) on its examination of whether NASA (1) effectively designed controls over steps NASA identified as key to its controlled equipment reutilization process, including sending equipment to disposal, and (2) has implemented policies, controls, and processes to enhance equipment reutilization.

Savings

QUESTION 307:

What assumptions did NASA use to estimate the anticipated operational efficiencies and cost savings that it expects to achieve by implementing the new PP&E Module?

ANSWER 307:

In the Business Case Analysis: Revision 2.0, developed October 15, 2007, NASA estimated the potential operational efficiencies and cost savings that could be realized from implementing the PP&E system. A careful examination of PP&E reports was

performed to identify areas where process and/or technology improvements would result in measurable benefits. At that time, NASA identified asset reporting functions where changes from the status quo would provide meaningful and measurable benefits. The objectives and benefits identified were as follows:

Objective #1: Integrated processes between PP&E logistics and PP&E financial.
Benefit 1: More accurate and timely valuation of PP&E.
Benefit 2: Improved audit trail for capitalized PP&E.
Benefit 3: Reduced manual processes among multiple systems.
Benefit 4: Standardization for government-held data & process.

Objective #2: Improving usability and operability.
Benefit 1: Reduced effort to support the operational costs.
Benefit 2: Improved data consistency by eliminating redundant data across multiple systems.
Benefit 3: Reduced need for manual postings and processes.

Objective #3: Improve PP&E financial management.
Benefit 1: Improved financial audit trail supporting financial statements.
Benefit 2: Improved capitalization and depreciation processes.
Benefit 3: Improved Work in Process valuation for NASA-held [contractor-held] PP&E.

Objective #4: Improve PP&E Logistics Management.
Benefit 1: Improved re-utilization of assets enabling reductions in procurement activities.
Benefit 2: Improved physical inventory reporting of all accountable property.
Benefit 3: Reduced losses initiated by a survey process for lost, stolen, or damaged PP&E as a result of elimination of manual entry errors.

NASA evaluated historical data across FY 2003-2005, and the number of equipment items transferred-in, the total inventory balance and the associated losses and corresponding dollar value of items lost. Using the data, NASA estimated an increase in items transferred-in from programmatic reuse instead of a new acquisition would provide NASA direct quantitative savings. Additionally, enhanced visibility and automation was anticipated to greatly reduce loss rates from manual data entry processes. At that time, NASA anticipated savings for Year 1 (post "go-live") to be 15 percent. Years 2 through 5 were projected to yield an additional savings of 2.5 percent. These savings were based on the following assumptions:

- For every additional item that is transferred it is expected that this item will not be procured.
- For every additional item that is not lost, it is expected that this item will not be procured.

QUESTION 308:

What portion of the anticipated annual cost savings is expected to come from increased equipment reutilization and how much from the elimination of manual processes?

ANSWER 308:

NASA has the ability to track the re-utilization of NASA-owned assets, thereby avoiding new procurements. There are metrics in Logistics Inventory Management System (LIMS) for re-utilizations after an item is declared excess and enters the disposal process. NASA will produce similar metrics out of the PP&E Disposal Module. NASA will report the increases in re-utilizations, and draw some inference from the acquisition value of the property re-utilized. NASA anticipates that the majority of cost savings would be achieved by the elimination of two independent NASA legacy systems (NASA Equipment Management System (NEMS) and NASA Property Disposal Management System (NPDMS)), replaced by the PP&E System.

Since May 2008, Go-Live, NASA was able to save taxpayer funds (post excess declaration) by reutilizing existing equipment and transferring equipment to other Federal agencies. NASA will also realize additional savings with potential reuse of more than 777K line items from the Space Shuttle program to the Constellation program. These savings will be realized following Space Shuttle retirement. To date, the following savings were achieved thru reutilizations supported from enhanced visibility provided by the PP&E System:

On Center (between NASA Centers) and Same Center Transfers:

- Total Line Items: **3,052**
- Total Acquisition Costs: **$ 49,703,916.01**
- Total Quantity: **24,648**

Transfers to Other Federal Agencies

- Total Line Items: **802**
- Total Acquisition Costs: **$ 179,537,897.70**
- Total Quantity: **1,947**

QUESTION 309:

How does NASA intend to track any savings achieved, and over what period of time? Does NASA intend to report this information to Congress or other key stakeholders and how often?

ANSWER 309:

Yes, NASA does plan to track any saving achieved through equipment programmatic reuse (before excess), equipment reuse after excess, and equipment transferred to other Federal Agencies. NASA reports these property transfers to other Federal agencies

annually to the General Services Administration. NASA's PP&E System can produce these reports on an ad-hoc basis, through the N-PROP and Business Warehouse Modules and can produce the reports on demand.

QUESTION 310:

What manual processes does NASA intend to reduce or eliminate? What portion/number of employees does NASA anticipate will continue to use manual processes?

ANSWER 310:

As stated in NASA Inspector General Report, "Final Memorandum on NASA's Development of the Integrated Asset Management – Property, Plant, and Equipment Module to Provide Identified Benefits (IG-08-032)," dated September 2008:

> "Prior to implementation of the IAM/PP&E module, property accountants manually recorded property and depreciation calculations in the general ledger. The IAM/PP&E module is expected, through the integration of logistics and financial systems, to eliminate manual processes such as recording journal voucher entries, calculating depreciation of assets, and maintaining Excel spreadsheets. Also, prior to IAM/PP&E implementation, only equipment managers could accept property using NEMS and dispose of property using NPDMS. All other users completed paper forms to document equipment logistics and did not have access to determine available excess equipment, particularly in other Centers. With IAM/PP&E, end-users can accept equipment electronically, and all NASA users will be able to search N-PROP for excess equipment that is identified for property disposal."

QUESTION 311:

What metrics does NASA intend to use to track trends in equipment reutilization and measure performance, such as by center, program, or other categories?

ANSWER 311:

NASA plans to utilize its Performance Measurement Plan to monitor the Module's performance with regard to asset reutilization and other key processes and will make the necessary continuous process improvement changes to policy, processes, and/or systems, as warranted.

Several performance measures are identified in the Performance Measurement Plan related to anticipated benefits such as: (1) the number of automated transactions in Core Financial related to capitalized personal property; (2) the total number of users with

access to N-PROP; and, (3) the number of items from excess property transferred or reutilized with the transactions made electronically (reported to GSA annually).

Equipment Availability

QUESTION 312:

Does it seem reasonable to you to expect NASA employees or contractors who are interested in using a certain type of equipment to have to contact potentially hundreds of other users to see if they could reutilize equipment NASA already has on hand?

ANSWER 312:

No, NASA does not expect all NASA employees [or contactors] who are interested in using certain types of equipment to contact the end users on equipment availability. The option of stating a desire to a property custodian or equipment manager remains an alternative. However, with the new system, active equipment is visible Agency-wide for users to review equipment before it is declared excess. This visibility provides the opportunity for programmatic, technical, and scientific experts to discuss possible reuse through loans or borrowing, coordinating through their property custodians or equipment managers, as noted in NASA Procedural Requirement 4200. 1. Equipment issues can be made known to Property Disposal Officers and Property Custodians, so that when property is excessed, internal programmatic reuse opportunities are visible and maximized.

QUESTION 313:

Why does the PP&E Module, as initially designed and implemented, fail to capture information on the anticipated and actual usage (availability) of equipment assigned to end users at the time the equipment is accepted? For example, someone searching for an oscilloscope could have to contact up to 1,700 other end users to determine the availability status of these equipment items?

ANSWER 313:

As NASA stated in the May 1, 2009, letter to the Chairman of the Committee on Science an Technology, in response to the Government Accountability Office (GAO) report (GAO-09—187):

> "The PP&E Module was designed and developed by evaluating the total business process for property management and equipment accountability. As a result, two modules of the NASA PP&E System were designed to accurately manage property. All active records reside in the Equipment Master Record (EMR) module. At no time should equipment in the EMR depict any status other than ACTIVE. Thus, there is no need to design a separate status category for the

EMR. Active equipment is visible Agency-wide. This visibility provides the opportunity for programmatic, technical, and scientific experts to discuss possible reuse through loans or borrowing, coordinating through their property custodians or equipment managers. After property is declared excess, it becomes eligible for reutilization. All excess property is processed through NASA's disposition module. Equipment no longer required for performance of a specific NASA requirement will be reported for reutilization screening throughout NASA. This is accomplished when an item is declared EXCESS. Declaration of excess can be made at any time or as the result of an annual walk- through.

The culmination of years of process reengineering and best practice assessments from both commercial and public sector entities resulted in a property system that achieved the goal of increasing property accountability and the accurate valuation of controlled property across the Agency. A resultant benefit is the heightened potential for property reutilization though Agency-wide visibility and accessibility to all NASA users. This capability was not previously available through the legacy system."

QUESTION 314:

At times during or at the end of a project, equipment usage may change, resulting in the availability of equipment increasing. For example, a user may not intend to use the equipment again for a few months until the next stage of work begins. Does NASA intend to provide a mechanism to ensure that the information on equipment availability is updated as appropriate?

ANSWER 314:

Yes, in accordance with NASA policy, during the annual walk-through, all property identified as inactive or no longer needed becomes available for reuse or is identified as excess property to the program and enters NASA's equipment reutilization process. The new PP&E System separates utilizations into two categories. The first captures property reutilizations (as a borrower within NASA or inter-Center transfer) prior to the property being declared excess. The second category occurs after the property is declared excess to the user's need. Within the Business Warehouse Module of the PP&E System, NASA can track real-time data for transfers for NASA internal programmatic reuse, transfers to other Federal agencies, and donations to eligible non-Federal recipients. Previous to the deployment of the PP&E System, this data was tracked manually, which was time consuming and lent itself to potentially inaccurate reporting.

QUESTION 315:

Does NASA intend to ensure that its new PP&E Module complies with the Financial Systems Integration Office's property management systems requirements, which require property management systems to capture an equipment item's current use status? Why or why not?

ANSWER 315:

Yes, NASA is in compliance with property management system requirements and captures equipment current use by ensuring that only active records reside in the EMR module. As detailed in the response to Question 313, at no time should equipment in the EMR depict any status other than ACTIVE. Thus, there is no need to design a separate status category for the EMR.

Implementation Issues

QUESTION 316:

Are NASA-wide procedures in place so that screening for existing equipment is done consistently by all centers prior to purchasing new equipment, and what steps has NASA taken or does it plan to take to ensure that procedures and controls are effectively and consistently implemented? Has NASA considered whether the $25,000 threshold before requiring screening for existing available equipment adequately maximizes reutilization? If so, please summarize the conclusions of any studies or analyses done.

ANSWER 316:

NASA NPR 4200.1 Chapter 1, Equipment Acquisition, Section 1.1.3.2, states:

> "Prior to acquisition of equipment valued at $25,000 or more, existing equipment resources will be screened in accordance with NPR 4300.1, NASA Personal Property Disposal Procedural Requirements, which indicates that the PDO is responsible for the Center's screening, redistribution, and marketing activities of NASA-owned excess, surplus, and exchange/sale personal property. This includes transfer, exchange, sale, and abandonment or destruction, of NASA-owned personal property, as well as acquiring other Federal agencies' excess personal property for NASA's use in order to reduce NASA's new procurement and infrastructure costs. Equipment valued at less than $25,000 may be screened at the option of the purchaser or the equipment management organization, on a case-by-case basis."

Further, Appendix F, Section 2.2 of NPR 4200 states:

> "...before new items of equipment are procured, purchase requests which have a unit cost of $25,000 or more must be screened to determine if the desired item, or an acceptable substitute, is available, active, or excess in the Business Warehouse (BW) module in the NASA PP&E system."

Through the enhanced visibility of property in the PP&E Module, NASA Centers have experienced increased communication among programs with similar property needs. While not necessarily resulting in the transfer of an asset in lieu of a new acquisition, the

requesting organization has coordinated with the current organization holding the property for a technical property performance evaluation. This unanticipated benefit provides valued referrals on whether a new acquisition for a similar item is needed or recommendations as to how an alternate technical design could better achieve the desired test result.

QUESTION 317:

Are NASA employees now required to justify the purchase of new equipment if needed equipment is already available within NASA? If not, why?

ANSWER 317:

Yes, all Center procurement requests for items of equipment with an estimated unit cost of $25,000 or more will be routed through the Center Equipment Manager for screening, or the SEMO will coordinate with their Center procurement office where the Procurement Specialist has access to BW to accomplish the screening.

Through the enhanced visibility of property in the PP&E Module, NASA Centers have experienced increased communication among programs with similar property needs. While not necessarily resulting in the transfer of an asset in lieu of a new acquisition, the requesting organization has coordinated with the current organization holding the property for a technical property performance evaluation. This unanticipated benefit provides valued referrals on whether a new acquisition for a similar item is needed, or recommendations as to how an alternate technical design could better achieve the desired test result.

QUESTION 318:

To what extent, if any, does NASA provide, or plan to provide, incentives to its staff to help end users recognize the benefits of reutilizing equipment and encourage them to fully use the PP&E Module to identify potential matches and negotiate with other users to help increase equipment reutilization? Has NASA provided or does it intend to provide any additional training to employees or contractors?

ANSWER 318:

Under a cost-constrained budget, NASA remains dedicated to cutting costs for the American taxpayer. NASA programs and projects are focused on cost savings Agency-wide as the greatest incentive to leverage equipment reutilization. In fact, to date, the Constellation program now estimates the reuse potential of an estimated 700,000 line items of personal property, which is an increase of 200,000 from NASA's earlier estimate. This reuse will offset the acquisition cost requirements for the new program.

In accordance with NASA policy, during the annual walk-through, all property identified as inactive or no longer needed becomes available for reuse or is identified as excess

property to the program and enters NASA's equipment reutilization process. The new PP&E System separates utilizations into two categories. The first captures property reutilizations (as a borrow within NASA or inter-Center transfer) prior to the property being declared excess. The second category occurs after the property is declared excess to the user's need. Within the Business Warehouse Module of the PP&E System, NASA can track real-time data for transfers for NASA internal programmatic reuse, transfers to other Federal agencies, and donations to eligible non-Federal recipients. Previous to the deployment of the PP&E System, this data was tracked manually, which was time consuming and lent itself to potentially inaccurate reporting.

The visibility now achieved through the use of the PP&E EXCESS disposition module has resulted in internal NASA reutilizations being processed for 1,583 items from October 1, 2008, to March 15, 2009. We anticipate continued benefits from enhanced accessibility, visibility, and availability of information across NASA. NASA's PP&E Module is still in its infancy and is a tool in which NASA can build upon for greater reuse of NASA assets, avoiding future procurements for like items.

NASA's property awareness campaign has recently reinforced the need to increase equipment reutilization. NASA revised a property awareness video to coincide with the IAM/PP&E May 2008 launch date. This Web-based training provides NASA civil service and contractor personnel with training on the individual's responsibility for conserving and protecting Government property. This video stresses the importance of property accountability and the day-to-day management responsibility regarding NASA property. The video highlights the PP&E Module's ability to provide visibility of total property assets and directs the end user to contact the appropriate property official (property custodian, property disposal officer, and supply and equipment manager (SEMO)) for all actions pertaining to property accountability. In February 2009, the video became a part of NASA's official electronic education Agency training system (SATERN). In addition to the video, continued communication with property personnel occurs via video conferencing and teleconferences. All forums stress the benefits to NASA of personal property reutilization and the value of the PP&E Module.

QUESTION 319:

GAO reported in 2009 that NASA has not provided detailed guidance on what should be included in the PP&E description field, leading to widely varying descriptions. Further, GAO found that some equipment items were incorrectly coded as new and unused when they were not. Problems such as these could lead to opportunities for reutilization being overlooked. What actions does NASA plan to take to ensure that the PP&E Module includes clear, consistent, and accurate equipment descriptions, and information on the physical condition of equipment?

ANSWER 319:

NASA currently utilizes the Federal Cataloging standard for item naming for all controlled property. NASA is in full compliance with current Federal regulations and

applies the same naming conventions as other Federal agencies. Within NASA, Center Equipment Managers are responsible for interpreting the Federal Catalog H2 Series when creating new equipment records and maintaining consistency with naming conventions. The NASA PP&E System allows for a complete name search or partial "wild-card" search of available active equipment to enhance potential reuse. NASA's current policy, as provided in interim NASA Procedural Requirements (NPR) 4200 entitled, "NASA Equipment Management Procedural Requirements," was issued in May 2008 to assist NASA users with this search capability.

NASA acknowledges that further improvements may be realized through the consolidation of current decentralized Center processes into a single Agency cataloging operation. To further enhance data quality assurance and standardization, NASA will determine the feasibility of consolidating asset cataloging at one central location for new equipment and separately consider retroactive data cleansing for existing NASA controlled property. NASA is evaluating the establishment of a new Agency Cataloger position dedicated to consolidating Center cataloging processes. NASA anticipates that completion of this task may be heavily impacted by resource availability.

QUESTION 320:

Has NASA implemented agency-wide procedures for conducting and reporting the results of annual walk-through inspections to update the data in the PP&E Module to help facilitate equipment reutilization and disposal? If not, why? What oversight mechanisms does NASA have or plan to put in place to ensure that these steps are taken on a regular basis?

ANSWER 320:

Yes. NASA already has established policy (NPR 4200 1, Chapter 1, Section 1.6.1) that addresses conducting annual walk-through inspections at both the Agency and Installation levels. The procedures contained therein outline details on performing annual walk-through inspections at the Agency, Center, and Installation levels. The policy states that NASA Division Directors or equivalent "shall perform annual walk through inspections to ensure that equipment assigned to the organization is classified in the appropriate use status. Equipment no longer required for the performance of a specific NASA requirement shall be declared excess by using proper documentation and forwarded to the property Disposal Officer."

Further, interim NPR 4200.1, Chapter 3, Section 3.6.5, states:

> "...walk-through inspections are required by the Federal Property Management Regulation, Section 101-43.101 and 40 U.S.C. Section 524(a) (2) and shall be performed by each Division Director or designee, accompanied by the property custodian. "

The walk-through inspection includes all locations, both onsite and offsite for each property management area, identifying inactive or underused equipment that is no longer required or that is expected to become inactive in the near future. NASA policy also states that the SEMO shall prepare a report annually for the Center Director describing the walk-through program and results.

As the policy above validates, property declared excess will be updated in the PP&E DSPL system by the property disposal officer or the property custodian for disposition and reutilization within NASA or the Federal Government.

Additionally, in 2008, NASA reinstated management reviews to evaluate the performance of NASA Center Logistics Operations. The goals of the Compensating Control Group in the Logistics Management Division are to ensure that:

- Programs are efficiently and effectively carried out in accordance with legislative requirements and Agency policy to achieve their strategic goals;
- Obligations and costs comply with applicable laws; and,
- Assets are safeguarded against fraud, waste, loss, and unauthorized use.

NASA's future logistics compensating control reviews will ensure that the annual walk-through inspections are completed and are in compliance with NASA procedural requirements.

FINANCIAL MANAGEMENT SYSTEM COMPLIANCE WITH FFMIA

GAO and others have consistently reported that NASA's financial management system does not fully comply with the requirements of the Federal Financial Management Improvement Act (FFMIA). Because of these weaknesses NASA has not been able to generate timely, accurate, and useful financial information with which to make informed decisions, manage daily operations, and ensure accountability on an ongoing basis. In addition, these weaknesses have prevented NASA from being able to produce auditable yearend financial statements and provide sufficient evidence to support interim financial statements prepared throughout the fiscal year. To address these weaknesses, NASA developed an Integrated Enterprise Management Program (IEMP), which is intended to provide information needed to support effective day-to-day program management and external financial reporting. That system has not corrected fully NASA's financial weaknesses.

QUESTION 321:

What steps has NASA taken to bring its new financial management system into compliance with FFMIA, and to strengthen its control environment and accountability

over government-owned equipment? Specifically, what steps has NASA taken to ensure that the new financial management system will:

a. Produce auditable financial statements;
b. Address long-standing data reliability issues;
c. Provide accurate and reliable cost data concerning contract spending;
d. Accurately capture and report on NASA's environmental liabilities;
e. Identify, track, and record all capital equipment costs as they are incurred throughout the entire property transaction life cycle; and
f. Identify and record all controlled equipment when purchased.

ANSWER 321:

NASA has made significant improvements to its new core financial system since NASA implemented it in 2003 and the GAO reported on NASA's lack of compliance with FFMIA in 2005. Key to the improvements was a major update to NASA's core financial system (SAP Version Update, or SVU) in 2006 that addressed many of the weaknesses identified during the initial system implementation. This update resolved accrual posting issues, added edit checks, streamlined funds distribution, improved funds control, improved program/project management information, and streamlined year end processing. Additional improvements to the core financial system and asset accounting and contracts management modules are described in the sections below. These and other improvements are systematically identified, prioritized, planned, developed, tested and implemented through a semi-annual system release process. Changes to NASA's core financial system are inevitable in order to maintain alignment with changes in laws, regulations, requirements and business practices.

Specific steps NASA has taken to address the listed areas include:

a. *Produce auditable financial statements*
NASA produces financial statements each month for internal review, quarterly for OMB review and annually for the American public. The improvements NASA makes to the core financial system, including those listed in the sections below, contribute to the Agency's ability to produce auditable financial statements.

b. *Address long-standing data reliability issues*
The conversion from 10 Center-based financial systems to 1 enterprise-wide financial system in 2003 resulted in anomalous balances in some general ledger accounts, particularly in the Fund Balance with Treasury (FBWT) account. The FBWT differences were resolved by FY 2005. NASA has implemented a monitoring program which provides the overall framework of management controls that NASA uses to assess and evaluate its (i) internal controls; (ii) compliance with GAAP;,and, (iii) evidence that balances and activity reported in its financial statements are auditable. The program ensures that ongoing management reviews and validations of financial data, financial statements and internal controls are performed when and as required.

c. *Provide accurate and reliable cost data concerning contract spending*
NASA program and project managers are currently using cost data, including contract spending, from the Agency's core financial system for monitoring and decision-making purposes. The Agency's governing councils also use this cost information at multiple levels (Project, Program, Mission, Agency) to conduct regular performance status reviews.

d. *Accurately capture and report on NASA's environmental liabilities*
Estimates of NASA's environmental liabilities are developed outside of the core financial system through established estimation processes and with the support of estimation software, as appropriate. Those estimates are jointly reviewed by NASA's environmental and financial organizations. Improvements have been made in the processes (planning and development), software and software models, and management reviews used to develop and validate those estimates. NASA recently completed an independent validation of the software models for a limited number of projects. That review found that estimates, when compared with actual project costs, were within acceptable validation ranges.

e. *Identify, track, and record all capital equipment costs as they are incurred throughout the entire property transaction life cycle*
With the start of FY 2008, NASA implemented a new policy and process for identifying, tracking and recording capital equipment costs as they are incurred through the property life cycle. This policy requires that capital assets acquired on new contracts be identified before acquisition with a unique work break down structure code. This code must then be used to track costs throughout the property life cycle. In May 2008, NASA implemented the Asset Accounting Module, an automated asset management system providing Agency wide accountability and visibility of Property, Plant, & Equipment (PP&E) assets utilized by NASA installations, programs, and projects. This module is integrated with NASA's core financial system and provides additional capability for the financial management of capitalized personal property to enhance the Agency's ability to meet requirements for financial reporting. The scope of this implementation includes logistics and financial management of NASA-owned accountable personal property.

f. *Identify and record all controlled equipment when purchased.*
NASA-held controlled equipment items are uniquely identified and recorded in equipment master records within the Agency's logistics systems, and the original acquisition costs associated with those equipment items flow from those records into the financial management system. Equipment items that also meet the thresholds for capital assets are also uniquely linked to the Asset Master Record tracked and recorded in the core financial system. The implementation of the Personal Property Plant & Equipment (PP&E) module of the Integrated Asset Management (IAM) System, along with the Financial Asset Accounting Module, have together improved the identification, recordation, and tracking of controlled equipment throughout the equipment life cycle.

QUESTION 322:

When were these improvements made? Are further refinements planned, and if so, which?

ANSWER 322:

The dates of the improvements listed above are:

2003 Core Financial System initial implementation
2006 SAP Version Update (SVU)
2007 PP&E Policy and Process Revisions
2008 Monitoring program implemented
2008 Integrated Asset Accounting Property, Plant and Equipment (PP&E) Module implementation

Future refinements to the financial management system are planned through the Agency's comprehensive system release process. Major system releases, typically performed twice each year, support implementation of vendor upgrades. For each release, areas for improvement are identified and prioritized, enhancements are developed and tested, implementation is scheduled and communicated, and training is delivered to the Agency's relevant user community.

QUESTION 323:

When do you expect NASA will be able to produce a financial statement that can be audited by independent accountants, as, to date, PricewaterhouseCoopers and Ernst and Young have been unable to find sufficient evidential support for amounts presented in NASA's financial statements?

ANSWER 323:

NASA produces financial statements each month for internal review, quarterly for OMB review, and annually, subject to independent audit, for the American public. As noted above, NASA continues to make improvements to its financial system, financial policies and processes, and management reviews and oversight that have significantly improved data quality since the implementation of the core financial system in 2003. For certain legacy assets, such as the International Space Station (ISS) and Space Shuttles, NASA auditors have found that, "Internal control matters related to legacy capital assets that remain on [NASA's] balance sheet for contracts originally executed in prior years will continue to impact financial reporting." While certain of the existing ISS and Space Shuttle assets will be transitioned for use on other NASA programs, much of this issue may become moot with the passage of time, as the Shuttle is planned to be retired in 2010, and the ISS is being depreciated based upon a 15-year specification life through

2016. While the ISS depreciation schedule naturally leads to 2016 as an outside date for resolution of this issue, NASA is developing a variety of alternatives, in alignment with anticipated changes to PP&E Federal property accounting standards, to achieve a more timely, albeit still cost efficient and effective, solution for this issue.

QUESTION 324:

Why is the IEMP unable to track recoveries? Why is such data not tracked currently by NASA's financial systems? What changes are necessary in the system to be able to track such data?

ANSWER 324:

As of FY 2006, NASA's core financial system is able to track recoveries. The system was not configured to report recoveries prior to an upgrade implemented for FY 2006.

QUESTION 325:

A recent GAO report concluded that unlike other IG offices the audit reports from NASA's IG office generally lacked economy and efficiency results with monetary accomplishments and dollar savings. Why do your audit reports not have dollar savings?

ANSWER 325:

During the period addressed by the GAO report, the NASA OIG devoted a significant amount of its resources to safety (following the Columbia accident), IT security, and financial and contract management issues. Focusing efforts on these issues was consistent with OIG's goal of addressing the most significant challenges facing the Agency. By the nature of its mission and heavy reliance on contractors, safety and contract management are critical to the success of Agency programs and operations. Also, the Agency and OIG had identified both IT security and financial management as areas with material weaknesses in internal controls. OIG's reports and recommendations have helped the Agency identify and address systemic issues in the areas of safety, acquisition management, financial management, information technology management. While OIG's work has led to improvements in Agency internal controls and enhanced the economy efficiency and effectiveness of programs and operations, it has not yielded significant monetary savings.

QUESTION 326:

Does the office plan to obtain more dollar savings from audits of economy and efficiency in the future?

ANSWER 326:

Yes, the OIG has realigned its priorities and resources to place greater emphasis on the execution of audits with potential cost saving addressing economy, efficiency and effectiveness of the Agency's programs and operations.

The NASA OIG Strategic Audit Plan for Fiscal Year 2009 sets forth goals and objectives designed to assist NASA in achieving its mission; provides assurance that Agency's economy and efficiency will be addressed; and ensures measurable monetary accomplishments will be attained over the next 5 years. To achieve the Plan's goals, the OIG will target its resources to:

- incorporate lessons learned and proven methodologies by benchmarking best practices within the IG community;
- give greater emphasis to identifying audits with potential monetary savings;
- conduct planning sessions with Agency leadership, Congressional staff, OMB and academia that are designed to create dialogue about the important issues facing NASA;
- realign priorities and reallocate human resources to expand the execution of audits addressing NASA's program effectiveness, economy, and efficiency; and
- enhance audit methodologies and guidance for identifying opportunities to put funds to better use.

Implementation of the above prescribed efforts will ensure that the OIG has efficiently and effectively employed their resources to meet Agency needs and minimize exposure to fraud, waste and abuse.

QUESTION 327:

GAO also recommended that the NASA IG office work closely with an objective outside party when preparing strategic and annual plans in order to address NASA's economy and efficiency with dollar savings. Will the NASA IG follow the GAO's advice, and if not, why not?

ANSWER 327:

To date, NASA OIG has taken the necessary measures to address GAO's recommendation. Such measures include obtaining assistance from other Federal OIGs including those from the Department of Defense, Energy, and Veterans Affairs.

Through benchmarking best practices within the OIG community, the NASA OIG has implemented an audit planning process which will generate areas for audit emphasis; identify and prioritize issues for audit oversight; increase awareness of potential sources of audit leads; and establish the framework for rebuilding the OIG inventory of economy and efficiency audits with potential cost savings. Continuing to strengthen the OIG's strategic planning process is a priority for the Office that will yield independent, relevant information to improve the effectiveness, efficiency, and integrity of NASA programs and operations.

QUESTION 328:

GAO also observed that the NASA IG office has a relatively high turnover rate and that many high level auditors have left the office. Do you plan to follow GAO's recommendation to obtain the assistance of an objective expert to determine the appropriate actions to address this issue?

ANSWER 328:

Yes, NASA OIG has selected the Office of Personnel Management's Training and Management Assistance Program (OPM/TMA) to aid the Office in obtaining the services of an outside expert to identify and recommend corrective actions for addressing the turnover rate.

The OIG, with the assistance of OPM/TMA, will select a contractor from 31 pre-qualified commercial partners to conduct the study. We expect to make a selection within the next several months and anticipate receiving a final report by the end of the year. OPM/TMA will oversee the study to completion.

QUESTION 329:

The former NASA IG stated his reliance on DCAA to provide audit coverage of NASA's contracts. What are your plans to audit NASA's contracting process beyond the work of the DCAA?

ANSWER 329:

In an effort to expand the execution of audits addressing NASA's program effectiveness, economy, and efficiency, the OIG has implemented measures to increase internal rigor and review of the NASA's contracting process beyond the work of the Defense Contract Audit Agency (DCAA).

Such efforts are demonstrated through recent OIG findings pertaining to NASA's Stratospheric Observatory for Infrared Astronomy (SOFIA) Program, NASA's University-Affiliated Spaceport Technology Development Contract, and ongoing work addressing the Jet Propulsion Laboratory's (JPL) Earned-Award Terms and Awards Fees Contract.

Developed by NASA in 1996, SOFIA is an airborne observatory within the airframe of a Boeing 747SP, which will study the universe in the infrared spectrum. The Program has experienced cost overruns that exceed 217 percent of the initial cost estimate, and a delay of approximately 10 years for the start of limited scientific operations. As of January 2009, the SOFIA Program's life-cycle cost estimates were approximately $1.1 billion for

development and implementation and approximately $3.4 billion including a 20-year operational lifespan.

The OIG audit found that SOFIA Program management deemphasized the importance of cost control, which negated its effectiveness; neglected to provide the contractors with incentives to control costs; and emphasized meeting near-term schedule milestones without adequate regard for controlling cost. Consequently, NASA expended $233,600 of Government funds for award fees that did not meet NASA FAR Supplement requirements and, therefore, were made without appropriate basis. Furthermore, the OIG concluded that the evaluation criteria in the Award fee was flawed and could result in future awards being granted without the appropriate emphasis on cost control.

NASA OIG made several recommendations that if implemented would assist the Agency with validating cost estimates and cost control. NASA management generally concurred with the recommendations and agreed to take action to ensure the long-term viability of the SOFIA Program.

An OIG audit of the Arctic Slope Regional Corporation (ASRC), ASRC Aerospace Corporation, NASA's University-Affiliated Spaceport Technology Development Contract (USTDC) found that evaluation factors used to assess the USTDC contractor's performance did not provide the basis for a fair and objective assessment. Because performance evaluation factors were not task order-specific and tied to desired outcomes as required by acquisition regulations, the performance evaluations provided little evidence that the approximately $2.2 million in USTDC award fees for FY 2007 were fully justified or were an accurate reflection of the contractor's performance.
The OIG is currently conducting an audit of the Jet Propulsion Laboratory's (JPL) Earned-Award Terms and Awards Fees Contract to determine whether the earned-award terms and fees paid to the contractor for operations of JPL were appropriately calculated and justified.

COTS-D

The spend plan for the recovery funds includes $150 million for commercial crew and cargo, of which $80 million is to be available for "commercial development of crew concepts and technology demonstrations and investigations." This sure sounds like COTS-D, but your staff informs the Committee that that is not the case. Please elaborate for the Committee if these funds are for COTS-D.

QUESTION 330:

How are these funds to be allocated? For example, do you plan to execute new Space Act agreements, initiate a new RFI and subsequent contracts through an RFP?

ANSWER 330:

With regard to Recovery Act funds, the $150M funds will be allocated to activities to stimulate efforts within the private sector to develop and demonstrate human spaceflight capabilities. Risks include launch abort systems, crew systems, ECLSS, etc. Additionally, NASA plans to accelerate development of a docking system and develop a concise set of human rating requirements using recovery Act funds. These will benefit NASA as well as the commercial space industry in coming years. These will also be available should funding for commercial crew transport be made available to NASA.

NASA intends to solicit proposals from industry and enter into funded SAAs for the development of commercial crew transportation concepts and initial capabilities that could be released as early as June 2009 and awarded in September 2009.

QUESTION 331:

Does this investment (i.e., the full $150 million) signal a continuing commitment or further fiscal requirement for funds for these activities in fiscal year 2010 or are the activities to be supported by these funds one-time, discrete and severable programs and demonstrations?

ANSWER 331:

The FY 2009 Recovery Act funds provide a one-time allocation for $400M for Exploration, of which $150M will be spent by the Commercial, Crew and Cargo Program Office (C3PO), as previously outlined. Therefore, at this time, the allocation of such funds for C3PO should not be viewed as anything more than a one-time investment of Recovery Act funds, which per the terms of that law, will need to be spent by September 2010.

With regard to the FY 2010 President's budget submit, NASA is requesting $39.1M to pay for milestones expected to be achieved by SpaceX and Orbital, as well as to restore a $20M funding reduction for the Commercial Crew and Cargo Program that was included in the FY 2009 budget, for the currently negotiated SAAs with regard to COTS Capabilities A through C. There is no funding allocated in the FY 2010 request for COTS Capability D.

FY 2006 Construction of Facilities Funding - Response to #239

(Dollars in Millions)	FY 2006 Budget Request	Total Budget Provided	Amount to Complete Project	Unobligated Balance 11-May-09
Science	35.0	70.8	0.6	0.6
Construct Exploration Sciences Building, Phase 1 (GSFC)	15.0	14.8	0.0	0.0
Construct Flight Project Center, Phase 1 (JPL)	20.0	23.9	0.0	0.0
Construct Administrative and Education Complex, Phase 1 (JPL)	0.0	2.0	0.0	0.0
Connect Madrid DSCC to Commercial Power (JPL)	0.0	1.3	0.0	0.0
Minor Revitalization (Various Locations)	0.0	2.2	0.0	0.0
NOAA Transfer	0.0	26.6	0.6	0.6
Aeronautics Research	0.0	6.3	0.0	0.0
Repair Compressor No. 5 (LaRC)	0.0	4.4	0.0	0.0
Repairs to Icing Research Tunnel (GRC)	0.0	1.9	0.0	0.0
Exploration Systems	0.0	95.9	1.3	1.3
Construct Repalcement Building 4601 (MSFC)	0.0	28.5	0.2	0.2
A3 Propulsion Test Facility (SSC)	0.0	52.4	0.0	0.0
Modifications to Pad B (KSC)	0.0	5.1	0.0	0.0
Minor Revitalization funded by Constellation	0.0	9.9	1.1	1.1
Space Operations	74.2	59.8	1.2	1.2
Repairs to Launch Complex LC-39B (KSC)	22.8	0.0	0.0	0.0
Repairs to Vehicle Assembly Building (VAB) (KSC)	9.4	14.9	0.4	0.4
Minor Revitalization funded by Space Shuttle (Various Locations)	40.5	43.1	0.8	0.8
Minor Revitalization funded by Space and Flight Support (Various Locations)	1.5	1.8	0.0	0.0
Cross-Agency Support	165.4	126.7	0.0	0.0
Rehabilitate Electrical Distribution System (ARC)	5.0	5.0	0.0	0.0
Repair Emergency Chiller System, Bldg 24 (GSFC)	5.7	5.7	0.0	0.0
Construct Administrative and Education Complex, Phase 1 (JPL)	22.5	0.0	0.0	0.0
Seismic Upgrade of Telecommunications Bldg 238 (JPL)	6.0	4.9	0.0	0.0
Renovate Operations & Checkout Bldg (KSC)	5.4	5.4	0.0	0.0
Construct Liquid Nitrogen Plant, Phase 2 (LaRC)	6.7	7.0	0.0	0.0
Repair /Replace 350 psig Steam Dist Sys, Util Tun #4 (LaRC)	0.0	0.9	0.0	0.0
Infrastructure Upgrades to Accommodate Unmanned Aerial Vehicles	0.0	3.8	0.0	0.0
Institute of Sciecne Research Earmark	0.0	9.3	0.0	0.0
Site Utilities for Master Plan (GSFC)	0.0	3.7	0.0	0.0
Construct Flight Project Center, Phase 1 (JPL)	0.0	1.1	0.0	0.0
Minor Revital & Const @ Var Loc, Less than $5M/project	105.1	70.9	0.0	0.0
Demolition of Facilities	9.0	9.0	0.0	0.0
Total	274.6	359.5	3.1	3.1

FY 2007 Construction of Facilities Funding - Response to #239

(Dollars in Millions)	FY 2007 Budget Request	Total Budget Provided	Amount to Complete Project	Unobligated Balance 11-May-09
Science	76.3	58.7	0.0	0.0
Construct Exploration Sciences Building, Phase 2 (GSFC)	30.0	30.0	0.0	0.0
Construct Administrative and Education Complex (JPL)	19.5	0.0	0.0	0.0
Construct Flight Project Center, Phase 2 (JPL)	26.8	26.8	0.0	0.0
Minor Revtialization funded by Deep Space Network	0.0	1.9	0.0	0.0
Exploration Systems	0.0	71.0	13.3	13.3
Modify Launch Complex 39B (KSC)	0.0	33.3	8.1	8.1
Construct A-3 Propulsion Test Facility (SSC)	0.0	19.3	3.2	3.2
Space Power Facility Modifications, Plum Brook (GRC)	0.0	9.0	0.0	0.0
Modify A-1 Propulsion Test Facility (SSC)	0.0	0.5	0.4	0.4
Minor Revitalization funded by Constellation	0.0	8.9	1.6	1.6
SCAP	0.0	42.0	0.0	0.0
Space Power Facility Modifications, Plum Brook (GRC)	0.0	42.0	0.0	0.0
Space Operations	24.1	23.8	1.9	1.9
Repairs to Vehicle Assembly Building (VAB) (KSC)	14.1	14.1	1.2	1.2
Minor Revitalization funded by Space Shuttle (Various Locations)	6.0	6.0	0.6	0.6
Minor Revitalization Space and Flight Support (Various Locations)	4.0	3.7	0.1	0.1
Cross-Agency Support	129.1	127.5	3.9	3.9
Construct New Office Facility (JSC)	15.0	15.0	0.1	0.1
Renovate Operations & Checkout Bldg (KSC)	7.2	9.0	1.0	1.0
Rehabilitate Building Systems, Building 4207 (MSFC)	6.9	9.9	0.5	0.5
Upgrade Roads for Master Plan (GSFC)	0.0	6.4	0.0	0.0
Replace Emergency Chiller System, Building 23 (GSFC)	0.0	3.3	0.0	0.0
Construct Flight Project Center, Phase 2 (JPL)	0.0	1.0	0.0	0.0
Construct Replacement Fire Station #2, LC39 Area (KSC)	0.0	0.1	0.1	0.1
Minor Revital & Const @ Var Loc, Less than $5M/project	90.0	72.8	1.9	1.9
Demolition of Facilities	10.0	10.0	0.3	0.3
Total	229.5	323.0	19.1	19.1

FY 2008 Construction of Facilities Funding - Response to #239

(Dollars in Millions)	FY 2008 Budget Request	Total Budget Provided	Amount to Complete Project	Unobligated Balance 11-May-09
Science	38.0	44.1	6.3	6.3
Construct Exploration Sciences Building, Phase 3 (GSFC)	20.0	20.0	4.2	4.2
Construct Flight Project Center, Phase 3 (JPL)	14.2	14.2	0.0	0.0
Replace Air Handlers for Lunar Sample Fac, Bldg 3 (JSC)	0.0	1.1	0.3	0.3
Minor Revitalization (DSN - Various Locations)	3.8	5.7	0.0	0.0
Minor Revitalization - Jame Webb Telescope	0.0	1.4	0.2	0.2
Minor Revitalization - SOPHIA	0.0	1.7	1.6	1.6
Exploration Systems	73.4	64.0	15.1	15.1
Construct CEV Avionics and Integration Lab (JSC)	22.0	18.7	4.0	4.0
Modify Vehicle Assembly Building, (KSC)	31.2	0.0	0.0	0.0
Modify Dynamic Test Stand 4550 (MSFC)	5.0	0.0	0.0	0.0
Modify A-1 Propulsion Test Facility (SSC)	6.6	5.3	3.8	3.8
Space Power Facility, Plum Brook Station (GRC)	0.0	4.0	0.0	0.0
Revitalize O&C Building for Orion Crew Vehicle (KSC)	0.0	20.2	0.0	0.0
Construct Center for Human Space Flight Performance and Research (JSC)	0.0	5.0	0.4	0.4
Minor Revitalization funded by Constellation (Var Loc)	8.6	10.8	6.9	6.9
Space Operations	4.7	9.5	1.8	1.8
Construct Center for Human Space Flight Performance and Research (JSC)	0.0	4.0	0.0	0.0
Minor Revitalization funded by Space Station (Var Loc)	0.0	2.0	0.5	0.5
Minor Revitalization funded by Space and Flight Support (Var Loc)	4.7	3.5	1.3	1.3
Cross-Agency Support	209.6	214.5	23.4	23.4
Construct New Office Facility (JSC)	12.0	11.9	1.3	1.3
Renovate Operations & Checkout Bldg (KSC)	11.0	7.0	1.3	1.3
Construct Replacement Administratvie Office Bldg (LaRC)	28.8	28.8	0.8	0.8
Construct Replacement Engineering Building (MSFC)	30.0	34.0	3.5	3.5
Replace Asbestos Siding and Provide Energy/Safety Upgrades, Bldg 4705 (MSFC)	8.9	8.9	0.9	0.9
Construct Flight Projects Center (JPL)	0.0	3.9	0.0	0.0
Minor Revital & Const @ Var Loc, Less than $5M/project	104.5	105.6	8.7	8.7
Demolition of Facilities	14.4	14.4	6.9	6.9
Total	325.7	332.1	46.6	46.6

FY 2009 Construction of Facilities Funding - Response to #239

(Dollars in Millions)	FY 2009 Budget Request	Total Budget Provided	Amount to Complete Project	Unobligated Balance 11-May-09
Science	0.0	21.6	21.6	21.6
Construct Laser Fabrication & Test Facility - ICESatt II (GSFC)*	0.0	5.4	5.4	5.4
Improve Launch Pad Insfrastructure, WFF (GSFC)	0.0	14.0	14.0	14.0
Minor Revitalization - Construct New Laboratory, WSTF-Heliophysics (JSC)	0.0	1.5	1.5	1.5
Minor Revitalization - Lunar Sampler Facility-Planetary (JSC)	0.0	0.1	0.1	0.1
Minor Revitalization - Mirror Coating Facility-Astrophysics (DFRC)	0.0	0.6	0.6	0.6
Exploration Systems	93.3	67.6	67.6	67.6
Modify Launch Complex 39B for ARES 1 Vehicles (KSC)	21.7	0.0	0.0	0.0
Modify Vehicle Assembly Building, (KSC)	2.5	2.5	2.5	2.5
Modify Multi-Payload Processing Facility for CEV (KSC)	7.7	0.0	0.0	0.0
Construct Vertical Assembly & Welding Highbay in Bldg 103, MAF (MSFC)	25.7	42.3	42.3	42.3
Modify Building 103 to Support Upper Stage Manufacturing, MAF (MSFC)	17.4	11.0	11.0	11.0
Modify A-1 Propulsion Test Facility, (SSC)	0.0	0.9	0.9	0.9
Minor Revitalization funded by Constellation (Var Loc)	18.3	10.9	10.9	10.9
Space Operations	16.0	14.7	10.9	10.9
Minor Revitalization funded by DSN (Var Loc)	12.1	12.2	8.4	8.4
Minor Revitalization funded by Space Flight Support (Var Loc)	3.9	2.5	2.5	2.5
Cross-Agency Support	187.5	179.5	142.2	142.2
Construct Collaboration Support Facility, Bldg N232 (ARC)	29.0	29.0	29.0	29.0
N258 Electrical Supply (ARC)	0.0	11.5	11.5	11.5
Repair and Construct Consolidated Info Tech Center (DFRC)	5.8	10.8	10.8	10.8
Upgrade Auxiliary Chiller Plant (JSC)	7.5	7.5	7.5	7.5
Revitalize Electrical Maintenance Complex (KSC)	5.9	5.9	5.9	5.9
Renovation of Operations and Checkout Building (KSC)	11.0	6.5	6.5	6.5
Construct Replacement Propellants North Maint Fac (KSC)	5.0	5.0	5.0	5.0
Replace Asbestos Siding and Provide Energy/Safety Upgrades,	10.9	7.4	1.6	1.6
Minor Revital & Const @ Var Loc, Less than $5M/project	97.4	80.9	55.7	55.7
Demolition of Facilities	15.0	15.0	8.7	8.7
Recovery Act funding - Repair of Hurricane Damage (JSC)	0.0	50.0	50.0	50.0
Total	296.8	283.4	242.3	242.3

FY 2010 Construction of Facilities Funding - Response to #239

(Dollars in Millions)	FY 2010 Budget Request
Science	12.6
Minor Revitalization - Earth Science Research	11.4
Minor Revitalization - Heliophysics Research	1.2
Exploration Systems	88.4
Modify Launch Complex 39B for ARES 1 Vehicles (KSC)	6.8
Modify Vehicle Assembly Building, (KSC)	35.8
Modify Multi-Payload Processing Facility for Orion (KSC)	1.0
Modify Building 103 to Support Upper Stage, MAF (MSFC)	2.5
Construct A-3 Propulsion Test Facility	16.8
Modify Space Power Facility for Orion Integrated Environmental Testing, Plum Brook (GRC)	2.3
Minor Revitalization funded by Constellation Systems	21.2
Minor Revitalization funded by Exploration Technology Development Program	2.0
Space Operations	26.8
Construct 34-Meter Beam Waveguide Antenna, DSS-35, Canberra, Australia (JPL)	6.8
Minor Revitalization funded by DSN	4.3
Minor Revitalization funded by Space and Flight Support	15.7
Cross-Agency Support	237.8
Repair Hangar Fire Protection and Electrical, B4820 (DRFC)	10.0
Repair Primary Electrical Distribution System (DFRC)	12.0
Construct Centralized Office Building (GRC)	25.3
Construct Shipping and Receiving Facility (GSFC)	12.8
Revitalize Administrative Support Building 12 (JSC)	22.0
Renovation of Operations and Checkout Building (KSC)	18.0
Revitalize High and Medium Voltage Electrical Distribution Systems (KSC)	18.1
Replace Asbestos Siding and Provide Energy/Safety Upgrades,	5.0
Minor Revitalization at Var Loc, Less than $5M/project	94.6
Demolition of Facilities	20.0
Total	365.6

Response to #242

Program Direct CoF by Mission
Dollars in Millions

	Budget Request	Operating Plan	Change
Science	149.3	201.1	51.8
FY 2005	0.0	2.9	2.9
FY 2006	35.0	73.8	38.8
FY 2007	76.3	58.7	-17.6
FY 2008	38.0	44.1	6.1
FY 2009	0.0	21.6	21.6
Aeronautics Research	0.0	6.3	6.3
FY 2005	0.0	0.0	0.0
FY 2006	0.0	6.3	6.3
FY 2007	0.0	0.0	0.0
FY 2008	0.0	0.0	0.0
FY 2009	0.0	0.0	0.0
Exploration Systems	176.6	362.5	185.9
FY 2005	0.0	3.9	3.9
FY 2006	0.0	95.9	95.9
FY 2007	0.0	89.8	89.8
FY 2008	81.1	73.6	-7.5
FY 2009	95.5	99.3	3.8
Space Operations	177.0	140.6	-36.4
FY 2005	55.2	31.3	-23.9
FY 2006	75.8	60.4	-15.4
FY 2007	24.5	24.5	0.0
FY 2008	5.2	9.6	4.4
FY 2009	16.3	14.8	-1.5
Strategic Capabilities Asset Progr	0.0	42.0	42.0
FY 2007	0.0	42.0	42.0
Total	502.9	710.5	207.6
FY 2005	55.2	38.1	-17.1
FY 2006	110.8	236.4	125.6
FY 2007	100.8	215.0	114.2
FY 2008	124.3	127.3	3.0
FY 2009	111.8	135.7	23.9

SSP FY 2010 Budget Threats

(as of May 31, 2009)

Project Name	Threats	FY09	FY10	FY11	FY12	Total
SSP Level 1 Threats		**$71.3**	**$187.1**	**$671.0**	**$100.5**	**$1,015.6**
ET	ET-122 Refurb		32.6			32.6
ET	Hurricane Gustav Damages at MAF	2.0				2.0
ET	Rates Impacts	10.0				
ET	Loss of Synergy	6.5	4.9			11.4
ET	MOM Underrun Fee	2.6				2.6
ET	Recertification BX-265	0.7				0.7
ET	SF01 Estimate MOM and Production	10.6	10.8			21.4
FCOD	SCA Stator Vane Repair	0.1				
FCOD	TAWS - Terrian Awareness & Warning System	0.1				
MI	IRD ODIN services & support contract rates increase	0.3				0.3
MI	Artifacts Dispostion/Identifiaction	0.5				
Orbiter	ARC Jet Funding Augment in lieu of SCAP		3.8			3.8
Orbiter	GH2 Flow Control Valve (Intercenters, WSTF, other)	4.0				4.0
Orbiter	WSTF (FO&I roll)	0.9				0.9
RSRB-M	Early Refurbishment of Flown RSRM Hardware	1.9	6.1	11.0	2.5	21.5
RSRB-M	Fee Reconciliation		15.9			15.9
RSRB-M	Forward pricing rate icrease		0.3			0.3
RSRB-M	Unresolved Management Challenge		6.9			6.9
S&MA	JSC SAIC Labor Rates Impact	0.8	1.6			2.4
Shuttle Processing	Hypergol Price Increase		4.3			4.3
Shuttle Processing	Liquid Helium Price Increase		0.5			0.5
Shuttle Processing	USA GO Workforce	15.0				15.0
Shuttle Processing	Utilities Cost		1.7			1.7

SSP FY 2010 Budget Threats (cont.)

(as of May 31, 2009)

Project Name	Threats	FY09	FY10	FY11	FY12	Total
Shuttle Processing	Liquid Helium Price Increase		0.5			0.5
Shuttle Processing	USA GO Workforce	15.0				15.0
Shuttle Processing	Utilities Cost		1.7			1.7
SSC	Continued SSME Testing		10.0			10.0
SSC	Propellant Cost increase for Remaining Tests	1.6				1.6
SSME	4 HPTP Recycles		0.7			0.7
SSME	Critical Skills Retention		16.8			16.8
SSME	Fee Adjustment (Workforce/Rates)	6.5	7.0			13.5
SSME	Loss of Synergy	3.7				
SSP	Manifest Protection to fly in 1st Qtr FY 2011			600.0		600.0
SSP	Severance and Retention	3.6	63.3			66.9
SSP	Transition and Retirement			60.0	98.0	158.0

ISS Program Threats – Level 1

$ Cost in Millions

April 29, 2009 (Not all Threats are cumulative)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	TOTAL
Level 1 Threats (>50% probability will happen)	**30.5**	**120.0**	**70.8**	**58.2**	**58.8**	**57.0**	**395.1**
ISS Budget and Schedule	5.0	25.0	25.0	25.0	25.0	25.0	130.0
Augmented Upmass, 2010-2015	-	5.0	12.5	13.6	12.9	13.9	57.9
Starboard SARJ increased vibration and friction	6.9	31.4	17.0	-	-	-	55.3
FY09 OB Level 1 Liens and Threats	10.1	17.8	1.9	0.4	0.3	-	30.5
COTS-CEV Integration Impact on ISS Program Resources	0.2	4.7	5.0	4.4	3.8	1.9	20.0
Integrated Schedule Risk for ELC, FSE, ORU and External Payload Development Supporting Flights ULF3/4/5	4.5	12.0	-	-	-	-	16.5
Outyear Inflation	-	0.0	0.9	3.0	3.6	5.6	13.2
Program impacts from IT security initiatives related to HSPD-12 and NPR-2810.1A implementation	2.0	3.9	2.1	1.6	1.6	1.6	12.6
Russian Infrastructure Budget	0.8	1.5	2.4	2.6	2.8	1.6	11.7
ODAR Impacts and Opportunities for Payloads	0.6	1.5	2.0	3.6	3.7	0.2	11.6
Material Pool Repair Backlog	-	8.0	-	-	-	-	8.0
MSRR Operational Life Extension	-	-	-	2.4	2.5	2.6	7.4
End of Shuttle Program SPOC Fee	-	6.1	-	-	-	-	6.1
ELC Payload Integration	-	0.6	0.6	1.1	1.1	1.1	4.5
Additional Glacier Throughput	-	-	-	-	0.9	2.7	3.5
USOS/RS Integration Effort to Support Docking Port Availability	-	1.3	0.9	-	-	-	2.2
Cold Stowage Support for ESA and JAXA Payloads	-	0.4	0.3	0.3	0.3	0.3	1.4
Life Sciences Support Contract Ends FY09	-	0.1	0.1	0.1	0.3	0.5	1.2
Processing of Life Science Payloads	0.4	0.1	0.1	0.1	0.1	0.1	0.9
CRF Abandonment Costs	-	0.6	-	-	-	-	0.6
Program Scientist Requirement beyond OZ Budget Phase-out	-	-	-	-	-	-	-

ISS Program Threats – Level 2 & 3

$ Cost in Millions

April 29, 2009 (Not all Threats are cumulative)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	TOTAL
Level 2 Threats (50/50 - may or may not happen)	**6.3**	**34.1**	**33.1**	**22.9**	**13.5**	**12.1**	**122.0**
FY09 OB Level 2 Liens and Threats	5.3	22.7	15.6	10.1	0.7	-	54.4
Space Station Processing Facility (SSPF) funding profile starting in FY11 may be at risk.	-	-	7.4	7.7	7.8	8.1	31.0
Habitat Holding Rack Flight Cost (integration and Sustaining Engineering effort)	-	2.0	1.5	1.0	0.8	0.8	6.0
MIC -Program Management and Administration Budget Shortfall	-	-	1.0	1.0	1.1	1.1	4.2
S&MA Support Rate Increase [FY2009-0001]	-	1.0	0.9	1.1	1.0	0.1	4.1
FRAM-mounted Payload Analytical and Physical Integraiton in HTV#2 and Subsequent Flights	-	1.0	0.5	0.9	0.9	0.6	3.9
HTV2 launch of an ISPR/EXPRESS Rack	-	2.1	1.3	-	-	-	3.4
Uncompensated Space Life Sciences (SLS) Services Provided to International Partners (IPs)	-	0.6	0.6	0.6	0.7	0.7	3.2
FCU Upgrade	0.2	1.8	0.2	-	-	-	2.2
Cost impacts of new requirements for ground-based pressure vessels and pressurized systems (PVS)	-	-	2.2	-	-	-	2.2
C&T - ESTL Space Network Driven Upgrades	-	0.6	1.2	-	-	-	1.8
Dollar Devaluation Impacts on NISN-Russia IT Costs	-	0.4	0.4	0.4	0.4	0.4	1.8
DCMA/DCAA/CAS Budget may exceed allocation for FY 10	-	1.7	-	-	-	-	1.7
Increase in GSFC ISS support budget	-	0.3	0.3	0.2	0.2	0.5	1.5
Positive voltages on the ISS Truss elements at high latitudes represent a shock hazard to EVA crew	0.5	-	-	-	-	-	0.5
Zero-Fault Tolerant for Exercise Equipment	0.3	-	-	-	-	-	0.3
Level 3 Threats (Not likely)	**0.5**	**11.1**	**8.0**	**0.7**	**-**	**-**	**20.2**
FY09 OB Level 3 Liens and Threats	0.3	8.8	5.1	-	-	-	14.1
AMS Payload Engineering and mission integration support	-	1.8	2.9	-	-	-	4.7
NBL facility projects [XARMA 05-0010]	0.3	0.5	-	-	-	-	0.8
Six-crew ISS	-	-	-	0.7	-	-	0.7
1EVA New Contract Cost Risk [FY2009-0002]	-	-	-	-	-	-	-

Responses to written question submitted by Rep. Schiff resulting from the April 29, 2009, hearing.

Science, Earth Science, Climate Change Research and Monitoring

QUESTION 1:

With climate change legislation arriving soon, and the possibility of movement in the international arena, the nation will need the capability to monitor a cap-and-trade regime. Even for a system confined to the U.S., international monitoring may be necessary for international offsets. NASA has a long track record of developing Earth-observing satellites. How can we turn that experience into a continuous, world-wide monitoring capability? Have our European and other partners expressed interest in such a capability?

ANSWER 1:

Global measurements are required to advance Earth system science, provide a sound basis for policy, and monitor the impacts and efficacy of policy decisions and regulatory regimes. Space-based satellite missions and instruments provide the most complete and efficient way to obtain the required global measurements. NASA research missions test and demonstrate measurement approaches, establishing the technological basis for long-term measurements and advancing the engineering state-of-the-art. NASA Research and Applications programs demonstrate the utility of the space-based measurements for advancing Earth system science, improving long- and short-term environmental predictions, and delivering direct societal benefits from the research missions. However, long-term monitoring for climate policy evaluation requires taking measurements on a sustained basis for far longer than the 3-year planned lifetime of typical missions.

NASA's constellation of 15 Earth observing satellites currently in orbit provides the bulk of the global observations employed by the U.S. Global Change Research Program. To fully understand global carbon distribution, it will be necessary to monitor atmospheric carbon dioxide as well as the things that directly affect it such as land cover, land use change, and biological and oceanic productivity. NASA has pioneered measurements that contribute to this knowledge base, and has built up partnerships with other agencies to develop missions and instruments that can provide some of the necessary extended measurements.

The Orbiting Carbon Observatory (OCO) would have been the first satellite designed to identify regional-scale CO_2 sources and sinks globally. Its potential for high-accuracy measurements of CO_2 near the surface combined with upper-troposphere abundances obtained by NASA's Aqua spacecraft would have demonstrated a global CO_2 data acquisition capability. However, the OCO was lost due to a launch vehicle failure in February. As NASA was still in the process of evaluating options for recovery of OCO-type measurements when the Administration released the FY 2010 budget request, no funds were requested for an OCO recovery mission.

Even so, such a research capability can only demonstrate the feasibility and practicality of a long-term program for purposes such as monitoring a cap-and-trade regime. Agencies with environmental monitoring, policy development and compliance responsibilities would have to define the requirements for such an operational monitoring system. As for the cases of Landsat and NPOESS, these other agencies might in the future fund space-based observing systems to meet these needs, and NASA could help them by acquiring observing systems on a reimbursable basis, but no such discussions have been held. Other nations have interests similar to the U.S., and Japan now has a satellite in orbit designed for measurement of greenhouse gases. This, too, is a research endeavor, with less capability than that designed into OCO. The U.S. participates in international multilateral discussions of Earth observation needs for societal benefits beyond research through the Group on Earth Observations. NASA and other agencies participate through the U.S. Group on Earth Observations, a working group under the National Science and Technology Council.

NASA will keep the Congress informed on the results of the study of options for OCO recovery, and of any requests from other agencies to NASA for assistance on long-term monitoring activities.

Responses to a written question submitted by Rep. Ruppersberger resulting from the April 29, 2009, hearing at which Mr. Scolese testified.

QUESTION 1:

NASA Marshall Space Flight Center and Johns Hopkins Applied Physics Laboratory have been working on a project called the International Lunar Network (ILN), a network of small geophysical nodes to be placed on the surface of the Moon. Each node will be outfitted with seismometers and other sensors to better understand the interior structure, composition and properties of the Moon, an important scientific goal of NASA's lunar program.

The ILN project is one of several projects funded under the "Lunar Science Research" line of NASA's Planetary Science budget. Congress fully funded "Lunar Science Research" in the FY 2009 omnibus appropriations bill at the requested level of $105 million, of which only a portion of the funding is for ILN.

However, recently there have been rumors that NASA may not be moving forward with ILN. There is also some speculation that NASA doesn't want to move forward with this project until a new Administrator is brought on-board, even though the project was included in NASA's earlier budgets and approved by Congress.

Mr. Scolese: NASA's budget last year indicated that that it would be moving forward with the International Lunar Network (ILN) program to put a small network of geophysical measuring stations (nodes) on the lunar surface in the 2013-2014 timeframe to improve our understanding of the interior structure and composition of the Moon. What are NASA's plans for moving forward with the International Lunar Network (ILN) program?

ANSWER 1:

Several international space agencies are currently pursuing plans to place small robotic landers on the surface of the Moon during the next decade. Recognizing this as an opportunity, NASA initiated an effort in 2008 to coordinate these missions in conducting geophysical network science. This effort, called the International Lunar Network (ILN), intends to achieve this high-priority science objective and maximize the return of the landers, orbiters, instruments, or other significant infrastructure that each nation contributes.

The NASA component of the ILN includes robotic lunar landers (nodes) collectively called the Anchor Nodes. The Anchor Nodes mission is part of NASA's Lunar Quest Program within the Science Mission Directorate. As currently envisioned, the ILN will consist of geophysical instrument packages placed at different locations on the lunar surface. These instrument packages would have a nominal mission of six years. The Anchor Nodes project is currently in pre-formulation as the team continues to refine mission design concepts through a series of trade studies. These studies are aimed at resolving technical design choices, such as defining the necessary energy storage technologies needed for surviving the long lunar nights (2

weeks long, 12 times a year) extending over the 6 year period of continuous seismic measurements.

The recently established NRC Planetary Science Decadal Survey team will prioritize the ILN along with other proposed planetary missions taking into account scientific priorities across all planetary science sub-disciplines and foreseeable budgets and cost estimates. NASA also expects the Review of U.S. Human Space Flight Plans led by Norm Augustine to examine the appropriate degree of robotic exploration as a complement to human exploration. The Augustine panel may therefore provide findings that influence NASA's implementation of ILN. NASA will keep the Congress apprised of the results of these reviews.

Responses to written questions submitted by Rep. Aderholt resulting from the April 29, 2009, hearing at which Mr. Scolese testified.

QUESTION 1:

My understanding from the list on page 2 of your testimony, and from comments at the hearing, that $150M of the $400M in stimulus bill funding specified by Congress for the Exploration program will be spent on the Commercial Orbital Transportation Services (COTS) program. It seems to me that this decision directly cuts into funds which are needed by the Constellation program. Why was the decision made to use part of the $400M for COTS?

ANSWER 1:

NASA appreciates the $400 million dollars of additional funding provided for Exploration needs as part of the Recovery Act, of which $250M will be applied to Constellation Systems for critical mission activities that will improve NASA's ability to maintain the March 2015 IOC date. The Constellation Program plans to use the funds to accelerate its test schedule and the procurement of long-lead items, thereby mitigating risk. More specifically, funding for Constellation from the Recovery Act would be applied as follows:

- Acceleration of the Orion Ground Test Articles (GTA), the construction of the Service Module GTA, and the overall improvement of their level of fidelity. The additional funding provides critical data to mitigate risks for structural and component qualification and provides early data for model correlation and uncertainty reduction, improving schedule confidence towards IOC;
- Design the specialized systems and equipment for the Mobile Launcher, which are a critical part of the overall structure. The Mobile Launcher is a large platform with a tower used to transport, service, and launch the next generation launch vehicle and spacecraft (Ares I and Orion);
- Accelerate delivery schedules for various Orion Engineering Development Units, reducing the cost and schedule risk to the development program; and
- Accelerate development of J-2X engine components.

The $150M in Recovery Act funds allocated to Exploration Systems will support plans to stimulate efforts to develop and demonstrate technologies that enable commercial human space flight capabilities. In addition to potentially leading toward developing a commercial crew transportation capability, these efforts are intended to foster entrepreneurial activity leading to job growth in engineering, analysis, design, and research, and to economic growth as capabilities for new markets are created.

It is important to note that some of these funds will directly benefit the Constellation Program, as well as the commercial sector. For example, a portion of the funds will be used to accelerate an International Space Station (ISS) docking system that will also be utilized by both the commercial orbital crew transportation community as well as the Orion project. This will reduce overall Constellation schedule and cost risks. Some of these funds also will support test stand

work at Stennis which will help the Orion project. In addition, NASA will use a portion of the funds to conduct an extensive review of existing human rating requirements that currently reside in numerous requirements and specification documents and develop a minimum set of human rating requirements. These new requirements will be applicable to the Constellation Program as well as commercial partners and will reduce the complexity associated with human rating a space flight system.

QUESTION 2:

At the bottom of page 6, you indicate that with this $150M, "NASA is completing its promised $500M investment to the two funded COTS partners..." Can you provide us please with a reference to the milestones of achievement which the COTS partners are supposed to achieve before receiving the final installment of the award money, and provide us with the dates on which the COTS partners achieved each milestone?

ANSWER 2:

NASA could not find this reference in the draft transcript provided to the Agency. To clarify, the $150M in Recovery Act funds will not be used to complete the $500M investment for COTS cargo demonstrations, which are already fully funded at $500M as part of NASA's regular budget.

The President's FY 2010 budget request includes $39.1M to pay for milestones expected to be achieved by SpaceX and Orbital, as well as to restore a $20M funding reduction for the Commercial Crew and Cargo Program Office (under which the COTS projects are organized) that was included in the FY 2009 budget.

NASA is pleased with the progress that our funded COTS partners have made to date in meeting the terms of their Space Act Agreements (SAAs). Both commercial partners continue to make steady progress in achieving their cargo demonstration milestones. While each has experienced some milestone delays, this is not unexpected, since both partners have aggressive, success-oriented schedules, and are facing challenges typical of a space flight development program. As such, NASA sees no reason to doubt either company's ability to achieve its desired objectives -- that of demonstrating commercial cargo delivery to and from the International Space Station.

As of July 2, 2009, SpaceX had completed the first 14 of 22 milestones and has received a total of $234 million in payments with $44 million available for the remaining milestones. SpaceX has completed the majority of Dragon capsule qualification testing. Technical progress is being made and qualification testing is progressing on the Falcon 9 launch vehicle as well. SpaceX has begun manufacturing the flight Dragon capsule and Falcon 9 to be used for the COTS demonstration flight 1.

Recently, SpaceX notified NASA that the company expects delays in completing its three demonstration flights. According to the terms of the current SAA, SpaceX was supposed to complete its first demonstration flight in June 2009 so as to allow additional time for Falcon 9 manufacturing and testing programs. SpaceX now expects to complete its first demonstration

flight in January 2010, with the second and third flights now planned for June 2010 and August 2010, respectively.

Orbital has completed eight of its planned 19 milestones and has received a total of $100M to date with an additional $70M available for future milestones. The Orbital demonstration flight is currently planned for March 2011 due to the company's decision to change its cargo transportation architecture from an unpressurized (external) cargo system to a pressurized (internal) cargo system.

It is important to note that NASA will not pay for any milestone until the milestone is successfully completed per the SAA and approved by NASA. Should a milestone be missed, NASA will evaluate partner progress made and recommend future actions that are in the best interest of the Government.

Please see milestone charts on attached pages.

QUESTION 3:

Again, from the comments at the hearing, it seems that $80M of the $150M will go to "crew" activities. Human spaceflight work, in other words. I have several questions about this. Can you provide the Committee some details on how NASA believes the cargo-lift milestones achieved so far by the COTS partners would indicate their readiness to engage in human spaceflight work?

ANSWER 3:

To clarify, the Recovery Act funds will not be applied to the currently negotiated SAAs for COTS which are related to cargo demonstration, nor will these funds be applied to the ISS Commercial Resupply Services Contracts (CRS), awarded in December 2008.

Currently, NASA has SAA agreements with two funded partners totaling a $500M investment in commercial cargo demonstration capabilities, and as outlined in the response to Question #2, NASA is pleased with the progress that these partners have made to date on these SAAs. SpaceX is the only funded COTS partner that is working toward a crew transportation capability; SpaceX is using its own funds for this mission. Many of the technologies that SpaceX is developing for their cargo flights could eventually support a crewed capability. For example, the SpaceX Falcon 9 launch vehicle and Dragon capsule are being designed and manufactured with safety features necessary to carry humans (to the extent that they can be incorporated into the cargo vehicle). Additional subsystems such as crew seats, crew health monitoring, abort systems, and communications systems, however, would be required to support crew accommodations and safety.

It is important to note that NASA has intentionally limited its COTS investment to first requiring commercial companies to successfully demonstrate an orbital cargo capability before investing in the more difficult development of crew transportation capability. NASA has taken this position because some of the top risks associated with ISS proximity operations and visiting

vehicle integration ascent and entry are common to both cargo and crew missions. Currently, ongoing and planned commercial capabilities are being examined as part of the U.S. Human Space Flight Review.

QUESTION 5:

If it is a new contract, what is the rationale behind using the $80M to initiate that work, as opposed to applying the funds to the Constellation programs?

ANSWER 5:

Please refer to the responses to Questions #1 and 4. The Recovery Act funding will support the Commercial Crew and Cargo Program Office's (C3PO)'s plan to stimulate efforts to develop and demonstrate technologies that enable commercial human space flight capabilities. In addition to potentially leading toward developing a commercial crew transportation capability, these efforts are intended to foster entrepreneurial activity leading to job growth in engineering, analysis, design, and research, and to economic growth as capabilities for new markets are created. It is important to note that some of these C3PO funds will directly benefit the Constellation Program, as well as the commercial sector. For example, a portion of the funds will be used to accelerate an International Space Station (ISS) docking system that will also be utilized by both the commercial orbital crew transportation community as well as the Orion project. This will reduce overall Constellation schedule and cost risks associated with that subsystem. In addition, NASA will use a portion of the funds to conduct an extensive review of existing human rating requirements that currently reside in numerous requirements and specification documents and develop a minimum set of human rating requirements. These new requirements will be applicable to the Constellation Program as well as commercial partners and will reduce the complexity associated with human rating a space flight system.

QUESTION 7:

I want to reiterate a larger question I asked about the Constellation program, and one which touches on the Chairman's own questions about how a flat out-year budget allows or does not allow NASA to complete the Constellation program by 2015. That is a gap of five long years. What amount of money would allow complete of Constellation in a shorter period of time? I realize that there are some launch-pad availability issues which partially impact the situation, but it is hard to believe that "no amount" of funding could close the gap between now and 2015. If we set a goal, for example, of having the Constellation programs ready by 2013, how much per year of additional funding would be required to meet that goal, to hire more NASA scientists, more contractors, to buy more computers, obtain more testing materials, etc.? One billion per year? Two billion per year?

ANSWER 7:

NASA has reached the point where acceleration earlier than 2015 is no longer possible. It is important to note that schedule acceleration is not only a matter of funding, involving as it does

the timing of hardware development and testing schedules. Orion has reached the point at which the development schedule for some systems cannot be accelerated due to testing needs and limits on the ability to further accelerate procurements from contractors. At this point, additional funding would have the effect of accelerating the schedule of some test activities and the procurement of long-lead items; this would help reduce programmatic risk levels making the current IOC date more robust.

QUESTION 8:

Please update me on the programs for the lunar landing programs, including the rovers, both robotic and those meant to carry humans. I see some comment in the testimony, but I am wondering how the out-year budgets look in terms of meeting the 2020 goal, and whether there is a chance that work could be done faster.

ANSWER 8:

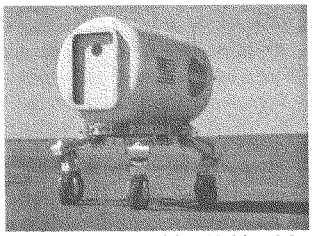
NASA has spent the last several years developing and refining a point of departure lunar architecture to satisfy the lunar exploration objectives. The results of the studies to date have indicated the need to have a two-person pressurized electric rover and a larger robotic system for payload unloading and long distance traverses that will facilitate the exploration of the lunar surface. NASA expects to continue defining the lunar architecture and its requirements for several years. As has already been done, this would likely involve working with other nations and the commercial sector to coordinate planning, leverage investment, and identify opportunities for specific collaboration on Exploration activities.

NASA has developed working system concepts that we have been testing both at NASA laboratories as well as out in the field. In particular, field tests provide valuable data on the system and surface operational concepts that would be used on the lunar surface. In addition, NASA has been working with Apollo-era veterans and scientists to get their perspective about what worked and didn't work during their missions. Thus, by gathering information from all of these sources, NASA can refine its current concept for future lunar architecture requirements.

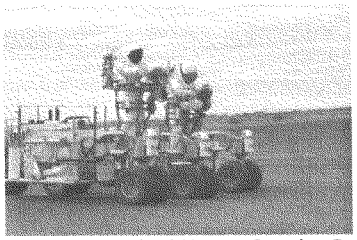
One of the ways NASA is testing the concepts is by taking the concepts out into the field and performing appropriate tests. These are called "Analog field tests" given that NASA takes the systems to field sites that are analogous (i.e. similar) to some aspect of the Moon. Each year, NASA plans a series of these tests at sites throughout the United States and Canada, based on test objectives that are matched with desired locations. In 2008, NASA performed tests at Moses Lake, Wash.; Pavilion Lake in British Columbia Canada; Devon Island Canada; Black Point Lava Flow near Flagstaff, Ariz.; and Mauna Kea, Hawaii. In 2009, we hope to be able to collaborate with the National Oceanic and Atmospheric Administration to perform underwater tests at NOAA's underwater facility off of Key Largo, Florida. More specifically, two examples of recent analog tests are:

1) In June 2008, NASA conducted a series of field tests at Moses Lake, Wash., where prototype lunar hardware was tested in an environment that served as an analogue for the lunar surface. During these tests, we successfully tested the All-Terrain Hex-

Legged Extra-Terrestrial Explorer or ATHLETE robotic system, which is designed to unload payload from a lander platform and is envisioned to enable long distance traverses. The ATHLETE system is a six-legged robot that can travel by either rolling on the wheels of its legs or using its legs to walk out of areas that are too difficult to roll. NASA also tested a smaller robotic scout, and an unpressurized human carrying rover which is a concept for a rover that will be designed to carry two astronauts 10s of miles over the lunar surface.



The ATHLETE with a Habitat Mockup



The Unpressurized Human Carrying Rover

2) In October 2008, NASA traveled to the Black Point Lava Flow near Flagstaff, Ariz. to conduct an additional test. This two-week test allowed NASA to test the first concept vehicle for the small pressurized rover, which has since been named the Lunar Electric Rover. (This is the vehicle that also participated in the 2009 Presidential Inaugural Committee Parade, along with several astronauts.). This rover is a concept for a rover that will be designed to carry two astronauts 100s of miles across the lunar surface.



The Lunar Electric Rover on the Black Point Lava Flow

It should be noted that these rovers, especially the Lunar Electric Rover, share many common technology development requirements with electric vehicles on Earth (energy storage like batteries, electric motors, recharging systems, new tires, etc.). Because of this need, NASA is pursuing partnerships both with other Government agencies and U.S. industry to ensure NASA is at the forefront of electric vehicle technology development. The technologies developed for the

Lunar Electric Rover may be helpful in enabling technologies for electric cars and electric heavy equipment used on Earth.

The Review of U.S. Human Space Flight Plans led by Norm Augustine will evaluate the current lunar architecture, as well as alternatives, to ensure the nation is on the best trajectory for the future of human space flight – one that is safe, innovative, affordable, and sustainable. NASA expects the review to assess possible schedules for returning humans to the Moon. NASA anticipates that the review will assess the feasibility of landing humans on the Moon by 2020 given the baselined architecture and the projected budget.

QUESTION 9:

Please update me regarding how you view the current geographical distribution of your educational programs. Are there states or particular areas that seem underserved, and if so, how would you suggest solving that? For example, is more NASA outreach needed, or is that educators have been more active in certain states in terms of applying for, and accessing, NASA education programs?

ANSWER 9
NASA provides opportunities in scientific research, engineering, professional development, and engagement opportunities for students, faculty, and classroom educators nationwide. This is accomplished through direct contact between the Agency and education participants, and through leveraged partnerships and professional networks that NASA supports. Each NASA Field Center has an education office that provides resources, responds to inquiries, conducts educator professional development, provides special services (e.g. speakers, workshops, career fairs) and recruits students for internships and other opportunities. Centers respond to requests and support education efforts in every state and territory. Internships and other hands-on research and engineering opportunities occur at the nine NASA Field Centers and Jet Propulsion Laboratory, and are open to recruitment and selection of applicants from all states, districts, and U.S. territories.

NASA has addressed the challenge of distributing information and opportunities across geographic distances by creating national networks and infrastructures. The Space Grant College and Fellowship Program (Space Grant) expands opportunities for Americans to understand and participate in NASA's aeronautics and space projects by supporting and enhancing science and engineering education, research and public outreach efforts. Space Grant is a vast network that capitalizes on the reach of state-based consortia in 50 states, Puerto Rico, and the District of Columbia. The national Space Grant network comprises nearly 850 colleges and universities, museums, science centers, state and local government agencies, and industry partners. Space Grant consortia provide local access to NASA research, grantees, contractors, and student involvement opportunities, and extend NASA's reach into states that are geographically separated from NASA Field Centers. It also fosters aerospace career awareness and helps build future competitiveness including states that have only minor involvement in aerospace industry.

Partnerships with national organizations extend NASA's reach to higher education students and faculty. Management of student research projects is often conducted in partnership with

organizations that understand the needs and challenges of specific audiences. Partners like the United Negro College Fund Program (UNCFP), American Indian Higher Education Consortium (AIHEC), and Society of Hispanic Professional Engineers (SHPE), allow NASA to provide mentoring opportunities, curricular content, research opportunities, and information about internships, engineering competitions in a manner that best attracts and serves the audience that NASA is trying to reach.

NASA provides opportunities for elementary and secondary level educators and students in all geographic areas of the U.S. Professional development is offered through videoconferencing technologies such as NASA's Digital Learning Network (DLN), and virtual communities like Second Life. Downlinks from the International Space Station, and ham radio "telephone calls" from the space shuttle allow students to talk directly to astronauts. Similar technologies enable interactions with NASA scientists and engineers. These advanced tools ensure that educators and students, whether they be in Alabama, Hawaii, Maine, Texas, or any other state, are able to receive the same quality and access to engagement opportunities. The Aerospace Education Specialists (AES) project provides professional development and training on new NASA curricular support resources. The Educator Resource Center Network (ERCN) provides NASA education materials at no cost to educators throughout the Nation. Both projects have professionals who assist educators in using NASA's classroom materials to meet the standards and requirements of that particular state.

The Museum Alliance and NASA SpacePlace provide on-line communities of practice for museums and science centers that provide NASA aerospace content and services to their local audiences. These two activities reach hundreds of large and small museums, planetariums, libraries and other facilities in all 50 states, providing them with materials for use with their audiences. Professional staff at these locations receive in depth training on NASA missions, participate in launch activities, are prepared for breaking discoveries and other news, share industry best practices and lessons learned, and generally serve as NASA ambassadors to the general public.

While school districts nearest the ten NASA Field Centers and other NASA facilities benefit enormously from site tours, ERC workshops, Center Open House activities, and other special events, active engagement of audiences in all parts of the country is actively pursued. NASA undergraduate internship and graduate-level research programs are overall successful in attracting students from across the states. NASA makes all resources and materials available to educators via the Internet and is increasing its use of electronic professional development tools to deliver NASA STEM content to educators geographically dispersed in communities throughout the Nation.

QUESTION 10:

In the "Space Act Amendment Three between NASA and Space Exploration Technologies Corp. for Commercial Orbital Transportation Services Demonstration," what is the full cost to NASA of executing the added responsibilities listed under section V., subsections 6 through 9?

ANSWER 10:

NASA's responsibilities under the Commercial Orbital Transportation Services (COTS) Space Act Agreement (SAA) with Space Exploration Technologies (SpaceX), Article 3, Section V, items 6 through 9 include: 1) integration and launch of COTS UHF Communication Unit (CUCU); 2) Tracking and Data Relay Satellite System (TDRSS) communications for three demonstration flights; 3) provision of NASA Standard Detonators for three demonstration flights; and, 4) provision of items for loan including simulators, cables, EVA labels, and miscellaneous equipment.

For the International Space Station (ISS) Program, the total estimated cost is approximately $4M. This includes interface development, testing and verification activities, hardware, software and operations integration, integration and launch of CUCU, and TDRSS coverage for three demonstration flights. The transportation costs for supplying the CUCU boxes and integration cabling to the ISS on the Space Shuttle and Progress flights is approximately $400K.

Cost to the Exploration Systems Mission Directorate includes $120K for 100 units of NASA Standard Detonators that support the three demonstration flights.

WITNESSES

	Page
Arabit, Joseph	1
Barnett, Helaine	193
Bevier, Lillian	193
Gordon, Phil	1
Holder, Eric	269
Leonhart, Michele	115
Locke, Gary	383
Newell, Bill	1
Scolese, Christopher	587
Shirk, David	1