

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2016

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## HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

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**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
2016**

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WEDNESDAY, MARCH 25, 2015.

**FEDERAL BUREAU OF INVESTIGATION**

**WITNESS**

**HON. JAMES B. COMEY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

Mr. CULBERSON. The Commerce, Justice, Science Appropriations Subcommittee will come to order. It is a privilege to have with us today the Director of the FBI, Jim Comey. We are delighted to have you today with us, sir.

I want to also before we start, though, take a moment to recognize our newest member Mr. Palazzo from Mississippi. We are delighted to have you with us, Steve. I know we miss Alan a great deal. But we are delighted to have you, and very pleased to have with us the Chairman of the full committee. Thank you, Mr. Rogers, good to have you with us. And Mr. Fattah, we are going to go ahead and crank it up.

This is particularly appropriate today to have you with us, Mr. Chairman, because the 9/11 Commission has issued its findings this morning and we will talk a little bit about that today. But we are privileged to have you with us here in front of our subcommittee to present your 2016 budget request. It is a very important, complex and critical mission that the FBI has to perform. We have on this subcommittee over the years helped the FBI fulfill its mission. You are the lead agency in domestic anti-terrorism, counter intelligence, national security efforts, so a vital law enforcement effort.

And as you mentioned the other day, once criminals got hold of automobiles and could cross state lines and someone could hold up a bank in three different states on the same day it suddenly made the role of the FBI in fighting crime very, very important to the Congress in the 1920s and thirties. And your role has only grown over the years, and particularly in the light of the 9/11 attacks, the growing danger of cyber crime, the ongoing cyber warfare that is taking place invisibly against the United States and private industry. Your role in fighting human trafficking and financial fraud is just vitally, vitally important. And we have a responsibility to help make sure that you are able to do your job but also be sure that our constituents' hard earned tax dollars are wisely spent.

So we want to be sure in the budget request that you submit today on behalf of the FBI and the President that the subcommittee wants to be certain that we have scrubbed your budget and done everything we can to make certain that again our constituents' hard earned tax dollars are wisely and prudently spent. Particularly in light of the tremendous budget pressures we face in this very difficult budget year.

The report that was issued this morning by the 9/11 Commission, we are pleased to see the progress that the FBI has made in transforming itself, in light of the continuing challenges posed by terrorism and other global threats. I want to particularly thank the members of that Commission, Ed Meese, former Attorney General; Tim Roemer, former Congressman; and Bruce Hoffman with Georgetown University for their superb work. This Commission was put together at the instigation of my predecessor, Frank Wolf, and it is comforting to see the progress that the FBI has made in transforming itself in light of the 9/11 attacks.

We will be working through some tough questions in today's hearing, Mr. Director. And we want to make sure that the investments that we make in the FBI have a real impact in enhancing national security and reducing crime. We deeply appreciate your service to the nation and I would like to recognize Mr. Fattah for any comments that he would like to make.

Mr. FATTAH. Let me thank the chairman, and thank the Director for being with us today. You said recently that we have, in every single state the Bureau has active investigations around terrorism. And obviously it is a major concern given the activities taking place in all parts of the world. And part of the big discussion in the 9/11 Commission was whether or not, how we kind of recalibrated ourselves to deal with these challenges. Because heretofore it was about catching people after they had done something wrong. And in the case of terrorism it is really a much different approach, where you are trying to prevent something catastrophic from happening by people who in many instances have no desire to get away. So it is a much different, you know, circumstance.

So it will be interesting as we, you know, talk about, you know, cyber crime, which is a big deal, and you know, a lot of these other issues. Obviously this is something that from a national government perspective the decision of the Commission was that we should not have kind of a terrorism only entity, that the FBI was quite capable of dealing with this challenge. And the Bureau has proven to be. But you have also faced criticism from some of the processes that you have had to utilize, which in some cases you know the question of whether or not people who are espousing ideas but taking no action, you know, where the line falls.

So I will be interested in your comments. Obviously, your budget and the appropriations, the committee, as it has in the past, will do everything necessary to make sure that you have the support needed to protect the country. Because you are really not trying to protect the FBI, you are trying to have the FBI protect the nation. And so we have a responsibility to find the resources. But I will be looking forward to your comments on the subjects that I have raised. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you. I am privileged to recognize the chairman of the full committee, Mr. Rogers from Kentucky.

Mr. ROGERS. Thank you, Mr. Chairman. Mr. Director, welcome, and to your staff. I was looking at your resume, your work record as a prosecutor. I did that for 11 years myself on the state level, state district level, so I commend you for your education and your experience in that regard.

Pardon my raspy throat, I have caught it.

The chairman rightly said that the FBI has a critical mission in protecting the homeland. And frankly the charge of, to the FBI, has changed absolutely dramatically over the last decade or so. When I first came to Congress in 1981, you know, we were focused on catching armed robbers and all of that. But now it is such a sophisticated and complicated new charge that you have, dealing with counterterrorism, hostile foreign intelligence agencies, espionage, domestic and foreign cyber threats. Cyber is a new word, now it is a new challenge. And then of course the traditional catching of crooks and thieves and dangerous criminals here at home, particularly drug related and especially prescription pill attacks that CDC says is a national epidemic.

So you have a hefty load. And we are going to try to give you what we can afford to help you fight all of these charges. And it will not be enough. But there is a limit on what we can appropriate. We are confronting an extremely difficult budgetary climate here. In fact we are debating today on the floor the budget, which is severe and strict. It stays within the sequestered levels. So we are not dealing with a lot of new money, hardly any.

It is extremely important for you and others like your agency, which relies so heavily on intelligence information, to leverage and maximize the partnerships forged at the local, state, and even international level to ensure that every penny the taxpayer spends is targeted, efficient, and effective. In fact last week I visited with the Interpol headquarters over in France, had my second visit with them. And in the last several years that agency has grown.

When I was there the first time ten or 15 years ago, the difficulty I saw at that time, that our agencies over here were not participating in Interpol as they should. Now they are. And it is imperative that we continue that work with Interpol, as I am sure you will agree.

You have been taking strides in recent years to streamline and optimize your intelligence components. But I think we can all agree that much work is still to be done there. Last year you requested and we granted permission to restructure the FBI's intelligence program to more seamlessly integrate intelligence and operations. And I hope you can provide us with an update on those efforts in a minute. Particularly as we all begin to assess the report evaluating the FBI's implementation of the 9/11 Commission recommendations.

Finally I want you to provide the committee with some information about how the Bureau is working to combat the threat of homegrown domestic extremism. ISIS has demonstrated very sophisticated recruiting techniques through the internet and social media. And by some accounts as many as 20,000 fighters have

traveled from 90 different countries to fight in Syria, including some 150 I understand from the U.S. that we know about.

It is imperative that we work to prevent the radicalization and recruitment of American citizens who could later return to the U.S. and cause us harm. And I know the FBI has an important role to play in that regard. We would like to hear about it.

So Mr. Director, thank you for your work and your career, and we thank you for your dedication to your country, and your service to your country, and all that you command. Thank you, Mr. Chairman.

[The information follows:]



## **Chairman Hal Rogers**

### **House Committee on Appropriations**

**FY 2016 Budget Hearing – Federal Bureau of Investigation**  
**March 25, 2015**  
**Opening Statement As Prepared**

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Mr. Chairman, thank you for yielding. I join you in welcoming Director Comey back to the Committee as we discuss the Federal Bureau of Investigation's (FBI) budget request for Fiscal Year 2016.

The Chairman rightly stated that the FBI has a critical mission in protecting our homeland, and I extend my thanks to the 35,000 individuals under your charge: who support our country's counter-terrorism efforts; who protect us from hostile foreign intelligence agencies and espionage; who work tirelessly to beat back against the constant barrage of domestic and foreign cyber-threats; and who risk life and limb to put dangerous criminals here at home behind bars. The importance of these efforts to our national security and our economy cannot be understated.

And yet, the Chairman also rightly stated that we are confronting an extremely difficult budgetary climate – and every federal agency is therefore confronted with tough choices. It is extremely important for agencies like the FBI which rely so heavily on intelligence information to leverage and maximize the partnerships forged at the local, state and even international level to ensure that every penny the taxpayer spends is targeted, efficient and effective. I am pleased that the FBI has been taking strides in recent years to streamline and optimize its intelligence components, but I think we can all agree that much work is still to be done here. Last year, you requested and we granted permission to restructure the FBI's Intelligence Program to more seamlessly integrate intelligence and operations, and I hope you can provide the Committee with an update on these efforts – particularly as we all begin to assess the report evaluating the FBI's implementation of the 9/11 Commission recommendations.

Finally, I'd also like you to provide the Committee with some information about how the Bureau is working to combat the threat of homegrown domestic extremism. ISIL has demonstrated sophisticated recruiting techniques through the Internet and social media, and by some accounts, as many as 20,000 have traveled from 90 different countries to fight in Syria. It is imperative that we work to prevent the radicalization and recruitment of American citizens who could later return and do us harm, and the FBI has an important role to play in that regard.

Mr. Director, I thank you for being with us today. While the budget is tough, we will absolutely do our best to provide your agency with the necessary support to face these ongoing threats and challenges. I look forward to your testimony, and I yield back.

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Mr. CULBERSON. Thank you, Mr. Chairman. Director Comey, I really appreciate, as the chairman said, your service to the country. Thank you for being here today. And we will of course submit your written testimony in its entirety as a part of the record, without objection. And welcome your testimony today, sir. And to the extent you can summarize it, we would be grateful. And again, we look forward to hearing from you, sir. Thank you.

Mr. COMEY. Thank you, Mr. Chairman, Mr. Fattah, Chairman Rogers, members of the committee. I will be very brief. I want to start by thanking you for your support of the FBI over many years.

The FBI's budget request for 2016 is about maintaining the capabilities you have given us, which is mostly people. The magic of the FBI is its folks. Over sixty percent of our budget goes to agents, analysts, scientists and surveillance specialists. And my goal for 2016 is to be a good steward of the taxpayers' money, because I know the kind of times we face, and sustain that capability.

We have asked for two small enhancements, one that relates to cyber and the other that relates to our effort to integrate our systems better with the rest of the Intelligence Community. Each of those is about a \$10 million request. But we are about sustaining what you have already given us. And you have supported the FBI in ways that we are extremely grateful for.

The threats that we face and are responsible for protecting this great country from are well known to this Committee and you have alluded to them in your remarks. Counterterrorism remains our top priority. The counterterrorism threat has changed dramatically since I was Deputy Attorney General in the Bush Administration. They have actually changed in the 18 months I have been on this job.

The shift has been the growth of the group that calls itself the Islamic State from a safe haven in Syria and portions of Iraq. They are issuing a siren song to troubled souls to travel to the so-called caliphate to fight in an apocalyptic battle, as they have styled it. Or if you cannot travel, kill someone where you are. And that siren song increasingly goes out in English. It increasingly goes out on social media, and reaches into our country where it is consumed by people who are very hard for us to see because they are in their basement. They are in some space that we do not have visibility into consuming poison, and either deciding whether they want to travel or whether they want to harm somebody here at home.

Increasingly the focus of this threat is on people in uniform. This week we saw ISIL calling for harm to be brought to over 100 members of our military services. And so the threat we face is global. It moves at the speed of light. And it is increasingly difficult for us to see because it goes through the complex spider web of social media.

We spend all day every day worrying about this and working on it. To answer Mr. Fattah's question, yes we focus an awful lot on trying to find those needles in our 50-state haystack who might be radicalizing and responding to this poison, and either planning to travel or planning to do harm here at home. We have investigations focusing on these people we call homegrown violent extremists in all 50 states. Until about a month ago, it was 49 states—no Alaska. That has changed. We have got all 50. And that is no



cause for celebration. But we are working with our partners in state and local law enforcement and in the rest of the Intelligence Community to find these people and disrupt them.

Counterintelligence has been mentioned. A lot of folks tend to think the spy game is a thing of the fifties, sixties, or seventies. It is alive and well. That threat comes at us through human beings and through the internet. Nation state actors are trying to steal what matters to this country and we are about trying to prevent that.

And then you mentioned our criminal responsibilities. We are responsible for protecting children in this country, protecting people from fraudsters, protecting people from the ravages of drug abuse and drug dealing, and violent crime. And I have got folks all over this country, in 56 field offices, and in nearly 400 total offices, doing that work every single day.

And a word about cyber. Every single one of the threats I mentioned increasingly comes at us through the internet. Mr. Chairman, you mentioned the modern FBI in a way was born with the great vector change of the 20th Century. The automobile and asphalt made it necessary to a breathtakingly fast criminal element, 50 miles an hour, 60 miles an hour. We now face a vector change that dwarfs that. Because Dillinger could not do 1,000 robberies in the same day in all 50 states from halfway around the world. That is the threat we face through the internet. It moves at the speed of light. Everybody is next-door neighbors to everybody else on the internet.

So we are working very hard to make sure that my criminal investigators, my counterintelligence investigators, my counterterrorism operators, and all of our international operations are growing our ability to be good in cyberspace. Because to protect kids, to fight fraud, to fight everything we are responsible for, we have to operate there. So that is about people, training, technology, and smart deployment.

I will mention one thing that most folks do not know much about. I had a chance to visit our facility down in Alabama. Most people do not realize the FBI trains all the nation's bomb techs and we do that down at the Redstone Arsenal in Alabama. And we also spend time there building the world's greatest library of improvised explosive devices. Another thing the American people do not realize their hard earned tax dollars have bought, and it is worth the money. We now have the ability when a device is detonated or found anywhere in the world, to compare the forensics of the tool marks, the hairs, the finger prints to thousands of samples we have collected in the operation called TEDAC, which is also centered in Alabama. Work that is kind of hidden from the taxpayers, not intentionally, it just doesn't get a lot of headlines, but makes a big difference.

And then I will close, with what Chairman Rogers mentioned—state and local partners. They are essential to everything we do. I have been to all 56 field offices and I have met with sheriffs and chiefs in all 56 to build those relationships. And I do something else, which I think every member of a family, like the law enforcement family, should do. When an officer is killed in the line of

duty, I call that sheriff or that chief to express our condolences and offer help. I make way too many calls.

I have had three officers killed in this country, two yesterday, another one earlier this week. Totally different circumstances; Navajo Indian Reservation; Fond du Lac, Wisconsin; and San Jose, California. Except united by the fact that they were all murdered by thugs and they are people who certainly did not deserve that and leave behind families. I mention this because it leaves me today with a heavy heart. And we are having important conversations in this country, especially about race and policing which I am a huge fan of having. But I am keen to make sure that when we have conversations about law enforcement, we understand what is at stake and the sacrifices made by the men and women in law enforcement, and the kind of people who sign up to do this sort of work. And especially today with the loss of so much life just in the last 24 hours, it is on my mind. So I thought I would mention it.

But I will close with thanking you for your support. The 9/11 Review Commission, as we told the world today, released 129 pages of their report. We declassified as much as we possibly could. And their message is, you have done great. It is not good enough. And that is exactly my message to the FBI. I said that is what it means to be world class. To know you are good, and never, never be satisfied with it.

So we have made a lot of progress in transforming our intelligence capabilities. We still need to go farther. And the American people deserve us to be even better than we are today. And my pledge is, I have eight and a half years to go, and I will work every day to make us better. So thank you for your time.

Mr. CULBERSON. Thank you, Director Comey. I think it is especially appropriate you remind us all to keep your officers in our prayers. And our hearts go out to the families of those three agents who lost their lives. And that is something that all of us I know keep in the forefront of our mind, the sacrifice, the risk that all of you take in protecting us and the country from these incredibly complex and varied threats.

It is also apparent in this new era, the scale of the problem is so huge that you really do have to rely obviously on state and local authorities. It is a team effort. And the genius of America is, the founders envisioned a system where protecting lives and property, police powers, is vested originally in the states, and in the good hearts and common sense of individual Americans. So there is also a vital role I think for individual Americans to play in helping defend the country. It is really the most important role quite frankly since one thing our enemies will never be able to defeat is the good hearts, the good common sense of individual Americans defending their families, their homes, their neighborhoods, their communities. The work that our local police and sheriffs and state police officers do is just indispensable and that partnership with you is vital and I appreciate very much you mentioning it to us today.

And the evolving threat that we face was important motivation of course behind Chairman Wolf's amendment to create the 9/11 Commission, which released its unclassified report today. As I mentioned, former Attorney General Ed Meese, Congressman Tim Roe-

mer, and Bruce Hoffman were authors of the report and I appreciate you mentioning it in your opening testimony.

#### INTELLIGENCE ANALYSTS

One of the key recommendations they made that I know you have already begun to do and wanted to ask you to elaborate on a little more is the vitally important role that intelligence analysts play in the new world the FBI now confronts. And could you talk a little bit more about the work that you are doing to implement the recommendation of the 9/11 Commission to professionalize the intelligence analyst position within the FBI?

Mr. COMEY. Yes, thank you Mr. Chairman. The FBI did not have an intelligence career service as recently as 13 years ago. And so we have made great progress, but transforming an organization and creating an entirely new element to the organization, I believe, is a generational project. And Bob Mueller spent a decade on it.

I announced as soon as I started, I was going to spend my decade pushing on that same change. Because it is about attracting great talent, training them and equipping them right, but it is also about having the rest of the organization accept them and learn to work well together with them. And we are doing that extremely well in some places, other places not so much. And so what I am doing is a bunch of different things; but I am training our leaders on what effective integration between operations and intelligence looks like.

I am making it a personal priority so that I review monthly a series of projects to drive that forward. I grade our leaders on it and I am working very hard to make sure that people understand that this is something the FBI has always done. We have always been in the intelligence business. This is about making us better. It should not be a threat to anyone. It is about making this great organization better.

So it is one of my three personal priorities at the FBI, to make sure that I drive that integration between intelligence analysts and our operators, particularly our special agents, and make it good everywhere in the United States.

Mr. CULBERSON. And in particular in making the analyst positions, moving them into senior management level. Making sure they are integrated as far as possible, into your career service and in senior management positions?

Mr. COMEY. Yes, sir. One of the things I did again with the support of this committee when I started is create a separate Intelligence Branch. So the leader of the Intelligence Branch was much closer to me, I could see that person and drive it. I appointed a very talented Special Agent to that role. But I said I love him as a person, do not like him as a concept. Because that role should be someone who came up through the intelligence career service. And I have got talent coming up towards that but I will not know that we have made material progress until the Intelligence Branch is led by an intelligence career service professional.

#### FIVE-YEAR STRATEGIC PLAN

Mr. CULBERSON. Talk to us if you could also sir about the panel's recommendation that the FBI adopt a five-year plan like the De-

fense Department, a strategic plan, and your work to implement that recommendation? And do you agree with the concept?

Mr. COMEY. Yes, that is one I told the Commissioners I need to give more thought to. I do not want to create plans just for the sake of creating five-year plans. I have been at a lot of institutions where people spend a lot of time writing them and then they sit on a shelf. We have got all kinds of plans in the Bureau. What I promised to do is go back and figure out whether there is a missing overarching strategic plan that ought to be written covering a five-year period. And so I told them I would get back to them on that. I do not know yet whether that makes sense for me.

#### INFORMATION SHARING

Mr. CULBERSON. The Commission also wanted to be sure that we recognized and point out to the public that your information sharing with state and local police departments and law enforcement authorities is a good news story. Talk to us a little bit more about that.

Mr. COMEY. Yes, that is a very good news story. We have, I think, broken down a lot of the barriers, both technological and regulatory policy between us and state and local law enforcement we share information with. Most of all, the culture has changed. We now lean forward and push things out as a matter of reflex, which is so great to hear.

I ask about it everywhere I go in the United States, all 50 states. I say how are we doing to the sheriffs and the chiefs, and the answer is you are doing extremely well. We have seen a dramatic change. And it is the right thing to do but there is also a very practical reason, we need these folks.

Our joint terrorism task forces are made up predominantly of state and local law enforcement that contribute their talent to us. So I do think that is a good news story. But as I have said to folks, look, I have a great marriage but I believe I can always find a way to be a better spouse. We have a great relationship with state and local law enforcement. I want to continue to try and improve that if we can.

Mr. CULBERSON. Yes, I am confident that the first time we are going to spot someone who has come here to do us harm from overseas, a terrorist, it is going to be an average American, using their good judgment and their instincts to spot something peculiar and/or a local police officer or a local sheriff having spotted something that just their instincts as a good law enforcement officer tells them is out of place and wrong. So it is a good story. And frankly the entire 9/11 Commission recommendations, it is very encouraging to see that the sum of what they have sent the Congress in the unclassified version and the classified version is a good news story for the FBI, that you have done a good job in responding to 9/11. And we appreciate that very much, sir. Let me recognize Mr. Fattah.

Mr. FATTAH. Thank you. When I became ranking on this subcommittee one of my first visits was out to the Center for Missing and Exploited Children, which is one of the places where you do joint operations looking for children. And the Innocence Lost Project, which the committee has supported, you have now been

able to rescue some 4,350 children. But as you know there are thousands and thousands of children who are missing, many of whom are being exploited in all kinds of terrible circumstances. So as, you as the Director, you have to prioritize, you know, where are you going to place you said your greatest resource are your people, your agents, right? You have got, you know, I have also been out to the Joint Terrorism Screening Center. There is very important work going on there. You have to make these decisions about whether somebody is tracking down a child who has been exploited, whether somebody is looking after, you know, chasing down a terrorist, and so on. Could you just share with us as you are working through these issues how you have prioritized this under your leadership?

#### PRIORITIZING EFFORTS

Mr. COMEY. Yes, thank you Mr. Fattah. The work involving kids, by the way, is some of the most important and meaningful that we do. As the father of five I have gone out and visited NCMEC. I have gone and met with all of my folks who do this work and told them there is nothing with deeper moral content than that work. And I tell them that I want you to take care of yourselves, because I worry that it eats my people up.

But the way we approach it generally is—this is kind of a homely metaphor and I was not a football player but I am a football fan and I view the FBI like a safety in football. We have certain assigned coverages, right? Counterterrorism, counterintelligence, non-negotiable, every game, every opponent, that is our responsibility. But beyond that, what I want to do is look to the primary line of defense and say “where do you need us in this game?” Do you need us in the flats? Do you need us over the middle? Should we play run support? Should we play deep? That is going to be different in every game against every opponent.

And so the way the metaphor works is, I have told my Special Agents in Charge, in the cities in which you operate, figure out where we can make a tackle. Right? I do not want to jump on piles where people have already been tackled. I do not want to be speared in the back. But figure out where we are needed, right? Because we are a big agency but we are small compared to state and local law enforcement. So figure out where they need us to make a tackle.

And that is institutionalized in a process we call Threat Review and Prioritization. It is a very disciplined and very, very complicated process where we figure out what threats to the United States we are needed to make a tackle on. And in Philadelphia where are we needed, in Phoenix where are we needed, and in Birmingham where are we needed? And then we come up with an annual list.

Mr. FATTAH. Well you mentioned, you know, that the taxpayer may not know about the explosive bomb detection training you do in Alabama. I do not think most Americans have any idea that thousands of children go missing every week in our country. And some of them end up in circumstances in which they are exploited for years, you know, on the internet and in other ways. And so, you know, if you have got, and you mentioned the officer who was shot

this week and killed in Wisconsin by a suspect in a bank robbery. One of the things you do is you chase bank robbers, right? So somebody, and it was a special agent in charge, says, you know, we are going to go after bank robbers, or we are going to go after this little girl who is being exploited. And you know, and making very tough decisions with limited resources. And I am just trying to understand, because we have to make decisions about what we are funding, you know, how are you making these decisions? And none of them are, you know, I mean, none of them—I guess you would want to do it all but you have got to decide.

Mr. COMEY. Well, the way in which we make a decision is sit down and talk to people like NCMEC; talk to social services agencies; talk to law enforcement and say, "Okay, I am the Special Agent in Charge in Philadelphia. Who is doing what to address that problem here?" Given that, I would rank my priorities," and align my resources against it according to where it fits on the priority level.

We do the same thing at the national level. In Washington, we sit there and say, What are the bad things that could happen in the United States that the FBI might be able to help with? Not to be depressing, but there are 304 bad things. Then we say, Okay, given who else is helping with those bad things and the harm that flows from those bad things, how would we rank them? And then we do that and come up with a national threat ranking of all the threats we could face; it is imperfect, but it is a way in which we try to balance it.

Mr. FATTAH. Right.

Mr. COMEY. We do the work you are talking about in every field office.

Mr. FATTAH. And the chairman mentioned—the chairman of the full committee mentioned Interpol. You know, Ron Noble, who is a friend of mine, runs the Interpol and he has been doing a terrific job. The Europeans have something magical going on because they can make arrests and prosecutions throughout these 28 countries with no extradition and none of these other issues. They kind of have a seamless system that we cannot do state to state, I mean, in America, which is interesting, that I have been able to jump over language and sovereignty issues and nationalities to work law enforcement in a much more seamless way. It is something that we can learn, I think, as we go forward.

Thank you very much, and thank you, Chairman.

Mr. CULBERSON. Thank you, Mr. Fattah.

Chairman Rogers.

#### FBI TRANSFORMATION

Mr. ROGERS. The biggest change that I have seen in my experience, as far as the FBI is concerned, over the years has been the graduation from investigating already-committed crimes and preparing evidence for prosecution and then there is today's world where you are working more in preventing, trying to prevent events, including crime, before it takes place; counterterrorism, trying to prevent terrorism; trying to keep spies away; the constant barrage of cyberthreats, foreign and domestic; prevention, rather than prosecution, although it may eventually may be prosecution.

That is a significant change, and it has taken an effort on the part of the FBI leadership over these last few years to try to get it through the agency's head about this new world in which we live and the mission of the FBI, more in prevention, actually, than prosecution.

Do you agree with that?

Mr. COMEY. Very much. The transformation that is happening in the FBI is one from a place where we were criticized with some justification for working our in-box. A call came in, we responded to it, and we investigated it. Now we step back and have lots of thoughtful people say, "So what are the bad things that are going on here that might happen and how do we find out more about them so we can address it before it happens?" And that is the intelligence transformation.

I am the director of the FBI and I say this with pride: I think we are the best in the world at finding stuff out. What we are getting much better at is being thoughtful about what stuff we need to find out, who else needs to find out the stuff that we found out, and what might we not know; what stuff are we missing, and being much more thoughtful about that. That is taking the intelligence talent and connecting it to the great talent resident in my Special Agents.

#### RECRUITING OF FOREIGN FIGHTERS

Mr. ROGERS. Well, and the current world war, frankly, the war of terrorism and violence is a worldwide event, so we are in a world war. And we are up against a very sophisticated, capable enemy. The recruiting of foreign fighters into Syria and Iraq, we have not found a way yet, in my opinion, to effectively stop or even slow it down. And it is more than a law enforcement and it is more than an FBI mission, but it certainly is an FBI mission.

But just last week we learned about a 47-year-old Air Force veteran who tried to join ISIS, and before his apprehension, Tairod Pugh worked for a number of American firms overseas, including a U.S. Defense firm, in Iraq for whom Pugh performed avionics on U.S. Army aircraft. We have had several stories like that, that have appeared. Is there a magic bullet to try to get at that kind of a problem that the FBI can do?

Mr. COMEY. Yeah, there is not a magic bullet. To us, it is about a full-court press, making sure that we have sources where we need them to be; that we have both the know-how and the technical capability to play in the online space where they are meeting and recruiting and radicalizing; and that we are closely connected to state, local partners—I agree with the chairman, they are far more likely to hear about a guy thinking about leaving the community and going to Syria—and that we are connected with our intelligence partners and our foreign partners who are tripwires for us.

What happened with that guy is the Egyptians spotted him when he was sent back from Turkey, alerted us, and then we were able to lay hands on him.

#### PRESCRIPTION DRUGS/HEROIN

Mr. ROGERS. We switch completely to the prescription drug problem which has been devastating in my part of the state and the

country, particularly Oxycontin, but now that we are beginning to make a dent in the pill mills, closing them down in Florida and Georgia and other places and finally getting FDA to change the formulation of drugs like Oxycontin to make them non-abused, a lot of the country shifting to heroin, and the drug cartels in Mexico, I am hearing, are now getting into the pill business because of the enormous profits there.

What can you tell us about that?

Mr. COMEY. I think you have identified something that does not get the attention that it deserves. DEA, obviously, has the lead here, but we do a lot to support them, so I know a fair bit about this. We see the Mexican traffickers increasingly shifting to heroin, white heroin—it used to be that brown heroin was coming out of Mexico—white heroin is highly pure, and is being pushed into the United States to gain market share. So what is happening is, as you said, Mr. Chairman, it is supplanting pill abuse because it is cheaper, easier to get, and it is extraordinarily deadly. The people using it—sounds like an odd thing to say—do not know how to use heroin, do not realize it is 93, 97 percent pure, and so kids and adults and people of all walks of life are dying all over this country. And as I travel the country, I see it sweeping south and west.

When I became the FBI director 18 months ago, I heard about it a lot in the Northeast and the North Central; now I am hearing about it everywhere I go. For economic reasons, it is cheap and the traffickers are pushing it in. So we are spending a lot of time to work, again, with DEA and our local partners, to disrupt the traffickers to impose costs on them so we can shorten the supply and then drive the price up so we do not have the—I think there were 6,000 deaths from heroin overdoses or more in the United States last year—so we can push those numbers of tragedies down.

Mr. ROGERS. Well, still, more people are dying from prescription pill abuse than from car wrecks. So even though a part of the country is switching to heroin, the pills are still a problem in a big part of the country.

Mr. Chairman, I have abused my time.

Mr. CULBERSON. Not at all. Not at all.

#### CYBER THREATS

Mr. ROGERS. Quickly, and finally, cyberthreats, where are we?

Mr. COMEY. Cyber is a feature of every threat that the FBI is responsible for. I describe it as an evil-layer cake. At the top level we have nation-state actors who are looking to break into our corporate systems and our government systems to steal all kinds of information for their commission advantage or for their intelligence advantage. Then we have organized criminal groups, very sophisticated hackers looking to steal Americans' information for criminal purposes. Then we have all manners of thugs and criminals and pedophiles down below, and the reason is obvious: Our lives are there. My kids play on the Internet. It is where we bank. It is where health care is. It is where our critical infrastructure is. So those who would do harm to children or money or credit card information or our banks or our critical infrastructure, that is where they come.



So, there is not a single cyberthreat; it is a feature of everything that the FBI is responsible for. The bad guys have shrunk the world, right, because Belarus is next door to Birmingham on the Internet, and so we are working very hard to shrink it back. I can forward-deploy my cyber experts to make the globe smaller so we can impose some costs. Because right now, everybody thinks it is a freebie to steal Americans' information. We have to impose costs on these people, so even though they are in their pajamas halfway around the world, they are afraid to break into an American's life and steal what matters to us.

Mr. ROGERS. Do we have absolute evidence, absolute proof that these attacks, many of these attacks are from states?

Mr. COMEY. Yes.

Mr. ROGERS. Countries?

Mr. COMEY. Yes.

Mr. ROGERS. Governments?

Mr. COMEY. Yes.

Mr. ROGERS. Military?

Mr. COMEY. Military intelligence.

Mr. ROGERS. Russia?

Mr. COMEY. Russia is a significant player in cyber intrusions, as is China, obviously, two huge operators in that world.

Mr. ROGERS. We have proof that Russia and China and other Governments are attacking our country's cyber information databases?

Mr. COMEY. Yes.

Mr. ROGERS. What are we doing about it?

Mr. COMEY. Well, a lot of different things, only some of which I can talk about here. One of the things that we are trying to do is name it and shame it. We did it last year by indicting five members of the People's Liberation Army and publicizing them on posters indicating they were stealing information from American companies, stealing our innovation.

And people say, well, indicting them is not going to do any good, you will never catch them, and I always say, we have more flaws at the FBI because we are humans. We are dogged and never say never. People like to travel, like to have their children educated in the United States or Europe. Never say never. We are trying to impose costs, and part of the costs, though, is the naming, the calling it out. The Chinese are stealing our innovation, our ideas, our creativity, our jobs.

Mr. ROGERS. In fact it was this subcommittee, Frank was the chairman many years ago, who first brought attention to foreign governments hacking into his files and he sort of led the way, but, boy, it has come a long way, and I am not satisfied at all that we are doing what we need to do to try to stop it or counteract it.

Thank you, Mr. Director.

Mr. COMEY. Thank you, Mr. Chairman.

Mr. CULBERSON. Mr. Chairman, I think it is a top priority for us on this subcommittee, of keen interest to all of us in the Congress, but of particular interest to me in the work that you have done. I have had a chance to come out and hear some of the work in a classified setting; it is very impressive.

What advice could you—before we move on to Mr. Honda—very quickly, just, if you could, tell the American public out there listening just some good basic rules to protect themselves, good hygiene practices against cyber attack on their own computers or smart phones at home.

Mr. COMEY. Folks should exercise the prudence wandering around the electronic neighborhood that they would wandering around any other neighborhood. I have tried to train my children on this, when they cross a parking lot at night in a shopping mall, they are alert. They are thinking about where they are going. They are walking a certain way. They lock their car. People should behave the same way on the Internet. It is actually a bigger neighborhood, a bigger parking lot.

Mr. CULBERSON. And more dangerous.

Mr. COMEY. And in some ways, more dangerous.

And so what I tell folks is very simple: An email is a knock on your front door. Opening the attachment to an email is opening your front door. You would never open your front door without looking through your peephole and seeing what is there, but all the time folks get an email, they open the attachment and their whole life can be stolen in that moment.

And also know where your children are. You know where your children go to play, right? At least I do. Folks need to know what their kids are doing on the Internet; where are they going; who are they interacting with? It is the kind of parenting and common sense that we seem to exercise in all aspects of our life, except when we are sitting at a keyboard, which makes no sense at all because we just made the entire world our neighbors when you are behind that keyboard.

Mr. CULBERSON. And I heard your wonderful analyst tell us at a hearing in a classified setting we had, Mr. Chairman, with some of your cyber folks, that 80 percent of protecting yourself against a cyber attack is good hygiene, like washing your hands after a meal or some of the basic things that you have just mentioned to us. Thank you, Director.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

And, Director Comey, thank you for coming in today to testify before the subcommittee.

As you know, a key tool in combatting crime is the use of Combined DNA Index System, better known as CODIS, and CODIS blends forensic science with computer technology to accurately identify suspects and assist in a successful prosecution of criminals.

Last year's budget hearing, I brought up the nationwide backlog of untested sexual assault kits, which was around 500,000. Shortly after that hearing, Alameda County District Attorney, Nancy O'Malley, and your office began discussions about the backlog that occurs prior to the upload of CODIS. And I am pleased that the FBI laboratory staff have met with the DA several times regarding a pilot project that may facilitate the CODIS upload of DNA profiles linked to suspects of accused sexual assault crimes.

And having said that, I just want to add, also, my thanks to the past chairman, Frank Wolf, who really carried us and helped us see it entirely through.

The fiscal year 2015 CJS appropriation bill included \$41 million for just the first point of the backlog in police evidence rooms, and I am hopeful that will continue to program in fiscal year 2016, and I am aware that this is outside your purview, but I wanted you to know that we are committed to this issue. Alameda County in my district has been out in front on this issue and I encourage you and your staff to continue to work with them on the pilot project that will focus on another point of the backlog, that is the technical review by government labs of a private lab's work upload to CODIS.

I would like to now turn to how the second point of the backlog can be addressed. Namely, the implementation of rapid DNA instruments in the police booking stations. And I am a firm believer that having an arrestee sample tested quickly by a rapid DNA instrument while that arrestee is still in the booking environment, that will reduce the burden on government labs, and I am hoping that you will be able to continue, because I raised this issue last year, as well.

And I know that the FBI is supportive of rapid DNA technology, but since last year's budget hearing, tell me about what problems has been made to amend the law, protocols and policies to allow the use of rapid DNA instruments in police booking stations and once the relevant requirements have been amended, what is your approximate timeline, assuming it has been amended, for implementing the rapid DNA instruments in law enforcement agencies booking stations?

#### COMBINED DNA INDEX SYSTEM—CODIS

Mr. COMEY. Thank you, Mr. Honda, and thank you for your continued focus on the rape kit backlog. There are rapists out there who will victimize more women and the key to stopping them sits on the shelves in a whole lot of police departments, and so I appreciate your focus on that, and I promise that we will remain focused on it, as well.

With respect to rapid DNA, you are right, we are big fans of the idea of the capability being in booking rooms, that a sample can be taken when someone is arrested and uploaded to CODIS immediately. I have talked to my DNA experts. They have continued to work with the companies—it is a private-company enterprise, as you know, making these devices—to give them guidance on what will be needed to make it able to connect to our database in a way that preserves the sterling reputation of our database.

My folks tell me there are all kinds of challenges around making sure we have the right software and the right hardware to connect the devices, but good progress is being made. They think we are probably two to three years away, though, from being at a place where this is a common feature, even in our biggest cities. I understand that it does require legislative authorization. I do not know exactly sitting here today where that sits inside the Executive Branch. I think perhaps with the Office of Management and Budget being looked at for privacy reasons, but both are marching along at the same time, the technical fix and the legislative fix; that is my understanding today.

Mr. HONDA. Okay. Because we have to understand that there are 500,000 kits that have been used, 500,000 cases that are being left

without the great evidence that DNA will provide, so victims and arrestees are at bay in order to get their justice, and I think the quicker we move and be able to implement this, then we can reduce these backlogs and have people really enjoy the benefits of our technology, but also our rapid response to justice.

Mr. Chairman, if I may just indulge with one quick question? I just wanted to thank you very much for adding to the FBI training manual, which will include the guidance, just as law enforcement identifying and reporting hate crimes directed at Sikhs, Arabs and Hindus, and I think that is going to be able to produce a great deal of information. I do have a concern, though, about the comment that you had made last month on race policing. You said that it is ridiculous that I cannot tell you how many people were shot by the police last week, last month, last year. It may be taken out of context, but that was the quote. So, as I understand it, currently, police departments can on a voluntary basis, report incidents to the data that the FBI keeps on justifiable homicide. This, however, is problematic, according to one Justice Department statistician who was quoted in a news article said that the FBI's justifiable homicide and estimates from arrested-related deaths both have significant limitations in terms of coverage and reliability that are primarily due to agency participation in regard to this issue.

Could you discuss what the situation is currently with voluntarily reporting and what approaches we could take to get better data on—since it is a very high level problem of public notice.

#### JUSTIFIABLE HOMICIDE REPORTING

Mr. COMEY. I agree very much, and it was not out of context. I think it is ridiculous that I cannot tell you with any confidence how many people were shot by the police in any period of time—yesterday, last week, last year—because we do not have uniform reporting that is universal. We have 17,000 police departments in the United States and they are not all reporting to us violent encounters with suspects, so I do not have any confidence in my data.

And what I meant was I think it is ridiculous that I can tell you how many books were sold on Amazon and how many people went to the hospital with the flu last week, but we do not have data. So every conversation about police encounters with citizens is, by definition, uninformed in this country, and that is a crazy place to be.

It is a voluntary system and it requires the support of local and state law enforcement, and so I am working with the sheriffs and the chiefs who all agree with me, to give us this data. What do you need for us to be able to help you give the data? We are going to be talking to Congress I think more down the road about are there incentives that Congress could offer to have folks give us the data, but we are not in a good place now, and it is one of the things I am trying to do, after the speech I gave, to try and improve the records.

Mr. HONDA. Perhaps through our good chairman, we might be able to look at this and see if we can be of assistance to help the FBI to acquire this information because voluntary reporting of police shootings, it just does not seem to be acceptable, essentially in today's environment and the kinds of things that we know what is going on and what is not going on in our country right now.

Mr. CULBERSON. We will explore that and also the level of violence police officers encounter every day in their difficult and dangerous work on our behalf.

Let me recognize the State of Mississippi and our newest member, Mr. Palazzo.

Mr. PALAZZO. Thank you, Mr. Chairman.

And before I get into questions, I would briefly like to express my gratitude and appreciation to the Appropriations Committee and the Members of Congress for allowing me to serve in the seat of our friend and colleague Alan Nunnelee held. I know everyone who knew him was heartbroken of his passing, and although I do not believe his shoes can be filled, I hope to serve this Committee with the best interests of the United States in mind, just as our good friend Alan did for four years.

With that said, Director Comey, I appreciate your being here and I appreciate the sacrifices that your people and the magic in your agency, as you so eloquently said, provides for our security and protection here at home, and I am sorry for your loss, too, as well as the three FBI agents. We, too, have lost a U.S. Marshal, Josie Wells, in the past month, and he was from south Mississippi, and it was in the line of duty and he left a wife and unborn child to carry on his legacy. So we know what you all sacrifice day in and day out and some of the best people in the world serve in our law enforcement. I would like to follow up real quick on something that Chairman Rogers mentioned; he brought up China, and China is something from Armed Services and Homeland Security, my former committees, as always, have piqued my curiosity. They seem to be aggressively building up their military and their space capabilities. And it sounded—and I do not want to put words in your mouth—that we know China, the government of China is involved in cyber attacks on the American Government and American enterprise. And so knowing that, and just indicting five individuals to kind of expose them and shame them I do not think really works with China, since it has the consent of their government.

So with that, how do we counter these cyber—what would you recommend to us on how we counter these cyber threats, both internally and externally? And I guess you can focus on China or an unnamed country, if you do not want to pound on them; I would just like to hear your thoughts.

#### CYBER INTRUSIONS

Mr. COMEY. Thank you. And I should have said—I may have misspoken—the three lives that were lost were police officers; one state trooper and two police officers. I agree, it does not make any difference, it is still great people lost in the line of duty.

With respect to China or any nation/state actor that is engaged in cyber intrusion activity in the United States, the question about what can be done more broadly about them is one that is both beyond the ken of the FBI and one that even if it was the FBI's, we would not discuss it in an open forum. But what we are trying to do is make sure—our responsibility is to investigate cyber intrusions to the United States to make sure that our government has a full understanding of who is doing what so we can figure out, as a country, what to do about it.

One of the things that we have been involved in is bringing criminal charges against some of those actors as part of a toolbox approach to try and change behavior with the Chinese. There are a lot of other things that are beyond the FBI, that I know have gone on, diplomatic, for example, and it is part of a lot of international forums, our government, I know, is working to trying to adopt some norms to try to get the Chinese to go along with them. But it is my function or the FBI's, to understand what they are doing, develop the facts, and then show our government, here is what we see.

Mr. PALAZZO. And I understand the cyberthreat is real and I think Congress and the American people are recognizing that it is real and it is a clear and present danger. I hope that we are doing everything that we can, as Members of Congress, to provide your agency, as well as others with the resources to counter this threat, because it is not just illegally downloading music, but it is a huge fear that if they engage in some form of cyber attack, that it could, you know, cripple our critical infrastructure and the last thing I would want to see is the lights go out and your ATM does not work, your navigation on your car and your phone, I think it would cause a huge amount of panic in our country. You also mentioned something about the siren song of the radical Islamists and these people you mentioned, we really do not see them, they are not obvious to us in the large extent because they are in their basements consuming this form of poison. Can you, for lack of a better word, profile, what this person would be, and is there a certain, you know, something about their demographics that make them vulnerable to this poison? Because I agree with you that it is a poison and we do not need our young—we do not need anybody in America consuming it.

#### FOREIGN FIGHTER RECRUITMENT

Mr. COMEY. In a way, I wish I could. That is one of the challenges of this threat. When we talk about travelers, the people that we know, who have gone to Syria to hook up with ISIL, the ages range from 18 to 62. They are from any part of the country, any background. They are or were raised in the Islamic faith or are converts—but they may have all different kinds of backgrounds, be in all different places in the United States, consume this, and develop this view that this is how they will find meaning in life. So the one common characteristic they have, which unfortunately is not a great marker for me finding them, is they are people who are troubled souls seeking meaning in life. But there is not a poverty marker, right? Some of them have jobs. They just have a misguided sense that they need to participate in the Apocalyptic battle. Some of them are kind of losers who have had trouble with jobs or petty crimes. But there is not a particular pattern. We have studied it pretty closely, very closely, and searched for the pattern, but so far I cannot offer you one.

Mr. PALAZZO. Thank you, Director.

I yield back. Thank you, Mr. Chairman.

Mr. CULBERSON. Following up very briefly on Mr. Palazzo's point about China. A back door, a Trojan horse, can be created into a computer system either with a piece of software that you might be

able to detect, or it can be hardwired into a computer device, a computer chip, or a piece of telecommunications equipment as a piece of hardware, and it is invisible, and you cannot see it.

And the problem is so bad with the Chinese in general, and Huawei in particular, and these Chinese owned companies, that the Australian government actually just prohibited the purchase of any Huawei telecommunications equipment by any governmental entity in Australia.

Let me recognize at this time, Mr. Aderholt, and the State of Alabama.

Mr. ADERHOLT. Thank you. Mr. Chairman, it is good to be here today and for this hearing. Thank you for mentioning what we do down in Alabama. We appreciate the way to mention Huntsville and also Birmingham.

I met with the folks, some of the folks, from the Birmingham facility just recently and one of things that we talked about, and they had mentioned to me was that the new iPhone, the new iPhone 6s, have an encryption in it that you cannot get into the—they are encrypted and there is no back door key.

And just wanted to know what—and, of course, this is different from their predecessors, the other phones you were able to get into—what is your—or what is the FBI's position on Apple and Google's decision both to encrypt these smart phones?

#### SMARTPHONE ENCRYPTION

Mr. COMEY. We have a huge problem for law enforcement—state, local, and federal—and in national security work. We have court process, where judges issue search warrants or interception orders, and we are unable to execute on those orders because the device is locked or the communications are encrypted. And so we are drifting to a place where a whole lot of people are going to look at us with tears in their eyes and say, what do you mean you cannot? My daughter is missing, you have her phone, what do you mean you cannot tell me who she was texting with before she disappeared.

You know, I keep saying to folks, this is a democracy, we should never drift; maybe that is where we want to go, but I think we need to have a conversation in this country about where we are going. I do not want back doors, right? I want, with court process, the ability to gather evidence after I have shown probable cause to believe on that device there is evidence of a crime. The Fourth Amendment is clearly in play, and I follow it, and I get authority. We need to discuss if we are going to go to a place where we cannot get access.

So it is a huge feature. Sheriffs and chiefs raise it with me everywhere in the country and say, these are important in domestic violence cases, child exploitation cases, car wrecks, and I do not know exactly what the answer is, but it is something we have to talk about.

Mr. ADERHOLT. So, you know, you mention about the mother shows you the phone and say you cannot get into it, what programs had it affected and can you just let us know the damage that it has done to the FBI?

Mr. COMEY. Yeah, we have encountered it in drug cases, all of our work we have encountered it. I am not in a position where I can sort of offer a percentage or a number, but it is a feature now, an obstacle, in a huge percentage of our criminal investigations and it will only become worse. You know, I have heard tech executives say, privacy should be the paramount virtue.

When I hear that I close my eyes and say, try to imagine what that world looks like, where pedophiles cannot be seen, kidnapers cannot be seen, drug dealers cannot be seen. So I do not have a number I can express it as, but I hear it, as you have heard it from the folks in Birmingham, I hear it all over the country. We are drifting to a place and not talking about it.

Mr. ADERHOLT. Do you need additional resources to work on this, or what can we, as this committee, do or as Congress do to try to help you with this?

Mr. COMEY. I think one of the things that the Administration is working on right now is, what would a legislative response look like that would allow us, again, not in a sneaky way but with court process, to be able to get access to the evidence. And it is complicated because it involves both communications carriers and device makers. I think ultimately it is going to require some sort of legislative fix that if you want to do business in this country, we are about the rule of law, but we do not want to create spaces that are beyond the reach of the law in the United States, right.

There is no safe deposit box that cannot be opened with authority, there is no car trunk that cannot be opened with authority. We are getting to a place where there are these huge spaces that are beyond the reach of court authority and I think it is going to take a legislative fix.

Mr. ADERHOLT. So if I understand you, it is really not a matter of resources, it is really just a legislative fix overall that really that this needs to be dealt with.

Mr. COMEY. I think that is right. I think we, as a democracy, need to figure out so what are the trade offs associated with the privacy interests, and what are the public safety interests, and how do we reconcile them? It is really, really hard, but it is not splitting the atom. I mean, we do hard stuff and I just think it is a conversation that we have to have.

Mr. ADERHOLT. Okay. Thank you. Thank you, Mr. Chairman.

Mr. CULBERSON. Chairman Aderholt asked a great question. Also, I would love for you to talk to us, very briefly, about that court case before the Supreme Court recently where the phone was seized in a part of a routine police arrest, and the police picked up the phone, and looked at it, and the guy said, "You can't look at it." Talk to us a little bit about that case and what, if anything, we could do, for example, cannot Apple see what is on here under a court order? Could you not get it from Apple?

Mr. COMEY. No, the iPhone 6 is designed so that Apple is unable to unlock it. So it becomes the safe deposit box with no second key. The bank cannot get into it, a judge cannot order access to it, so it is very, very—

Mr. ADERHOLT. Let me add there, if I understand it was Apple voluntarily made this decision to fix it so the user is able to lock it and they are not able to unlock it.



Mr. COMEY. That is correct. And Apple—I am not trying to pick on the folks at Apple or Google—their view is they are responding to competitive pressures. People want to have a zone of privacy, and so do I, but to have a zone of privacy that is outside the reach of the law is very concerning.

But, Mr. Chairman, with respect to the court case, the FBI—our practice has always been to get search warrants for devices. That makes good sense to me, especially given that I do not have a phone with me, but all of our lives are there. It is no longer just a phone, it is a suitcase that is carrying your kids pictures, and your documents, and so it was good sense to me in the Supreme Court's reasoning that this is different than it used to be.

And so it should have Fourth Amendment implications, and that is the way we treat it. If I want to look at your phone, without your consent, I will go to a judge, make a showing of probable cause, get a court order, and, if I can get the phone open, then look at it. The challenge is on our side is our inability to access it even with a court order.

Mr. ADERHOLT. Great question. If I could follow up one more question. Has there been any, that you heard of, there is a rumor that Apple has made an agreement with China about this as a precondition to selling their phones there.

Mr. COMEY. Yeah, I do not know anything about that.

Mr. CULBERSON. Thank you. Judge Carter has dealt with this quite a bit as a District Court judge and——

Mr. FATTAH. Mr. Chairman.

Mr. CULBERSON [continuing]. I'd like to turn to our colleague from Texas, Chairman Carter.

Mr. FATTAH. Mister Chairman, You know, there is a way forward, right? So if life or liberty is in jeopardy and my daughter is missing, I want you to get into the phone. If it is a battle that doesn't involve life or liberty, I am interested in what the fathers have to say about right to privacy and the protections of people's personal papers and so on.

So you can find our way forward and I think that the Director is correct that there may need to be a legislative activity that kind of, because the people we represent have some interest in privacy, and which is why these companies are trying to produce a product that gives them that privacy, but we also need to protect public safety. So if there is a terrorist who has got a bomb, and you need to track where they are via their a cell phone, we want them to be able to do it.

So, you know, we have to find the wisdom of Solomon which is why it is good that the Judge is up next.

Mr. CARTER. You will never get away from me that way. I am Chairman of Homeland Security appropriations and serve on the defense and the defense subcommittees, so we have all the national defense issues with cyber and now serve on this wonderful committee, and so cyber is just pounding me from every direction. So every time I hear someone say that it pops into my head. Because I don't know anything about this stuff.

If they can do that to your cellphone, why can't they do it to every computer in the country and nobody can get into it?

VOICE. Logical——

Mr. CARTER. If that is the case then there is a solution to that to the invaders from around the world that are trying to get in here. You know, if that gets to be the scope, the law, and even the law cannot penetrate it, then are we not creating an instrument that is the perfect tool for lawlessness?

This is a very interesting conundrum that is developing in the law. If they, at their own will at Microsoft should put something on a computer, or at Apple can put something in that computer, which is what it is, to where nobody but that owner can open it, then why can't they put it in the big giant supercomputers, that nobody but that owner can open it?

And everything gets locked away secretly. And that sounds like a solution to this great cyber attack problem we have got. But in turn it allows those who would do harm, to have a great tool to do harm where a law enforcement cannot reach it. This is a problem that has got to be solved.

And if you are following the Bill of Rights, you have every right to be able to go before a judge, present your probable cause, and (indiscernible) get into that machine. And I do not think there is a right of privacy issue at all that prevents you following the law to do it.

And so if that is what they have created, they have created a monster that will harm law enforcement, national security, and anything else in this country, and this really needs to be addressed. And I would not have even talked about that, but that upsets the heck out of me, because I do not think that is right. Thank you.

Mr. CULBERSON. Judge, if I could ask you about—and Director Comey, you can pitch in—if you had a case in front of you where you had evidence that there was evidence of a crime in a safe that was locked and only the owner had the combination to the safe, how would you handle that?

Mr. CARTER. I think I would probably—if anybody had an affidavit of probable cause, and if I found that they got probable cause, I would issue—give them the right to make the search. And if they made it search proof, then—and you cannot, even the guy that created the monster cannot get in there, that is bad policy.

Mr. COMEY. There is no safe like that in the world.

Mr. CULBERSON. Yeah, you can crack the safe, right? You just get a court order, you go crack the safe.

Mr. CARTER. Sir, but if you cannot crack the safe—

Mr. CULBERSON. Right.

Mr. CARTER [continuing]. Which is what they have created here, that is a real crisis.

Mr. CULBERSON. The analogy seems valid, doesn't it? It is like a safe that is locked up they are holding evidence of a crime.

Mr. CARTER. On our issues of privacy, those issues of privacy are protected by the Bill of Rights.

Mr. CULBERSON. Yeah, it is a great question.

Mr. HONDA. Mr. Chairman?

Mr. FATTAH. I knew we would find wisdom from the Judge.

Mr. HONDA. The question I would ask them, and distinction I would ask through the Chair, to the Administrator is this. Then you get a court order, the court order would be a court order for hardline, you can get a court order for tapping the line. Under

FISA we can now get a court order to tap into information that is used with a digital phone.

Accessing information on a digital phone that has what we might want to call our intelligence also, accessing that would be like accessing a person under oath giving any information they may have inside of them. And so we may have to look at the kind of legislation that equates that with, you know, our intelligence and transacts as our own privacy. So there would be a sanction if we lie under oath. And if we have a choice now of opening up our own phone, and even the company cannot do that, they were—you know, I would just try to make a distinction between—

Mr. CARTER. I am yielding my time, go ahead and talk, he is a nice guy.

Mr. HONDA. Thank you, Judge. I am trying to make a distinction between the kinds of laws that we write or we author. In one set of technology, when we are looking at artificial intelligence, and we are looking at another kind of technology, where we can make safe our own information, accessing that is going to have to have another kind of—another level of thought like we had to do with accessing and tapping into technology.

A safe is, you know, a safe is still the old technology, I think—

Mr. CULBERSON. I think the (indiscernible) is legal issue in a situation that is based—

Mr. HONDA. If you have access to a phone that the individual who bought it can open up, then you can—you could have certain kinds of force of law that would require them to be able to testify.

Mr. CULBERSON. It is an interesting question, I do not mean to—forgive us, Judge, we—

Mr. HONDA. I just wanted to raise that. Thank you, Judge.

Mr. CULBERSON. It is a really interesting conversation that Chairman Aderholt started here and I am glad to get the Judge's wisdom on this.

Mr. CARTER. I have another question I wanted to ask you last time we were here, you said one of things you were concerned about is am I going to be able to get the—in the workforce the quantity of people that I need in this cyber war that we are facing.

How are you doing in being able to recruit the intelligent workforce that it takes to go off in this spatial area of national security and crime? How effective have you been since our last conversation? It is one of the things you expressed the last time we were here and I wanted to give you a chance to say how effective you have been and what can we do to make you more effective?

#### RECRUITING CYBER PERSONNEL

Mr. COMEY. Thanks, Judge. Pretty good, but it is too early for me to give you a high confidence read. I have just been climbing out of my gap—my hole from sequestration, so we have been hiring lots and lots of people. So far so good, and they are staying. Because once you get to do public service it becomes addictive even if other companies are throwing a lot of dough at you.

So my cyber division attrition rates are very low. Folks are getting in and realizing it is fun to do good for a living. But it is early, I do not want to sound over-confident. We should talk again in a year when I have a full two years of data on my side.

Mr. CARTER. Well, I mean this is not an issue you got, but what else you can in what it is you do. And one of the questions that has come up for us to discuss is what other opportunities to contract with these people who are—have these (indiscernible) that all they do is this kind of work and maybe is that something that Government can do effectively and safely protecting government's interests and sub-contract some of the work to the great computer wizards of our world? That is something we need to be thinking about.

And now, we're looking now, at Homeland Security, is whether or not that is a safe, appropriate thing to do, to sub-contract. So that is something you might think about. Because there is a lot of—I was in a room full of these smart people yesterday morning for breakfast, and they—I understood about every fifth word. Thank you.

Mr. CULBERSON. Thank you, Judge. It is complicated so it is an incredibly complex universe of computer out there.

Now I recognize the State of Washington, Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thank you. And I have three pieces here, and I am going to make them as brief as possible, I appreciate your time.

I am going to start with—I am going to start on a different track and kind of come back to cyber, because, you know, why not mix it up? Actually, this does have a relation. In your submitted testimony you mentioned the Internet facilitated sexual exploitation of children as an evolving threat that your agency is faced with. And as you know, there are thousands of children every year, through sites like backpage.com and other Internet sites, that are sold.

Backpage and other sites have acknowledged the existence of prostitution and sexual exploitation, and of minors on their sites and these sites are accomplices of basically promoting prostitution and exploitation of minors. I want to know where the FBI—has the FBI prosecuted any of these companies for knowingly permitting the exploitation of girls and young women on their sites?

#### EXPLOITATION OF CHILDREN ON THE INTERNET

Mr. COMEY. It is a great question and a really important question because you are right, we are seeing an explosion of the abuse of kids through the Internet and the selling of kids through the Internet.

The answer is yes. We have prosecuted the people behind an outfit, I think, called Redbook, that was in California. We locked up the proprietor of it, running it, one of these backpage.com outfits, and that shut down the site. We may have taken civil action to shut down the site. So, yes, we have.

Ms. HERRERA BEUTLER. Follow up, since the online facilitated sexual exploitation of children is an evolving and prioritized threat, help me understand your allocation to that area of investigations. And how does the Internet Crimes Against Children Program fund fit into that?

Mr. COMEY. Yeah, we have task forces that focus on this, I am going to forget the number, but it is more than my number of field offices, so we have two in some places. We do this in every field office, we do an operation that I hope you have heard of called Op-

eration Cross Country, where we work with State and local partners. It connects to this cyber stuff because a lot of the ways in which we find the people looking to exploit kids is through those advertisements, where we try to take down, in a swoop, a bunch of these people, rescue the kids, and lock up—I hate the word pimp, because it almost sounds like some sort of '70s comedy thing, these are slavers—we lock up the slavers, and to try and send a powerful message.

So I do not know the second part, I will have to get back to you on the second part of your question, where the funds—the Internet Crimes Against Children fund fits in, but I am sure I can find out quickly.

[The information follows:]

The Internet Crimes Against Children program involves the Department's Criminal Division, the FBI, INTERPOL Washington/U.S. National Central Bureau, the Office of Juvenile Justice and Delinquency Program (OJJDP) and the U.S. Attorney's Office. In FY16, the President's Budget was for \$417.2 million, which was an increase of \$15.2 million.

The Internet Crimes Against Children Task Force Program (ICAC program) helps state and local law enforcement agencies develop an effective response to technology-facilitated child sexual exploitation and Internet crimes against children. This help encompasses forensic and investigative components, training and technical assistance, victim services, and community education.

The program was developed in response to the increasing number of children and teenagers using the Internet, the proliferation of child sexual abuse images available electronically, and heightened online activity by predators seeking unsupervised contact with potential underage victims. OJJDP created the ICAC Task Force Program under the authority of the fiscal year (FY) 1998 Justice Appropriations Act, Public Law 105-119. The Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act ("the PROTECT Act") of 2008, (P.L. 110-401, codified at 42 USC 17601, et seq.), authorized the ICAC program through FY 2013.

The ICAC program is a national network of 61 coordinated task forces representing over 3,500 federal, state, and local law enforcement and prosecutorial agencies. These agencies are engaged in both proactive and reactive investigations, forensic investigations, and criminal prosecutions. By helping state and local agencies to develop effective, sustainable responses to online child victimization – including responses to the online sharing of child sexual abuse images, OJJDP has increased the capacity of thousands of communities across the country to combat Internet crimes against children.

In calendar year 2014, ICAC investigations resulted in the arrests of more than 8,100 individuals and task forces conducted over 60,098 forensic examinations. Additionally, the ICAC program trained over 31,000 law enforcement personnel, over 1,945 prosecutors, and more than 3,188 other professionals working in the ICAC field.

Ms. HERRERA BEUTLER. And I am glad you mentioned that piece on Operation Cross Country because I think the demand side, you know, a lot of the work we have been trying to do, even at a State level, is changing the perception. So first of all, we have been much more successful here federally. These are victims.

We are talking about young children who have been brought into this slavery, this form of slavery, trafficked and exploited, and what we have—now we are turning our eyes to how do we beat the demand? How are these people prosecuted?

There is nothing more frustrating than knowing a 17 or 16 year old girl who has been prostituted is the one that faces the criminal penalty and a John walks free. It makes me—it is infuriating to me. So you are focused on the demand side, both these portals that these criminals are using, and I agree pimp has almost been romanticized in some areas, which is pathetic, but these Johns, these slavers, need to be the focus.

And, too, I think you said name and shame, that is another area and a place. I mean, some of the people who are buying these children are people that, at times, are amongst us.

Switching, and this is an area where we are going to continue to focus, so we may continue and follow up with your staff and your team.

Cyber, this is my last question. Premiera Blue Cross in Washington State had a real serious cyber attack last May, but the company did not discover the breach until January of this year. And then upon the advice of the FBI, and a cyber security firm, the company waited until March 17th to provide notification of the attack.

According to the information we have received to date, about 11 million customers nationwide and about 6 million in Washington State, including my constituents, may have been compromised. So I guess I want to hear why would the FBI recommend they wait to make that information public when we are talking about names, addresses, telephone numbers, Social Security numbers, and in some cases medical history, banking data, so on and so forth?

Mr. COMEY. Yeah, thank you for that. I do not know the facts enough to know whether it was January to March at our request, but we do sometimes ask companies to hold off for a little while so we do not alert the bad guys. Because as soon as it becomes public, whoever was doing it goes to ground.

Ms. HERRERA BEUTLER. I would assume that is a 24 hour or a 2 day—I mean, the way we—from some of our previous briefings that we have had with cyber security division, that is not a two month window, because if it is we are not doing something right.

Mr. COMEY. Yeah, I do not—the two month window seems odd to me, but it is more than a 24 hour period because often it is a search for the ground zero computer, to see if we can find where the digital dust is from and where the bad guys entered. And in a huge company, sometimes that takes more than just a 24 hour period. But two months I do not fully understand, so I will get smarter about that.

Ms. HERRERA BEUTLER. I have another follow-up on that because that greatly concerns me.

Mr. COMEY. Yep.

Ms. HERRERA BEUTLER. Thank you. I yield back.

Mr. CULBERSON. Thank you very much. Mrs. Roby, you are now——

Ms. ROBY. Thank you for being here today. And sitting here listening to these discussions all over the place.

I have an almost 10 year old and a 6 year old. And the thought of one of my children going missing, and you are not able to do anything about it because of what we already discussed, is terrifying. But I can say this, thank you for the work that you do for our country, and I just appreciate the challenges that you have.

I am new to the subcommittee, so I too am not an expert in cyber security by any stretch and it is like going to school everyday to learn more about what you do and the challenges that you face.

I was in Huntsville, I know you touched on, with Mr. Aderholt, about Birmingham and I know you mentioned Huntsville when I was not here. But it was great to be at the new TEDAC facility and, of course, by delivering furniture. I mean, it was not completed, there is no bodies there yet, they needed some of the equipment. But it is fascinating, it was fascinating for me to learn about what they are doing. This is the terrorist's explosive device in (indiscernible), and I also had the chance to stop by the hazardous devices school while I was there, which was great as well, where they train local law enforcement.

So I guess what I wanted to talk to you about was sort of the things that they mentioned as challenge was personnel recruitment because just nationally it is difficult to find individuals that have the expertise to be able to do this type of analysis on IEDs and so I just wanted to talk about your budget requests, and where you see any shortfalls in personnel for this new facility, and, you know, how we can make this vital center a reality.

#### TERRORIST EXPLOSIVE DEVICE ANALYTICAL CENTER—TEDAC

Mr. COMEY. Thank you so much for that. And I too visited there within the last eight weeks, I forget when I was there, and they were just—I could smell the fresh paint and——

Ms. ROBY. Right. Right.

Mr. COMEY [continuing]. It is very exciting, because it will make a big difference. It will save lives. That place will literally save lives.

The answer is I think we are doing okay in terms of recruiting and hiring back. We were down many, many, many vacancy slots in the FBI as a result of sequestration. We hired about 2,400 people last year. I am trying to hire 3,000 this year. And then my budget request this year is just simply about being able to sustain that, to hire those folks then be able to keep them on the job.

I do not think I am going to have a problem staffing TEDAC. I am going to transfer people, and I actually went down and met with our staff at Quantico and said, "Wait 'til you visit Huntsville." You'll think, "I do not want to be sent to Huntsville, wait 'til I try and get you out of Huntsville in about two years."

So I do not think we are going to have a problem, I think the committee has supported us well enough, and—it sounds like a corny thing to say—I am lucky enough that the FBI has, justifiably, a very strong identity in American life. So people want to



work for the FBI and they want to do the kind of work we are doing in Huntsville. Folks are banging down the door.

I advertise for Special Agents, and I get 20,000 applications in two weeks. And so I think we are going to be okay there.

#### HAZARDOUS DEVICES SCHOOL—HDS

Ms. ROBY. And that is great to hear. Talking about the hazardous devices school, I forget what they call it, but the staging areas—

Mr. COMEY. The villages.

Ms. ROBY. The villages, yeah, yeah, yeah.

Mr. COMEY. We blow stuff up in the village.

Ms. ROBY. Right. And we are willing to expand that. Can you just—I mean it is an expensive, expensive school to operate because of what you are doing, but—and the equipment that they use. So if you can just talk about that a little bit.

Mr. COMEY. There is such a demand for that. Again, that is, as you said, where we, the FBI, train all State and local bomb techs in the United States. There are thousands of bomb technicians in the United States, they are all certified, and they have been trained at the Hazardous Devices School.

To be trained effectively, though, you need to work on buildings that have a real feel to them, that is what the villages are. There is a church, there is a little supermarket, things like that you can practice in.

Ms. ROBY. They also put the church next to the liquor store.

Mr. COMEY. Is it? They just showed me the church, they did not show me the liquor store.

Ms. ROBY. Well, they tried to say it was like Alabama, I was not going to accept that, so. Okay.

Mr. COMEY. But thanks to the support of this Committee and on the Senate side, Senator Shelby's Committee, we have gotten the funding, I forget the number, but to build a number of additional villages, which will really help us. How many additional villages?

VOICE. Six.

Mr. COMEY. Six additional villages. And people should not think that is a whole new town, it is just a little cluster of buildings. That will enable us to meet the demand.

The military, as it is downsizing, is shrinking its commitment to the Hazardous Devices School, and so we are using again the support we have gotten from Congress to try to make sure that we staff up to make sure that we have a net, that we stay the same. And I think we are going to be okay there was the verdict I got when I was there.

Ms. ROBY. Okay, great. Well, again, thank you for the important work that you do, and everybody that is with you on your team, we appreciate your commitment to our country and our safety. Thank you.

Mr. CULBERSON. Thank you, Mrs. Roby. I wanted, if I could, to follow up on one of the questions that Chairman Rogers brought up about foreign fighters. Director Comey, at—we have seen estimates there are as many as 20,000 traveled from 90 different countries to fight in Syria, and we have heard reports there is about 150

Americans that have traveled to Syria and Iraq to fight with ISIS or other terrorist groups.

And could you talk to the committee—and I recognize this is an unclassified setting—about your ability to be able to identify and keep track of these folks and the Americans that may be traveling over there. And what can this subcommittee do to help you deal with that threat?

#### FOREIGN FIGHTERS

Mr. COMEY. Yeah, thank you, Mr. Chairman. It is a big piece of our work and it is enormously challenging.

The number of 150 is the approximate number of Americans who have traveled to Syria in connection with the conflict. Some have gone for humanitarian reasons, some have gone to associate with ISIS, some have gone to associate with the Nusra front or other groups.

So one of our challenges is even with those we identified, try to understand, so what are they doing there? Because not everybody who has gone there went there to be a terrorist, but we treat them all like they are, and we cover them like a blanket when they come back 'til we understand it.

Our challenge is trying to make sure that with our partners in the Intelligence Community, and our foreign partners, we have the tripwires in place to spot Americans who might be, not just going towards that area of the world, but heading towards Syria. This is hard because there are thousands and thousands of Americans every day that fly towards, the Mediterranean Turkey for all manner of good reasons. So we need the help of our partners in the Intelligence Community and our foreign partners to spot those who might transit Turkey. The Turks have been a big help to us there, and that relationship has gotten increasingly better.

And then here at home, our challenge, to come back to State and local law enforcement is, I am not highly confident that 150 is 150 of 175, I am only missing 25, or 150 of 300, I just do not know because, again, it is so difficult in a wonderful free country like ours to know who might be traveling with that purpose.

So that is where it comes into the research we do online to spot them and our relationship with state and local law enforcement.

Mr. CULBERSON. Well, also, we have the benefit of having Judge Carter, Chairman of Homeland Security, with us, talk to us about in particular, Judge Carter, how is TSA and Homeland Security doing? How are they working with you and making sure they identify and flag these folks?

Mr. COMEY. Yeah, we have got a great partner in—

Mr. CULBERSON. What recommendations would you make to the Chairman about anything Homeland needs to be doing?

#### DEPARTMENT OF HOMELAND SECURITY

Mr. COMEY. I think we are in a good place, Judge, with respect to CBP. They are our key partner here. They are on our Joint Terrorism Task Forces. They are on our National Joint Terrorism Task Force. Because we all recognize that they have the eyes at the border, outbound and inbound, and so we are lashed up with them very, very closely.

One of the lessons of the Boston Marathon bombing was, we needed to make sure that we were even more effective in working with them. The TSA has a great relationship, but the key partner on this traveler bit, it turns out to be CBP. And I do not have a recommendation for improvement on that right now.

Mr. CULBERSON. Well, but, my understanding, Judge, is that—and Director—that the United States does not have the ability to track visas. If they overstay their visa, we are not doing a good job, Judge—and correct me if I'm wrong—on tracking these guys once they are in the country. We do not know exactly when they—

Mr. CARTER. We do not have an exit policy right now. So if they overstay a visa, they can know they are overstaying, but they do not know if they have left or not. So that is a real problem.

Mr. CULBERSON. That is why I was asking the question, Director.

Mr. CARTER. But that is not really where he is coming from. Working together, I think there is a good working relationship between the agencies and the FBI and others. Our guys are doing a pretty decent job on the law enforcement side of it. The (indiscernible)—yeah, we need an exit policy, but it is going to cost—you can start counting in billions of dollars when we start doing it. And that is one of the problems we have got in this particular environment we are living in right now.

Mr. CULBERSON. But you can spot them when they leave the country if you flag their visa. If you got a reason to track somebody, you think they might be a problem, they leave the country or enter the country, Homeland Security is able to share that information?

Mr. CARTER. Well, we do not have an exit policy right now. We do not know.

Mr. COMEY. But if we have an interest in someone, we share that with CBP—

Mr. CARTER. Yeah, then we are tracking—

Mr. COMEY [continuing]. Systems—

Mr. CARTER [continuing]. Individuals.

Mr. COMEY. And a flag goes up.

Mr. CARTER. Yeah.

Mr. CULBERSON. That is what I am wondering.

Mr. COMEY. Yeah. That is working pretty well.

Mr. CARTER. Now, then if we are tracking individuals, we do that every day.

Mr. CULBERSON. Sure. Yeah.

Mr. CARTER. But just an average Joe that flies over the, you know, a plane for a vacation, if he stays—

Mr. CULBERSON. Right. Or overstays.

Mr. CARTER [continuing]. We don't know when he is going to leave. He could have left. He did not—we do not necessarily know—

Mr. COMEY. Yeah.

Mr. CARTER [continuing]. Whether he left or did not leave.

Mr. COMEY. Yeah.

Mr. CULBERSON. We have—I know, also, the Patriot Act coming up for renewal here at the end of May, will expire. And I wanted to—because our constituents are rightly, as Mr. Fattah said, all of us have an interest in protecting the privacy of law-abiding Ameri-

cans, as I know you do as well. And remembering Benjamin Franklin's admonition that those who would trade a little liberty for a little safety will soon wind up with neither. And that is an important lesson for us all to remember.

Could you talk to us about, and also the Americans watching today, the protections that The Patriot Act builds into the privacy, of making sure that the privacy of law-abiding Americans is protected, and the thresholds that you have got to cross in order to get a court order or access to people's phone records or their conversations and that suitcase that we all have with us.

#### PATRIOT ACT

Mr. COMEY. Yep, thank you, Mr. Chairman. I—

Mr. CULBERSON. And how important The Patriot Act is to you.

Mr. COMEY. Well, I tell a lot of folks when I talk about this in public, Americans should be skeptical of government power. The country was built by people who were. I tell my British friends it is because of you people that we built it the way we built it, to set interest against interest. Because you cannot trust people in power. And so I tell folks, "Look, I am a nice person. I am an honest person. You should not trust me."

Mr. CULBERSON. Texans can relate to that, so—

Mr. COMEY. Yeah. You should want to know how is the design of the founders alive in my life? And so The Patriot Act is a great example. If we want to get someone's business records using our authority under Section 215, we have to go to a federal judge and get that authority. And then we have to make a regular report to Congress about how we are using Section 215, and we discuss it in oversight hearings repeatedly.

So the Executive Branch, the Judicial Branch, and the Legislative are working together, and then my work on 215 and all of our Patriot Act authorities is audited by an Inspector General on a regular basis, who reports to Congress. So that is great. I mean, that is burdensome, but that is the way it should be. And so there are judges. There is oversight in every piece of the work we do.

The reason that the Patriot Act authorities matter so much, especially the two that I will mention. Section 215 is the authority that allows us in our national security investigations to go to judges and get authority to get documents or tangible things or records. If that expires and we lose that authority, we will have a gap in our ability to respond to spies and terrorists that I cannot fill with grand jury subpoenas or some other manner or process. That is very, very worrisome. That is a part of The Patriot Act we do not talk about very much.

And the second I will mention is roving wiretaps. In criminal cases, if a drug dealer is swapping phones as they frequently do, a judge can issue an order that allows us to follow the person, so we do not lose him when he switches phones. The Patriot Act gave us that authority when we are fighting spies and terrorists. I think people would want us to have the same authority in spy and terrorism cases that we have in criminal cases. But, again, it involves the authority of a judge, where we have to make a showing to the judge or probable cause, written affidavits; it is all overseen by the courts.

So I think those are sensible things. The challenge is it just took me two minutes to explain it, and often people just sort of nod and say, "It is terrible what The Patriot Act has done." I hope folks do not do that.

Mr. CULBERSON. And also important for people to remember, too, that Mr. Snowden is no hero.

Mr. COMEY. Yeah.

Mr. CULBERSON. Can you talk a little bit about in an open setting why people should not think that what he did, and of him, as a hero?

SNOWDEN

Mr. COMEY. Now, I do not want to say too much, because I hope Mr. Snowden will realize that the greatest country in the world has the fullest and freest criminal justice system in the world. And he will avail himself for the rights and opportunities of being able to defend himself in our criminal justice system, and he will leave Russia and come back here. I want him to get a fair trial, so I do not want to dump on him too much.

I guess what I would say is, those who want to describe someone like that as a hero, need to take the corpus of his work and hug the whole thing.

Mr. CULBERSON. I remember he carried out, what, how many laptops?

Mr. COMEY. A lot of records. And so you need to take a look at the entire damage to our ability to track terrorists, to track spies, all of the work—the whole corpus of work has to be looked at together.

Mr. CULBERSON. Exactly. Thank you for the extra time, Members. Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman. So your budget is inside of a Bill. You know, the Bill has got a number on it. But the DOJ portion thereof, you know, you're seeking \$8 billion dollars. We have another part of this budget that has been growing exponentially. It has moved from \$1 billion to \$7 billion. It is the federal prison budget.

And it is a big concern, because the federal prison system is gobbling up this budget that this Committee has discretion over. And there is a sense that the country incarcerates people that do not need to be incarcerated. In fact, we incarcerate more people than any other country in the world.

And so we set up a commission that has got two former members leading it—J.C. Watts out of Oklahoma and Alan Mollohan out of West Virginia. We put some experts on it, including the head of corrections from the State of Pennsylvania, which I think was a very wise choice. And they are looking at what it is that we might be doing about something that we kind of call Justice Reinvestment. You know, what can we do to move away from things that are not working, this over-emphasis on incarceration and to move in some other direction. And there is some states—Texas has been at the very forefront actually—looking at some very aggressive activities particularly in terms of their juvenile system and not incarcerating so many young people.

So I would be very interested in your view about who the country, you know, that somebody said here, I can't remember who, you know, "People who have done something we don't like, we shouldn't put in jail. The people we fear and can do us harm, you should put in jail." And I would be interested, as the lead law enforcement official in the country, what your view is about this problem and what we should do about it?

#### INCARCERATION

Mr. COMEY. Yeah, thank you, Mr. Fattah. It is something I spent a lot of my life thinking about. And I am still not sure I am expert enough to be useful to you, but here is my take on it. I think we can always be smarter about how we incarcerate, how we use the coercive aspects of the criminal justice system. I also think we can be a whole lot better at preparing people to re-enter society. That is something I think we as a country have done a very poor job of.

But I also want to make sure that if I am involved in an effort like that, that I am thoughtful about what connection, if any, there is between the incarceration rate and the fact that we have historical low levels of crime. I would not want to do anything—and I am not saying people are—but we do not want to do anything where we say 20 years from now, "Gees, we really got that one wrong," because we had achieved a level of reduction that was unprecedented. So I would want to be thoughtful about that. A lot of people smarter than I should think about that.

And the second thing is I want to be data driven. I would want to know who are the people who are in jail in federal prison and why are they there and what are the risks associated with them? Because the reason I say that is, oftentimes I hear people talk about the low-level, non-violent drug offenders in federal prison. I have never put anyone there by that description. And I cannot find a whole lot of federal prosecutors who say, "Yeah, I prosecuted a low-level, non-violent drug offender." And so there may be a lot of folks like that, but I would want to make sure that the data is scrubbed.

But other than that, I am agnostic. I am not a ideological person. I want to be effective.

Mr. FATTAH. Well, this is almost an equal part of our budget to what your request is now. And at one point, it was, you know, at \$1 billion. The number of inmates actually has, as the crime rate nationwide, the number of inmates have been going down, and the crime rate is going down. A lot of that actually is happening at the state level, though, not necessarily where we are.

And but, let me move onto a different subject, but the Committee would be interested in your thoughts as we go through this process and as the recommendations from the Colson Group comes back. I am sure the Chairman would be interested in your thoughts.

So Sandy Hook took place a little while ago, but it was a tragedy. And they are, you know, every year not just the loss of a police officer, there are literally, I mean, thousands and thousands of Americans just being shot and killed. And the access to firearms, which the Supreme Court has said, you know, people have a constitutional right to, and that is the law of our land.

As a law enforcement official, how do you, and we, Todd Jones is now leaving as the head of the, you know, one of your sister agencies. What is your thought about what we should be doing, or thinking about, as a nationwide, vis-a-vis, the question of firearms?

#### FIREARMS

Mr. COMEY. Another big, hard question. Probably all aspects of that are beyond my expertise and my authority, except for one piece. I spent a lot of my life as a prosecutor trying to make sure that criminals were deathly afraid of getting caught with a gun. And that if a criminal is caught, obviously, committing a crime with a gun or just possessing it, there is severe, severe consequences.

I have long believed that most homicides are happenstance homicides. What would otherwise be a fist fight or a rock fight, becomes a shootout because the gun is an article of clothing. It is there in the waistband. The felon has it there or the drug dealer has it there. And that if we can make the criminal—criminals are very good at rational calculation—fear that as an article of clothing, then we will have more fist fights, more rock fights, maybe more stabbings. We will have fewer shootings.

So in Richmond, Virginia, we did an effort to really try and drive into the criminal mind that you should think more about your gun than about your socks and your shoes when you get dressed to go out and deal drugs or hang on the street corner. And I think that is very, very effective.

And so I am a big supporter—not a big part of the FBI's work—of maniacal enforcement of felon-in-possession, drug-dealer-in-possession crimes like that. Because there is no excuse for a criminal to have one. None.

Mr. FATTAH. And one last question, Mr. Chairman. There have been a lot of debate here on the Hill about prosecution of people that you have locked up as terrorists in Article 3 courts. As best as I can tell, there have been no incidents. There have been no issues. These prosecutions have proceeded during the normal course and justice has been served. Is that your sense of this? Is there some—I mean, because we have this debate. The Administration wants to close Guantanamo and get out of the business of incarcerating people without a trial and, you know, just incarcerating without having any due process, because they think it is a problem for our country internationally. Is there any concern you have about the ability of our court systems to handle these cases?

Mr. CULBERSON. But distinguishing—I know as Mr. Fattah would—between foreign nationals captured on a battlefield overseas versus an American citizen.

Mr. COMEY. Well, as I understand your question, it is just about the effectiveness of the criminal justice system in my experience.

Mr. FATTAH. Yeah, I am not trying to get you in the middle of this.

Mr. COMEY. (Indiscernible)——

Mr. FATTAH. I am just trying to make sure that you——

Mr. COMEY. Part of a harder conversation.

Mr. FATTAH. Whether or not there should be any concern from our standpoint as a country that our court system is capable.

Mr. COMEY. No, none.

Mr. FATTAH. Of prosecuting?

Mr. COMEY. None. Now, that doesn't mean that——

Mr. FATTAH. (Indiscernible).

Mr. COMEY [continuing]. That doesn't mean that ends the policy conversation, which is one the FBI should not be involved in, but yeah, in my experience, our courts are very, very good at offering people a fair trial and then incapacitating them for the rest of their lives in a safe way.

Mr. FATTAH. Thank you. Thank you.

Mr. CULBERSON. Expertly done. I want to be sure to recognize Mr. Palazzo.

Mr. PALAZZO. I am good, Mr. Chairman. Thank you.

Mr. CULBERSON. Mr. Honda.

#### 2016 SUPER BOWL THREATS

Mr. HONDA. Thank you, Mr. Chairman, and let me just say I appreciate your flexibility and the Judge's flexibility, too. I just have a real quick question. In 2016, my area will be hosting the Superbowl. And in the past three, four years probably, we have been tracking the Superbowl activities in terms of human trafficking. And in that light, you have the arena of trans-national organized crime, which addresses trafficking of women and children internationally. You also have a discussion around the Child Sex Tourism Initiative and addressing child—instead of saying prostitution, I just say child sex slavery, because prostitution has another connotation in my mind.

Is there staff that we can collaborate with and speak with to anticipate the 2016? We are already working on cyber systems with our local entities in terms of light rail, high-speed rail and those kinds of activities, in airports. It would be great if we can work with some of your staff to check and double check on the kinds of things that we are doing and to see if there is anything else that we can do and collaborate (indiscernible).

Mr. COMEY. Yeah, and I am sure that we can, Mr. Honda. This is something we have a lot of expertise——

Mr. HONDA. Yes.

Mr. COMEY [continuing]. Practice in, all aspects of the threats around a Superbowl, but we can equip you with that. We do a lot of work around Superbowl events. In fact, I would tell people come to the Superbowl for all kinds of good reasons. If you are coming to try and pick up kids or engage in prostitution involving children, we will be there, and we will be looking to lock you up. So we will get you what you need on that.

Mr. HONDA. And we like to look at public education and engaging the other agencies to be aware and trained on visual kinds of surveillance, too, so we greatly appreciate it. Thank you, Mr. Chairman.

Mr. COMEY. Sure.

Mr. CULBERSON. Judge Carter.

Mr. CARTER. Thank you, Mr. Chairman. Now, let us have a little judge/prosecutor discussion here.

Mr. COMEY. I am too rusty.



Mr. CARTER. We (indiscernible)—I am not a law professor. This is the kind of thing we are going to have to be thinking about. We're telling our industry. Okay? The cyber attacks are real. They are coming. Home Depot got attacked. Sony got attacked. We just heard about Blue Cross getting attacked. You got to build your fort, where part of our plan for cyber security is to tell industry, "Build a fort. Protect yourself. Be prepared. We are helping you, assisting you, but be prepared."

Now, whether this attack is a criminal act or an act of war is an interesting debate to have. I would ask everybody in the cyber field, what is your opinion of when a cyber attack escalates above a criminal activity and becomes an act of war? Most people say it is a policy decision. I understand that is a good cop-out. But just a discussion, it is an interesting discussion.

But then there is even a more interesting thing, because what you are going to have ultimately is almost we are going back to the Middle Ages. We are building a bunch of little forts around our industry. Some of these forts are going to be very powerful. I would bet the fort around Microsoft is going to be extremely powerful. The fort around Apple is going to be extremely powerful.

Not only powerful in defending themselves from an attack outside, but they'll actually have the ability to counter-attack. And when they counter-attack, they could start an international incident. They could start we don't know what—and that is a question we have to ponder, because quite honestly, we are as a government permitting them to build that fort. And that fort is nothing more than build your own castle and protect your castle.

Now, there is so little to be always able to be in the defensive posture. But those with the offensive capability may go offensive. And for the criminal justice system, we may have to decide, has that person gone too far, just like the security guard that protects—uses his gun in the protection of the bank or so forth? Some of it is going to be self-defense, maybe some of it is not. We have to make that determination. We may have to make that determination in the cyber world sometime in the future if a private entity protecting its own property decides to counter-attack in a cyber attack, which we sort of have the ability to do.

And which we would preserve to do as a government, though, they would have to preserve some of these big monster tech industries that have the ability to counter-attack. How is that going to affect us in the criminal—the world of criminal justice? Or have you ever thought about that?

Mr. COMEY. Oh, I thought about it. From the private sector, where I was before coming back to this great job, and on the government side. The answer is we, as a country, cannot allow it. Right? It is against the law. And it, in my view, should remain against the law. It is great to build a fort, but if you start throwing rocks off the parapet or throwing barrels of oil down, it can have knock-on effects that are very, very hard to predict. It could drag us into a place we do not want to be.

So it is unlawful for a private entity to hack back, and it makes good sense to me. But I also agree that there is a crying need from a lot of private enterprise for our government, then, to fill that space. And that is a harder policy question. But we cannot have

each of these castles start throwing stuff out into the square. That public space is a place where the government ought to be operating.

Mr. CARTER. And I would agree with you, but if you look at the Dark Ages, that is exactly what happened. The folks could not control the individual castles. Any of them, they could not control the individual castles. It caused all kinds of social turmoil in the Middle Ages. And, arguably, we could be going to cyber Middle Ages with everybody defending their own. Because the government is (indiscernible) right now—we are taking care of the government and in some instances, we are taking care of our body politic of commerce.

But the individual, actually with the ownership, it is going to protect their own. And I think that on the horizon we got real issues, because the government has got to come in and say, “How far can this person go to protect their own?”

Mr. COMEY. Right.

Mr. CARTER. And they are developing an ability for us that is—I am making this up, because I do not know anything about cyber—that the minute you hack into me, it fries everything—every computer you—attached to you all over the world. If somebody can just—comes up with that, that is going to be a very large offensive tool that somebody could use.

It is a question that the government has got to start thinking about, because this is a big deal. And at some point that is an act of war. Then, the government has to go to defend the individual's property. If they bombed Microsoft or bombed in Dallas, I think we would be—if they fly an airplane, dropped a bomb, we call it an act of war. The question is, when we get the point where it is an act of war by basically destroying my business? That is a tough question.

Mr. COMEY. Yes, it is.

Mr. CARTER. And we in the criminal justice system have to think about it, and our professors back in law school have to think about it, and we have to come up with a solution.

Mr. COMEY. Yeah. Why is a criminal justice analog right in the Old West? If the marshal does not provide safety for the folks living in those communities, in those towns, well, then they are going to defend themselves to protect their families from the bad guys. So the government has to fill that public space and defend the citizens (indiscernible).

Mr. CARTER. I think you are probably right.

Mr. COMEY. Yeah.

Mr. CARTER. And that is a huge task. Thank you.

Mr. CULBERSON. And a great question and a good analogy, if the government is unable to defend that public space and provide protection if the marshal cannot be there for the little homestead outside of town, out in the Indian country, how—we have got all of us the right to self-defense to what extent does an individual or business have the right of self-defense, for example, in the cyber world? [No response.]

There is no clear answer, I guess.

Mr. COMEY. Hard question.

Mr. CULBERSON. It is really an interesting question.

Mr. CARTER. Yes, but it is a question that I think we are literally creating those castles today. There is no doubt about that. (Indiscernible).

Mr. CULBERSON. Sure.

Mr. CARTER. (Indiscernible).

Mr. CULBERSON. And to follow up a little bit on the analogy earlier, the conversation about the Apple 6, in the case of a safe where you ordered—you have got a court order to go in and get the contents of a safe that you have probable cause to believe contains evidence of a crime, if the safe is uncrackable and either the owner cannot, or will not, open it, as a general rule, does the company that built the safe have the ability to open the safe? Is there any requirement with a physical safe, that they be—the company that built the safe—open it? Do you have the ability to open it? Is there any legal requirement? How did that work, Judge and Director, in your experience?

Mr. COMEY. I do not know of a legal requirement. We could, with a court order, almost always get information from the manufacturer, or we just blow the door off.

Mr. CULBERSON. But the manufacturer could tell you.

Mr. CARTER. I have got to go. I want to thank you for—

Mr. COMEY. Thank you.

Mr. CARTER [continuing]. What you do, and we are very proud of the FBI and all the good work you do. Thank you.

Mr. CULBERSON. Thank you, Judge. That is absolutely true, and I will not keep you too much longer, but you could either blow the safe or in your experience, the manufacturer always had the ability to open it—

Mr. COMEY. Yeah.

Mr. CULBERSON [continuing]. In some way, shape, or form.

Mr. COMEY. But I'm hesitating, I do not know whether I have ever seen a circumstance where we use lawful process to compel a manufacturer to give us assistance. I just do not know enough.

Mr. CULBERSON. Just drill it or blow it.

Mr. COMEY. Yeah.

Mr. CULBERSON. Yeah. Okay. Because that is another problem we are going to have to—again, protecting people's individual privacy, but recognizing if you have got evidence of a crime locked up in that suitcase, how in the world do you get at it?

#### INSPECTOR GENERAL—INFORMATION SHARING

Let me ask about, before we wrap up, and I will follow up with other questions for the record, the importance of information sharing with the Inspector General. It is a question that is ongoing with every agency under our jurisdiction. The Inspector Generals have a vital role notifying us of that they do audits and if the Inspector General is ever denied access to information, they have to notify the Committee, and we have gotten several notices from the Inspector General.

I know we have mentioned this to you and your folks before about the FBI's failure to comply with the access-to-information requirement, and I know that the FBI has a disagreement on what the law requires. And Mr. Fattah and I have both written a letter to the Attorney General asking the Office of Legal Counsel to help

resolve a particular matter—I do not think involving a whistleblower’s—to resolve this matter as quickly as possible.

I would just like to ask, sir, what steps are you taking to ensure the Inspector General gets the information they need in a timely manner and what, if any, conflict of interest, may there be in the agency being investigated by the Inspector General being in a position to decide what information the Inspector General needs? Particularly, since the Inspector General has, as you did, as a prosecutor, the ability to review things in a confidential manner and in camera, so to speak, as a judge would, since the Inspector General has criminal investigative authority and can maintain the confidentiality of that information, should not the IG be the one?

Are you be able to work with them in a confidential, behind-closed-door manner to decide what information they need? What are you doing to help them get what they need in this case, for example, in particular?

Mr. COMEY. No, no. Thank you. It is an important issue. I love my IG, as he knows. The only thing I clearly love more is the rule of law. And so I am in a situation where the FBI, Office of General Counsel, has given us legal advice over several General Counsels about what The Wiretap Act and The Grand Jury Secrecy Act provides with respect to our ability to give information to the Inspector General. And so we just have to solve that problem, which should be fairly easy. As you know, the Office of Legal Counsel is looking at the question. I think the new Deputy Attorney General is moving towards resolving this question. I just need someone at a high level in the Department of Justice to say, “It is okay. You do not have to go to a judge before you can turn over wiretap information or grand jury information to the IG.” And problem solved. But I have no interest in obstructing the IG.

Mr. CULBERSON. I know that.

Mr. COMEY. But I also do not want to be—us just willy-nilly turning over stuff that might be protected under the statutes and then have someone say, “Well, how did you do that? You were told by your General Counsel that the law required this.” So I just need clarity there. And the other thing I am doing in the meantime is just trying to speed up our business processes.

Mr. CULBERSON. Yes, sir.

Mr. COMEY. So that we just do whatever we think we have to do (indiscernible) law, but much more quickly.

Mr. CULBERSON. What I am particularly interested in is getting it done in a timely fashion. What are you doing to help expedite the process so the Inspector General can get the information that they need to do their job?

Mr. COMEY. Yeah. I think that is literally a question of building better business process to quickly review and copy and produce and search for information. I will not go into all the boring details, but I have an internal consultant shop that are geniuses at business process. I have put them to work on that saying, “Figure out how to do this faster.” It is like making cars. Just figure out how we can do that much more effectively.

I think he will see dramatic improvement there. That is not going to solve this legal question, but I think I can solve the business process. Then, if I can get the leadership, the Department of

Justice, to solve the legal question, then it might not all be love, I suppose, with the IG, but it will be in a much better place.

Mr. CULBERSON. Mr. Honda. [No response.]

I also on behalf of the Subcommittee and the people of Texas that I am proud to represent, I want to express our deep gratitude to you and for your service and to the men and women of the FBI for all that you do to help keep us safe while protecting our privacy and our very precious constitutional rights. And as law-abiding Americans, we are your best back up. There is no better back up for a law enforcement officer than a American using their own common sense, their own good judgment, and their good hearts.

And by the way, you mentioned earlier about the criminals with guns, I doubt you have ever had a problem with a concealed carry permit holder who is licensed with a background check using their good judgment. I am not aware of any problems with the Texans that are licensed. Could you comment on that as a law enforcement officer and a prosecutor?

Mr. COMEY. Yeah. I have not had situations where there has been problems with that.

Mr. CULBERSON. With a concealed carry permit holder?

Mr. COMEY. Not that I can remember.

Mr. CULBERSON. That is a law enforcement officer's best back up, particularly if he is a Texan. Thank you very much, sir, for your service to the country, and we will submit any further questions for the record, and the hearing is adjourned. Thank you.

**Department of Justice - FY 2016 Hearing Products**

**FBI**

**FBI Hearing**

Beutler 1 - Human Trafficking

**Question**

How many FBI agents in the country are assigned just to work on human trafficking cases?

**Answer**

The FBI has two programs that work human trafficking, one dedicated to the sex trafficking of children and one dedicated to labor trafficking and adult sex trafficking. The FBI's Violent Crimes Against Children program includes 508 agents; of these, approximately 400 agents work to identify and prosecute individuals and criminal enterprises responsible for the commercial trafficking of children. The FBI provides specialized training to agents due to the unique circumstances commonly associated with child sex trafficking investigations. Specifically, the FBI hosts the Protecting Victims of Child Sex Trafficking training for agents, task force officers, and prosecutors assigned to child sex trafficking investigations.

The FBI's Civil Rights Program (CRP) includes approximately 90 agents to work human trafficking matters nationwide. Like the Crimes Against Children program, specific training is provided to agents assigned to work such investigations. This training includes details on investigating all forms of human trafficking, taking a victim-centric approach to investigations, working with FBI Victim Specialists, and coordinating efforts with non-governmental organizations and victim service providers.

Beutler 2 - Human Trafficking

**Question**

Given the nature of this crime why does the FBI not have specialized agents to handle all forms of human trafficking cases-sex and labor-us citizens and foreign national, men, women and children?

**Answer**

The FBI does have specialized agents to investigate the trafficking of children and adults. The FBI provides specialized training to agents due to the unique circumstances commonly associated with human trafficking investigations. Please refer to the response to your first question for more details.

Beutler 3 - Human Trafficking

**Question**

You requested \$8.48 billion in direct budget authority for FY 16, how much of that will go towards human trafficking?

**Answer**

The FY 2016 budget request includes \$182.5M and 1,051 positions (598 Agents) to support human trafficking efforts.

Beutler 4 - Human Trafficking

**Question**

And within those funds, how much will be dedicated to child exploitation cases - internet and live; and what will be allocated to labor trafficking, and adult sex trafficking investigations?

**Answer**

The FY 2016 budget request includes \$156 million to fund 875 positions (508 agents) in support of the Violent Crimes Against Children Program, which includes the sex trafficking of children. The FY 2016 budget also includes \$26.5 million to fund 176 positions (90 agents) in support of the Civil Rights Program, which addresses both labor and sex trafficking of adults.

Beutler 5 - Child Exploitation

**Question**

How many of these companies has the FBI prosecuted for knowingly permitting the exploitation of girls and young women on their sites? Why not?

**Lead-In Information From Original Document**

In your submitted testimony you mentioned internet facilitated sexual exploitation of children as an evolving threat your agency is faced with. As you know, thousands of children are sold every year through Backpage.com and other internet sites. While the Communications Decency Act provides civil immunity for third party content, it includes an exception for violations of federal criminal law. Backpage.com and other sites have acknowledged the existence of prostitution and sex trafficking on their sites. These sites are accomplices to promoting prostitution of minors.

**Answer**

In June 2014, the FBI seized the websites MyRedBook.com and SFRedBook.com, which were owned by the same individual. The owner of the sites, as well as one employee, were arrested. These two individuals both pleaded guilty to using a facility of interstate commerce with the intent to facilitate prostitution. As part of his plea agreement, defendant Eric Omuro agreed to forfeit more than \$1.28 million in cash and property as well as the sfRedBook.com and myRedBook.com domain names. On May 21, 2015, he was sentenced to 13 months in prison. The FBI understands the need to employ a multifaceted plan to address child sex trafficking, which includes the prosecution of perpetrators who facilitate the exploitation of children. The FBI constantly evaluates a variety of businesses alleged to be involved with the exploitation of children, and works closely with the litigating divisions within the Department of Justice to pursue viable prosecutions when the elements of the statutes have been met and can be proven in Federal Court.

Beutler 6 - Child Exploitation

**Question**

Also, since online facilitated sexual exploitation of children is an evolving and prioritized threat, what is your allocation to that area of investigations and how does Internet Crimes Against Children (ICAC) program funding fit into that?

**Lead-In Information From Original Document**

In your submitted testimony you mentioned internet facilitated sexual exploitation of children as an evolving threat your agency is faced with. As you know, thousands of children are sold every year through Backpage.com and other internet sites. While the Communications Decency Act provides civil immunity for third party content, it includes an exception for violations of federal criminal law. Backpage.com and other sites have acknowledged the existence of prostitution and sex trafficking on their sites. These sites are accomplices to promoting prostitution of minors.

**Answer**

The FBI dedicates more than 270 agents to investigate adults who entice, extort, or otherwise sexually exploit children online. The FBI is not involved with funding decisions associated with the ICAC program. But the FBI and ICAC Commanders meet regularly to coordinate and discuss enforcement and intelligence matters of common interest. The FBI works closely with the Office of Juvenile Justice and Delinquency Prevention (the office that administers the ICAC grant program) and the ICAC Commanders to discuss a variety of issues to include collaborative operational opportunities, deconfliction, sharing of intelligence, and technology associated with the research and development of technical capabilities which are mutually beneficial. Many of the FBI-led Child Exploitation Task Forces (CETF) are ICAC affiliates, and in some locations the ICAC is collocated with the FBI CETF.



Beutler 7 - Operation Cross Country

**Question**

What about the demand side - has the FBI put a proactive priority on and reasonable resources toward identifying and arresting the demand, i.e. the purchasers of sex acts with the trafficking victims, in the context of Operation Cross Country?

**Lead-In Information From Original Document**

Operation Cross Country has been a great success in identifying and rescuing child sex trafficking victims and arresting traffickers.

**Answer**

The FBI leads 71 Child Exploitation Task Forces (CETF) throughout the United States, and partners with approximately 400 different state and local law enforcement agencies to address both child sex trafficking and online sexual exploitation of children matters.. Through the collaborative relationships within each of the CETFs, the FBI and its local partners are able to address both the demand and supply side of commercial sexual exploitation matters involving children. The FBI also continuously evaluates the role of online forums that knowingly advertise illegal commercial sex acts for appropriate federal investigation.

Beutler 8 - Operation Cross Country

**Question**

For each of the 8 Operations, how many "Johns"/buyers were arrested?

**Lead-In Information From Original Document**

Operation Cross Country has been a great success in identifying and rescuing child sex trafficking victims and arresting traffickers.

**Answer**

During Operation Cross Country (OCC), the FBI tracked the total number of arrested individuals but this number is not limited to subjects who purchase commercial sex. As well as those arrested for purchasing commercial sex, this number includes, but is not limited to, those with active warrants, individuals arrested for gun/drug charges, etc. As the operation has grown, so too has the number of individuals arrested. The FBI does not track how many individuals were arrested solely for purchasing commercial sex. The overall arrest statistics are as follows:

OCC I: 368

OCC II: 716

OCC III: 571

OCC IV: 766

OCC V: 844

OCC VI: 1,277

OCC VII: 1,359

OCC VIII: 1,916

Beutler 9 - Operation Cross Country

**Question**

How many identified buyers were not arrested at each of the 8 Operations?

**Lead-In Information From Original Document**

Operation Cross Country has been a great success in identifying and rescuing child sex trafficking victims and arresting traffickers.

**Answer**

The FBI does not collect information on which identified buyers were not arrested.

Beutler 10 - Operation Cross Country

**Question**

How many buyer cases are left to the partnering local law enforcement agency from each Operation Cross Country?

**Lead-In Information From Original Document**

Operation Cross Country has been a great success in identifying and rescuing child sex trafficking victims and arresting traffickers.

**Answer**

Most buyer cases are left to the partnering local law enforcement agencies; they are the lead agencies for cases involving those who purchase commercial sex.

## Beutler 11 - Operation Cross Country

**Question**

Also, as we know that some 80% or more of adults engaged in prostitution were initially trafficked as children, has the FBI worked within Operation Cross Country planning to ensure that adults engaged in commercial sex acts are screened for potential past or current sex trafficking rather than simply handed over to local law enforcement for prostitution offenses or charged as a trafficking or trafficking conspiracy perpetrator?

**Answer**

While the primary goal of Operation Cross Country is to identify and recover child victims of sex trafficking, the FBI is fully aware that, during these operations, we encounter adults who may be trafficking victims. As part of the planning for each of the operations, all field offices are instructed to incorporate agents trained to investigate adult sex trafficking matters and screen adults for information to support a trafficking investigation. This effort has been successful in identifying both domestic and international sex trafficking victims. In addition, we work closely with the Department's Office for Victims of Crime which administers grant funding to serve victims of human trafficking and provide technical assistance and training for victim service providers and allied professionals. Ensuring a victim-centered approach to investigations is a priority for the Department and is featured in all its training and technical assistance in this area.

## Beutler 12 - US Attorney Prosecutions

**Question**

Does the FBI track the number of the U.S. Attorney's Office declinations nationwide on these matters and if so does it break it down by type of offenders?

**Lead-In Information From Original Document**

Investigation only takes you so far; ultimately you need prosecution. In many districts it is difficult to get prosecutors to accept prosecution.

**Answer**

The FBI does not track declinations by the U.S. Attorneys' Offices.

## Beutler 13 - US Attorney Prosecutions

**Question**

If this has identified as a problem, is there national coordination to reduce the number?

**Lead-In Information From Original Document**

Investigation only takes you so far; ultimately you need prosecution. In many districts it is difficult to get prosecutors to accept prosecution.

**Answer**

The FBI does not track declinations by the U.S. Attorneys' Offices.

Beutler 14 - US Attorney Prosecutions

**Question**

What is the percentage of cases declined by the USAO in favor of state prosecution?

**Lead-In Information From Original Document**

Investigation only takes you so far; ultimately you need prosecution. In many districts it is difficult to get prosecutors to accept prosecution.

**Answer**

The FBI does not track declinations by the U.S. Attorneys' Offices.

Beutler 15 - CSEC Training

**Question**

Sex trafficking and commercial sexual exploitation of children (CSEC) occurs across the country in urban, suburban and rural areas. What is the FBI doing to ensure that law enforcement officers in rural and other areas are trained to respond to CSEC and sex trafficking?

**Answer**

The presence of child sex trafficking in rural areas is a matter the FBI commonly emphasizes during training and informational briefings. More specifically, training is often allotted to agents assigned to rural areas due to challenges faced by agents in rural offices, including limited resources and subject matter expertise. The FBI constantly evaluates the capabilities of each field office in an effort to identify and address gaps. Additionally, the FBI's Protecting Victims of Child Sex Trafficking program provides training to other federal, state, and local partners. To date the FBI has trained over 1,300 federal, state, and local law enforcement personnel to address these types of crimes and investigations. The Department's Office for Victims of Crime and Bureau of Justice Assistance provide grants to develop and enhance human trafficking task forces around the country. Both agencies provide training and technical assistance to ensure that

grant funded task forces (law enforcement and victim service providers) are receiving training on the multi-disciplinary response to trafficking, which includes both sex and labor trafficking.

Beutler 16 - Curbing Demand

### **Question**

Buyers of sex from children are responsible for the vast market and profit from sex trafficking and child prostitution. Without buyers, the business of sex trafficking would not exist. What is the FBI doing to curb the demand for commercial sex?

### **Answer**

The FBI leads 71 Child Exploitation Task Forces (CETF) throughout the United States, and partners with approximately 400 different state and local law enforcement agencies to address both child sex trafficking and online sexual exploitation of children matters.. Through the collaborative relationships within each of the CETFs, the FBI and its local partners are able to address both the demand and supply side of commercial sexual exploitation matters involving children. The FBI also continuously evaluates the role of online forums that knowingly advertise illegal commercial sex acts for appropriate federal investigation.

Beutler 17 - Child Exploitation recovery efforts

### **Question**

The FBI has helped recover hundreds of exploited children across the country. What is being done to provide services to and work with those children after recovery to ensure they are not exploited again?

### **Answer**

The FBI maintains a cadre of specially trained Victim Specialists. Through training, team meetings, and community outreach, these Victim Specialists work with Child Protective Services, Probation Officers, Medical Professionals, Mental Health providers, schools and others to provide education on the unique needs that child survivors have post recovery.

When possible, the FBI's Victim Program provides crisis support to minor survivors of Domestic Sex Trafficking. Crisis support to a survivor can include transportation to medical services, providing snacks/water, hygiene items, and a change of clothing that promotes dignity and comfort during any interaction with law enforcement and other professionals.

Many FBI cases extend over several months, or years. As a result, Victim Specialists are encouraged to maintain contact with the survivor, the family and/or professionals involved to provide resource information as it is needed, and to advocate as appropriate. To give an example, if a minor is placed in residential treatment, the Victim Specialist stays in contact with providers and guardians to keep communication open with the survivor. Victim Specialists work within the

team to coordinate any future investigative needs that would not jeopardize the victim's mental health. The Victim Specialist also works with the U.S. Attorney's Office to facilitate transition and support throughout the court process.

If a minor has been detained, the Victim Specialist will work with detention staff and provide supportive services as allowed. This may include information on placement options that work with Domestic Minor Sex Trafficking victims, local resources, and ongoing support.

In addition, the Department's Office for Victims of Crime administers a grant program to serve victims of human trafficking, including child victims. Grants can fund comprehensive services for victims or specialized services for a special populations or with a specific focus (e.g., boys, girls, LGBTQ, legal services, housing).

Beutler 18 - Trafficking cases

### **Question**

How many sex trafficking cases has the FBI investigated in the last 2 years? How many labor trafficking cases has the FBI investigated in the last 2 years?

### **Answer**

The FBI initiated 2,446 child sex trafficking investigations during FY 2013 and FY 2014.

A historical study of FBI human trafficking cases determined approximately 70 percent of Civil Rights Program Human Trafficking cases are sex trafficking cases, with the remaining 30 percent being labor trafficking cases. There are currently approximately 530 pending Civil Rights Program human trafficking cases being investigated nationwide.

Beutler 19 - Child Exploitation at Super Bowl

### **Question**

Can the FBI quantify the amount of funds it spent on preparations and investigations around the 2015 Super Bowl to identify sex trafficking victims?

### **Lead-In Information From Original Document**

There seems to be an increase in trafficking around large sporting events, including the Super Bowl. The FBI worked with local law enforcement agencies in the Phoenix area prior to and during the Super Bowl last month. As a result, according to the FBI, 360 customers of commercial sex were arrested, 68 traffickers were arrested, and 30 juvenile victims were recovered. Last year after the Super Bowl in New Jersey, the FBI said it rescued 25 children who had been sex trafficked and filed criminal charges against 45 pimps.

**Answer**

On a daily basis, the CETFs coordinate enforcement operations, many of which are driven by local events that draw tourists into the area. Intelligence has demonstrated that large sporting events, conventions, etc. which draw a significant number of people with disposable income into a common geographical area, will result in an increased level of prostitution and sex trafficking. The FBI recognizes this and specifically allocates funding to surge resources, when needed, to appropriately address this threat. But we do not track the specific cost of preparations or investigations for special events.

Beutler 20 - Child Exploitation at Super Bowl

**Question**

Did the FBI have adequate resources to effectively combat sex trafficking at the Super Bowl?

**Lead-In Information From Original Document**

There seems to be an increase in trafficking around large sporting events, including the Super Bowl. The FBI worked with local law enforcement agencies in the Phoenix area prior to and during the Super Bowl last month. As a result, according to the FBI, 360 customers of commercial sex were arrested, 68 traffickers were arrested, and 30 juvenile victims were recovered. Last year after the Super Bowl in New Jersey, the FBI said it rescued 25 children who had been sex trafficked and filed criminal charges against 45 pimps.

**Answer**

The FBI, in partnership with local law enforcement, had adequate resources to address anti-trafficking enforcement operations during the Super Bowl. The Phoenix Field Office had four dedicated Special Agents assigned to work Human Trafficking/VCAC sex trafficking matters leading up to and during the 2015 Super Bowl. The Phoenix Field Office was able to supplement this dedicated manpower with 10 other temporarily assigned agents as well as Task Force Officers/detectives from local police departments.

Beutler 21 - Child Exploitation at Super Bowl

**Question**

Of the Juveniles rescued this year, does the FBI know if they were specifically trafficked for sex for purposes of the Super Bowl or had they been victims of sex trafficking and were only identified through the targeted investigations the FBI conducted around the Super Bowl?

**Lead-In Information From Original Document**

There seems to be an increase in trafficking around large sporting events, including the Super Bowl. The FBI worked with local law enforcement agencies in the Phoenix area prior to and

during the Super Bowl last month. As a result, according to the FBI, 360 customers of commercial sex were arrested, 68 traffickers were arrested, and 30 juvenile victims were recovered. Last year after the Super Bowl in New Jersey, the FBI said it rescued 25 children who had been sex trafficked and filed criminal charges against 45 pimps.

#### **Answer**

Child victims recovered during enforcement operations associated with the Super Bowl were both locally based and trafficked into Arizona for the Super Bowl event. Interviews of the victims revealed that some of those responsible for exploiting the child victims recruited local minors to engage in acts of prostitution, while other subjects trafficked children into the Phoenix for financial gain during the event.

Beutler 22 - Child Exploitation at Super Bowl

#### **Question**

Same question for the adults - were they specifically trafficked for the Super Bowl or had they been trafficked previously, but only identified by the Super Bowl investigation?

#### **Lead-In Information From Original Document**

There seems to be an increase in trafficking around large sporting events, including the Super Bowl. The FBI worked with local law enforcement agencies in the Phoenix area prior to and during the Super Bowl last month. As a result, according to the FBI, 360 customers of commercial sex were arrested, 68 traffickers were arrested, and 30 juvenile victims were recovered. Last year after the Super Bowl in New Jersey, the FBI said it rescued 25 children who had been sex trafficked and filed criminal charges against 45 pimps.

#### **Answer**

With the adults encountered, all of the females who were from out-of-state were asked if they were brought to Arizona solely for the Super Bowl. The FBI determined that the vast majority of females from other states had traveled, or had been trafficked to Arizona, specifically for the Super Bowl. When asked why, the females told investigators it was due to the amount of money which could be made from the influx of visitors associated with the event. Among all the female victims encountered, it was determined that most had been trafficking victims prior to the Super Bowl. The Super Bowl provided a financial opportunity for their traffickers.

Beutler 23 - Child Exploitation at Super Bowl

#### **Question**

Were the victims referred to social services? If so, what agencies?

#### **Lead-In Information From Original Document**



There seems to be an increase in trafficking around large sporting events, including the Super Bowl. The FBI worked with local law enforcement agencies in the Phoenix area prior to and during the Super Bowl last month. As a result, according to the FBI, 360 customers of commercial sex were arrested, 68 traffickers were arrested, and 30 juvenile victims were recovered. Last year after the Super Bowl in New Jersey, the FBI said it rescued 25 children who had been sex trafficked and filed criminal charges against 45 pimps.

### **Answer**

Prior to Super Bowl operations, all operational teams were provided NGO victim services referral sheets created by the FBI Phoenix Task Force which listed the contact numbers and names for all local victim service organizations in the greater Phoenix area available to provide services to adult and juvenile trafficking victims. The groups listed were Phoenix Dream Center, MOMA's House, Maggie's Place, Streetlight USA, Florence Crittendon, Starfish Mentor Program, and Tumbleweed Youth Crisis Shelter. Operational teams were advised, if they encountered a victim who was attempting to get away from their trafficker, that these organizations could provide services and resources.

In addition to the service provider list distributed to operational teams, Task Force personnel created victim contact business cards, which listed the 24-hour victim service organizations, the contacting agent/Task Force Officer name and phone number, and a list of services available to victims of trafficking. When contacting adult victims, it was evident in most cases the individual was being controlled by a trafficker, but due to fear, psychological barriers, trauma bond, and distrust of police, they did not fully disclose the extent of their situation, nor did they feel empowered to leave their trafficker. The contact cards generated by the Task Force were provided to these females to enable them to seek help and escape their trafficker when they were ready to do so.

It should be noted that FBI Victim Specialists were extremely helpful during operations, would respond to all victims recovered, and remained with victims until they were placed with the appropriate service provider or reunited with a family member.

Beutler 24 - Child Exploitation at Super Bowl

### **Question**

Did the FBI or local authorities arrest any of these victims? If so, how many individuals were arrested? What crime were the victims charged with?

### **Lead-In Information From Original Document**

There seems to be an increase in trafficking around large sporting events, including the Super Bowl. The FBI worked with local law enforcement agencies in the Phoenix area prior to and during the Super Bowl last month. As a result, according to the FBI, 360 customers of commercial sex were arrested, 68 traffickers were arrested, and 30 juvenile victims were

recovered. Last year after the Super Bowl in New Jersey, the FBI said it rescued 25 children who had been sex trafficked and filed criminal charges against 45 pimps.

### **Answer**

The FBI identifies children forced to engage in acts of prostitution as victims and treats them as such. Each victim is evaluated in order to assess their immediate, short term, and long term needs. All facts of the situation are carefully considered in determining an appropriate housing arrangement for the victim. In some situations, law enforcement is left with no alternative but to take the victim into custody. These circumstances include, but are not limited to, the existence of an outstanding warrant for the child, refusal of the child to provide identifying information to law enforcement, and state laws which require a child to be entered into the "system" (taken into custody) in order to be eligible for social services. In one instance, a child was taken into custody to ensure her safety.

One minor victim was taken into protective custody after twice being recovered and placed in an unsecure facility by the state social service agency. Authorities considered the previous attempts to provide assistance to the child in the unsecured facility and determined a secure facility was needed to ensure the safety and wellbeing of the child.

Phoenix Police Department teams arrested or cited 74 of the adults who were contacted during January operations; the FBI does not know the total number of adults contacted by the Phoenix Police Department during these operations. There were additional citations issued by other departments which conducted independent anti-trafficking operations during the same time period, but the actual numbers are unavailable at this time.

Individuals engaged in prostitution who were not victims were charged with either Arizona Revised Statute (ARS) 13-3214 (Prostitution), which is a misdemeanor, or Phoenix City Charge 2352(A)(1) (Prostitution), which is also a misdemeanor.

Beutler 25 - Premera Blue Cross Hacking

### **Question**

Can you explain why the FBI recommended waiting to notify customers that the information may have included name, address, telephone number, Social Security number, banking data, and health data?

### **Lead-In Information From Original Document**

Premera Blue Cross experienced a serious cyberattack last May, but the company did not discover the breach until January 2015. Upon the advice of the FBI and a cyber security firm, the company waited until March 17th, to provide notification of the attack. According to the information we have received to date, as many as 11 million customers nationwide and 6 million in Washington State may have been compromised - some of whom are my constituents.

**Answer**

The FBI did not advise Premera to delay notification. Premera executives reported to Senator Patty Murray on this question and stated that the delay was on the advice of their third party mitigation company.



WEDNESDAY, FEBRUARY 25, 2015.

**DEPARTMENT OF JUSTICE**

**WITNESS**

**MICHAEL E. HOROWITZ, INSPECTOR GENERAL**

Mr. CULBERSON. Good morning, Members. The Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies will come to order.

I am delighted to start out our hearing schedule this year with the inspectors general for the Department of Justice, Department of Commerce, and for NASA. Great way for us, I think, to set the framework for the year to get an understanding of some of the management challenges that each of these agencies face.

We particularly rely on your expertise and good work to help us identify where we can make the best use of our taxpayers' hard-earned money, make sure it is spent more wisely and efficiently to eliminate fraud, waste, and abuse, but also to be sure the agencies are accomplishing the purposes that the Congress has created them for.

It is a real privilege for me to be here to serve as chairman of this wonderful subcommittee and to succeed Frank Wolf who has really been a hero of mine since I got here. I really feel very sincerely that I am following Frank in the same position as Thomas Jefferson when he followed Benjamin Franklin and said no one can replace Dr. Franklin. I can only succeed him.

And that is certainly true. We are going to miss Frank a lot. He taught us all a great deal. It is a privilege to serve here with each one of you and especially you, Chaka. We have had a good time together in this subcommittee. We do great things and I am looking forward to a great year serving with you, my friend.

Mr. FATTAH. I am looking forward to it also and I am committed to make sure that as has been the case in the past that we end up with a bipartisan product that we can——

Mr. CULBERSON. Yeah.

Mr. FATTAH. Proudly take to the full committee. All right?

Mr. CULBERSON. Yes. It is an important bill and feathers right in with the work you do, Chairman Carter, on Homeland. Looking forward to working with you.

We have a number of new Members of the committee. I am delighted to note that Washington State is so well represented, Mr. Kilmer, between you and Ms. Herrera Beutler.

You have what part of the state?

Mr. KILMER. I represent Tacoma and the Olympic Peninsula of Washington State.

Mr. CULBERSON. The United States' only rain forest, I think, right?

Mr. KILMER. That is right, yeah.

Mr. CULBERSON. You are on that——

Mr. KILMER. You bet.

Mr. CULBERSON [continuing]. Beautiful part of the country.

Mr. KILMER. We say in Washington we do not tan. We rest.

Mr. CULBERSON. Unlike England.

Mr. KILMER. Yeah.

Mr. CULBERSON. Delighted to have you here.

Mr. Jenkins, delighted to have you here.

Mr. JENKINS. Thank you, Mr. Chairman.

Mr. CULBERSON. West Virginia to be well represented. We got Martha Roby as a new Member of the subcommittee from Alabama, Mr. Jolly from Florida. And, of course, we have got Mr. Aderholt returning as a returning Member, of course, Mr. Honda and Mr. Serrano.

And we will be following the five-minute rule for questions roughly. I am not going to be exact about it, but we are going to try to keep things moving, make sure everybody gets the opportunity to ask questions.

I will recognize Members in order of seniority based on who is present at the beginning of the hearing and as Members come in, folks who come in a little bit later will go after those who came earlier.

And I know that as Mr. Fattah said, we will work hard together to make sure this is a bill that we, I hope, can all support in the end and will help, as I said earlier, ensure that our taxpayers' hard-earned dollars are well spent which is why I wanted to start with our inspector generals.

We have already got the national debt approaching \$18 trillion and it is a continuing source of concern that with the President's budget request, for example, asking for tremendous increases in spending in every year in government, but he proposes to pay for it with tax increases. And that is certainly not going to happen.

We have a responsibility in the Appropriations Committee to be sure that the precious resources that we allocate are targeted and well spent.

So we really appreciate the work that you all do and we will hear first from Mr. Horowitz who is the inspector general for the Department of Justice and has been since 2012. We will next hear from Todd Zinser, the inspector general for the Department of Commerce where he has served since 2007 and then finally Paul Martin, the inspector general for NASA who has been working in that capacity since 2009.

Of course, we want to hear about your own budget requests, but if I could ask each one of you to zero in on, and we have received your prepared testimony which we will enter into the record without objection, but certainly welcome your summarization of that testimony, but particularly interested in, if you could, have us focus on recommendations to make the agencies more efficient and where we can achieve savings.

So deeply appreciate you being here, your service to the country, and, Mr. Horowitz, you are recognized. Oh, excuse me. Yeah. I apologize.

Chaka, if I could, I want to recognize you, sir, for any opening statement you would like to make.

Mr. FATTAH. No. I think you covered it and I think we will proceed with the hearing.

Mr. CULBERSON. Very good.

Mr. FATTAH. For each of us to say the same thing because I agree with what you said. All right?

Mr. CULBERSON. Thank you very much. I appreciate it. We are ready to roll.

Mr. Horowitz, thank you very much for being here today, sir, and we look forward to your testimony.

Mr. HOROWITZ. Thank you, Mr. Chairman.

Thank you, Congressman Fattah and Members of the subcommittee, and thank you for inviting me to testify today and thank you for your strong bipartisan support for my office.

In these tight budget times, making sure that department programs are operating effectively and efficiently is critical and I am proud of the outstanding value that the OIG at the Justice Department continues to deliver to the taxpayers.

In fiscal year 2014, the OIG identified over \$23 million in questioned costs and nearly \$1.3 million in taxpayer funds that could be put to better use by the department.

And our criminal, civil, and administrative investigations resulted in the imposition or identification of almost \$7 million in fines, restitutions, recoveries, and other monetary results.

These savings, however, do not take into account some of the most significant reviews that we have done which cannot be translated into quantifiable dollar figures but which address fundamental issues that the Justice Department touches involving national security, civil liberties, safety and security of federal prisons, effectiveness of department programs, and the conduct of department employees.

Our ongoing work includes reviews of the department's asset seizure activities, ATF's oversight of its storefront operations, the FBI's use of bulk telephony metadata obtained under Section 215 of the Patriot Act, the department's use of drones, the impact of the BOP's aging prison population, the department's use of pretrial diversion programs, and the BOP's management of its private contract facilities.

Our fiscal year 2016 budget seeks funding at a level of \$93.7 million which includes a requested increase of \$2.9 million to expand our oversight of contracting by the department.

Contract spending at the department has grown substantially over the years and is now approximately \$7 billion, about 25 percent of the department's budget. The requested program increase will allow our office to support an additional ten FTEs in our audit division and five FTEs in our investigations division, thereby enhancing our ability to audit more complex and higher risk contracts.

In the past, much of the OIG's external audit work has focused on grants which at the time far exceeded contract spending. While grant spending remains substantial, about \$2.3 billion last year, the amount spent on contracts, as I mentioned, is now far greater.

Given these figures, it is critical for our office to develop the same kind of deep expertise and experience in contract management that we have in the grant fraud area.

Over the past five fiscal years, we have issued over 200 grant-related audit reports containing over 1,000 recommendations and over \$100 million in dollar-related findings.

In addition over the last five years, we have opened over a hundred grant-related investigations resulting in 19 convictions and over \$5.8 million in fines, restitutions, and recoveries.

While I could change the focus of these auditors and agents from grant work to contract work, given the continuing grant management risks we are finding, our commitment to grant oversight needs to remain at its current level.

This is the first program enhancement request that I have made since becoming inspector general and as someone whose primary responsibility is to be a strong steward of the public's money, I recognize the significance of the request and make it only after undertaking careful planning and evaluation of our needs.

I do so because adding these positions in our field offices around the country would allow us to address potential procurement waste, fraud, and abuse, and I am confident it will produce stronger returns for the taxpayers.

Let me mention the top challenges that we have identified recently as we are required to do each year at the Department of Justice for the coming fiscal year.

We have identified seven major challenges in our recent report. First the department needs to address the persistent crisis in the federal prison system; second, safeguarding national security consistent with civil rights and civil liberties; third, enhancing cyber security in an era of ever-increasing threats; four, effectively implementing performance-based management; five, upholding the highest standards of integrity and public service; six, ensuring effective and efficient oversight of law enforcement programs; and, seven, protecting taxpayer funds from mismanagement and misuse.

I have outlined those in greater details in my testimony and I look forward to speaking about them today at the hearing.

Let me conclude by briefly addressing the continuing challenges we face in getting access to information in the department's possession. Unfortunately, I sound like a broken record on this issue, but it is a matter that is not resolved yet and it is an issue of utmost importance to us.

And the IG Act Congress passed could not be clearer. Inspectors general are entitled to complete, timely, and unfiltered access to all documents and records within an agency's possession. Delaying access imperils an IG's independence, impairs our ability to provide effective and independent oversight that saves taxpayers money and improves the government's operation and erodes the morale of the dedicated professionals that make up our staff.

My office knows these problems all too well. In particular, the FBI continues to take the position it first raised in 2010 that the IG Act does not entitle the OIG to certain records in its possession.

In May 2014, the department's leadership asked the Office of Legal Counsel to issue an opinion to try and resolve the objections



raised by the FBI. Nine months later, we are still waiting for that opinion.

I cannot emphasize enough how important it is that the OLC issue its opinion promptly because the existing procedures at the department assume the correctness of the FBI's legal position which thereby undermines our independence and impairs the timeliness of our reviews. The status quo simply cannot continue indefinitely.

We appreciate the strong bipartisan support from the subcommittee and the Congress, in particular the inclusion by the subcommittee of Section 218 in last year's Appropriations Act to try and resolve these issues.

While the law only recently went into effect, it has had a positive effect with several department components. However, the FBI is repeatedly failing to comply with Section 218 because it continues to maintain that the IG Act does not authorize OIG access to certain records in the FBI's possession.

As a result, the FBI is continuing its costly, wasteful, and time-consuming process of reviewing documents that are responsive to our requests in order to determine whether they need to withhold them from us only to then go to the attorney general or the deputy attorney general for permission to give them to us.

On February 3rd, February 19, and again this morning, we have reported to Congress as provided in Section 218 about failures by the FBI to provide us with documents in a timely fashion with regard to several ongoing reviews.

As I said, it is time to resolve the legal dispute. The FBI's failure to comply with a bipartisan appropriations law coupled with the department's seeming lack of urgency in issuing an OLC opinion that would resolve this dispute is seriously impacting our ability to conduct oversight. Every day this continues, taxpayer funds are being needlessly wasted. I looked forward to continuing to work with the subcommittee to try and resolve this matter promptly.

Thank you again for your critical support for our work which has enabled us to conduct the kind of aggressive and thorough oversight that is expected of us and to root out waste, fraud, abuse, and mismanagement. I look forward to answering your questions today.

Mr. CULBERSON. Mr. Horowitz, thank you.

And I wanted to first start with the FBI's refusal to provide you information. It applies to all the inspector generals. And for each one of us on Appropriations on the other subcommittees, this is highly relevant because it is not just the FBI. It is an ongoing problem with the inspector general across the spectrum of the Federal Government.

And every inspector general is essentially a—you have the ability to do criminal investigations as well.

Mr. HOROWITZ. Correct.

Mr. CULBERSON. So you are used to handling sensitive information—

Mr. HOROWITZ. We have the most—

Mr. CULBERSON [continuing]. In your jurisdiction.

Mr. HOROWITZ. And with overseeing the FBI, we have done Patriot Act reviews, FISA reviews. We have Post 9/11. We have the Hanssen matter, the spy matter. We have got some of the most

sensitive material available and we have been given that prior to 2010 with no issues.

Mr. CULBERSON. You are essentially like a U.S. attorney's office in that you have got obviously top-secret clearance. You are used to handling sensitive information and——

Mr. HOROWITZ. Right.

Mr. CULBERSON [continuing]. Protecting it from being disclosed.

Mr. HOROWITZ. Correct.

Mr. CULBERSON. When Judge Carter served as a district court judge, you reviewed, Judge, all the time, complicated material.

So the FBI's objection here is that the information cannot be released to you because they believe they have an obligation to withhold it—they are citing a number of different rules.

For example, the rule of civil procedure regarding grand jury materials, that is something you saw, Judge, I would imagine, as a part of your function.

There was not any problem with either Judge Carter releasing that or with you or any of the other inspector generals. That is standard operating procedure; is it not?

Mr. HOROWITZ. And it is standard operating procedure. We have raised the question and said if you have any concerns with how we have handled it, tell us. That is not the issue. We have never been——

Mr. CULBERSON. Never had any issue?

Mr. HOROWITZ. Never had a breach.

Mr. CULBERSON. Never had a breach?

Mr. HOROWITZ. Yeah.

Mr. CULBERSON. The Wire Tap Act, again, standard operating procedure, no big deal. The Bank Secrecy Act, the FBI says we cannot give you the information because of the Bank Secrecy Act and the Fair Credit Reporting Act.

Mr. HOROWITZ. Right.

Mr. CULBERSON. Statutes that have been in the book for a while.

Mr. HOROWITZ. Right.

Mr. CULBERSON. And the inspector general statutes were probably enacted after these were enacted by Congress.

Mr. HOROWITZ. Yeah. It is interesting. So my issue, the statutes that they are citing were enacted before the IG Act. So the IG Act came and said you get everything. That came afterwards. The Peace Corps IG is having the same problem. Their general counsel is claiming a law passed by Congress two years ago did not override the IG Act. So we are getting on statutes that happened before the IG Act.

Mr. CULBERSON. Yeah.

Mr. HOROWITZ. She is getting it on issues that happened after the IG Act was passed.

Mr. CULBERSON. I do not mean to keep picking on Judge Carter, my good friend from Texas, but I believe, Judge, the standard rule of statutory interpretation is that the later enacted law supersedes the earlier one.

Mr. CARTER. That is right.

Mr. CULBERSON. That is just, again, standard operating procedure. We will certainly help you with this. And I hope each Member of the subcommittee will take this to heart in all our work on

our other subcommittees, Mr. Fattah, because this is an ongoing problem across——

Mr. FATTAH. I think compliance with 218 is important and I would be glad to join in with the chairman in however you would like to communicate.

Mr. CULBERSON. Right.

Mr. FATTAH. Through either the Office of Legal Counsel, their opinion, if they would like to see it move forward or——

Mr. HOROWITZ. Exactly.

Mr. FATTAH. However we can move to a resolution.

Mr. CULBERSON. Thank you very much. We will certainly do that.

Mr. HOROWITZ. And I have made clear at this point, I will take any opinion from the Office of Legal Counsel because, frankly, even if a bad opinion, I am confident Congress will quickly fix the statute.

But what we are all operating under right now is a belief in the IG community and from every Member of Congress I have spoken to and testified before that the IG Act should apply. So we need that decision to fix the statute if that is what the department thinks. And obviously a good decision that applies to the law as we think it is would resolve it as well.

Mr. CULBERSON. And, Mr. Horowitz, if you could, to the extent you can do so in this setting, describe to us the type of information that the FBI is refusing to provide to you.

Mr. HOROWITZ. It is precisely what you indicated, Mr. Chairman. We have got grand jury information prior to 2010, we were given similar information.

In fact, there are two federal district court opinions from two judges in the western district of Oklahoma from 1998 and 1999 on the Justice Department's motion that found we were entitled to access grand jury information.

So I am, frankly, not sure why anyone at OLC would overrule two Article 3 federal judges who have decided that issue already.

Fair Credit Reporting Act, we are looking at the national security letter reviews by the FBI. At the start of our review before 2010, we got the information. After 2010, all of a sudden, we could not get the information.

Mr. FATTAH. Mr. Chairman, I just want to make sure we can clarify the record. I thought what I heard you say was that what we were experiencing was that there was a refusal to provide and then a kind of a filtering process and then the AG or the deputy would then have to go through these documents and then provide them and that the issue for you was that at the end of the day, they are getting the documents and it has just created a process that has wasted money.

Mr. CULBERSON. And time.

Mr. FATTAH. And time.

Mr. HOROWITZ. Right.

Mr. FATTAH. In getting the documents. And I just want to be clear that that is what you said.

Mr. HOROWITZ. That is exactly right. It is a clear waste of money to have to review these documents, ultimately go to the AG or deputy to give them to us. I will add, though, it does, and the AG has

been supportive, the DAG has been supportive, but it then relies on us to get their approval. And clearly that is inconsistent with the—no matter how good their intentions are, it is inconsistent with the IG Act.

Mr. FATTAH. Right. It threatens your independence, right.

Mr. HOROWITZ. Correct.

Mr. CULBERSON. So what is amazing about 2010?

Mr. HOROWITZ. It is the question everybody asks. And there is nothing that happens from a legal standpoint, policy standpoint, handling of documents standpoint.

Frankly, the only thing that has happened is we issued a number of very hard-hitting reports in the mid 2005s about how folks were handling national security-related issues. And there is nothing else that happens in 2010.

And, frankly, at the Peace Corps, I think the inspector general there who I have testified with several times on these issues, she would tell you the same thing. There is nothing magical about it. It is pretty clear that these are decisions that just from our standpoint I will say do not have a basis.

Mr. CULBERSON. I will come back with some other follow-up. I want to make sure the other Members get a chance to ask some questions. So I will recognize my good friend, Mr. Fattah, at this point.

Mr. FATTAH. Thank you.

First of all, I want to congratulate you in becoming chair of the Inspector General's Council. And, you know, as a freshman Member of Congress, I think working with former Congressman Chris Shays, I was one of the sponsors of the Inspector Generals Act. I think that it has worked well.

I have told you this in private. I will tell you again that I think it has worked well and it is important that we focus on the major issues and the major spending in these departments versus kind of cherry picking, you know, at minor issues around coffee and doughnuts at conferences, I mean, so we kind of focus on the big ticket items.

But I want to thank you for the cooperation in resolving some of the issues related to the national youth mentoring grant. There was, you know, some bureaucratic back and forth that caused some very significant hardships for some of our premier youth servicing entities in the country.

And through your good work, you know, I think we kind of moved the ball down the field. So I want to thank you for that. And I do not know why you want to do this job, but I am glad you are doing it and good to see you.

Mr. HOROWITZ. I have my doubts sometimes.

Mr. FATTAH. Thank you very much, Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Fattah.

Judge Carter.

Mr. CARTER. Thank you, Mr. Chairman.

First I will comment on what you were talking about there. You know, first off, I can tell you at least in state court, the district attorney does not have grand jury testimony available to the defense. They ask for it every time. They do not get it very often. So that

is kind of a sacred cow for them. I think it probably is a sacred cow for the FBI, too.

That is part of it. I know that is. And some of these other things that concern evidence that they might be using at trial is a very sacred cow, too. This is an adversarial position that these folks are in. I am not defending them, but I think there has got to be something to that effect on some of this.

Back to my question because this is the world I live in right now. Last year, DOJ asked for 24 additional immigration judge teams. This year, they've asked for 55 immigration judge teams.

Has there been any progress in identifying how effective these immigration judge teams are? With the continuing request for additional immigration judge teams, has there been a corresponding increase in removal letters considering that 42 percent of all defendants sentenced in federal courts are non-U.S. nationals?

I am concerned about the continual release of non-U.S. nationals throughout the country by immigration judge teams and the subsequent crimes they commit. Do you track any of that data and are you looking into it?

Mr. HOROWITZ. Those are all very significant questions, Judge. We did a review two years ago, shortly after I arrived, on the Executive Office of Immigration Review and their data and their success rates in complying with their own time lines and found serious issues with how they were counting cases, how they were measuring success and had several recommendations on how to improve that.

And let me go back and look at where we currently stand two years later on that data and report back to you because it was a significant concern to us. A critical question is, are the performance metrics there that warrant additional positions like that. And that is something we have been focusing more and more on.

With regard to tracking data and getting data, that has, frankly, been one of our biggest challenges as we look at our prison-related work which is the lack of data available at the department. We have essentially started doing that ourselves as we undertake our reviews because there is not those measurements there.

So, for example, when we looked at the compassionate release programs, we did a sampling to try and figure out what recidivism rates were. When we are doing some of our current work on re-entry and other programs, we are essentially doing our own work on those studies because that data is not there.

So let me follow-up and see if there is such tracking data, but my guess is the answer is probably unlikely given what we are seeing in some other areas. But I will get back to you on that.

Mr. CARTER. Well, it goes to another question I have on recidivism rates.

Mr. HOROWITZ. Right.

Mr. CARTER. The prison people tell us they are not doing any studies on recidivism rates. Recidivism is part of why we have—

Mr. HOROWITZ. Right.

Mr. CARTER [continuing]. Prisons and why we have punishment systems and why we have alternatives to it, incarceration and all the other things we come up with.

How effective is it in preventing crime and preventing the individual from coming back——

Mr. HOROWITZ. Right.

Mr. CARTER [continuing]. Into the system?

Mr. HOROWITZ. Right.

Mr. CARTER. If we are not confident in that data, maybe the Congress needs to act to have somebody collect it.

Mr. HOROWITZ. Yeah. Yeah. It is a significant issue for us as we do this. We do not have enough people to constantly do large-scale studies. So what we are doing is taking selected samples to try and at least get some measurement.

But as far as we are aware, the last study done at a federal level was a 1994 study. And obviously a lot has happened since then.

Mr. CARTER. Yeah.

Mr. HOROWITZ. And we are trying to look at, for example, halfway houses, reentry programs, work-related programs in prisons all in the hope of trying to decide and evaluate, and contract prisons as well, who has got the best programs in place, what are the best practices out there, where can we make recommendations.

If you have got, and the Bureau of Prisons does, three different companies providing contract prison facilities, who has got the best programs, which are showing up as the best handling of inmates, who has the best healthcare?

We have seen the riots recently this past week in one of the prisons in Texas. Two other prisons had issues. Who is doing the best with managing the population, education programs. You can go on and on, and it seems to us which wardens are managing their facilities in the best ways. There are various metrics that we are trying to get and look at that, frankly, do not exist as we are doing some of these reviews in the prison area to try and figure out where spending can be reduced, where efficiencies can be found, and who is managing in the most effective way possible.

Mr. CARTER. And this really concerns me because, you know, even at our attorney general level in a little old, small county relative to the big Federal Government, we have those kind of studies in our——

Mr. HOROWITZ. Right.

Mr. CARTER [continuing]. Probation departments recidivism studies to look at special alternatives to incarceration programs and halfway houses can be a headache that you cannot believe them because just two or three really bad events come out of a halfway house situation where somebody gets killed—I tried a capital murder case where two guys from a halfway house murdered a UT student. And let me tell you the community rises up in arms at that point in time. So it is important to get this data.

Mr. HOROWITZ. Yeah.

Mr. CARTER. Thank you, John. I went over my time.

Mr. CULBERSON. Thank you, Judge.

Mr. Kilmer.

Mr. KILMER. Thank you, Mr. Chair.

And thanks for being here.

I wanted to dive into the Government Performance and Results Act and the requirements that it has established for agencies. I am

a firm believer that we should be focused on outcomes rather than just inputs.

And I started looking through the priority goals and performance information for fiscal year 2014 and 2015 that accompanied the department's budget request. And it seemed to me a lot of the goals were, particularly those associated with violent crime, financial and healthcare fraud, and vulnerable people concentrate a lot more on actions rather than on outcomes and on results.

So just as an example, on the vulnerable people section, the department said that it was going to, and I'm quoting, "open investigations concerning noncompliant ex-offenders at four percent over average in fiscal years 2012 and 2013, sexual exploitation of children, three percent over average for fiscal years 2011, 2012, and 2013," and so on.

So I want to get a better understanding. How does opening investigations represent results-oriented management? And, you know, so what do the folks we represent get out of opening more cases and should the focus not be on outcomes of those cases? And if that is the goal, what ought we do?

Mr. HOROWITZ. Right. I could not agree with you more, Congressman. And that is why this year for the first time we have as one of our top management challenges the performance-based reporting by the department. This is an issue, frankly. I said I was a federal prosecutor in New York for seven and a half years. You got a pat on the back for the number of cases you did and what jail sentence people got and how many for the agents. It was how many people were arrested.

But there were no measurements on have you reduced crime in the community, have you addressed the gang problem, have you focused on the corruption issues, whatever they were. And that is what led us to look at this year as one of the top challenges because when a police chief goes before the microphone and talks about crime, they talk about how they have reduced it, not how many people they have arrested.

Mr. KILMER. Yeah.

Mr. HOROWITZ. And that is the same in program after program. And I think the department has to focus more in a lot of different areas on outcomes rather than just on actions. The prison area is one of them.

And what we are trying to do as we look at these issues, and obviously with 170 or so auditors in a 100,000 person department, there is only so many reviews and audits we can do at a time, but what we are trying to do is make sure that our auditors are focused on precisely those questions so that when we are issuing reports, we are highlighting and making recommendations about the performance-based measures that need to be thought of.

We are doing that. I have talked about that on the grant side. We saw that as an example. We did a report a year or two ago on grants issued to two local police departments. It turned out that, in fact, the departments had used the grant money as required under the grant. They bought the drones. It turned out they had just never gotten the FAA approval and they were sitting in a warehouse.

So the check the box approach was “gave you grant money, did you buy a drone? Yes, we bought a drone.” But the next question was not did they use it, did it work, does it inform our judgment on future grants.

Mr. KILMER. Uh-huh.

Mr. HOROWITZ. None of those. So those are the kinds of questions our folks are now thinking about and focused on. And I think, frankly, as you are looking at programs, I think these are the kinds of questions that need to be asked because it will reinforce and certainly support the kind of questions we are asking as well.

Mr. KILMER. Thank you.

I think that is valuable feedback and I think we would have a strong appetite for working with you to drive that.

Let me ask one other thing if time permits. So in 2013, the Congress reauthorized the Violence Against Women Act. And one of the key provisions of that was giving tribes the authority to exercise jurisdiction over domestic violence criminals regardless of their Indian and un-Indian status. And that provision goes into effect on March the 7th.

Has your office looked into how the department has worked with tribal authorities to prepare for that, for implementing that new authority, and is funding needed or anything else needed to see that move?

Mr. HOROWITZ. We actually have not. I am certainly happy to follow-up and see what we can learn about it. It is a very important issue. The Indian country issues, grant-related issues with Indian country are very significant.

It is something that as the new chair of the Council of IGs, I am actually working with several other IGs to try and think about a cross-cutting initiative on Indian country issues.

We have at the Department of Justice money that goes to Indian country. Interior, Education, HHS, Education, HUD, I can go on and on, Labor, and we have all come together and to meet to try and talk about how we can advance some of these issues. And I will follow-up on this one as well.

Mr. KILMER. Great. Thank you.

Thank you, Mr. Chair.

Mr. CULBERSON. Thank you.

Also, Mr. Horowitz, I have a keen interest in Judge Carter’s question, so please copy me on that, would you?

Mr. HOROWITZ. Yes. Absolutely.

Mr. CULBERSON. And find out about the number of removals the judges are actually ordering. Are they following the law? Are they doing their job? And then also, the recidivism is an incredibly important point.

And I think, Judge, I heard you say you discovered 42 percent of all defendants sentenced since——

Mr. CARTER. It is in his testimony.

Mr. CULBERSON. Forty-two percent sentenced in federal court are non-U.S. citizens, an incredible number.

Mr. HOROWITZ. Yeah.

Mr. CULBERSON. An incredible number.

Mr. FATTAH. And it has grown.

Mr. HOROWITZ. It’s growing.



Mr. FATTAH. Significantly from where it was two years ago. If I could, Mr. Chairman, very quickly I want to compliment Judge Carter and his great work that he did on the Fort Hood banner and made some progress there and the Purple Heart.

Mr. CARTER. Thank you.

Mr. FATTAH. And the amendment to the national authorization. And along this general point that the judge is making, the committee has done some work here on Justice Reinvestment. I am not dealing with the immigration side of this, but the broad issue of Justice Reinvestment.

And now we have two former members leading a task force, Congressman Watts and Congressman Mollohan——

Mr. HOROWITZ. Uh-huh.

Mr. FATTAH. With a group of nationally recognized experts looking at this question of, you know, how we could deal with what you say is the number one, number one of the seven issues is our prison population at the federal level. And it is a problem in our states, too. So, you know, we are very interested.

And, two, do your offices have information that is helpful to use, data that is helpful, you know, as we go forward? I am looking at Rand Paul on a major piece of legislation, the REDEEM Act, in this regard.

So there is some broad consensus between Republicans and Democrats that we need to do something different than what we are doing because we presently incarcerate more people than any other country in the world on a per capita basis.

And the federal budget went from \$1 billion now to what, \$7 billion on the federal prison population. You know, it is taking up a bigger and bigger slice of the DOJ budget.

So thank you, Mr. Chairman.

Mr. HOROWITZ. And be happy to work with the group on those issues because it is a staggering dollar figure for the department. A quarter of the department's budget goes to prisons, \$1.1 billion to healthcare on inmates. Three to four percent of the department's budget goes to support inmate healthcare.

Mr. CULBERSON. And which I see from your testimony——

Mr. HOROWITZ. Yeah.

Mr. CULBERSON [continuing]. Is getting only more expensive as the population ages in the prisons.

Mr. HOROWITZ. Yeah.

Mr. CULBERSON. Thank you. Thank you very much.

Let me recognize Mrs. Roby. Oh, excuse me. Mr. Jenkins. Forgive me.

Mr. JENKINS. Thank you, Mr. Chairman.

Good morning.

Mr. HOROWITZ. Good morning.

Mr. JENKINS. Let's continue down that road of healthcare and the prison overcrowding. Actually, I served on our justice reinvestment effort in the West Virginia legislature and we have made the concept meaning, of course, that you are going to take the savings that you would have spent as you do things to reduce some of the cost, some of the incarceration numbers, and reinvest those so you are not necessarily putting a lot of new dollars, although often-

times it does require a little jumpstart investment on the front end before you see that reduced prison population.

You know, I have read your testimony and I am curious. Again, you have identified a top priority of the concern of the pending crisis, as you label it, and you talk about overcrowding and you although acknowledge that we actually saw a dip in the federal prison population the last fiscal year. And it is expected actually to continue to drop at least for the next few years.

And you point out the issue of despite a reduced prison population, costs continue. And you identify, as you just have, healthcare as being one of the drivers of that.

Let's talk about why healthcare. And the only thing I saw from your testimony here that you mention is an aging prison population, older people, higher healthcare costs, but dig in a little bit more for me other than just saying, well, we have got an older population.

I understand. I have a healthcare background, but what are the factors driving the healthcare delivery system in our prison system? The healthcare benefits and services that our prison population are entitled to, are these being delivered in the most efficient way?

And I shudder to think that our prison population is getting equivalent to a gold or a bronze or a high-level plan that a normal non-incarcerated citizen might not have access to.

What have you all done looking into the healthcare delivery system and what the cost drivers are other than just we have got an older population?

Mr. HOROWITZ. We have done some research on the drug side and the increasing cost, for example, the hepatitis issues and how the costs have increased for those kinds of medications, but we are actually right now in the middle of looking at some of these issues both in the contract prison area and in the BOP space on, and working actually with HHS OIG—

Mr. JENKINS. Is there a robust effort to look at the contract services and the healthcare? I assume this is almost like a bundled payment structure versus the non-contract provider of prison services and look at who is getting the appropriate outcomes, but who is also providing the services in a cost-effective manner.

Mr. HOROWITZ. Yes. And that is what we are trying to do in looking at these issues. In some respects, the delivery of healthcare in the BOP is very decentralized. In other places like at Butner and Springfield, which are medical facilities, it is much more centralized within the prisons.

I think from our standpoint, one of the things we are trying to look at is the issues of the management on a broader level is more centralized versus the decentralized. There are arguments obviously each way depending upon the locale, some prisons in very remote locations.

But there are some very fundamental questions. For example, the contract prisons, the companies that run the contract prisons often have their own healthcare companies that are providing that service. And we are trying to get behind that.

And, frankly, that is one of the reasons for the request on the auditors that I made is those are very complex arrangements that we are trying to get in the middle of.

Mr. JENKINS. Is there a clear description of the types of services that a federal inmate must be provided? What I have heard you just describe is the complexities of the decentralization and the multifaceted approach to all these, but is there really a core set of what services or are we wrestling even with what a federal prison inmate in West Virginia is entitled to compared to in another facility?

Mr. HOROWITZ. I think there are those issues.

Mr. JENKINS. That is my sense.

Mr. HOROWITZ. And then you have the overlay with the contract prisons and how those are being managed. That has been reported as the reason for some of the riots at some of the private contract prisons is healthcare delivery or the lack thereof.

So we are trying to get in the middle of that and understand it better. And that is where I will put a plug in for HHS OIG which has been very helpful to us in understanding how they are looking at the Medicare, Medicaid systems and how do those compare and what prices are being paid through Medicare, Medicaid versus what prices are being paid in the prisons.

Mr. JENKINS. Let me have one additional question, Mr. Chairman, time permitted.

The other is, you know, again, having been through Justice Reinvestment, a Reverend Watts in Charleston, West Virginia once said, you know, we need to start focusing on people we are really scared of, not people we are just really mad at. That was a pretty profound statement with regard to our prison population challenges.

But the President has in his base budget proposed a cut to drug courts, cutting federal funding to drug courts. I know in our state, drug courts have proven very effective. And there is an initiative under the DOJ relating to the smart crime initiative.

Have you done an audit of or have any involvement in this research of the smart crime initiative, which I understand is ongoing, which is supposed to identify whether or not some of these initiatives are working, and I understand you do not have the results yet, but we are still seeing a President's budget that says we think drug courts apparently are not effective and we are going to cut their funding?

Mr. HOROWITZ. We have not yet initiated on the smart on crime initiative. Our plan was to do that later this year. It will be about two years that it will have been implemented so that we get some solid data actually analyzed. So we have not yet initiated it. I can get back to you, though, on what we do have on drug courts because I could not agree with you more.

One of the things we are trying to do actually is look at what the states have done because, frankly, in the prison reform area, the states are way ahead of the federal government. We have looked at the largest states, Texas, Florida, California, Georgia, and New York, the fifth state, and see what they have done. And be happy to talk with you and your staff about what the West Virginia model was.

But we are trying to take a look at that and see what learning we can get at the state level, but also as we look at reentry, pre-trial diversion, drug courts, all of these alternatives to incarceration.

And on the Sentencing Commission when I was there back in 2003 to 2009 period, we did a hearing and a review on alternatives to incarceration and drug courts seemed to be working very well.

Mr. JENKINS. Uh-huh.

Mr. HOROWITZ. So I am quite familiar with it and that is why I want to look at some of these models.

Mr. JENKINS. Do you think we should be cutting back on drug courts?

Mr. HOROWITZ. It surprises me that we would try and do that as we look at all of these alternatives to incarceration.

Mr. JENKINS. Thank you.

Thank you, Mr. Chairman.

Mr. CULBERSON. The President's budget is, of course, just a recommendation.

Mr. HOROWITZ. Yes.

Mr. CULBERSON. Great questions.

I recognize Mrs. Roby.

Mrs. ROBY. Good morning.

Mr. HOROWITZ. Good morning.

Mrs. ROBY. Thank you, Mr. Chairman.

Some of us just left a look on VA hearing about—you know, regarding military families, and as I heard through their testimony and see this amount of wasteful spending, \$23 million does not fix our problems, but I think it is flat-out wrong that we are trying to use our military as a means to an end and we have all those budgetary issues.

But when I look at this and I see the amount of wasteful spending that you have identified, those dollars add up and they add up throughout our federal government.

Mr. CULBERSON. And that is just what they are auditing.

Mrs. ROBY. Right.

Mr. HOROWITZ. Right.

Mrs. ROBY. So is the American people and our military families, when we just left this hearing, you know, they are looking at us saying, you know, you are trying to figure things out on our backs, all the while compromising letting this. And this is the kind of stuff that is in the budget that we are finding. But we need to deal with this, and so I fully appreciate—but I want to find out more about that \$23 million—as I look through your testimony—the questioned cost. If you could do into a little bit more detail about where those dollars are formed and what do you anticipate to find throughout the rest of this fiscal year?

Mr. HOROWITZ. Well, a fair amount of those findings come in grant areas where the oversight has been lax or not sufficiently rigorous to make sure that funds were not commingled. Asset forfeiture issues that have arisen, we have looked pretty aggressively at asset forfeiture questions, and whether the monies were being used properly and appropriately. We have looked at various Department programs. We did a review of the ATF's use of its undercover training funds, for example, on the law enforcement side and

found how those monies were being commingled and used in a way that was not consistent with the intent of the program or at least being able to account for it in a way that was consistent with the intent of the program.

And we are moving forward progressively this year in our review of grants. We are also doing, and have initiated several contract-related audits. One of the contract-related audits that we are close to releasing and issuing which involves the second-largest contract at the Justice Department is the Reeves County correctional facility that is managed by a private company in Texas—it is a \$500 million-plus contract—and we are going to be issuing a report in the next couple of weeks on what our contract auditors have found in that regard, and we have others that we are undertaking as well.

So we are trying to cover where the risk—where the greatest risks are which tend to be in the grant area and, frankly, the contract area.

Mrs. ROBY. That was going to be my follow-up question with you. If you could recommend to this committee where you think the greatest scrutiny needs to take place, and then following up with your previous answer as well, you know, if we could have a more detailed list of where you intend to—or where you found that \$23 million and then where you are looking.

Mr. HOROWITZ. Absolutely.

Mrs. ROBY. But could you tell us where you think the most scrutiny should be applied?

Mr. HOROWITZ. We have found over the years when the grant numbers were as high as they were, that those were where the greatest risks were, the highest risks were in terms of dollars. We, obviously, have a number of significant risks in areas we have done in non-monetary reviews, but focusing just on the dollar-related issues, and we think there are significant issues, as contracts are now a quarter of the Department's budgets, with those contracts and putting aggressive scrutiny on them to make sure that they are performing as required under the contract, as required by the federal acquisition rules, and a number of those contracts were in the prison area; therefore, by the contract prisons, they are for health care and that is what we are trying to do more work on and that is why we have asked for the enhancement.

But we have also tried to partner with HHS OIG to make sure that we are able to do that kind of work.

Mrs. ROBY. Okay. Thank you.

Mr. Chairman, I yield back.

Mr. CULBERSON. As in each of your testimonies, I would be interested in what have you identified as best practices. This is just systemic. It just seems like in every federal agency—I got here in 2001. I came out of the state legislature in Texas. It is not as bad in state government, but it certainly seems to be just throughout the federal government, as Mrs. Roby was just saying that the waste and the fraud and the abuse is just maddening.

And if you could, as part of your testimony, for NASA, the Department of Commerce, and for DOJ, if you have found examples of programs that, on an ongoing basis, have done a good job of flushing out fraud, waste, and abuse, please let us know. I think

about, Medicaid, if you identify Medicaid fraud and are able to bring it to the attention of the government, you can actually institute a qui tam lawsuit, I think it is called——

Mr. HOROWITZ. Right.

Mr. CULBERSON. [continuing]. And recover five to ten percent of any fraud that you undercover.

Mr. HOROWITZ. Right.

Mr. CULBERSON. I think that would be great motivation for federal employees. Why not give them five percent of anything they can find. Is there anything like that in existing law that they can flush out and save the taxpayers a hundred million dollars. It would not be a bad thing to take home a \$5 million payday. I think that would root out a lot of waste.

Mr. HOROWITZ. Mr. Chair, I agree. [Laughter]

Mr. CULBERSON. It probably would not apply to congressmen—it would not apply to us, but federal employees.

Yes?

Mr. FATTAH. In your new role as chair of the IG counsel, one of the big agencies that have all been challenged is the Department of Defense; they have never even been able to comply, even audited, so, you know, I mean at all.

Mr. HOROWITZ. Yeah.

Mr. FATTAH. And I think the new goal is to be audit-ready by the time we get to 2025.

Mr. HOROWITZ. Right.

Mr. FATTAH. Which to have an agency that cannot be audited is a concern. I know the IG counsel in the past had made very strong statements about that, but since it takes up such a large amount of the budget and it is so important to our national defense, it would seem to me that those of us who are interested in efficiency and effectiveness would be as focused on that in terms of pushing for the help now.

Mr. HOROWITZ. Absolutely. Yeah.

Mr. CULBERSON. I do want to point out that if there is any Marine Corps or Navy veterans in the room, that the—I understand that the Marine Corps, and now the Navy, are the first branches of the military to adopt generally accepted accounting procedures. So the Marine Corps and Navy can now be audited by an outside private accounting firm; is that your understanding as well?

Mr. HOROWITZ. Right. That is my understanding.

Mr. CULBERSON. Yeah, it is a good thing.

Mr. Jolly.

Mr. JOLLY. Thank you, Mr. Chairman. I apologize for being late; I was with Mrs. Roby at the MilCon hearing as well. I apologize.

And so if the question has already been covered feel free to share with me, but I was hoping, you know, the foundation of any IG is the independence of your office. And I followed the issue with the IG Act and the FBI's interpretation of 6(a) and how that has developed over the past year or two.

Can you talk about kind of where things currently stand, and I guess the concern—and I think you raise it in your testimony, rightfully so—that finally the process now instituted by the Department requires the Department's approval for your request or admonition of your request to the FBI to actually achieve it, which un-

dermines, then, the independence of an authority of your office. Can you talk about where that is right now, some of your specific concerns and remedies that would actually really effectuate, you know, the change you need or just enforcement of the current law.

Mr. HOROWITZ. Yeah, absolutely.

So where things currently stand is the FBI continues to maintain. It does not believe we have the right to access our own documents in its possession, citing several categories in particular, as a legal reason. The AG and the Deputy AG have put in place a process where the FBI reviews the documents that we have asked for, does not produce them all right to us—they have to go through and review. That delays and wastes money. I mean there are costs associated with that.

Mr. JOLLY. Reviewing it on what standard? I mean, what—

Mr. HOROWITZ. Whether there is any grand jury, wiretap, Fair Credit Reporting Act information, Bank Secrecy Act, and several other categories.

Mr. JOLLY. Are they adopting the FBI's position, essentially, when they are reviewing that?

Mr. HOROWITZ. That is essentially what is going on.

Mr. JOLLY. And the Department that you are in charge of serving as the IG for is actually taking the FBI—clearly, I mean, taking the FBI's interpretation of this, right?

Mr. HOROWITZ. The status quo is the FBI's policy right now.

Mr. JOLLY. Okay.

Mr. HOROWITZ. So not changing anything means we are living under the FBI's legal interpretation, which is, it has to do this review. We are being treated like a civil litigant at some level; it is what they do for their civil discovery.

Mr. JOLLY. Right. Right.

Mr. HOROWITZ. So we are part of the Department, but we are a civil litigant.

Mr. JOLLY. Right.

Mr. HOROWITZ. So they are reviewing the documents to decide what not to give us because of their legal reasons.

Mr. JOLLY. Uh-huh.

Mr. HOROWITZ. They, then, need to share it with the Deputy and the AG, who have committed to giving us everything. So we are spending money to withhold records that the AG said we should get.

Mr. JOLLY. Right. Right.

Mr. HOROWITZ. That is where the process currently stands, and for which we have never mishandled records ever. I am a former prosecutor, I understand the concern about these. We do not generally ask for records in the middle of the criminal cases, so we do not interfere. That has never been the reason they have raised. And the Department's proposed resolution—this is how the Department wanted to proceed, that was we did not object—

Mr. JOLLY. Uh-huh.

Mr. HOROWITZ. [continuing]. Was to send it to the Office of Legal Counsel last May. We were told at one point it would be done by October. I maybe should have asked which October, but we are now in February and this is not that complicated.

Mr. JOLLY. What is the impact of some of your investigations?

Mr. HOROWITZ. I will just give you an example. We had one that took almost a year of delay because of these issues. We have the two whistleblower matters that I reported on that we asked for in September and October. FBI whistleblowers, just to get a sense of it, we have authority over FBI whistleblower retaliation allegations. In my mind—put aside any legal issue—the FBI should not be looking at those records, period; there is a conflict. They should be handing them to us, what we need.

Mr. JOLLY. Uh-huh.

Mr. HOROWITZ. Instead, they are reviewing them to decide what to withhold from us so they can go to the AG and say, “Should we give it to them”?

Mr. JOLLY. Right.

Mr. HOROWITZ. That has gone on for months on a whistleblower retaliation matter.

Mr. JOLLY. The IG Act is clear.

Mr. HOROWITZ. I do not think that you could have made it much clearer.

Mr. JOLLY. So the question, I mean it is a bit intriguing, what is the legislative fix or is there one? Is it just—

Mr. HOROWITZ. I thought Section 218 would work.

Mr. JOLLY. Right.

Mr. HOROWITZ. I thought Section 218 would work.

Mr. JOLLY. Well, I mean it is a real question. Is there anything on the authorizing side in the statute that you would say needs tweaking or is it really just enforcement from the subcommittee?

Mr. HOROWITZ. The problem that we have had on our side, on the IG’s side, and in talking with members, frankly, is we do not know really what needs fixing.

Mr. JOLLY. Right.

Mr. HOROWITZ. Which is where, I had mentioned earlier, any opinion at this point would be good, because then, at least, members of congress have a roadmap. We have a roadmap of how to fix it.

Mr. JOLLY. Right.

Mr. HOROWITZ. We could reinforce—you could take what is in Section 218—

Mr. JOLLY. Right.

Mr. HOROWITZ [continuing]. And make it absolutely clear—

Mr. JOLLY. Sure. Right.

Mr. HOROWITZ [continuing]. In the actual statute, but you would be writing against some unknown legal opinion lurking out there—

Mr. JOLLY. Got it.

Mr. HOROWITZ [continuing]. From the Department.

The easier way to do this—and this would resolve it. I mean we are at a standstill now where the FBI’s process is the process. There is no resolution. I have another potential Section 218 letter to come up, depending on what I learn from the FBI, and these are going to continue because they are not changing their process.

Mr. JOLLY. So the Office of Legal Counsel needs encouragement to issue their opinion—

Mr. HOROWITZ. Right.



Mr. JOLLY [continuing]. And the FBI needs encouragement to actually comply with Section 6(a) of the IGL Act.

Mr. HOROWITZ. Right. And I have talked with Director Comey and what he, I think, would say is, We just need the——

Mr. JOLLY. Yeah.

Mr. HOROWITZ [continuing]. Then to tell us we can do—we can give it to you, because in our view, we do not think we can right now, as the lawyers tell me.

Mr. JOLLY. All right. Thank you. I appreciate it very much.

Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you.

And the Office of Legal Counsel is simply an advisory opinion; that is not binding on anybody?

Mr. HOROWITZ. That is correct. The AG and the Deputy have to decide what—how they want to handle that opinion.

Mr. CARTER. Can I chime in for a second?

Mr. CULBERSON. Yes, please.

Mr. CARTER. There is no resolution designed related to any of this; it is all—I mean you said that you are treated as a civil litigant?

Mr. HOROWITZ. Yes.

Mr. CARTER. But in the dispute of the civil litigant, there is always the judge.

Mr. HOROWITZ. Right. That is right.

And do you know what is interesting?

Mr. CARTER. Yes?

Mr. HOROWITZ. For the GAO, they can go to a judge.

We do not have any such authority.

Mr. CARTER. Well, I mean at some point in time there has got to be a resolution to this thing, and if we need to write a resolution to the law, then we need to write a resolution to the law.

Mr. HOROWITZ. Right.

Mr. CARTER. It is insane that you are supposed to oversee the activities of people—in fact, you are supposed to police them up.

Mr. HOROWITZ. Yes.

Mr. CARTER. And the people you are policing up can say, We are not going to give you the evidence.

Mr. HOROWITZ. Yes.

Mr. CARTER. I am sorry, that flies in the face of felonious.

Mr. HOROWITZ. And I would just add, there is no rationale that I can think of that would explain why Congress created our office in 1988, why it authorized us in 2003, and the Attorney General Ashcroft authorized us a year earlier to oversee the FBI, the DEA and all the law enforcement components at the Justice Department, yet you all thought we should not see the evidence that they gather for the cases you want us to oversee.

Mr. CARTER. Right.

Mr. HOROWITZ. If I cannot look at grand jury information at the FBI, wiretap information, I am not sure why you would want me to look at the FBI, right?

Mr. CARTER. That is a fixable problem, but it needs to be fixed.

Mr. HOROWITZ. Yeah.

Mr. CULBERSON. And, fundamentally, and I have come to view our role as appropriators as, obviously, we have to allocate pre-

cious, hard-earned taxpayer resources, but really to be the enforcers. Fundamentally, we are the enforcers. The law is only as effective as it is enforced, and that is ultimately up to us.

I think you are exactly right, Mr. Jolly, that we will help motivate these folks and to do the right thing and follow the law.

Mr. HOROWITZ. And just to give an example of what—

Mr. CULBERSON. We can only appropriate our hard-earned taxpayers' dollars for lawful purposes, right?

Mr. HOROWITZ. And just to give an example of how it has had a positive effect, we had three open requests with DEA when the law went into effect in mid-December. By New Year's Eve we had all three of those records. So there was notice taken.

Mr. CULBERSON. Yeah. We will be sure to help with that.

And, also, if they are producing documents—if the agency—you identified documents that you needed to pursue your investigation of the whistleblower case, for example, and the agency has the ability to go over those documents, I bet they are pounding on some employees that are identified in there that might be peripherally involved, I suspect, and that is a real problem.

Mr. HOROWITZ. And, frankly, our biggest crisis in IG is we do not know what we do not know. We are sitting here waiting for records, yet they are being reviewed and in whistleblower retaliation cases, there are all sorts of appearance issues, let alone what is actually happening, so—

Mr. CULBERSON. We will be sure to help in any way we can.

I have a number of other questions that I am going to submit for the record because I want to make sure that we are able to hear from the Department of Commerce and NASA. You have so many important responsibilities. I would like to meet with you separately—

Mr. HOROWITZ. Absolutely.

Mr. CULBERSON [continuing]. And certainly welcome any of the members who would want to join me in that, because you have covered a lot of really important topics in your audits, in your reports, and in your testimony today, and we deeply appreciate your service. And we will do everything we can on this subcommittee to help make sure that the law is enforced in a timely and appropriate fashion.

Mr. HOROWITZ. I appreciate that.

Mr. CARTER. Mr. Chairman, if I may?

Mr. CULBERSON. Yes, Mr. Carter.

Mr. CARTER. I would like to suggest that the staff of the subcommittee have a conversation with the judiciary committee on the issues that we have been talking about here, a dispute resolution solution. This is very important.

I tried a—case. I spent almost two weeks resolving, yes, you can have that, and no, you cannot have that. I know that somebody has got to do it.

Mr. CULBERSON. Yeah, you got to—

Mr. CARTER. You cannot just stand up there and look at each other and say, No, yes, you know?

Mr. JOLLY. Well, what scares me right now is that the person who says whether or not you can have it, is actually the office that they are supposed to be—

Mr. CULBERSON. Exactly.

Mr. CARTER. It did not make sense.

Mr. HOROWITZ. Yeah. Yeah.

Mr. CARTER. So I would suggest that we all get at the staff level some good communications going with the judiciary committee.

Mr. CULBERSON. Absolutely. And we will, I assure you that the staff and this subcommittee will all work together to make sure that there is ongoing and aggressive encouragement.

Mr. HOROWITZ. All right. I appreciate it.

And I look forward to meeting with you and the staff going forward on any issues that you think would be helpful with, I look forward to it. I appreciate all of your support.

Mr. CULBERSON. Any other questions?

Thank you very much for your service to the country. I look forward to meeting with you privately and with other members of the committee.

Mr. HOROWITZ. Thank you very much. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you very much, Mr. Horowitz.

At this time we are going to recognize Todd Zinser, inspector general for the Department of Commerce.

And, Mr. Kilmer, I understand you will substituting for Mr. Fattah right out of the gate.

Mr. Zinser, we sincerely appreciate your service to the country. I enjoyed our visit in my office. I am looking forward to doing that with Mr. Martin as well and with Mr. Horowitz.

And I will, of course, enter your statement—your testimony in its entirety into the record, if there is no objection, and, of course, would encourage your summarization of that hitting on the high points. And, again, I did not see it in here, but as I mentioned earlier, I would be very grateful to hear from you and from Mr. Martin if you found some examples of best practices. Are there existing, either programs or policies, in the Department of Commerce, for example, that have demonstrated a pretty good ability on an ongoing basis to undercover fraud, waste, abuse, duplication, that sort of thing. I would be interested in that. But we welcome your testimony, and thank you for your service to the country.



WEDNESDAY, FEBRUARY 25, 2015.

**UNITED STATES DEPARTMENT OF COMMERCE**

**WITNESS**

**TODD J. ZINSER, INSPECTOR GENERAL**

Mr. ZINSER. Thank you, Chairman, Ranking Member Fattah, Members of the Subcommittee. We appreciate the opportunity to testify today as you consider the fiscal year 2016 appropriation for the Department of Commerce.

As the Subcommittee is well aware, the Department of Commerce is very diverse and all of its bureaus do important work for the taxpayer. My testimony today will briefly summarize eight challenges and concerns that we have identified throughout our work.

**NOAA SATELLITES**

First is NOAA's environmental satellite programs. The Joint Polar Satellite System, or JPSS, and the Geostationary Operational Environmental Satellite-R Series, or GOES-R, each has a current life cycle cost of about \$11 billion. Our work is indicating the potential for a gap in polar satellite coverage of 10 to 16 months in fiscal year 2017, and the GOES-R program is at risk of not having a backup satellite in orbit this fiscal year and extending into 2016, and, again, with GOES-S in 2017 and 2018. NOAA must focus on maintaining the current baseline of the cost, schedule, and performance of these acquisitions to avoid further delays—and also on its plans to mitigate any coverage gaps.

**CYBERSECURITY CONCERNS**

Second, serious cybersecurity concerns persist at the Department. The Department must address, for example, security weaknesses in its incident detection and response capabilities, as well as persistent security deficiencies that make the Department vulnerable to cyber attacks. NOAA IT systems that support its satellite programs are a particular concern, including a recent hacking in the fall of 2014 that affected some of those systems.

**2020 DECENNIAL CENSUS**

Third, the Census Bureau must design and implement a cost-effective and accurate 2020 decennial. Even if the Census Bureau is able to maintain the cost-per-housing unit it achieved for the 2010 decennial, which averaged \$94 per housing unit, the estimated cost of the 2020 decennial would be nearly \$18 billion, or around \$5 billion more than 2010. The Census Bureau and the Department must make significant 2020 design changes to achieve an accurate census while substantially containing those costs.

## COST-SAVING FINANCIAL CONTROLS

Fourth, the Department must strengthen controls over its finances, contracts, and grants. And this is an area where I think there are potential for cost-savings, Mr. Chairman. During the period of 2012 to 2014, the Department obligated over \$7.6 billion in contracts and over \$3.6 billion in grants, which represented nearly one-third of the Department's overall budget during that period. These included hundreds of millions of dollars in sole-source contracts, other high-risk contracts, and sensitive acquisitions. Our audits indicate that the Department must improve its awarding and monitoring of contracts and grants.

## ISSUES AT USPTO

Fifth, the U.S. Patent and Trademark Office must reduce patent backlogs in pendency, address quality issues, and strengthen workforce management. For fiscal year 2016, USPTO is requesting authority to spend fee collections of \$3.2 billion. USPTO faces challenges with reducing wait times for issuing determinations on new patent applications, appeals and other filings, as well as with responding to stakeholder concerns related to patent quality. As indicated in investigations last year, USPTO will also face significant challenges managing the time and attendance of its examiners in its telework programs.

## FIRSTNET CHALLENGES

Number six, FirstNet's implementation of a nationwide public safety broadband network. FirstNet has been authorized to spend \$7 billion in mandatory funding to accomplish its mission. However, FirstNet's startup has posed many challenges. In December 2014, for example, we reported on ethics- and procurement-related issues. The Department has acknowledged our findings, concurred with our recommendations and undertaken corrective actions.

## DEPARTMENTAL ACCOUNTABILITY

Number seven, the Department must continue to foster a culture of accountability. In fiscal year 2014, OIG investigated and audited several high-profile matters directly resulting from a lack of compliance with laws, rules, regulations, and ethics guidelines, and which reflected serious mismanagement. This is an area that requires continued emphasis by OIG and Departmental management.

## CHALLENGES TO OIG INDEPENDENCE AND ACCESS

Finally, Mr. Chairman, the Department must ensure that Office of Inspector General independence and access are more strongly supported. In August 2014, I was one of 47 Inspectors General, along with IG Horowitz and IG Martin, who signed a letter to Congress concerning access and independence issue. There are several current issues discussed in my written testimony, including a two-year delay from the Department's Office of General Counsel in processing audit policies to ensure OIG's direct and full access to records during OIG audits.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions.

Mr. CULBERSON. Thank you very much, Mr. Zinser.

#### MANAGEMENT ACTIONS

What, if any, consequences are there for a Federal employee, for example, a Department of Commerce—frankly, I am sure it applies elsewhere as well—when they fail to comply with laws, rules, regulations, and ethics guidelines?

Mr. ZINSER. Well, sir, the penalties vary. We have seen cases where the Department has not done anything. We had a case last year, for example, where it took 18 months for the Department to take any action on an investigative matter we had referred to them.

Mr. CULBERSON. What action did they take?

Mr. ZINSER. I think, at the end of the day, there was a suspension in that case.

Mr. CULBERSON. A suspension?

Mr. ZINSER. There are cases where there have been removals, but it varies greatly. We are doing some work at PTO, for example, where employees or examiners, for example, engage in a misconduct called “patent mortgaging,” where they submit work knowing that it is not sufficient or not completed and that is a case of misconduct.

We found, and we are going to be issuing this audit in the near future, that the penalties for that varied very widely, so—

Mr. CULBERSON. Such as?

Mr. ZINSER. Well, from no action to suspensions. I do not think anybody has been removed for that misconduct.

Mr. CULBERSON. So the worst thing to do under Federal civil service guidelines, is a suspension?

Mr. ZINSER. I think that is the most common response. Management can remove employees, but suspensions are more common.

Mr. CULBERSON. I will never forget this Exhibit A when I first got on a Military Construction VA Subcommittee—and Judge Carter may remember this as a fellow Texan—there was a cemetery director at the Houston VA cemetery in Houston who closed the chapel, removed the Menorah and the Bible, padlocked it, used it to store boxes, and turned off these—these guys had landed at Normandy Beach, I mean these wonderful old gentlemen who made it possible for us to be here—contributed money to build a carillon to chime bells—she turned that off and then forbid the families from praying over the grave of their deceased loved one.

I cannot imagine it getting worse than that, and I was Chairman of the Subcommittee and they would not fire her, would not even suspend her. The only way that I was able to get her removed is, I just frankly just had to get on the phone with the Secretary of the VA. Of course the entire State of Texas and all of Houston was in an uproar, understandably; it was just an outrage. They still did not fire her. All they did was move her to headquarters and put her in charge of proofreading memos. Just unbelievable.

What recommendations have you—would you make—and I would certainly welcome this from Mr. Martin, as well as Mr. Horowitz—to changes in personnel policy so that you can actually either penalize somebody? Obviously you also would want to reward them for good behavior, you know, award bonuses if you are doing a good

job—but what recommendations would you have for us to change the law to allow for these agencies to actually ding people in the pocketbook and, frankly, remove them if necessary? For example, the polar satellite, someone who manages these incredibly expensive programs—if it is a technical problem, I understand it, but if it is incompetence—you see this over and over and over again—Mr. Martin has seen it, I am confident, in some of the NASA satellite programs where you have got these massive cost overruns. What recommendations do you have for us about how we can hold people accountable?

Frankly, as I am sure you know, Texas is an at-will State; if you do not do your job, you are fired. What do you recommend that we do at the federal level?

Mr. ZINSER. Well, it is a very complicated issue based on the number of different appeal avenues that employees have once management seeks to scrutinize performance and scrutinize misconduct. There are a number of avenues that employees take to avoid being accountable. So I think one area would be to take a performance action or a conduct action against an employee. Performance actions are very, very time-consuming. Management must be very detailed. They are very difficult—

Mr. CULBERSON. Under the Civil Service Rules?

Mr. ZINSER. Under the current rules, and in many cases, when the poor performance is very evident, managers still have to go through a very tedious process to document and take action.

Mr. CULBERSON. I would certainly welcome—I know all of us would—your specific suggestions on how we could help change the law because it is just an ongoing, absolutely maddening problem.

Mr. ZINSER. I would be happy to submit some recommendations.

Mr. CULBERSON. If you cannot fire somebody for not letting a family pray over the grave of a deceased veteran, you cannot fire anybody. That just is absolutely incredible.

#### OIG ACCESS

I gather you have similar problems, as Mr. Horowitz, in being denied access to information, and I want to ask if you could talk to us a little bit about the challenges you have had getting information for the Department of Commerce. Do you have any information requests pending, and has the Secretary been helpful in making various Commerce Bureaus work cooperatively with your staff?

Mr. ZINSER. Yes, sir.

Access and independence issues are really just part of the landscape that IGs deal with, and some cases are more serious than other cases. We had a very serious case back in November 2012 that this Subcommittee helped on where, two months after we issued a critical report of the polar satellite program, we were banned from attending their monthly program management council meetings, which we had attended for a long time.

Mr. CULBERSON. No kidding?

Mr. ZINSER. And this Subcommittee wrote a letter on our behalf. That persisted from November 2012 until Secretary Pritzker came in, in the summer of 2013, and finally reversed that order. So that was a very serious issue.



We have issues on a smaller scale: for example, I just had an auditor in one of the field offices for one of the bureaus, and the management there insisted on escorting my auditors from cubicle to cubicle if they had to interview employees. That is just not acceptable.

So the issues vary. Currently, we have a request outstanding. For example, we are trying to do a data analytics project at the Census Bureau to look at the data that is created when employees enter and depart the building using their swipe badges. We have been denied access to that universe of data and the Department is citing the Privacy Act to assert that its systems of records notice does not permit the IG to have those records for that purpose. So we have been waiting for a year for the Department to change its systems of record notice.

Mr. CULBERSON. Oh, please let us help you. We would be delighted.

Mr. ZINSER. I would be very grateful.

Mr. CULBERSON. As Mr. Jolly said earlier, we are the enforcers.

Mr. ZINSER. I would be very grateful. In that case, the Census Bureau had 28 cases last year of time and attendance abuse by employees and we are concerned that it is a bigger problem than that.

#### FEDERAL GRANTS

Mr. CULBERSON. One other quick question. If you are a grant recipient, State, local, or nonprofit, for example, and the agency is not doing proper oversight and the grant money has been misused in some way, what consequences, if any, are there for a grant recipient, as a general rule for the Department of Commerce?

Mr. ZINSER. Well the grant environment at Commerce is somewhat difficult to monitor because a lot of the grants are smaller-dollar amounts relative to other departments. But there are a lot of grants—as I mentioned in my testimony, over the past three years, Commerce has spent \$3.6 billion in grants. The consequences should be that the grantee is required to repay the money.

Mr. CULBERSON. Thank you. That is what I was looking for.

Mr. ZINSER. That, too, is something that you really have to stay on the agencies to get them to do that.

Mr. CULBERSON. Does current law require a grant recipient who misuses the money or engages in fraud, waste or abuse, for example, to disgorge the money and return it? Is that current law or internal regulation guidelines for it?

Mr. ZINSER. Well, there are certainly laws against converting Federal funds for your own use. So we do have cases where grantees or principals of grantees steal money and, if they are caught, they get prosecuted.

Mr. CULBERSON. But if they are not using it for the purpose for which the grant was intended, for example, they just buy the drone, they do not get FAA approval or whatever, do they have to disgorge it and return the money?

Mr. ZINSER. The Department can go through a process requiring them to return money under current regulation and law.

Mr. CULBERSON. Okay.

Mr. ZINSER. But the Department has to have the will to do that.

Mr. CULBERSON. That is another one I would be interested in pursuing.

All right. Let me, if I could, recognize Mr. Kilmer.

Mr. KILMER. Thank you, Mr. Chairman.

#### CYBERSECURITY CONCERNS

And thanks for being here. I was struck by your written testimony that the degree in which cybersecurity is a concern and a problem. You know, I know that your office submitted a lot of recommendations to NOAA following their cyber attack against NOAA in 2014.

Do they have the capacity and the capability to actually maintain an IT infrastructure to avoid future cyber attack?

Mr. ZINSER. I believe they do. I just think it requires much greater attention and vigilance than what they have applied. And I think the other thing that we have run into, especially in the NOAA IT area, is a resistance to our oversight. If NOAA were more receptive to our oversight, and worked more closely with us in resolving some of those issues, it would be a lot better.

Mr. KILMER. So what is the issue and what is the concern they raise and why would not they adopt your recommendations?

Mr. ZINSER. Well, I think it is a matter of applying the resources to it, sir.

Mr. KILMER. Okay.

Mr. ZINSER. We made recommendations on one system back in 2010 and the answer was that we are going to replace that system, so we do not want to put the resources into strengthening the security of that system. That system has not been replaced and it is 2015.

Mr. KILMER. Got it.

Can you talk more about what else needs to be done to improve—outside of NOAA—everything from incident detection and response to cyber attack against the Department and the sub agencies?

Mr. ZINSER. I think one area where the Department is improving is they are centralizing some of the oversight requirements for IT security. They have two primary projects that they have underway. One is called ESOC, which is to set up a central facility to monitor the networks for suspicious activity.

Mr. KILMER. Uh-huh.

Mr. ZINSER. And they are making progress on that. And the other project is called ECMO, which is basically software programs that each of the bureaus are required to implement to guard against systems that are not properly patched or configured. It is a continuous monitoring program that they are instituting, and it costs each of the bureaus money to put that in place, and they have made some progress on that.

#### CONTRACTS AND ACQUISITIONS

Mr. KILMER. I want to also ask about the concerns around acquisition policy. Your testimony mentioned concern about the use of time and materials and labor hour-type contracts. You know, I do not think it is Congress' role to dictate how contracting officers specifically structure their contracts, but I think it is important that

we make sure that they are educated about, and have the tools that they need to make good business decisions. So with that said, what do you think is driving the use of some of these more risky contracts and what do you think we ought to do to make sure that the use of those contracts is appropriate?

Mr. ZINSER. Thank you.

The contracting choices that are made by contracting officers are certainly the bailiwick of the contracting officers. Regarding some of the issues we have found, though—for example, on sole-source contracting—we have done audits where the justification for sole-source just is not adequate. And, of course, a contract that has been competed, theoretically, is more cost-effective than a sole-source contract. So sole-source contracts, by nature, are high-risk.

I think the other shocking thing from our perspective is that, when we go in and look at contracting offices and contracting files, there are files that are missing. And even on files that are not missing, we find where some of the supporting documents for some of the payouts just is not present. So a lot of it is kind of simple hygiene in terms of the contract offices.

Mr. KILMER. So I guess just to put a fine point on it, is there something that you recommend that we do to try to drive better behavior in that regard?

Mr. ZINSER. Well, I think that the people in charge of those contracting offices are the folks that you have to look to to really put in place the rigor and the discipline of their contracting staff. And I think that the skill sets of the employees would be particularly important to look at because contracting staff is very competitive. The government is not only competing with other government agencies; it is competing for contracting talent in the private sector.

Mr. KILMER. Yeah.

Mr. ZINSER. So I think that there are steps being taken for training and schools for contracting officers, and I think that supporting those efforts would be good.

Mr. KILMER. Thank you.

Thanks, Mr. Chair.

Mr. CULBERSON. Thank you, Mr. Kilmer.

And I recognize Mr. Jolly.

Mr. JOLLY. Thank you, Mr. Chairman.

Thank you for being here, Mr. Zinser. I actually have a lot of questioning I promise you, you did not see coming this morning.

Mr. ZINSER. Okay.

#### NOAA FISHERIES

Mr. JOLLY. I am trying to figure out a way for local fishermen in my district to have more days to catch red snapper than the current nine days. I am telling you where I am trying to get to and this is where you come in. In your testimony, you talk about a continuing emphasis on compliance with the law. So the issue, and I am hoping that you can educate me—and, Mr. Chairman, this is a real priority for me on this Subcommittee—so we have Magnuson-Stevens out there, it is up for reauthorization. And one of the issues that—and this has an enormous economic impact; it is not something to make light of—between commercial, recreational, for-hire, what it means for our economy, for the quality of life in our

coastal communities around the Gulf—and Ms. Herrera Beutler is going to talk to you about salmon later.

But here's the issue, and this is really where I want you to educate me. Currently under Magnuson, NOAA, NMFS, the science centers are required to consider third-party independent research when it comes to stock assessments. And I have put together a 30 or 40-person council in my district of all the different sectors. The one thing they keep saying is that the agency will not consider third-party data. And so the closures are based only on the internal data that they have and they are saying "no, thank you" to a lot of the third-party data.

My question for you is really in the compliance of the law and how your office, on a macroissue like that, I mean we are talking simple statutory language, how do we push—because we have gone full circle with this—do we need to change the language in Magnuson and, frankly, it comes back to no; we just need the agencies to comply with what the existing statute says.

Mr. CULBERSON. And enforce it through this subcommittee.

Mr. JOLLY. And enforce it regarding third-party data.

Where does your office come into that in something as, you know, cumbersome as simple compliance with a statute like that?

Mr. ZINSER. Well, I think the simple answer on fish stocks is, as you were suggesting, better science. They have to rely on better science.

Mr. JOLLY. The amount of data, science, that solves all of this. So my question is how do we get the agency to consider what they are required to consider under the law when it comes to third-party data and science?

Mr. ZINSER. Well, we could certainly do some work to find the areas where they are not doing that. We did some work probably four or five years ago where we did look to see whether NOAA was using—the Magnuson-Stevens Act best-available science——

Mr. JOLLY. Right. That is right.

Mr. ZINSER [continuing]. Then NOAA decides what that is.

Mr. JOLLY. Right.

Mr. ZINSER. So we were not able to say that NOAA was not using best-available science because NOAA decides what the best-available science is.

Mr. JOLLY. Right.

Mr. ZINSER. I do not know whether our office would have the expertise to do it, but there are organizations out there, the National Academy of Science for example——

Mr. JOLLY. Sure.

Mr. ZINSER [continuing]. Who could do a study or provide some assistance on how we get beyond that issue of best-available science.

Mr. CULBERSON. But you could certainly help identify whether or not they are using third-party data, as required by the statute——

Mr. JOLLY. Yes. And then to evaluate their interpretation of best-available science. It is kind of like the last panel, if the agency is saying, "Trust us", we are using the best-available science, it is hard for you to question that unless we have an outside review of how they actually are coming to that conclusion.

And, NOAA and NMFS, they are in my district; they are a constituent entity in my district, so it is something I want to work with them on, but it is a serious impediment to our economy in the Gulf States and to the quality of life. And, if you talk to folks on the water, they say we have more red snapper than we have ever had before.

And then you get into this conundrum because then the agency says, "Right, see, it is working."

Mr. ZINSER. Yes.

Mr. JOLLY. But at what point do you declare success and begin to open it up.

Mr. ZINSER. What I do not know is, for example, whether NOAA uses peer review for fish stock—and I should know this, but I do not—and, if it does, who sits on those peer reviews?

Mr. JOLLY. That is the issue, and Mr. Chairman, we can talk about this offline. I actually think there is a way to work with the agency on this through a cooperative research institute that still stays under the jurisdiction of NMFS, but aligns them—and there is precedent for this within the Department—a cooperative research institute where we know now that third-party inspect researchers, peer-reviewed, have a seat at the table and we know it has to be considered.

So I would like to work with you on that.

Mr. CULBERSON. I would be happy to help with that.

It is a big issue in Texas—

Mr. JOLLY. I appreciate that.

Mr. CULBERSON. And the Governor's Office just spoke to me about it last week.

Mr. JOLLY. Thank you, Mr. Chairman.

Thank you very much.

Mr. ZINSER. Thank you.

Mr. CULBERSON. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

And, good morning.

Mr. ZINSER. Good morning.

#### USPTO MANAGEMENT ISSUES

Mr. HONDA. Speaking in general, in your testimony, you mentioned challenges that USPTO has and has been facing in managing its telework programs and the Department and the USPTO have undertaken a number of initiatives to address these workforce management issues. So, very quickly, can you tell us more about the steps that have been taken to address this challenge and have you evaluated those changes, and if so, what can you tell us about those differences?

Mr. ZINSER. Yes, sir.

First, I think PTO is very focused on it since issues came to light last summer. I know that they are not ignoring the issue. It has brought in an outside party, the National Academy of Public Administration, to do a study and that is still ongoing.

We are having regular interactions with PTO management on the steps that it is taking; I can tell you a couple of them, for example. One is that it has allowed the supervisors to access records that they were not really easily approved to have before when they

think an employee has not been answering calls and has not been responding to emails. In the past, they really were not able to use other computer records, for example, to see whether the employee logged on that morning. PTO has freed that up a little bit: the whole issue of holding the examiners accountable really boils down to the supervisors' interaction with their teams, and PTO is letting the supervisor now do more data gathering when they think that they have got an employee not reporting to work.

Another example is that PTO is allowing the supervisors to look at their docket management more frequently. In the past, they would not really look at the production of the employee on a regular basis. So you ran into this phenomenon called end-loading where, during a quarter, the patent examiner would have a number of applications assigned to him or her and there would be very little work done during the first part of the period, but at the end of the period the supervisor would be flooded with these applications. PTO is letting the supervisor now monitor the workload more frequently through the period to make sure that the employee or the examiner is working on a consistent basis.

Mr. HONDA. It sounds like it is an evaluation technique that you have to go through a long period of time in order to evaluate whether a supervisor or a examiner is doing their job in a timely manner and it seems like patents and trademarks are more kind of a time-oriented issue that needs to be dealt with. I do not hear that that is the kind of evaluation that is being placed upon this process to see if telework is the appropriate way to go. Given the time that you described, it seems to me that there needs to be more a refined approach to it, because the patent applicants, they want to know as soon as possible, or is that built into that evaluation? If you can give us something offline on that and share that with us, I would be very interested in it.

Mr. ZINSER. I would be happy to do that.

Mr. HONDA. Okay, because the USPTO is a very important agency that is based upon time. And I understand using technology would be helpful, but it seems to me that if you do not monitor the time and efficiency and the efficacy of returning information back to the patent holder becomes in danger.

#### EEO COMPLAINT

Under the Equal Employment Opportunity, Inspector General, two weeks ago your office was found to have engaged in retaliation against an employee who filed an Equal Employment Opportunity complaint. To address this violation, the office has been ordered to compensate the employee for back pay and several Commerce Office of the Inspector General supervisors, including yourself, have been required to take EEO training.

In addition, you were ordered to post a letter in your offices when the EEO investigation was completed on Friday, February 13th. I have a copy of the letter here and the letter describes the violation that occurred and reaffirms your office's commitment to ensure that all Federal Equal Employment Opportunity laws are followed and reaffirms your office will not retaliate against employees who file EEO complaints. However, it is my understanding that

this public letter and statement has yet to be posted by you or your office.

So the question, I guess, is have you posted the letter ordered by the Department of Commerce Office of Civil Rights, which found your office retaliated against a former employee, has that been done?

Mr. ZINSER. I do not think it is posted yet; we are in the process of doing that. My understanding is that the employee has an opportunity, a 30-day window, to appeal. So part of the issue is to determine whether the employee is in that appeal window, but we are in the process of posting that on both a physical posting site and our internet site, sir.

Mr. HONDA. Well, wait a minute. You said that the employee has a right to appeal a judgment that was in that person's favor?

Mr. ZINSER. Well, yes, sir, that is the way the process works. The Department—

Mr. HONDA. Well, it seems to me an appeal would be on your side rather than on—I am not an attorney, so you have to correct me. Why would a plaintiff appeal a judgment for them?

Mr. ZINSER. Yes, sir. Well, the judgment was called a final agency decision, which means somebody in the Department issued the judgment versus a judge. And in that case, for example, the employee made 40 allegations. In one of them, the Departmental official ruled in the employee's favor on one of them. So if the employee felt, for example, that that judgment was deficient, the employee can appeal to the Office of Federal Operations at EEO. The IG's Office has no right to appeal any of it and we are not interested in doing that. It is just a logistical thing in terms of posting the letter.

Mr. HONDA. This notice to employees that you were ordered to post by yourself and your offices, this notice is posted pursuant to a final agency decision of the U.S. Department of Commerce Office of Civil Rights dated Friday, February 13th, which found that a violation of Age Discrimination Employment Act as amended has occurred at this facility, and it seems to me that you were ordered to post this letter and you have not done that yet.

Mr. ZINSER. Yes, sir. We do have a period of time to do that and we are in the process of doing it; it is a logistical issue.

Mr. HONDA. February 13th and this is February 26th.

Mr. ZINSER. 25th.

Mr. HONDA. How long does it take for you to determine whether you should or should not follow the order of the Office of Civil Rights to post something?

Mr. ZINSER. Well, that order came down on a Friday; that Monday was a holiday. On Tuesday, OPM shut down the DC-area Federal government due to hazardous weather. On Wednesday, I did ask my staff to post the letter and I will go back to see whether or not it has been posted.

Mr. HONDA. So you asked or you told them to? I mean, this is an order.

Mr. ZINSER. Well, okay, I told them to, but I brought my HR director into my office, informed her of the decision, and asked her to get it posted.

Mr. HONDA. Did you give her a time definite?

Mr. ZINSER. Well, I asked her to work with our Counsel's office to get that accomplished, sir.

Mr. HONDA. How about ASAP? I mean, it seems like an order is an order. It did not tell you that you had any leeway.

Mr. ZINSER. We did have conversations with the Office of Civil Rights about that, sir, and, like I said, we are in the process of posting it.

Mr. HONDA. So——

Mr. ZINSER. We will get it up.

Mr. HONDA [continuing]. Can you tell us by when?

Mr. ZINSER. We will get it up, if today is Wednesday, no later than Friday.

Mr. HONDA. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Honda. I recognize Ms. Herrera Beutler.

#### NOAA FISHERIES

Ms. HERRERA BEUTLER. Thank you, and thank you for being here. In Southwest Washington, my district, it goes from the Pacific coast, from the mouth of the Columbia up to the tip of Willapa Bay, and the salmon hatcheries on the Columbia River, which are Mitchell Act funded, support recreational and commercial fishing. So it is kind of very two opposite ends of the country, but we both have fish issues, surprisingly. Different fish, mind you. These fisheries support thousands of jobs in our region. And actually, I should add, up the coastline it is an amazing resource that we love, protect and, as we protect it, it also takes care of us in the form of commercial activity, it provides for families. And despite the importance of these hatcheries, I feel like we are having some challenges that we cannot address that are threatening our livelihood. I was really upset to see NOAA requested \$3 million less to the Salmon Management Activities account and those reductions target Mitchell Act hatcheries. And even under this spending level we know that the number of fish released is decreasing as costs escalate.

We had certain answers on this information, but what I would like to understand, despite the fact that as you take away money and you allocate less resources and time to something, they are maintaining in their budget document that they are going to be able to meet their obligation for operation and maintenance and their obligation to meet the hatchery reform responsibilities, which I am not totally sure how they are going to do that. Do you have any insight—and I know this is really getting into the weeds—as to how they are going to meet those obligations despite putting time and attention into it?

Mr. ZINSER. Congresswoman, I do not have insight into the hatchery issues in Washington State, but it would be something we would be very happy to look into. I know that NOAA has spent a lot of resources on salmon, but I have not tracked its——

Ms. HERRERA BEUTLER. It gets specific quickly.

Mr. ZINSER. No, we would be happy to look at that.

Ms. HERRERA BEUTLER. I would appreciate that. The second concern I have relative to these hatcheries and those that are in the Puget Sound is the issue associated with hatcheries not having ap-



proved hatchery genetic management plans. And I know that they are required under ESA, but absent the HGMPs these hatcheries are vulnerable to third-party lawsuits and potential legal action that could halt the hatchery releases. And this is another—there are lots of salmon issues—this is another area where I would like to make sure that the backlog is addressed and that these get put forward and put through for approval, because by not doing them it just jeopardizes our effort, the time and the money that we are putting into protecting these wild and hatchery species. So that is another area where I would welcome your help.

Mr. ZINSER. I would be happy to contact your office and run down these issues and make some inquiries.

Ms. HERRERA BEUTLER. That would be great. Great, that is it. When you talk about main issues, why you get on a Committee like this, that is a big one for us. So, thank you.

Mr. CULBERSON. The President's budget is only a recommendation, as I always remind the Agency.

Ms. HERRERA BEUTLER. Yes, it is.

Mr. CULBERSON. It is—

Ms. HERRERA BEUTLER. Yes, it is.

Mr. CULBERSON [continuing]. Just one of many things we take into account, but we get to write the bill.

Ms. HERRERA BEUTLER. Thank you.

Mr. CULBERSON. And I want to follow up, if I could, Mr. Zinser on a couple of areas. I will submit the majority of my questions for the record in the interest of time, but to follow up on the census.

#### NOAA WEATHER DATA

By the way, I would like to ask though, because I am keenly interested in getting good data, as Mr. Jolly was just talking about—particularly when it comes to NOAA and weather data—I am keenly interested in making sure we have got accurate temperature data. I am fascinated to see a couple of articles here. Recently some studies have been done showing that the Goddard Institute that was tracking weather data while James Hansen was there was averaging numbers, and filling in blank spots. I would like to visit with your folks separately about that, but if you could ask anyone if you have any audits or any examination you have done of the NOAA weather data that they have been collected for years and would really be interested to know when they were just filling in blank spots with numbers they made up, or are they actually using—you just want good data, right? You want to make sure you are getting good, objective, accurate data, particularly on something as important as when they are going to try to impose a carbon tax on us based on it, for example.

#### 2020 DECENNIAL CENSUS

But I digress, let me get back to the census. I really want to follow up with you on that and Mr. Martin, accurate weather data, temperature data. As you mentioned in your opening statement, the cost of the census in 2010 was about \$13 billion and you would think the cost the next time would go down. They have learned lessons from the last time and re-engineered it to hold the cost down below the 2010 census and currently the Census Bureau's cost

model is predicting a cost of \$12.6 billion for the 2020 census. Do you believe that estimate is accurate?

Mr. ZINSER. I think the estimating is very complicated. Census uses what is called a Monte Carlo process for estimating, which takes in all kinds of different variables and comes up with a range. The \$18 billion estimate is at 80 percent of the Monte Carlo estimate. We have not gone in to audit that estimate; we are in the process of looking at it, though. It came up in the 2014 site test work that we are doing.

Mr. CULBERSON. What additional steps would you recommend for the Census to take to keep the cost of the 2020 census below that of 2010?

Mr. ZINSER. Well, I think Census has to work in a number of areas; one is the address list. In 2010, it spent half a billion dollars going out and visiting every housing unit, putting in their GPS code and coming up with a master address file. That was very expensive and we think that there is technology they can use. Census is working very hard on this, to reduce that cost to not do a 100 percent address canvassing but more targeted address canvassing and use existing data from various private sector organizations that actually produce that kind of data.

I think the other thing that Census is doing is they are preparing to use the Internet, but in connection with that it has to get an advertising campaign or a social media campaign to get people to respond to the census via the Internet. It is testing that in the 2014 site test and probably more rigorously in the 2015 site test down in Savannah. I think Census has to use administrative records, if it can. I think it will be easier to use administrative records on the address-list issue, more complex on the enumeration, and Census is working on that right now.

And I think, finally, The bureau is going to reduce the number of local Census offices used in 2010 and will be able to do that by the way it re-engineered or restructured their field offices. It is going to be supervising enumerators from fewer local field offices based on technology.

Mr. CULBERSON. What are your top three concerns about the cost, schedule and implementation of the 2020 Census?

Mr. ZINSER. Well, I think one of the biggest risks is the IT systems that Census needs to put together to process all the data. It has a very ambitious IT project to combine all the various IT systems into one. In 2010, Census spent \$1 billion on a contract that actually scanned in all of the paper forms received and then processed that data. That contract will not be necessary if the Bureau is able to put this IT system in place. Without that system in place, we are going to revert to 2010 and that would be very, very problematic.

Mr. CULBERSON. That is a serious one. I have always been a big believer that our most important right is the right to be left alone and I have a lot of constituents that really object, as I do, to this very long survey form. That long survey form the Census is using, was that a creation of statute or internal regulations at the Census Department?

Mr. ZINSER. I believe it is by statute, sir. And what the Census Bureau did is, before 2010, use a long form and a short form. The

Bureau did away with the long form during the 2010 decennial and went to the American Community Survey instead. And it is the American Community Survey that generates the most complaints about intrusive questions and that is done throughout the year. That is not an every-ten-year issue; that is done on a consistent, ongoing basis.

Mr. CULBERSON. I will submit more about that in detail. It is frankly offensive and intrusive. Our most precious right as Americans is just to be left alone. It is aggravating.

I will submit a number of other questions for the record, so that we do not delay this unnecessarily, but let me see if I have got any followup. Yes?

Mr. HONDA. If I may piggyback on your——

Mr. CULBERSON. Sure.

Mr. HONDA [continuing]. Comment. Intrusive and offensive questions in Census, it seems to me that the Census' job is to find information on the population aside from the numbers.

Mr. CULBERSON. Right.

Mr. HONDA. So we can figure out what kind of program could we generate for their particular needs. I would be interested in the list of intrusive and offensive questions that you are talking about and the frequency of those, because one thing I know that we have to do is to keep it private and make sure that it is not available to the government as they used it on Japanese-Americans in 1942. But in order to provide the best data in order for people to generate their own programs, you know, we may have to ask some questions that could be asked in a socially, statistically and culturally sensitive appropriate way. Those would be my counter questions and I would really be interested in what that list of intrusive and offensive questions is.

Mr. ZINSER. Yes, sir. I do not know specifically what citizens view as intrusive. What we do know is that our hotline gets numerous calls from members of the public. The Census Bureau set up a separate point of contact for us to refer those individuals to. And so, when they come into our hotline, we do not really interview them about, well, which questions are you having problems with; it is more of a general complaint. We refer those to the Census Bureau, and the Census Bureau I believe has people who deal with those.

Mr. HONDA. Just through the Chair, if I may. To rebut that, though, the testimony you are giving right now could be construed as something we need to fix and take care of rather than look into deeper to make sure that we are protecting the privacy versus getting information that is appropriate in the census as we move forward in our development of this country.

Mr. ZINSER. Yes, sir. I would have to confirm this, but I do think that the Census Bureau has an effort underway to revisit some of the questions with a number of advisory groups that gives them feedback. And I can provide more information on that, but I do believe that the Census Bureau makes an effort to revisit the questions and the way to ask those questions.

Mr. HONDA. Thank you, Mr. Chairman, because I think that questioning properly is the way to find out information. One of the things that many communities are looking for is disaggregation of

information, so that we know how to provide the appropriate funds and programs for our communities. Thank you.

Mr. CULBERSON. Well, right. All they need to know is, how many people are in your house and what is your ancestry and age, fundamentally, is really all they are really looking for. And the questions, the long questionnaire form, I have seen one, they have sent it to my constituents and it is objectionable. And they also can fine you. I mean, they are threatening our constituents with all kinds of penalties if you do not comply with answering all these frankly intrusive questions.

And I am also really concerned about the protection of the privacy of the information. In Mr. Horowitz's analysis and the testimony he gave us for the Department of Justice he points out that there was an April, 2014 GAO report that analyzed just a statistical sample of fiscal year 2012 cyber incidents across 24 federal agencies, including the Department of Justice. GAO estimated that these federal agencies did not effectively or consistently demonstrate any action taken in response to the cyber attack in 65 percent of the cases. So I do not trust—and this is a great publication and I highly recommend it to all you guys. It is spooky. I object to the intrusive form of the question and, frankly, once it is in a Federal computer, if they are not even spotting 65 percent of the hacks——

Mr. HONDA. Will the Chairman yield?

Mr. CULBERSON. Yes, sir.

Mr. HONDA. I am not arguing about cyber security, I am talking about when we want information and how many folks you have in your family, how many families are living in the household, languages that are spoken. I think languages are very important.

Mr. CULBERSON. Just the basics, that is all they need.

Mr. HONDA. But to disaggregate that, it takes a little bit of time. And to not mention things that are important like language and other kinds of ways that communities operate——

Mr. CULBERSON. Yes, the fundamentals are fine.

Mr. HONDA. So I just did not want to make it cyber security versus the information that our families can provide us. Thank you.

Mr. CULBERSON. Privacy is a really important issue, I know for your constituents as it is for me. Texans do not like the government poking around their business. They are liable to get an unpleasant surprise if they come poking around too much. I had to put that in the record.

Mr. JOLLY, any other questions, followup?

Mr. JOLLY. No. I would like to get the Census Bureau to count red snapper in the Gulf.

Mr. HONDA. What language does red snapper speak? Would it be croakers? They are croakers, right?

Mr. JOLLY. They are croakers.

Mr. CULBERSON. As long as you get accurate data, that is what matters. Mr. Kilmer, any followup?

Mr. KILMER. No, thank you.

Mr. CULBERSON. I have a number of questions I will submit for the record. We will meet with you again to follow up on all this.

And thank you very much for your testimony and your service to the country, Mr. Zinser.

Mr. ZINSER. Thank you.

Mr. CULBERSON. Thank you. We will next move to Paul Martin, Inspector General for National Aeronautics and Space Administration.

Mr. Martin, thank you for your service to the country. I remember you from previous hearings and thank you for being here today. I will of course enter your statement without objection into the record in its entirety.

Mr. CULBERSON. We welcome your testimony today and look forward to hearing from you, sir. Thank you.

Mr. MARTIN. Thank you, Mr. Chairman, and thank you for saving the best for last.

Mr. CULBERSON. Of course. You know how I feel about the space program.

Mr. MARTIN. Very much so. And thanks to Mr. Kilmer and Mr. Jolly for sticking through this, I appreciate it.

Like many government agencies, NASA continues to grapple with its IT security and IT governance, project management, aging infrastructure, and contract and grant oversight issues. But unlike other agencies, NASA sends people and stuff into space. And so my remarks this morning will address a single challenge: managing NASA's human space exploration programs.

Two recent examples illustrate the highs and lows associated with NASA's unique mission: the successful test flight of the Orion Multi-Purpose Crew Vehicle in December and the failure of an Orbital Sciences rocket to the International Space Station in October that destroyed all cargo aboard and caused at least \$15 million damage to the Wallops Flight Facility.

Since the end of the Space Shuttle Program, the United States has lacked a domestic capability to transport astronauts to the Station. Consequently, the U.S. will pay Russia more than \$2 billion between 2012 and 2017 to transport 26 NASA and international partner astronauts.

To address this lack of capacity, NASA established the Commercial Crew Program, which is presently in its fourth and final phase. In September, NASA awarded two sets of firm fixed-price contracts, a \$4.2 billion award to Boeing and \$2.6 billion to SpaceX, for up to six flights each to the Station beginning in late 2017. Two years ago, the OIG reviewed NASA's management of Commercial Crew and identified several issues at the time, including unstable funding, the need to provide contractors with timely certification guidance, and coordination issues with other Federal agencies. Given its importance, we plan to open up a follow-on audit of the program later this year.

Apart from the Station, development of the SLS, Orion, and related launch infrastructure is critical to the success of NASA's human exploration efforts beyond low Earth orbit. We examined the Orion Program in 2012 and found that NASA is using an incremental development approach under which it allocates funding to the most critical systems necessary to achieve the next development milestone rather than developing multiple systems simultaneously, as is common in major spacecraft programs. Prior OIG re-

views have shown that delaying critical development tasks increased the risk of future cost and schedule problems. While NASA officials admit this incremental development approach is not ideal, they contend it was the only feasible option given their funding levels. Again, in light of Orion's importance, we recently opened up a follow-up review to examine the program's ongoing development.

Mr. CULBERSON. Do you agree that was their only option in light of their funding constraints?

Mr. MARTIN. I am not a technical scientist. They were pretty convincing, though, given the scope of the program and the funding.

Mr. CULBERSON. Forgive me. Continue.

Mr. MARTIN. Sure. To support SLS and Orion, NASA is modifying launch infrastructure at Kennedy, including the crawler-transporter, the Mobile Launcher, the Vehicle Assembly Building, and Pad 39B. In several weeks, we plan to issue an audit assessing NASA's progress in this effort. In the companion review we issued last year, we examined the challenges NASA is facing in attracting commercial space flight companies to Kennedy.

In addition, the OIG continues to monitor implementation of the 27 recommendations made by the National Academy of Public Administration in its January 2014 report. Actions taken by NASA thus far include hiring additional counter-intelligence officers, reviewing export control training materials, and improving identity management and credentialing programs.

Finally, I wanted to recognize the NASA Deputy Inspector General, Gail Robinson, sitting behind me, and Jim Morrison, the head of our audit office, and the rest of the OIG team for the significant work that they do. And I also want to thank and wish outgoing Clerk Mike Ringler happy trails in his future endeavors—we appreciated working with you.

Let me wrap with, Mr. Chairman, you asked about best practices, let me just mention two very briefly. At the OIG-level, we are developing a data analytics capability to get our arms around the mountains of data, contracting data, and grant data, that NASA has at its disposal but perhaps is not delving into. We are going to use it to better target our audit and investigative resources.

At the department-level best practices, NASA's record with project management, as you well know, has been spotty at best. And so we have an ongoing review now looking at one of the tools they are using that NASA has touted as improving project management. It is something called the Joint Confidence Level tool, the JCL tool. We are about halfway through an audit, drilling down on a project-by-project basis to see whether or not it is frankly going to stand up to the claims that NASA has made with respect to how useful it is in keeping projects on cost and schedule.

And, with that, we will stop.

Mr. CULBERSON. And those projects are often managed by a specific flight center depending on the type of mission and—

Mr. MARTIN. They often are, the very large projects are pieced out to different Centers. There is an aspect that perhaps Johnson would handle, an aspect that Kennedy would handle or Marshall would handle.

Mr. CULBERSON. Have you seen a difference in the way different flight centers handle? Are some more efficient than others?

Mr. MARTIN. Haven't really seen a difference in the way different Centers handle it, but we certainly have seen a higher quality project management on a project by project basis. And part of it is, we find, the experience of the project manager; part of it is does he or she have the flexibility to assemble their own team; and part of it, frankly, is the complexity of the project itself.

Mr. CULBERSON. I noticed in the documentation that accompanied your testimony that in the manned space program—there was an analysis, you mentioned the program—on Page 4, "The program's independent government cost estimates project significantly higher costs when NASA purchases flights from commercial companies rather than Russia."

Could you talk to us a little bit about what we are paying today for flights from the Russians? It varies up to I think you said \$70 million a flight, how and why will the cost will go up once NASA begins to purchase flights from Commercial?

Mr. MARTIN. Right. There are a couple different things going on here. I think the figure that you are referring to there is when we looked at NASA's efforts to extend the life of the International Space Station beyond 2020 into 2024, and NASA projects that over the next 10 years they will spend between \$3 and \$4 billion.

We question some of the assumptions underlying that \$3 to \$4 billion. Specifically, I think NASA is using the cost—the average cost, I think is \$74 million of a current seat on the Soyuz—as a placeholder when considering transportation costs to get astronauts up to the International Space Station.

We question that because we think that is, frankly, low-balling the amount that it is going to take, that NASA is going to spend on Commercial Crew capability.

Mr. CULBERSON. How much do you anticipate the average cost will be for Commercial Crew?

Mr. MARTIN. You know, it is unclear. As I indicated in—

Mr. CULBERSON. How much is your charge in this average of \$74 million—

Mr. MARTIN. Right.

Mr. CULBERSON [continuing]. What do you anticipate? What makes you think that that cost is going to go up?

Mr. MARTIN. Well, when I look at the size of the Commercial Crew contracts that have been let, the \$4.2 billion to Boeing and the \$2.6 billion to SpaceX. Again, I think there is at least two things going on, probably many more. One, is having a domestic capability for this technology. We have to have—

Mr. CULBERSON. Which is vitally important.

Mr. MARTIN. Which is vitally important, right. The fact on a per seat basis, will it be more expensive in the short term? It may very well be, we haven't done those calculations yet. But I think the overarching goal is to have this robust commercial capability.

Mr. CULBERSON. So the principle reason this independent government cost estimate projected a significantly higher cost was based on what they anticipate is going to be a larger cost per flight using Commercial.

Mr. MARTIN. I believe that is correct, yes.

Mr. CULBERSON. You would anticipate then that the cost per flight for Commercial is going to be significantly higher than the Soyuz average of \$74 million?

Mr. MARTIN. Well, again—and part of it depends on how many astronauts NASA puts on each of its commercial flights—I think—and correct me if I'm wrong, crew back here—I think they are contracting for up to six astronauts, but the capacity in International Space Station probably cannot handle that. So it may be three, it may be four depending how many bodies you put in that flight.

Mr. CULBERSON. Have you all prepared any estimates of what we, the Congress, needs to appropriate to make sure that the manned space program is back up and flying as fast as humanly possible, and that it is adequately funded? Because I note that is a recurring theme in the time that I've been on the subcommittee. I am just devoted to the space program, and scientific research, and space exploration, but it does seem to have been chronically under funded.

Have you come up with an estimate of what you anticipate would be necessary in order for NASA to stop doing, or be able to do? For example, as you mentioned earlier a lot of these complicated space flights are analyzing a number of systems simultaneously, and NASA has begun to prioritize those, as you said, and only work on a few of the most critical ones first in an effort to save money. What do they need, do you think—have you done that estimate?

Mr. MARTIN. We have not done that overall estimate. Again, we have looked at discreet programs like Commercial Crew and I will—I am sorry?

Mr. CULBERSON. Have you seen any estimates like that done that I am not aware of?

Mr. MARTIN. I think NASA, big NASA we call them, they probably have those estimates. But when we looked at Commercial Crew, I bring the Committee's attention, I believe the funding level for Commercial Crew has been increasing over the last several years in the neighborhood of \$800 million this year, and I believe the President put a request in for \$1.2 billion in fiscal year 2016. So as far as Commercial Crew, they have been asking for additional money. But my understanding of the budget requests that they have been making for the SLS and Orion Programs, they have been relatively flat over the last, at least, 3 years.

Mr. CULBERSON. I have learned over the years—and you will see this, Mr. Kilmer, I know from your experience from working with Mr. Young—that Office of Management and Budget is basically the source of these estimates and I do not find them to be very accurate and reliable. I would rather get the estimates directly from NASA, and one of the things that I will be pursuing, and I would love to have the help of anybody and everybody in this subcommittee to do so, is to have the agencies submit their recommendations for what money they think they need to accomplish their mission directly to Congress and bypass OMB as does—does Legal Services count?

VOICE. Legal Services counts.

Mr. CULBERSON. Directly to the Congress, because then we are getting an accurate estimate from the professionals that know what they need and not a bunch of bean counters over at OMB fil-



tering it, and low-balling them, and making it more difficult for us. Again, it is a budget recommendation, but it does make it more difficult for us when they come in at a low number.

Mr. MARTIN. Sure.

Mr. CULBERSON. And our wonderful staff got to beat—we got to beat our brains out trying to find the additional money that you guys need. And NASA's a strategic, vital, absolutely vital to the nation's security and prosperity for the future and it just is maddening, I know, for all of us. I am sure there is strong support in Washington State for the space program—

Mr. MARTIN. You bet.

Mr. CULBERSON [continuing]. Certainly I know Florida is partial to it, and we sure love them in Texas. But let me ask a couple of areas if I could, let me ask quickly about your ability to get access to the information.

Mr. MARTIN. We have not had the same problems. I did sign the letter, I was one of the 47 Inspectors General to show solidarity, because this was said at length, you know, independence is the coin of the realm. We have not had a problem at NASA. Sometimes we get frustrated, it takes a tad bit longer, but I am talking days, I am not talking weeks or months, so nothing like Michael or Todd experienced.

Mr. CULBERSON. Okay. That is good news. That is good news. Can you provide us with an example or two of recommendations where—just two examples where NASA has implemented your recommendations to save money or create efficiency?

Mr. MARTIN. Can I give you an example of where they haven't?

Mr. CULBERSON. Yes.

Mr. MARTIN. Okay. Which is, I think, more important. Like the other Inspectors General mentioned, we make a lot of recommendations that would suggest revisions to policies that may not show tangible dollar results at the time but hopefully will increase oversight of grants, oversight of projects, project management.

One review we did a couple years back looked at an environmental cleanup effort that NASA was involved in outside of—about 35 miles—outside of Los Angeles, it was called Santa Susana.

Mr. CULBERSON. Yes, I saw that in here.

Mr. MARTIN. Yes. NASA entered into an agreement with the State of California to clean up its portion of the Santa Susana test facility, NASA did rocket tests—

Mr. CULBERSON. California would do it on behalf of NASA.

Mr. MARTIN. I am sorry?

Mr. CULBERSON. California would do it on behalf of NASA.

Mr. MARTIN. Well, no, NASA would pony up the money. It is in the purview of the California Department of DTSC—it is called the Department of Toxic Substance Control—but NASA agreed to clean its soil and ground water down to what is called a background level, which is essentially like tests had never occurred on it. Pristine dirt, if you will, and ground water.

When, in fact, we found that NASA entered into that agreement and would, if they were held to make that so, NASA would spend upwards of \$200 million, far in excess of what was needed for the eventual use of that facility, which was going to be recreational.

So there are different levels. There is background level, there is residential level, and there is recreational level. The recreational level, as an example, would cost \$25 million, is the estimate.

Mr. CULBERSON. Is the recreational level, background level under Federal law?

Mr. MARTIN. Those are under Federal law. That is my understanding.

Mr. CULBERSON. This is cleaning it to California law?

Mr. MARTIN. This hasn't started yet, but, no, they have agreed—

Mr. CULBERSON. Neither have signed.

Mr. MARTIN [continuing]. They have agreed, they have agreed under—

Mr. CULBERSON. California standards.

Mr. MARTIN. Correct. Well, to the standards that were negotiated I guess with the California—

Mr. CULBERSON. Okay.

Mr. MARTIN. And so we have encouraged in our audit to NASA to crack back open that agreement and take a hard look at it because it is just spending, from our perspective, an inordinate amount of money to—and there is no doubt that the soil and the groundwater need to be cleaned, but it is the question of looking at the intended use of the property.

Mr. CULBERSON. True.

Mr. MARTIN. They are not going to be growing apples out there.

Mr. CULBERSON. Thank you, I did not mean to take so long. Mr. Kilmer.

Mr. KILMER. Thank you, Mr. Chair. I spent the previous 2 years on the House Science, Space, and Technology Committee, and there is a lot of interest in that committee not just in space but around commercialization of research and the SBIR program, and I read in the written testimony that there were a couple of incidences of fraud related to NASA's SBIR program. Just wanted to get a sense, is that a systemic problem or are these a couple bad actors, or—

Mr. MARTIN. I believe it is a bushel of bad actors more than just a couple of bad actors. I think it is a systemic problem. I believe there are 11 agencies across the Federal government that are required under legislation to provide SBIR grants and enter into contracts for this work.

I do not want to diminish that there is some terrific work that is done under the regime, the SBIR regime, but we have seen across the Government—and we do a lot of interagency work with the National Science Foundation and other folks who also give SBIR—we see a number of deficiencies including individuals who apply for an SBIR award to NASA but may put the same proposal before DOD and NSF and are funded by multiple agencies for the exact same research. Then the back end we have also seen where the research that is provided is substandard. And so we have seen a fair amount of fraud in the Program.

Mr. KILMER. Is there, given that it is a systemic problem, suggestions in terms of what the systemic response should be? Whether it be legislative or other sort of direction to those who issue the SBIR awards?

Mr. MARTIN. Sort of on the ground level, we are working cooperatively with other Offices of Inspector General to share techniques that we have to identify for fraud awareness, to identify characteristics that more likely lead to fraudulent use of this money.

I think, again, on an agency-wide level, or multi-agency level, we need to define data sharing capabilities so that we are able to identify when an individual, potential SBIR grantee, is putting the same proposal in to multiple agencies, been awarded by one, but again attempts to double or triple dip.

Mr. KILMER. That is (indiscernible) feedback. Given the conversation around commercial activity, that is something that we are actually seeing some involvement on in my neck of the woods. Have you seen NASA developing any capabilities that duplicate or compete with capabilities being developed within the private sector?

Mr. MARTIN. Well, again, NASA, under charge from the Congress and cooperation of the Administration, is working with contractors to develop the SLS and the Orion. Then you have Orbital and you have SpaceX and others that are developing their own private, both if they handle cargo and they handle crew. I am not sure—I mean there are rockets, there are different types of rockets, they can do different things, different purposes, carry, you know, commercial satellites—I am not sure that there is a duplication in that sense.

Mr. KILMER. Okay. I yield back. Thank you, Chairman.

Mr. CULBERSON. Mr. Jolly.

Mr. JOLLY. Thank you. Mr. Chairman, I want to follow up a little on questions from Mr. Kilmer and the new era where we are relying now on more contractors, private launch, et cetera. There is several folks who met with us on this notion of equitable bidding requirements and whether or not the soft cross of infrastructure support or other engineering services, or launch support that might be provided by NASA are actually calculated in the bid process for some of the private contractors. Have you done any work in that area or is that a solution in search of a problem?

Mr. MARTIN. Well, I do not know if it is a solution in search of a problem. We have done some fairly extensive work looking at NASA's infrastructure. In particular, we probably spent the most time down at Kennedy. As I mentioned in my opening statement, we looked at Kennedy's attempts. There is a significant number of unused facilities, big, expensive facilities like the airfield, like the VAB, like some of the test stands that NASA no longer needs with the retirement of the Space Shuttle Program.

And so we are encouraging, and this is the way NASA should handle it, identifying what you know you will not need. Recommission, sell, give out, you know, those, and then if there are some things that you may need but you do not need them right now, look to private entities or other Government agencies to lease or to use so that they can supplement your maintenance costs and things like that. And so we have looked at those issues extensively at the Kennedy Space Center.

Mr. JOLLY. Okay. And related to that, and it is really just between the disposal of excess assets or the lease of those assets ensuring it is a level playing field.

Mr. MARTIN. Right.

Mr. JOLLY. As we are continuing to expand the use of private contractors, ensuring that the agency is doing it in a manner that is not choosing favorites is including, you know, creating an equitable bidding environment, if you will, for the contractors now that we are increasingly relying on.

Mr. MARTIN. And we have done work in that area, again, particularly with some of the unused or under-used assets in Kennedy, NASA's process for making potential bidders or folks aware that there is an opportunity for them to lease. And NASA's process has been evolving. We made a series of recommendations to NASA to create that level playing field and that awareness.

Mr. JOLLY. Have they been adopting or implementing those recommendations?

Mr. MARTIN. They have.

Mr. JOLLY. Okay. Very good. Thank you very much.

Mr. MARTIN. Thank you, sir.

Mr. JOLLY. Yield back, Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Jolly. Well, we have had several people contact our office concerned that your OIG office is over-classifying reports particularly about Commercial Crew, and Orion, and SLS, and I wondered if you could talk to me about any of those, and what process you go through in deciding what to classify?

Mr. MARTIN. That issue is—I was telling the staff beforehand—that is a puzzler because I have no idea what that complaint might refer to. Now, we do not classify—I am not even sure that I have classification authority—we do not classify anything.

Mr. CULBERSON. Okay.

Mr. MARTIN. I mean, 99.5 percent of what my office does, we release publically on the Internet. The 0.5 percent is if we had done an IT review that identified specific—

Mr. CULBERSON. We are not aware of anything that you have—any information in your office that you have classified unless it dealt with somebody's personal information or a criminal investigation. Other than that—

Mr. MARTIN. Absolutely not a clue.

Mr. CULBERSON. Good, good, good.

Mr. MARTIN. Right. I am trying to guess what that may refer to. ASAP, the Aerospace Safety Advisory Panel, put out their annual report at the end of last year. Where ASAP complained that they were not given information from big NASA about the Commercial Crew issues, they were sort of being frozen out by saying that it was involved in a bid protest or some other issues. But that, again, that was ASAP that was not OIG's office.

Mr. CULBERSON. Let me also ask about the weather data, that I mentioned earlier with Mr. Zinser. Have you ever analyzed the data quality? Weather data collected by, for example, I know Goddard was involved previously in data collection, analyzing old records of temperature, for example. Have you ever analyzed any—

Mr. MARTIN. Not in the 5 years that I have been Inspector General.

Mr. CULBERSON. Okay.

Mr. MARTIN. Right.

Mr. CULBERSON. Something I would like to explore a little more with you separately.

Mr. MARTIN. Sure.

Mr. CULBERSON. And we have a couple of highlights in here, areas where I had some questions. You mentioned in your September 2014 report that you found that “the agency will not be able to meet its goal of cataloging 90 percent of near-Earth objects by 2020.” Could you talk to me a little bit about that and what problems you identified there, because it is a low likelihood that it would happen but the effect would, obviously, be catastrophic.

We saw the reentry of the large meteor over Russia last February, because of the dash cams they all have. It came in from the sun, nobody even knew it was there. And talk to us about the problems with a near-Earth orbit program.

Mr. MARTIN. We did a specific audit that looked at NASA’s efforts to identify first and then potentially mitigate these near-Earth objects. There is a congressionally cited sort of deadline, I believe it was 2020 and I cannot come up with the size of it.

Mr. CULBERSON. 2020?

Mr. MARTIN. Right. It is the big ones.

Mr. CULBERSON. About 140 meters in diameter.

Mr. MARTIN. Yes, definitely the big ones.

Mr. CULBERSON. Big around, yes.

Mr. MARTIN. The ones that you would yell, duck, and things like that, yes.

Mr. CULBERSON. City killers.

Mr. MARTIN. Exactly. What we found, in essence, was one individual at NASA who had, I do not want to say sole responsibility, but he had sole responsibility for managing this program and he was completely overworked, and the Program itself was underfunded, and so we made a series of recommendations to increase both the staffing and the ability of this office, and therefore NASA—

Mr. CULBERSON. September report?

Mr. MARTIN. That was in our September report. Right.

Mr. CULBERSON. All right, sir, we will go through that and do whatever we can to help. It is an important part of NASA’s function. And, frankly, to my mind, a little better use for the asteroid retrieval is to develop the next generation of rocket propulsion to demonstrate that they can actually move one of these asteroids if it was headed our direction.

Also I am concerned that there is a gap, potentially, coming up in the tracking and data relay satellite program. What are some of the recurring patterns you see, what is causing some of the problems in the management? Whether it be—you heard the testimony about NOAA and the joint polar satellite, there were too many chiefs overseeing it when it was split between Defense, Commerce, and NASA, I think now it is just Commerce and NASA handling it. What are some of the common themes you see that cause some of these problems with, for example, there are some techno problems with the James Webb Space Telescope, for it to jump from—what is it 3 billion originally estimate to now over 8?

Mr. MARTIN. 8.6 billion I believe.

Mr. CULBERSON. And climbing.

Mr. MARTIN. Right.

Mr. CULBERSON. I mean, it is a spectacular instrument and vital that we get it up and flying, it was a top priority of the Decadal Survey which we should always follow. But the cost overruns and the delays, it just seems to be, systemic and constant.

Mr. MARTIN. I appreciate you raising the SCAN Program, which is the Space Communications and Navigation Program, that you refer to with the TDR satellites. We are doing a series of four audits, one of which we have released and that dealt with the TDR satellites, and the problems there, again with many things, it is the TDR satellites that are up there are beyond their useful life, they're antiquated, and it is quite expensive, I think in the neighborhood of \$300, \$350 million to create another one and to launch it up. And so it is a significant issue that NASA needs to have a certain configuration, I forget if it is six or seven working at one time, to have communication with the Station and other low Earth orbiting satellites.

We are in the middle right now of winding up looking at the Deep Space Network. And this is where NASA has at least three installations—one in Goldstone, California; one in Madrid, Spain; and one in Canberra, Australia—at which they have an array of antenna. And the problem there is again antiquated equipment and very expensive upkeep.

And so while NASA's doing some programmatic things to try to save money, and we think they make sense, there has got to be—there have been cuts to the budgets of those programs, and they had a replacement cycle, an upgrade cycle and those upgrades and replacements are slipping behind, and that is obviously critical.

It makes no sense to spend billions and billions of dollars to send, you know, robotic missions out well beyond low-Earth orbit if you cannot communicate with them because you cannot receive the wealth of information they are sending back. So it is a very serious issue.

Mr. CULBERSON. Mr. Jolly.

Mr. JOLLY. I am good.

Mr. CULBERSON. Any follow-up?

Mr. JOLLY. No, thank you.

Mr. CULBERSON. What common themes or threads do you see in each one of these large satellite programs or spacecraft designs where they seem to have a problem in meeting their cost estimates, they fall behind schedule, they go over budget. Are there any common themes that you see looking across NASA?

Mr. MARTIN. It is inconsistent project management. And we have seen that, in fact, we put a—it was kind of an unusual audit for us. Usually when you go in and audit, there is a discreet issue, you drill down, look for money issues, look for fraud, waste, abuse, things like that. We did a piece about two and a half years ago that looked at NASA's historic issues with keeping its big projects on cost and on schedule, and I commend that to the committee and to the public.

Several themes emerge from that, in particular, that there is a mind set, certainly historically, at NASA that as long as the project works at the end of the road—and that road may be many years beyond at a much higher dollar than what was promised—all sins

will be forgiven leading up to that point. Hubble Space Telescope did, in fact they call it the Hubble Philosophy, it is not a term that I coined. That Hubble produces extraordinary pictures, and we are very thankful to have that. But at what cost?

If you look at the rather tortured development of the Hubble Space Telescope, including post launch, it was well over budget and well over time. But all those things are forgiven because it produces beautiful pictures. And so it is the discipline, I think, that NASA needs to insist in its project management.

Mr. CULBERSON. I will go back and look at that report.

Mr. MARTIN. Sure.

Mr. CULBERSON. Let me also ask you about the concerns that Chairman Wolf quite correctly had about Chinese nationals. The Chinese Space Program is owned lock, stock, and barrel by the People's Liberation Army, and we have prohibitions in our Bill that I will make sure we continue, it is really important to keep the Red Chinese out of our space program. In looking at the requirements and the law, that NASA makes sure they do not have any interaction with the Chinese Space Program. Talk to us about NASA's compliance with those requirements that Chairman Wolf quite correctly put in our Bill.

Mr. MARTIN. Right. I think NASA has complied, they have identified and notified this subcommittee and the Congress when they have had any kind of communication or any travel related to China. I would cite two other issues, one I mentioned in the testimony, NASA's follow-up on the 27 recommendations issued by NAPA, they have taken the recommendations quite seriously and so they are moving down the road there.

Another area that my office has done extensive work in is in IT security. So you brought your point out, it is a concern to have any foreign national, improperly at a NASA center. Frankly I think the larger concern is the penetration of NASA's IT network and IT security, by not only the Chinese but other foreign and domestic hackers.

Mr. CULBERSON. You said there are over 1,200 Web applications that are potentially vulnerable that—how is NASA dealing with that?

Mr. MARTIN. Yes, it was shocking when we looked at this. NASA maintains more than half of all the civilian non-military Websites. I had no idea. One agency maintains over—in fact, they had 1,500 when we began the audit, by the end of the audit they had reduced to 1,200 and they are still working.

And what that does, as you can imagine, it just provides—the target area is just so rich, it is so wide open. Part of the reason NASA has so many is because of its statutory mandate to share the results of its research. So they are speaking to the public, they are speaking with researchers, they are allowing ways for NASA employees into NASA systems. So maintaining proper IT security is an incredibly important issue, and our office has done a ton of work in that area.

Mr. CULBERSON. How is NASA dealing with it though? I mean are you satisfied that they are making—

Mr. MARTIN. I am satisfied that they appreciate the gravity of the situation. Am I satisfied that NASA is where they need to be

with IT security? Absolutely not. And partly what the fundamental root of NASA's IT security problem is the broader IT governance concerns.

NASA, up until I would say a year or two ago, fundamentally they were run—the IT governance was decentralized, run center by center. NASA's CIO had control over only 11 percent of the Agency's \$1.5 billion IT spend each year. The agency CIO, 11 percent. The programs, the missions, controlled 63 percent, and the Centers controlled the rest of that.

Now, you talk about the Appropriations Committee shaking the, you know, the stick, that is the stick, you are writing the checks at the end of the day. Well, if the CIO doesn't control the checkbook at NASA, it is very difficult. He could be as persuasive as possible, but he is not holding the checkbook. So I still have concerns about, significant concerns, about NASA's IT governance. Do they get it? Are they heading in the right direction? Absolutely.

Mr. CULBERSON. Talking, if I could, a little bit about keeping foreign nationals out of some of our flight centers. I know that—I was searching for this and just found it—you are referencing foreign nationals entering Ames's Flight Center, potentially having access to ITAR restricted information. "On two occasions a senior Ames manager inappropriately shared documents with unlicensed foreign nationals." I think I saw in here that these foreign nationals are actually working with a university in the area and because the university was doing some research at Ames were given access.

Mr. MARTIN. I believe at the point these foreign nationals were not, I think they were actually NASA employees at the time. NASA goes through—and I think the government goes through—before you bring a foreign national on they have to pass varying levels of background checks.

Mr. CULBERSON. Even if they are with the university?

Mr. MARTIN. Yes. The requirement is, if the contract is through the university they need to go through these background checks.

Mr. CULBERSON. I would be very interested in your help and your office—

Mr. MARTIN. Sure.

Mr. CULBERSON [continuing]. Making sure that those standards are followed because I had heard that that is not necessarily happening at Ames. I was just out there a few weeks ago.

Mr. MARTIN. Okay. We can chat with you and your staff on that.

Mr. CULBERSON. And I will go through some of these with you, and I will submit others for the record and meet with you separately and privately. I do not want to take too much of your time. We are going to face tight budgets and I do, if I could, really want to call on your help and the help of your staff in helping us find savings that we can use to help make sure that NASA gets the funding they need to do their job.

Mr. MARTIN. I look forward to the opportunity.

Mr. CULBERSON. And the freedom that they need and stability so they can do their job.

Mr. MARTIN. Absolutely.

Mr. CULBERSON. Without the fear of having the rug jerked out from underneath them.

Mr. MARTIN. Right.



Mr. CULBERSON. Deeply appreciate your service.  
Mr. MARTIN. Thank you.



**QUESTIONS FOR THE RECORD**  
related to the

Testimony of

**The Honorable Todd J. Zinser**  
Inspector General

U.S. Department of Commerce

before a hearing of the

Committee on Appropriations  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
U.S. House of Representatives

***The Department of Commerce's Fiscal Year 2016 Budget Request***

February 25, 2015

**Chairman John Culberson****Patent and Trademark Office – Telework and Nepotism**

Last year several very disturbing management practices at the Patent and Trademark Office came to light including nepotism in hiring at the Trademark Office, and time and attendance abuse including telework programs for patent examiners and paralegals. The timely processing of patent and trademark applications is important to our nation's economy and the PTO's application backlogs have been significant for many years. The idea that PTO has patent backlogs in excess of 500,000 applications and yet employees are being paid for time they haven't worked is very troubling. PTO has promised to address these abuses and give their supervisors better tools to manage their employees.

- What are you doing to monitor PTO efforts to improve their time and attendance reporting?

The Department of Commerce Office of Inspector General has taken several steps to monitor USPTO's efforts to improve its time and attendance reporting. For instance, we have played an active role in USPTO's implementation of our recommendations in the OIG's July 28, 2014 report concerning abuses within the Patent Trial and Appeals Board (PTAB). Our PTAB report made a number of recommendations to improve USPTO's time and attendance efforts, including recommending that (i) PTAB institute clearer telework rules, (ii) provide regular training to all teleworking employees, and (iii) review the effectiveness of its telework programs and determine whether they are appropriate for the work of the organization.

In response to our report's recommendations, USPTO conducted additional telework training for PTAB paralegals and their supervisors. Specifically, PTAB paralegals and their supervisors received refresher training in October 2014 on the existing time and attendance rules, requirements, responsibilities and permissible teleworking activities. USPTO provided additional telework training for all PTAB employees in October 2014. Going forward, all PTAB telework participants will be required to take the telework training annually.

Beyond these steps, OIG has engaged directly with USPTO to address time and attendance matters. In particular, we have established an arrangement with USPTO by which the agency provides OIG with weekly reports regarding potential misconduct by USPTO employees, which regularly include allegations of time and attendance abuse. Upon receipt of those matters, OIG determines whether the allegations require attention from OIG or USPTO management. As a result of those weekly reports, OIG has initiated a number of investigations into time and attendance abuses by USPTO employees. In one of those investigations, the evidence established that a patent examiner fraudulently claimed—and received salary and benefits for—more than 800 hours not actually worked. (OIG referred the matter for prosecution, but the U.S. Department of Justice declined to pursue the matter.) OIG is currently conducting other investigations of alleged time and attendance fraud by USPTO employees. Other matters involving allegations of less extensive time and attendance abuses have been referred to USPTO management for further review and reporting back to OIG. USPTO has a number of those management actions underway, and OIG will continue to monitor USPTO's handling of those matters.

We also understand that USPTO is currently considering modifying its internal procedures to make time and attendance data more readily available to management to examine potential time and attendance abuse within the agency. OIG will continue to monitor the development and implementation of any new practices or procedures in this regard.

Additionally, the Inspector General and OIG senior staff met with the Commissioner of Patents in December 2014 to discuss, among other issues, the disciplinary actions taken by USPTO in time and attendance matters over the past 2 years. USPTO recently provided OIG with responsive information, and we are in the process of analyzing those materials to determine whether further action is appropriate.

- Can we have confidence that nepotism in the hiring process has been eliminated?

Since the issuance of the OIG report *Review of Conduct by a High-Ranking Official in the Hiring of a Trademark Organization Employee* (13-0726) on July 8, 2014, USPTO appears to have taken steps to prevent future incidents involving conflicts of interest and nepotism in its hiring processes. For instance, following OIG's report, the agency adopted a new policy, entitled *Avoiding Prohibited Hiring Practices and Nepotism* (Policy No. OHR-202-04-19), to establish USPTO's nepotism policy and to provide ethics guidance concerning employment and other personnel actions affecting relatives and other individuals in close relationships with USPTO employees. Notably, beyond reiterating and clarifying the federal prohibitions on nepotism, the new policy expands those prohibitions to cover limited additional relationships that may not meet the legal definition of a "relative," but could raise similar concerns regarding nepotism, favoritism, or impartiality.

In addition, the policy appears to address problems identified in the OIG report about informal recommendations from USPTO employees. The agency now mandates that all employment recommendations must be submitted in writing and, to ensure compliance with a key statutory provision governing professional recommendations considered with respect to personnel actions (5 U.S.C. § 2302(b)(2)), be based upon the recommending official's personal knowledge of the individual's performance, ability, aptitude, general qualifications, or the character, loyalty, or suitability of the individual. According to the policy, hiring officials may not consider recommendations that are not based on personal knowledge of these stated attributes. We believe these changes, along with other enhancements to USPTO's nepotism policy, will help prevent instances of improper hiring in the future.

USPTO has also taken steps to develop its training for employees concerning ethics matters, including proper hiring practices and procedures. According to USPTO, the Department ethics personnel provide training to new USPTO employees when they join the agency and triennial training thereafter. Starting in 2014, the agency also required annual ethics training for patent examiners. Following OIG's July 2014 report, USPTO initiated training sessions for all hiring officials entitled "Participating in the Hiring Process: Understanding Ethical Requirements and the Role of Merit Principles," which was taught jointly by USPTO's Office of General Counsel and Office of Human Resources and focused on the role of the merit systems principles and ethics regulations in the hiring process. The agency reported to the OIG that more than 900 managers and supervisors attended these training sessions and that it held a follow-up overview session for high-level managers. We also understand that the agency is currently developing an online training

module called "The Supervisor's Role in the Hiring Process" and will provide detailed hypothetical situations to explain the key principles governing USPTO's hiring processes.

- Can we have confidence that PTO supervisors can effectively monitor their employees who telework?

As noted above, our investigations into time and attendance abuse by USPTO employees are ongoing, but at this point the evidence indicates that USPTO supervisors do not have all of the tools necessary to effectively monitor teleworking patent examiners, who constitute the vast majority of USPTO employees who work offsite.<sup>1</sup> We understand that supervisors tend to use three factors to determine whether an examiner is working. The use of the three factors, sometimes referred to as triangulation, apply to both teleworkers and office workers alike. First, the supervisors are instructed to review the examiner's production and determine whether the employee is producing at an acceptable level. Second, supervisors review the number of patent applicants or patent attorneys calling about applications handled by that examiner and the types of issues raised on those calls. Finally, supervisors observe whether examiners respond to their communications in a timely fashion (e.g., whether the supervisor can get in touch with examiners by email, instant message, or telephone, and whether examiners respond timely to meeting invitations).

Based on the evidence we have seen to date, including statements from some USPTO supervisors, we believe this three-pronged approach is inadequate for USPTO supervisors to effectively monitor teleworking employees. At best, this triangulation is a reactive approach, likely triggering the supervisor's attention only after the abuse has become noticeable—by that time, however, the employee's time and attendance abuse has probably persisted for an extended period of time with the potential to reach egregious levels. Additionally, the three-factor approach requires that a supervisor focus much of his or her attention on one examiner, when supervisors are generally already overwhelmed with other management and training responsibilities.

While our investigations into time and attendance abuses continue, we believe that USPTO could take specific steps that will provide a higher level of confidence that supervisors have the tools to monitor teleworking employees effectively.<sup>2</sup> In order to adequately monitor teleworkers, it is imperative that supervisors know their employees' planned work schedule for a particular week. Patent examiners are currently required to provide in advance only the number of hours they plan to work in a given biweekly period. Examiners are not required to provide supervisors with their telework schedule. This can create significant supervisory problems because examiners have great flexibility as to when they can work on a given day. Most examiners are permitted to work no more than 12 hours and no less than 15 minutes per day, Monday through Friday, between the hours of 5:30 a.m. and 10:00 p.m. Some examiners can work overtime outside those hours. Supervisors can and do reach out in the course of their responsibilities but, without an understanding of a teleworker's schedule on a biweekly basis, a supervisor's attempt to

<sup>1</sup> Although USPTO has different types of telework programs, our comments regarding teleworking personnel refer to (a) employees who telework periodically and (b) hotelers who work offsite on a long-term, permanent basis.

<sup>2</sup> We note that these steps may require consultation with the employees' labor unions.

check in with a teleworker to confirm they are working may not reach that teleworker in a timely manner.

Assuming examiners are required to inform their supervisors of their work schedule, the supervisors would still need a way to determine whether teleworkers are working. USPTO has explained that it provides examiners with “collaboration tools” that enable employees to communicate with each other and their supervisors, collaborate on projects, and participate in training and meetings. The collaboration tools include the Microsoft Lync communication platform, an instant messaging-type program that allows examiners to send real-time instant messages, make phone calls, or video conference. The program also has a colored presence indicator that informs others whether an employee is online and “available” (green light), online but “busy” or “in a meeting” (red light), online but “away” from their computer for a certain amount of time (yellow light), or offline. As of February 22, 2015, examiners are not permitted to take action that blocks communication (i.e., setting the presence indicator to “do not disturb”).

Currently, examiners are required to sign into their presence indicator during working hours. The indicator can be used to determine when an employee is present to facilitate communications. However, USPTO’s policy on work schedule notification, communication, and collaboration states that the presence indicator does not necessarily reflect whether examiners are working. As a result, the indicator cannot be used as a basis to make such a determination. Even if examiners are working on their computers and otherwise available, they are not required to show an “available” status. Supervisors therefore have no choice but to reasonably interpret a status of “away” to mean that the examiners are working. Such a policy makes it difficult to monitor whether teleworkers are working. On the other hand, requiring examiners to show their actual status on the presence indicator would allow supervisors to determine quickly whether their subordinates are near their computers. Supervisors could then reach out to examiners whose presence indicators show that they are working (e.g., not “away”) if necessary. For example, if an examiner has a status of “busy,” a supervisor could reach out to request a response when available.

Clarifying the meaning of each status would also assist supervisors in effectively monitoring teleworkers. A “busy” status can be interpreted a number of ways, depending on the situation. For example, it could mean that the teleworker is on the phone or is being used as a substitute for “do not disturb,” which examiners are no longer permitted to use. We believe the presence indicator for a teleworker should mimic the status of an employee working in the office. If a teleworker is present at his workstation, that teleworker’s presence indicator should read “available,” just as the presence of an office worker in his or her office shows they are present and available. The only reason why a teleworker’s status should read “busy” or “in a meeting” is if that employee is using a different mode of communication (phone, instant message, or video conference) and cannot respond to a message, email, or phone call. If the teleworker is away from his or her workstation, the status should read “away.” Formalizing statuses as described above would permit supervisors to supervise teleworkers in an efficient and effective manner, much the same way they would check in at the office. In addition, if examiners are required to provide a work schedule as described above, a supervisor could then compare the work status indicator with an examiner’s work schedule to verify that the examiner is working when they should be working. While requiring examiners to show their actual status will not

necessarily assure supervisors that examiners are working, it will give supervisors an indication as to whether teleworkers are likely working and add another data point to detect time and attendance abuse.

We recognize that, even in an office setting, a supervisor cannot be certain that an employee is working by his or her mere presence in the office. Presence, however, is a threshold indicator in determining work status, and the supervisor can then use production metrics to determine how efficient the employee is at work. Two additional tools—a teleworker's work schedule and the presence indicator indicating actual status—would further improve a supervisor's ability to confirm that a teleworker or hoteling examiner is working.

- Can we expect patent backlogs to be reduced and patent quality to increase if the telework abuses are eliminated?

Telework abuse is a form of time and attendance abuse, which reduces an employee's productivity because it inherently reduces the time spent working. Patent examining is time-intensive work; eliminating abuses that reduce work time, telework or otherwise, should result in patent examiners spending more time examining patent applications—which could reduce the backlog (and, more specifically, patent pendency) and improve quality by allowing more time to complete comprehensive reviews of applications.

Time and attendance abuse, both among teleworking employees and those physically reporting to USPTO offices, is a function of poor management controls. However, in addition to strengthening management controls, changes in the patent production goals and quality measures could reduce backlogs and patent pendency and improve patent quality.

USPTO sets production goals for its examiners: an examiner must review a certain number of applications relative to examining hours claimed. For example, an examiner might have a production goal of 4 patent reviews for an 80 "examining hour" time frame. From FY 2010 to FY 2014, 91 percent of the examiners met or exceeded their production goals, as defined in their annual performance plan. However, USPTO did not adjust its production goals between 1976 and 2009, despite major changes to the technologies used for patent review, such as examiner use of online databases instead of paper archives. And the production goal changes announced in September 2009 resulted in giving examiners more time for the same amount of patent examining work. Consequently, reports of time and attendance abuse, telework abuse, and end-loading—the practice of submitting a high volume of written decisions at the end of each quarter to meet production goals—suggest that at least some examiners have excess capacity in their schedules.

Our April 2015 patent quality report<sup>3</sup> found that—between October 1, 2009, and March 31, 2014—up to 20 percent of examiners practiced end-loading by submitting more than 50 percent of their work in the last 4 weeks of any given quarter. Examiners affirm their time in the electronic payroll system every 2 weeks. Thus a full-time examiner should be working 40-hour weeks over the entire quarter. If a fifth of all patent examiners are not

<sup>3</sup> Department of Commerce Office of Inspector General, April 13, 2015. *USPTO Needs to Strengthen Patent Quality Assurance Practices*, OIG-15-026-A. Washington, DC: DOC OIG.

submitting the majority of their work until the end of the quarter, questions inevitably arise about how they are spending the rest of their certified work time (typically 80 hours per biweekly pay period). Some patent examiners practicing end-loading may have legitimate reasons for not submitting their work until the end of the quarter: perhaps they conduct their examinations incrementally on multiple reviews before submitting their decisions simultaneously. However, in other cases, end-loading could represent employees actually doing the majority of their work at the end of the quarter.

Additionally, our report found the USPTO's measure of quality for an individual examiner's work is insufficient. During the period of FYs 2011–2013, more than 95 percent of all patent examiners received outstanding or commendable ratings for the quality element of their annual performance evaluations. To determine the ratings, supervisors must conduct in-depth reviews of at least four written determinations per examiner. We found that USPTO does not have a systematic method to ensure that these reviews are occurring—and that the metric used to calculate the rating, based on the reviews, does not capture high percentages of determinations with errors, resulting in high examiner performance ratings.

In March 2014, USPTO trained supervisors to better identify quality issues during their reviews of examiner determinations and in August 2014, initiated a pilot program to study end-loading. Although these steps are positive, many examiners will likely need fewer than 80 hours to meet the current production goals and ensure quality results, in which case opportunities for time and attendance abuse will likely continue to arise.

#### **NOAA Information Security Deficiencies**

It was revealed last November that NOAA was the victim of a cyberattack that compromised four NOAA websites. We understand that you are initiating an audit of NOAA's IT security practices related to this incident.

- To the extent that you are able to comment, could you briefly explain what happened? Has NOAA taken appropriate steps to address this vulnerability?

In September 2014, NOAA systems were a target of a serious cyber-attack. The attackers initially targeted three vulnerable Internet-facing National Environmental Satellite, Data, and Information Service (NESDIS) web applications and, from there, compromised additional NESDIS computers. NOAA's analysis determined the exfiltration of sensitive system information (e.g., user account names and passwords) and internal NOAA documents. Other exfiltrated information was encrypted and its content is unknown. NOAA indicated that it removed the attackers from its systems and remediated the vulnerabilities that allowed the attackers to gain initial access. During NOAA's efforts to contain the cyber attack, it inadvertently disrupted transmission of satellite weather data to the National Weather Service (NWS), the Department of Defense, and international forecast centers.

As you noted, we are conducting an audit that will determine the significant factors that contributed to the successful cyber attack and NOAA's effectiveness in responding to it. One area that we plan to assess is NESDIS' vulnerability scanning practices and its vulnerability remediation program. In FY 2012, the Department's chief information officer



issued an updated vulnerability scanning policy that now requires vulnerability scanning of applications and the timely remediation of vulnerabilities. This updated policy was based on recommendations from our cybersecurity work in FYs 2010 and 2011. Our FY 2010 work identified thousands of high-risk unremediated vulnerabilities, some previously undetected, in the Department systems we assessed. Factors contributing to the existence of these vulnerabilities included insufficient vulnerability scanning policies, procedures, and practices. Also, our FY 2011 work assessed web applications across the Department, including NESDIS. We found significant vulnerabilities resulting from inadequate software development practices, improper software configurations, and failure to install system updates in a timely manner.

This attack followed a report that your office issued in July 2014 regarding deficiencies in NOAA's national critical mission information systems, namely in its satellite programs.

- Is NOAA working aggressively to address the deficiencies outlined in that report? It is my understanding that many of these deficiencies require relatively simple fixes.

In 2014, we issued two IT security reports on NOAA's systems. The first report, issued in July, addressed security deficiencies in four NESDIS systems and five NWS systems. In August, we issued a memorandum report addressing security deficiencies on the Joint Polar Satellite System (JPSS) ground system.

NOAA is working to address the deficiencies outlined in our July report; however, simple fixes cannot remediate most of the vulnerabilities. For example, one of the NESDIS systems, the Polar-orbiting Operational Environmental Satellites ground system, is at an increased risk of a compromise because it is highly integrated with the U.S. Air Force's Defense Meteorological Satellite Program ground system. However, separating the two systems is not a simple fix, because both systems share the same IT infrastructure. Currently, we are working with NOAA on a corrective action plan which we hope NOAA will finalize by July 2015. In the JPSS report, we identified vulnerabilities that were relatively easy to fix, and NOAA indicated that it is working aggressively to fix the vulnerabilities.

#### **Polar Orbiting Weather Satellites**

NOAA is currently developing two weather satellite systems -- the Joint Polar Satellite System and the Geostationary Operational Environmental Satellite -- to replace existing weather satellites. The fiscal year 2015 appropriation included \$1.9 billion, the full request, to continue these efforts. The fiscal year 2016 request includes about \$1.7 billion for these two satellite programs, reflecting planned reductions as milestones toward launch are achieved. The Committee continues to support these important initiatives. NOAA states that satellites provide, on average, about 95% of the data assimilated into the National Weather Service numerical weather prediction models. Of this, more than 80 percent are from polar-orbiting satellites.

The Joint Polar Satellite System, JPSS-1, is a NOAA weather satellite that is scheduled to launch no later than the second quarter of fiscal year 2017. Your office issued a report in June, 2014 about a potential gap in polar weather data should the current satellite, the Suomi National Polar-orbiting Partnership, or Suomi NPP, fail prematurely or if JPSS-1 fails on launch or once in orbit. I understand

that later this spring NOAA is about to issue an updated, "Mitigation Plan for Potential Afternoon Polar-orbiting Satellite Data Gaps."

- Based on your review of the JPSS program and ongoing mitigation activities, has NOAA put in place adequate contingency plans should such a gap occur?

Yes, NOAA is taking steps to create a robust polar satellite constellation—one that is tolerant of single satellite or instrument failures. The FY 2016 budget submission formally introduces the Polar Follow-On program, which includes plans for a JPSS-3 and JPSS-4. It also includes an option to launch JPSS-3 early in the event of a premature failure of JPSS-2. This contingency mission would fly only the most critical instruments for weather prediction.

- What two or three activities do you believe NOAA should be doing in order to address a potential loss of data?

In order to reduce the potential for a loss in polar satellite data, NOAA must

- *Keep JPSS-1 development on track for a FY 2017 launch.* This effort is currently dealing with integration and testing challenges in both the satellite and ground system.
- *Continue efforts to make its forecasts more resilient to gaps in satellite data.* The agency can accomplish this by improving high-performance computing and numerical weather prediction models, as well as using other existing sources of observational data more effectively.
- Following that, in your view, is NOAA in a position to quickly implement any of those paths you identified?

Of these two activities, we find NOAA is better positioned, with NASA, to ensure that JPSS-1's development stays on track. Our work has not yet directly examined NOAA's efforts to improve forecasts. NOAA's updated "Mitigation Plan for Potential Afternoon Polar-Orbiting Satellite Data Gaps" should provide insight into this activity.

#### Geostationary Weather Satellites

The next Geostationary Operational Environmental Satellite, the GOES-R satellite, is scheduled to launch in the second quarter of 2016, or about a year from now. Your office issued a report critical of efforts with respect to the ground system.

- Has NOAA adequately addressed those deficiencies?

Yes. Since we issued our memorandum,<sup>4</sup> NOAA revised the launch readiness date to March 2016 because of flight segment problems. As a result, we now believe that the core ground system has a greater likelihood of having all capabilities implemented before launch.

<sup>4</sup> DOC OIG, March 6, 2014. *Interim Memorandum re: Audit of NOAA's Geostationary Operational Environmental Satellite-R Series Core Ground System Observations*, OIG-14-014-M. Washington, DC: DOC OIG.

- When will NOAA be able to ingest and disseminate all of the data that we are expecting from this new satellite?

NOAA's on-orbit check-out period for GOES-R is 6 months. Assuming a successful launch, the initial data products (e.g., satellite imagery for severe storms, space weather) should be available by September 2016, with all remaining data products (e.g., lightning, precipitation, winds) by March 2017, for NOAA to ingest and disseminate.

- Can you tell us about any potential gaps in this program – has NOAA taken adequate steps to address a potential gap in geostationary data – should one of current satellites fail – before the GOES-R satellite is launched in 2016?

NOAA's geostationary policy is to have three satellites in orbit—two operational satellites and one on-orbit spare for backup—which has been an effective approach in preventing a coverage gap. However, the constellation is at risk of not having a back-up on-orbit for 18 months—from April 2015, when GOES-13 (operating as GOES-East) reaches its end-of-design life, until GOES-R is ready for operations in September 2016. In order to limit this risk NOAA must keep GOES-R development on track for its planned March 2016 launch.

#### Satellite Procurement and Development

What are your thoughts on how to improve or streamline the relationship between NOAA and NASA for satellite procurement and deployment?

Our satellite system acquisition audits, generally, have not focused on the relationship between NOAA and NASA. However, other independent reviews have made recommendations for NOAA and NASA to improve program governance. Specifically, in 2012, NOAA's independent review team (IRT)—chaired by former President of Martin Marietta Corporation, Tom Young—examined the governance structures of GOES-R, JPSS, and an alternative model that would hold NOAA responsible for requirements and NASA responsible for budget and program execution. The IRT concluded that the GOES-R governance structure best met its principles for successful governance and recommended that NOAA implement the GOES-R model for JPSS. In response, NOAA did clarify the authority of the JPSS director position and directed the integration of all systems engineering under a single (NASA) program systems engineer. However, the JPSS program structure remains complex. A planned transition of ground system sustainment from NASA to NOAA, approximately 1 year after JPSS-1 is launched, may be an opportunity to bring JPSS' structure more in line with the GOES-R program.

#### FirstNet

You testified about your concerns related to the deployment of the First Responders Network – can you elaborate on the issues that you have discovered relating to its deployment, and describe how the agency has followed through on your recommendations?

We have been monitoring the First Responder Network Authority's progress to establish a public safety broadband network since its creation in February of 2012. Our last three *Top Management Challenges Facing the Department of Commerce* reports for FYs 2013–2015 included identifying FirstNet's implementation of a Nationwide Public Safety Broadband Network (NPSBN) among

the most significant management and performance challenges facing the Department of Commerce.

In our February 25, 2015 testimony, we presented general areas that required continued management attention: organizational structure, consultation, and development of a nationwide long-term evolution (LTE) network. To provide further detail, we identify the following as the most significant challenges facing FirstNet:

***Ensuring the adequacy of funding for a nationwide network.*** The Middle Class Tax Relief and Job Creation Act of 2012 (the Act) provides up to \$7 billion to build a nationwide public safety network. FirstNet must build a network that covers most of the 50 states, 5 territories, the District of Columbia, and 566 tribal nations. The 3.8 million square miles to be covered by the network will include areas that are urban, suburban, rural, and wilderness, as well as islands. Although up to \$7 billion was initially authorized by the Act, the total costs to establish the network are still unknown.

***Determining the sufficiency of assets contributed to the network by states, local governments and commercial entities.*** Implementing the NPSBN will require that FirstNet leverage existing infrastructure, such as existing government and commercial buildings, towers, fiber or microwave backhaul, and data centers. Assets are expected to be contributed by various parties including states, local governments, tribal entities, and commercial entities. FirstNet must effectively identify which existing infrastructure assets can be incorporated into the network. Also, FirstNet must take appropriate steps to comply with all applicable environmental and historic preservation laws, regulations, treaties, conventions, agreements, and executive orders as it integrates contributed assets into its design.

***Incorporating lessons learned from the Broadband Technology Opportunities Program (BTOP).*** FirstNet will need to build upon lessons learned from public safety projects funded by BTOP grants, an American Recovery and Reinvestment Act of 2009 program administered by the National Telecommunications and Information Administration (NTIA) to expand nationwide broadband infrastructure and adoption. Of the approximately 230 BTOP awards, 7 went to establish regional public safety broadband networks. However, the passage of legislation establishing FirstNet overtook these projects, and all 7 BTOP awards were partially suspended. Eventually, FirstNet entered into spectrum lease agreements with 4 of the projects—for which FirstNet will provide technical support and share any lessons learned on issues such as quality of service, priority/preemption, and federal partnerships with the broader public safety community.

***Addressing identified internal control weaknesses.*** Initially, FirstNet struggled to establish an organization and necessary internal controls. In July 2014, an independent public accounting firm reported a material weakness related to the financial reporting process in FirstNet's first financial statement audit required under the Act.

We initiated a review of FirstNet in response to (1) ethics- and procurement-related issues raised by a FirstNet Board member at an April 23, 2013, FirstNet Board of Directors meeting, (2) a conversation between FirstNet's chairman of the Board (chairman) and the IG, and (3) the chairman's subsequent request for the OIG to take over the ethics and procurement inquiry. Our resulting audit report, *FirstNet Must Strengthen Management of Financial Disclosures and Monitoring of Contracts* (issued December 5, 2014), found that the Department's

monitoring procedures for financial disclosure and potential conflicts of interest at FirstNet were inadequate. We also found that FirstNet's contracting practices lacked transparent award competition, sufficient oversight of hiring, and adequate monitoring. In the report, we offered recommendations to the Secretary of the Department of Commerce, regarding financial disclosure noncompliance issues; the Department's general counsel, regarding Office of General Counsel internal controls pertaining to financial disclosure and conflict of interest at FirstNet; the chair of FirstNet's Board, regarding the submission of initial disclosure and final public filer termination reports, as well as the routine updating of lists of entities presenting potential conflicts of interest; and the Department's senior procurement official, regarding contracting procedures, assurance, and administration.

In its response to our report, the Department acknowledged OIG's findings and concurred with the recommendations. In its February 3, 2015, action plan and March 5, 2015, revision to the plan requested by our office, the Department noted that FirstNet has developed compliance procedures and now coordinates with the Department on financial disclosures and conflicts of interest. Also, the Department identified actions planned and taken to address our findings including its plan to provide guidance to contracting staff on correct procedures for (1) selecting contract types, (2) hiring consultants, (3) ensuring receipt of deliverables, and (4) outreach, training, and oversight effort to prevent occurrences of unauthorized commitments. On March 13, 2015, we responded to FirstNet that the actions taken or planned met the intent of our recommendations.

**Addressing staffing and other organizational issues.** At the start, FirstNet has encountered difficulties in hiring and maintaining staff for key technical positions. For roughly the first year and a half of its existence, certain Board members functioned in roles as both Board members and as part of the management team, before FirstNet eventually assembled a separate management team and transferred operational responsibilities to it. Nonetheless, while many senior positions (e.g., chief information officer, chief administrative officer, and chief financial officer) are in place, key leadership positions throughout the organization remain vacant, including the chief user advocacy officer—a leadership position managing consultation and outreach—as well as many regional directors and supervisors for consultations. Three FirstNet executives have left their positions, which are now being filled in an acting capacity.

**Effectively executing the consultation process.** The Act designates at least three federal agencies—the Federal Communications Commission (FCC), NTIA, and the National Institute for Standards and Technology (NIST)—to provide consultation and support to FirstNet. The Act also directed that FirstNet consult with regional, state, tribal, and local jurisdictions regarding the distribution and expenditure of funds required to establish network policies. Specific consultation topics outlined in the Act include core network construction and Radio Access Network (RAN) build out, placement of towers, and network coverage areas, among others.

FirstNet is to consult with the jurisdictions through a locally designated officer or body, generally referred to as the single point of contact (SPOC) for each jurisdiction. Accordingly, FirstNet has begun initial consultations with SPOCs and must consider the information it collects as it develops the NPSBN. FirstNet had set an internal goal to have initial consultations with each jurisdiction completed by the end of November 2014. However, while FirstNet has held some initial consultation meetings and has scheduled others into September 2015, several have yet to be scheduled. FirstNet has indicated that the timing of these

meetings depends on each state's readiness and how quickly FirstNet can fully staff its outreach team.

As we continue our oversight of FirstNet, we will keep the committee informed of FirstNet's progress with respect to the challenges discussed here—and any others we identify through our audits, evaluations, and investigations.

#### Weather Prediction

In your experience, do you feel confident in NOAA's ability to predict and prepare for severe weather?

We have not performed audit work that would sufficiently inform a full opinion on this matter. However, in our *Top Management Challenges Facing the Department of Commerce*<sup>5</sup> report, we noted the Department's efforts to build a weather-ready nation through strategies to (1) evolve NWS, (2) improve the accuracy and usefulness of forecasts, and (3) enhance decision support services for emergency managers. In particular, the goal of improving NOAA's forecast model accuracy from 8 to 9 days by the end of FY 2015 is a challenge, given that its skill has remained at the 8-day level since 2010.

In a memorandum to its independent review team in late 2013, the NOAA deputy under secretary and the NWS director, issued a statement regarding the importance of polar satellite data to 3–7 day forecasts that emergency managers “need to make critical decisions that protect American lives and property.” They concluded that “a lack of JPSS quality p.m. polar orbiter data would erode everyday weather forecasts and expose the nation to a 25 percent chance of missing extreme event forecasts that matter most.” In our June 2014 audit report, we recommended that NOAA explain the effects of a polar satellite data gap in terms of degraded forecast hours and extrapolated economic costs, or, conversely, the contribution to forecast accuracy and the economic benefits of afternoon orbit data.<sup>6</sup> Such information would benefit stakeholders' decision-making.

<sup>5</sup> DOC OIG, October 16, 2014. *Top Management Challenges Facing the Department of Commerce*, OIG-15-002, Washington DC: DOC OIG, 15–20.

<sup>6</sup> DOC OIG, June 17, 2014. *Audit of the Joint Polar Satellite System: To Further Mitigate Risk of Data Gaps, NOAA Must Consider Additional Missions, Determine a Strategy, and Gain Stakeholder Support*, OIG-14-022-A, Washington DC: DOC OIG, 22, recommendation 6.



**NASA OFFICE OF INSPECTOR GENERAL**

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WASHINGTON, D.C. 20546-0001

Subcommittee on Commerce, Justice, Science, Related Agencies  
Committee on Appropriations  
United States House of Representatives

Questions for the Record

"NASA Fiscal Year 2016 Oversight Hearing"

Thursday, February 25, 2015  
10:30 a.m.

Paul K. Martin, Inspector General  
National Aeronautics and Space Administration

Questions Submitted by The Honorable John Culberson, Chairman

**Implementation of Recommendations to Save Money and Increase Efficiency**

1. Please provide three specific examples where NASA has implemented any NASA IG recommendations to either save money or create efficiencies.

*Answer:* Table 1 identifies three examples where NASA has implemented our audit recommendations to save money or create efficiencies.

**Table 1: Recommendations Implemented by NASA to Save Money or Create Efficiencies**

Report Number and Title	Date Issued	Recommendation	Questioned Costs	Funds Put to Better Use
IG-11-023, <i>NASA's Payments for Academic Training and Degrees</i>	8/10/2011	Recommendation 1. Require that, prior to granting final approval of academic training, NASA Center Training Offices assess the appropriateness of all academic training requests to ensure that employees obtain academic degrees only through established academic training programs. (Implemented 11/25/13)	\$1,438,196	N/A
IG-11-023, <i>NASA's Payments for Academic Training and Degrees</i>	8/10/2011	Recommendation 6. Require employees to submit official transcripts to document successful course completion. (Implemented 11/25/13)	\$892,490	N/A
IG-15-001, <i>The Science Mission Directorate's Mission Extension Process</i>	10/9/2014	Recommendation 4. To ensure consistency with NASA mission priorities and budget requirements, develop a standardized approach for mission extension funding that clearly articulates expectations and consistently implements those expectations across all Science Mission Directorate Divisions. (Implemented 3/26/2015)	Created Efficiency	

Source: NASA Office of Inspector General.

**2. Please provide three recommendations that NASA could easily implement but hasn't.**

*Answer:* We make recommendations to address challenges and improve efficiency and effectiveness in NASA programs and operations. Generally speaking, NASA works to address the issues identified in our reports either in the specific manner we recommended or in an alternate way that addresses the concerns we raised. That said, at times we question the amount of time it takes NASA to implement some of our recommendations.

**Access to Records, Documents, and Materials****3. Has NASA in any way hindered or impeded access to any documents you have requested in the course of conducting audits or investigations? Are the various Centers and NASA headquarters forthcoming with all of the information requested by the IG?**

*Answer:* On the whole, NASA has not hindered or impeded our access to Agency documents. While NASA's response in a few instances could have been timelier, we have always received requested information and access to Agency personnel.



***Decadal Science Priorities*****4. Does the NASA IG review NASA's science missions in accordance with decadal science priorities?**

*Answer:* We consider the results of the National Research Council's decadal surveys when planning our audit oversight work. We have also examined NASA's efforts to address survey priorities in the past, including the Tier 1 missions examined in the 2007 Earth Science Decadal Survey and the Origins Spectral Interpretation Resource Identification-Security-Regolith Explorer. In addition, we currently are examining the timing and resources required to review a series of upcoming missions such as Mars 2020, Europa, and Solar Probe Plus.

**5. Does NASA have a process whereby they map decadal survey recommendations against ongoing or planned missions?**

*Answer:* Appendix A of NASA's Science Plan lists all decadal recommendations for each of the Science Mission Directorate's (SMD) four science divisions along with the status of each recommendation. Appendix B contains NASA's strategic goals and objectives, SMD goals by science division, decadal survey priorities, and SMD missions that support each of the recommendations.<sup>1</sup>

**Commercial Crew Program****6. In 2013, your office conducted an audit of NASA's management of the Commercial Crew Program. That report stated that since retirement of the Shuttle Program in 2011, NASA will pay Russia about \$1.7 billion – from 2012 to 2017 – to fly 30 NASA astronauts to and from the Station. The estimates range from \$47 million to \$70 million for each seat. Congress has since directed NASA to foster a U.S. commercial alternative to paying the Russians to fly us to the Space Station.**

**Your report highlighted a few areas of concern, including funding and alignment of costs with the program schedule. Have you seen evidence to date that the contractors will be able to develop programs that meet proposed 2017 launch capabilities given likely budget realities?**

*Answer:* The current contracts for both The Boeing Company and Space Explorations Technology (SpaceX) – the two companies selected by NASA to participate in the Agency's Commercial Crew Program – have a completion date of 2017 for their spaceflight capabilities. That said, several milestones for systems certification may occur as late as August 2017, and achieving these milestones is based on full funding of the companies' development schedules. In our 2013 report, we found that shortfalls in funding had contributed to a 2-year slip in completion of the capabilities from 2015 to 2017.<sup>2</sup> Since then, the Commercial Crew Program has received additional funding – \$696 million requested for fiscal year 2014 and \$805 million for fiscal year 2015. In our judgment, Program underfunding and the time needed to certify that the companies' spaceflight systems are safe for human travel are the most probable reasons the development schedule would slip beyond 2017.

<sup>1</sup> NASA's 2014 Science Plan, including appendixes, is available at [http://science.nasa.gov/media/medialibrary/2014/05/02/2014\\_Science\\_Plan-0501\\_tagged.pdf](http://science.nasa.gov/media/medialibrary/2014/05/02/2014_Science_Plan-0501_tagged.pdf) (last accessed May 7, 2015).

<sup>2</sup> NASA Office of Inspector General, "NASA's Management of its Commercial Crew Program" (IG-14-001, November 13, 2013).

We plan to initiate a follow-up audit of the Commercial Crew Program in early fall 2015 to assess NASA's ability to meet the 2017 date, as well as to examine the certification process of the launch systems in light of the human rating requirements.

- 7. The Committee was of the opinion that NASA should winnow the process down to one vendor in order to focus resources. Can you comment on whether or not including funding for two vendors is the appropriate path?**

*Answer:* We discussed the merits of having multiple vendors in our report on the Commercial Crew Program, noting that multiple vendors better ensures continued access to the International Space Station (ISS) by providing redundant transportation capabilities in case one company cannot perform. NASA's decision to retain redundant capabilities has proven beneficial for commercial cargo resupply services in light of the October 2014 failure of Orbital Sciences Corporation's (Orbital) third resupply mission to the ISS as well as the April 2015 loss of a Russian Progress spacecraft. To address the need for ongoing resupply of the ISS, NASA is using its other vendor, SpaceX, to offset the cargo lost on the failed Orbital launch. Similarly, SpaceX experienced a 1-year gap between its second and third Commercial Resupply Services missions during which Orbital provided needed cargo transportation to the ISS.

In addition to proving redundant capabilities, experience from other major spaceflight programs shows that a lack of competition can increase costs. Moreover, as stated in our 2013 report, a primary impetus behind the Commercial Crew Program is to foster the U.S. spaceflight industry, a goal furthered by contracting with multiple vendors.<sup>3</sup>

- 8. In choosing to support two contractors, does this suggest that NASA believes one of the commercial carriers will fail?**

*Answer:* Although NASA acknowledges that one of the purposes of having multiple vendors is to provide redundant transportation capabilities to the ISS, we have no evidence suggesting the Agency believes one of its vendors will fail.

#### **Orion Multi-Purpose Crew Vehicle and Space Launch System**

- 9. Does the fiscal year 2016 request for the Orion and Space Launch Systems provide NASA with sufficient funding to safely support the first uncrewed test flight in 2017, with a subsequent crewed flight in 2021?**

*Answer:* This question is more appropriately addressed to Orion and Space Launch System Program managers. However, we are conducting a follow-up audit evaluating NASA's management of the Orion Program to help identify the challenges associated with meeting the proposed flight dates. In our 2013 audit of the Orion Program, we identified the Program's relatively flat funding profile as an outstanding program risk. To date, we have not evaluated funding or management of the Space Launch System Program because Congress directed the Government Accountability Office to examine this Program.

<sup>3</sup> "NASA's Management of its Commercial Crew Program," IG-14-001.

### International Space Station

10. The NASA IG issued a report in September 2014 regarding the proposal to extend the operational life of the International Space Station. This report stated that, "In November 2013, the International Space Station (ISS or Station) completed 15 years of continuous operation in low Earth orbit, marking a significant achievement in the history of human spaceflight. Two months later, the Administration announced its intent to extend Station operations until 2024. Originally designed and tested for a 15-year life span, the ISS may now operate for 26 years. The United States has invested almost \$75 billion in the ISS."

According to that report, program costs for the International Space Station have risen 26 percent between fiscal years 2011 and 2013. NASA spends about \$3 billion a year on the International Space Station – this amount is expected to grow to about \$4 billion by 2020. The IG report stated that NASA's assumptions underlying its cost projections are overly optimistic. Please explain. What can NASA do now to ensure that costs to operate the Station don't escalate?

In deciding to extend operations on the Station to 2024, NASA committed to expend a great deal of resources that otherwise could have been dedicated to future exploration missions. Has or will the IG evaluate lost opportunities because of this commitment?

*Answer:* Our primary concern about optimistic cost projections relates to NASA's projected costs for future commercial crew and cargo missions. By 2024, transportation costs are expected to account for 59 percent of the ISS's total operating budget as compared to 34 percent in fiscal year 2013. NASA officials intend to maintain the ISS annual budget between \$3 billion and \$4 billion per year through 2024. In our judgment, this estimate is based on overly optimistic assumptions. For example, NASA's estimates for the cost of the commercial crew transportation services they expect to replace the Russian Soyuz are based on the cost of a Soyuz seat in fiscal year 2016, or \$70.7 million per seat for a total cost of \$283 million per mission for four astronauts. However, the Program's independent government cost estimates projected significantly higher costs when NASA transitions to purchasing these seats from commercial companies.

With regard to ways to hold down costs, in our September 2014 report on the ISS we recommended the Associate Administrator for the Human Exploration and Operations Mission Directorate continue to solicit commitments from international partners to improve ISS cost sharing.<sup>4</sup> In addition, we are finishing up a review examining NASA's contract administration and oversight processes of ISS operations and maintenance contracts that may identify strategies to manage costs.

Finally, as discussed in our ISS report, extending the life of the ISS will allow NASA more time to utilize the Station as a research platform to study and mitigate a variety of human health risks that must be addressed to facilitate long-term exploration missions.<sup>5</sup> Although it is possible that a decision not to extend the Station would enable money to be dedicated to other missions, it also would mean the loss of this research opportunity. That said, we have not conducted work examining "lost opportunities" resulting from the ISS extension decision.

<sup>4</sup> NASA Office of Inspector General, "Extending the Operational Life of the International Space Station" (IG-14-031, September 18, 2014).

<sup>5</sup> "Extending the Operational Life of the International Space Station," IG-14-031.

**Foreign National Access**

11. Following a series of allegations about access of foreign nationals to information that is subject to ITAR – International Traffic in Arms Regulations – an intensive investigation was undertaken by your office, the FBI, and the Department of Homeland Security. This review occurred from 2009 through 2014. Please provide the Committee with an update on steps that NASA has taken to strengthen its foreign national access program. Has NASA implemented all of the recommendations that the IG recommended?

This follows recommendations from a January 2014 National Academy of Public Administration report that also recommended a series of recommendations. Has NASA implemented any of these recommendations? Have there been any subsequent incidents along these same lines, either at Langley, Ames, or any of the other Centers?

*Answer:* We continue to investigate allegations of unauthorized foreign national access at NASA facilities. In one recent example, we determined that two foreign nationals working for a university on a NASA-funded research program had accessed an export restricted item on one occasion without authorization. Based on our findings, the foreign nationals were fired by the university and NASA indefinitely suspended their access to Agency facilities.

Under language included in the fiscal year 2015 House Report, 113-448, NASA is required to provide Congress with quarterly reports outlining its progress in implementing the NAPA recommendations. NAPA's most recent report – an update on its fiscal year 2015 second quarter, provided to Congress on May 2015 – described the progress NASA has made with respect to implementing NAPA's recommendations. The report stated that NASA has closed or completed 16 of the 27 recommendations and included a timetable for when it plans to complete the remainder.

In addition to the NAPA report, both the Government Accountability Office and our office have made a number of recommendations in recent years as to how the Agency could both strengthen its export controls and tighten its foreign national access management. We plan to initiate an audit this summer to examine NASA's progress in implementing the more than 30 recommendations made by NAPA, the Government Accountability Office, and the Office of Inspector General in this area.

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